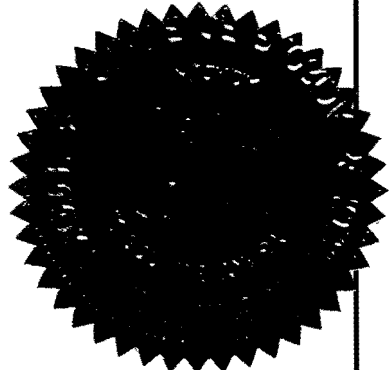


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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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VOLUME 7

Pages 781 through 890

PROCEEDINGS: HEARING

BEFORE: CHAIRMAN BRAULIO L. BAEZ
COMMISSIONER J. TERRY DEASON
COMMISSIONER LILA A. JABER
COMMISSIONER RUDOLPH "RUDY" BRADLEY
COMMISSIONER CHARLES M. DAVIDSON

DATE: Friday, May 28, 2004

TIME: Commenced at 9:00 a.m.
Concluded at 6:15 p.m.

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

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6732

APPEARANCE: (As heretofore noted.)

1 I N D E X

2 WITNESSES

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NUMBER:

ID.

ADMTD.

99 (Confidential) Late-filed Exhibit
MJM-1 to Mr. Majoros' Deposition

837

857

P R O C E E D I N G S

(Transcript follows in sequence from Volume 6.)

CHAIRMAN BAEZ: The next witness is Mr. Majoros.

Mr. Majoros, you have been sworn, correct? Okay.

Ms. Kaufman, go ahead.

MS. KAUFMAN: Mr. Majoros is appearing on behalf of the Citizens and the Florida Industrial Power Users Group.

CHAIRMAN BAEZ: I am showing it on behalf of the Citizens and FIPUG.

MICHAEL J. MAJOROS, JR.

was called as a witness on behalf of the Citizens of the State of Florida and the Florida Industrial Power Users Group, and having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. KAUFMAN:

Q Good afternoon, Mr. Majoros.

A Good afternoon.

Q Could you please state your name and business address for the record?

A My name is Michael J. Majoros, Jr. My business address is 1220 L Street Northwest, Washington, D.C.

Q And by whom are you employed and in what capacity?

A I am vice-president of the economic consulting firm of Snavelly, King, Majoros, O'Connor and Lee, Incorporated.

Q And I think we have established that you are

1 appearing on behalf of the Citizens of the State of Florida and
2 the Florida Industrial Power Users Group, is that correct?

3 A That is correct.

4 Q Did you cause 30 pages of testimony to be prefiled in
5 this docket?

6 A Yes.

7 Q Do you have any changes or corrections?

8 A No.

9 Q If I were to ask you the questions contained in your
10 prefiled testimony today, would your answers be the same?

11 A Yes, they would.

12 Q And you also had Appendix A, which I believe is your
13 qualifications, has been denominated Exhibit 13, as well as
14 five additional exhibits which have been denominated 14 through
15 18. Were those prepared under your supervision and direction?

16 A Yes.

17 Q And do you have any changes or corrections?

18 A No.

19 MS. KAUFMAN: Mr. Chairman, I think I neglected to
20 ask that Mr. Majoros' prefiled testimony be inserted into the
21 record as though read.

22 CHAIRMAN BAEZ: Without objection, show the prefiled
23 direct testimony of Michael Majoros entered into the record as
24 though read, and let the record reflect that his accompanying
25 exhibits running from Appendix A through MJM-1, 2, 3, 4, and 5

1 have been already identified.

2 MS. KAUFMAN: Thank you, Mr. Chairman.

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DIRECT TESTIMONY

OF

MICHAEL J. MAJOROS, JR.

DOCKET NO. 031033-EI

REDACTED

INTRODUCTION

- 1
- 2
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- 5
- 6
- 7 **Q. Please state your name.**
- 8 A. My name is Michael J. Majoros, Jr.
- 9 **Q. By whom and in what capacity are you employed?**
- 10 A. I am Vice President of Snavelly King Majoros O'Connor & Lee, Inc. ("Snavelly
11 King"), an economic consulting firm with offices at 1220 L Street, N.W., Suite 410,
12 Washington, D.C. 20005.
- 13 **Q. Have you attached a summary of qualifications and experience?**
- 14 A. Yes. Appendix A is a brief description of my qualifications and experience. It also
15 contains a listing of my appearances before state and federal regulatory bodies.
- 16 **Q. At whose request are you appearing?**
- 17 A. I am appearing on behalf of the Florida Office of Public Counsel ("OPC") and the
18 Florida Industrial Power Users Group ("FIPUG").
- 19 **Q. What is the subject of your testimony?**
- 20 A. I will address TECO's RFP process. I will explain why the waterborne
21 transportation rates that Tampa Electric Company ("Tampa Electric," "TECO" or
22 "the Company") has contracted to pay TECO Transport for the waterborne
23 transportation of coal which it seeks to recover from ratepayers in the next five (5)
24 years are excessive. I will also discuss the rate benchmark which the Commission
25 has employed and suggest why it should be eliminated.

1 **CONCLUSIONS AND RECOMMENDATIONS**

2 **Q. Please summarize your conclusions and recommendations.**

3 A. I conclude that TECO's June 27, 2003 Request for Proposals ("RFP") was not
4 sufficient to establish a market price for waterborne coal transportation. I conclude
5 that the TECO Transport prices for 2004 to 2008, to which TECO has agreed, are
6 unreasonable and I conclude that the waterborne coal transportation benchmark
7 provides bad information and should be eliminated. I recommend that *CON* of
8 TECO's payments to TECO Transport be disallowed entirely. My recommendation
9 assumes a maximum rate of *CON*. This reflects the two obvious adjustments to
10 Mr. Dibner's models which I discuss later in my testimony, and utilizes the *CON*
11 terminal rate from the prior contract. These fairly obvious adjustments suggest that
12 TECO agreed to rates which will result in an annual overcharge of approximately
13 *C* million.

14 **BACKGROUND**

15 **Q. Please explain your understanding of the background of this case.**

16 A. TECO is a regulated electric public utility that enjoys a monopoly in its service
17 territory. The Florida Public Service Commission regulates TECO's intrastate
18 service rates. In general, these service rates are based on TECO's costs of doing
19 business plus a return on its investment. TECO is a "full service" electric utility; by
20 that I mean it is engaged in the generation, purchase, transmission, distribution and
21 sale of electric energy.¹ TECO operates two coal-fired plants in Florida: Big Bend
22 and Polk, and a substantial portion of the Company's total annual cost is the coal
23 required to operate these plants. While most of the coal used is domestic coal, TECO

¹ TECO Energy, Inc., 2002 10K Report, p. 5 of 28.

1 also purchases foreign coal and petroleum coke which are blended with domestic
2 coal for use at the Polk plant.²

3 **Q. How are TECO's service rates established?**

4 A. TECO's "base" service rates are generally intended to reflect its annual costs plus a
5 return on its investment. Until the early 1970s TECO's base rates were designed to
6 cover all of its annual costs, including fuel. This treatment was changed, however, as
7 a result of the "Arab oil embargo".

8 **Q. What was the effect of the Arab oil embargo?**

9 A. The embargo created an oil price spike and an energy crisis which was felt by all
10 U.S. energy producers and consumers. Since oil was an energy price leader, all
11 energy prices spiked concomitant with an ever-increasing demand for electricity.
12 TECO's ability to control its substantial fuel costs was undermined as a result of fuel
13 price volatility combined with growing demand.

14 **Q. What was the regulatory reaction to this loss of control of fuel costs?**

15 A. The energy crises spawned electric base rate proceedings across the nation. In order
16 to reduce the number of electric base rate proceedings resulting from fluctuating fuel
17 costs, most U.S. electric utilities were given authority to recover fuel costs through a
18 separate fuel adjustment charge based on actual monthly fuel expense. In other
19 words, fuel was split out of the electric utilities' total cost pools and recovered
20 separately, currently on an annual basis. Thus, TECO's base rates are now intended
21 to recover its controllable costs; while its fuel charge, which varies with prices and
22 volumes, is to recover its most significant variable costs.

23 **Q. Please provide a brief conceptual description of the practical impact of the fuel**
24 **adjustment charge process.**

² Testimony of Joann T. Wehle, January 5, 2004, page 18.

1 A. TECO purchases its fuel and then acts as a conduit through which those costs are
2 passed on to its ratepayers. TECO is, in effect, a purchasing agent for ratepayers.
3 Because TECO is a monopoly and retail ratepayers have no service alternative,
4 TECO has a fiduciary responsibility to its retail customers. The regulatory compact
5 and common sense requires TECO to purchase fuel and other related services at the
6 lowest possible cost.

7 **Q. Is there any historical precedent for this assumption?**

8 A. Yes. The Commission's Order No. 12645 in Docket No. 830001-EU addressed
9 electric utility's inherent responsibilities regarding fuel adjustment clauses.
10 Appendix A to that Order is attached to my testimony as Exhibit___(MJM-1). It is
11 titled "Florida Public Service Commission Fuel Procurement Policy." It is replete
12 with references to "lowest system fuel cost." Item C states "the utility's management
13 has the sole responsibility to procure fuel in the most cost efficient manner possible."

14 **Q. How do transportation charges relate to TECO's fuel charge?**

15 A. The transportation cost of delivering fuel to TECO's generating plants is one of the
16 components of TECO's fuel cost. The transportation rates that TECO pays, therefore,
17 have a direct impact on the costs that ratepayers must pay via the fuel charge.

18 **Q. How does the FPSC regulate TECO's Fuel Adjustment Charge?**

19 A. Pursuant to its procedure, the Commission conducts a hearing each November
20 to set an annual fuel factor for the following calendar year, January -
21 December. At the end of the calendar year, TECO's actual fuel costs and the
22 amounts it recovered from its ratepayers are "trued-up" and any over- or
23 under-recovery is carried forward into the next year's fuel factor.³ In theory,
24 the fuel adjustment clause is intended to protect utilities from volatile fuel

³ Docket No. 980269-PU, Order No. PSC-98-0691-FOF-PU, May 19, 1998.

1 costs over which they generally do not have control by permitting them to
2 project their fuel costs for the upcoming calendar year in the prior year. In
3 reality, TECO (and the other utilities) recover a large portion of their revenues
4 through the fuel adjustment (and other clauses) and are essentially guaranteed
5 full recovery of items flowing through the fuel clause.

6 **Q. Have you been involved in any of TECO's fuel proceedings?**

7 A. Yes. I testified, on behalf of the OPC, in TECO's most recent fuel case, Docket No.
8 030001-EI. That case was the genesis of this coal transportation proceeding.

9 **Q. Is there anything unique about TECO's coal transportation costs?**

10 A. Yes, these costs are primarily waterborne transportation costs resulting from a
11 contract between TECO and its unregulated affiliate, TECO Transport. TECO's coal
12 primarily originates from mines in the Illinois Basin area, as well as overseas. In the
13 case of domestic coal, TECO must secure transportation from the mines to its Big
14 Bend plant in Florida. It secures this transportation from its sister company, TECO
15 Transport.

16 **Q. Please summarize this transportation.**

17 A. There are three legs of this journey. First, the coal is moved from the mine down the
18 Mississippi River via river barges to TECO Transport's Davant terminal near New
19 Orleans. The coal is then either stored at Davant, or moved directly onto an ocean-
20 going barge. Finally, the coal is shipped across the Gulf of Mexico to the Big Bend
21 plant. All of these transportation services have been, and continue to be, provided by
22 TECO Transport, an unregulated affiliate of Tampa Electric. TECO Transport's rates
23 for these three segments: inland river, terminal services, and cross-Gulf shipment, are
24 at issue in this docket because TECO's customers pay these rates on a dollar-for-
25 dollar basis.

1 **Q. Are these rates based on TECO Transport's costs?**

2 A. No, as will be discussed in more detail later, they are based on a market price
3 estimate. Therefore, since the rates are not based on TECO Transport's costs,
4 TECO's customers rely on TECO to obtain the best rates available through this
5 market-based arrangement.

6 **Q. How does TECO Transport charge TECO for these transportation services?**

7 A. TECO has a contract with TECO Transport for these transportation services. The
8 Commission adopted a "market price standard" in Docket No. 870001-EI-A, FPSC
9 Order No. 20298, issued November 10, 1988. This Order states that TECO Transport
10 may charge and TECO may recover the "market rate" for the transportation of its
11 coal. In that proceeding, the FPSC also established a "waterborne coal transportation
12 benchmark rate" to be used as a surrogate for a true market rate. I will discuss the
13 benchmark in more detail later.

14 **Q. Did you address Tampa Electric's waterborne transportation rates in your
15 testimony in Docket No. 030001-EI?**

16 A. No. Although initially TECO's waterborne transportation rates were to have been
17 addressed in that docket, they were subsequently deferred to this proceeding.

18 **Q. Why were TECO Transport's waterborne transportation rates deferred to this
19 separate docket?**

20 A. In early 2003, the Staff encouraged TECO to issue a Request for Proposals relating to
21 TECO's waterborne fuel transportation needs for 2004 and beyond.⁴ In July, 2003,
22 the Company prepared a Request for Proposals to provide for waterborne deliveries

⁴ Testimony and Exhibit of Joann T. Wehle, January 5, 2004, Docket No. 031033-EI ("Wehle-Jan. 2004"), Page 14.

1 of coal from suppliers in the Midwest to its Big Bend Station.⁵ (The flaws in the
2 Company RFP are discussed below as well as in the testimony of Pat Wells).

3 **Q. Did the Company provide testimony describing its RFP process?**

4 A. Yes. In Docket No. 030001-EI, on September 12, 2003, TECO filed direct testimony
5 of Ms. Joann T. Wehle and its consultant, Mr. Brent Dibner, describing the
6 Company's RFP process. In addition, Mr. Dibner indicated that he would
7 subsequently file supplemental testimony containing his calculation of the
8 appropriate "market rates" for TECO's waterborne transportation costs, i.e., his
9 report.⁶

10 **Q. Did Mr. Dibner ultimately provide his estimate of market rates?**

11 A. Yes, on September 25, 2003, TECO filed Mr. Dibner's supplemental testimony
12 describing his market analysis and resultant rates. Mr. Dibner also discussed the
13 waterborne transportation bids TECO received in response to its RFP.⁷ In his
14 September 25, 2003 testimony, Mr. Dibner recommended that:

15 Tampa Electric should present the market rates I have
16 established for each segment, as detailed in my exhibit, to TECO
17 Transport for its decision to meet or beat the market price for
18 services beginning January 1, 2004, as required by the terms of
19 the existing contract. If TECO Transport opts to provide service
20 under the contractual "Right of First Refusal" clause, Tampa
21 Electric should utilize the market rates I have established in
22 negotiating a contract with TECO Transport.⁸
23

24 I have underlined portions of the preceding passage to emphasize that Mr.
25 Dibner is TECO's consultant and his recommendations were intended to be used by

⁵ Testimony and Exhibit of Joann T. Wehle, September 12, 2003, Docket No. 030001-EI ("Wehle-Sept. 2004"), Page 13.

⁶ Testimony of Brent Dibner, September 12, 2003, Docket No. 031001-EI ("Dibner Testimony"), page 27.

⁷ Ms. Wehle, concomitantly, discussed two rail bids received by TECO.

⁸ Id., September 25, 2003, pages 23-24.

1 TECO to negotiate with TECO Transport. Mr. Dibner reiterated his recommendation
2 in his January 5, 2004 testimony in the current docket.⁹

3 **Q. What transpired next?**

4 A. In late September, both FIPUG and the OPC filed motions in opposition to TECO's
5 supplemental (September 25, 2003) testimony due to its late filing and the
6 significance of the issues and the dollars at stake.¹⁰ OPC and FIPUG requested that
7 the issues contained in the supplemental testimony be deferred from consideration at
8 the November 2003 fuel clause hearing. In October, two other parties (TECO
9 residential customers and CSXT) filed motions to establish a separate docket to
10 consider the transportation issues addressed by the supplemental testimony.¹¹ Also,
11 on October 23, 2003, Staff member Mr. William B. McNulty filed testimony on
12 behalf of FPSC Staff.¹²

13 **Q. What did Mr. McNulty recommend?**

14 A. Mr. McNulty recommended that "the Commission should determine that the RFP as
15 developed and administered by TECO had several shortcomings in generating a
16 reasonable level of information about market price and it should also determine that
17 the RFP nonetheless provided the most certain information regarding WCTS market
18 price for TECO available at that time."¹³ He also recommended that "the
19 Commission should determine TECO's recoverable costs for WCTS provided by
20 TECO Transport for the first quarter of 2004 are the rates appearing in the
21 TECO/TECO Transport contract less *C* %", a reduction based on the fact that the
22 rail bid TECO received was on average *C* % less than the rates TECO agreed to

⁹ Id., Docket No. 031033-EI, January 5, 2004, page 47.

¹⁰ In re: Fuel and purchased power cost recovery clause with generating performance incentive factor, Docket No. 030001-EI, Order No. PSC-03-1359-PCO-EI, December 1, 2003, page 2.

¹¹ Id., pages 2 and 3.

¹² Supplemental Direct Testimony of William B. McNulty, October 23, 2003.

¹³ Id., page 4.

1 pay TECO Transport.¹⁴ In addition, Mr. McNulty recommended that the
 2 Commission determine that the waterborne transportation benchmark is irrelevant for
 3 determining the prudence of TECO's rates for transportation as paid to its affiliate
 4 TECO Transport and that it should be eliminated.¹⁵ He also recommended that the
 5 Commission identify "TECO's WCTS cost recovery as an annual issue in the fuel
 6 docket to be resolved by an audit of TECO's operating results under its contract with
 7 TECO Transport."¹⁶

8 Mr. McNulty also noted that his recommendation was based on limited
 9 information, stating "These recommendations are provided based on the information
 10 available to me at the time this testimony was prepared. At that time, I have only
 11 limited information concerning TECO's evaluation of an appropriate market rate.
 12 However, I believe that the recommendation stated herein provides a reasonable
 13 means for establishing that rate."¹⁷

14 **Q. What did the Commission decide?**

15 A. The Commission determined that the waterborne transportation issues in TECO's
 16 supplemental testimony should be addressed in a separate proceeding.¹⁸

17 **Q. What issues did the Commission identify for consideration in this proceeding?**

18 A. The Commission identified three issues for consideration in this proceeding. They
 19 are as follows:

20 Issue 17E Is Tampa Electric's June 27, 2003, request for proposals sufficient to
 21 determine the current market price for coal transportation?¹⁹

¹⁴ Id., page 5.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id., page 3.

¹⁸ In re: Fuel and purchased power cost recovery clause with generating performance incentive factor,
 Docket No. 030001-EI, Order No. PSC-03-1359-PCO-EI, December 1, 2003.

¹⁹ Id., page 3.

1 Issue 17F Are Tampa Electric's projected coal transportation costs for 2004
2 through 2008 under the winning bid to its June 27, 2003, request for
3 proposals for coal transportation reasonable for cost recovery
4 purposes?²⁰

5 Issue 17G Should the Commission modify or eliminate the waterborne coal
6 transportation benchmark that was established for Tampa Electric by
7 Order No. PSC-93-0443-FOF-EI, issued March 23, 1993, in Docket
8 No. 930001-EI?²¹

9 **Q. Do you address each of these issues in your testimony?**

10 A. Yes.

11 **Q. What are your conclusions?**

12 A. In my opinion, the RFP process was not sufficient to elicit bids, the rates Mr. Dibner
13 recommends are unreasonable, and the benchmark should be eliminated.

14 **RFP PROCESS**

15 **Q. Were there problems with Tampa Electric's RFP?**

16 A. Yes. In my opinion the RFP and the process it followed was obviously flawed. Mr.
17 Pat Wells discusses this in more detail in his testimony. My testimony focuses more
18 on the results of the process rather than the process itself. Therefore, I will
19 summarize the RFP process as background for my testimony.

20 **Q. Why did Tampa Electric issue an RFP for its waterborne coal transportation?**

21 A. In early 2003 the Commission Staff encouraged TECO to issue an RFP for its
22 waterborne coal transportation.²²

²⁰ Id.

²¹ Id.

²² January 5, 2004 Testimony of Joann T. Wehle, page 14.

1 **Q. Do you think Tampa Electric intended to accept any of the bids it would receive**
2 **from the RFP?**

3 A. No. Due to the timing and contents of the RFP, as Mr. Wells explains, it appears that
4 the RFP was simply a way to attempt to satisfy the Staff and perhaps be used as an
5 information-gathering tool. Tampa Electric witness Joann Wehle states in her
6 January 5, 2003 testimony: "Tampa Electric decided to issue an RFP as part of its
7 good-faith efforts to obtain the most relevant and timely waterborne transportation
8 market data available."²³ Thus, the purpose of the RFP was to gather information
9 relating to the appropriate market rates for the three components of Tampa Electric's
10 transportation needs (inland, terminal and ocean), for use in establishing the contract
11 for transportation services beginning in 2004 and not to actually award the bid to any
12 entity other than TECO Transport.

13 **Q. Were there other indications that TECO would not change transportation**
14 **providers as a result of the RFP?**

15 A. Yes. Tampa Electric's contract with TECO Transport includes a "Right of First
16 Refusal" clause, which allows TECO Transport to "meet or beat" current market
17 prices.²⁴ Thus, TECO Transport was not even required to respond to the RFP.
18 Furthermore, the RFP's stated preference for a single provider of end-to-end service
19 suggests that the RFP was tailored towards TECO Transport, the only waterborne
20 transportation provider capable at this time of providing such end-to-end service. It
21 is clear that a new contract was going to be signed with TECO Transport, and the
22 results of the RFP would be used to assist in determining the rates included in that
23 contract.

24 **Q. Did the RFP result in any bids?**

²³ Id.

²⁴ Id., page 22.

1 A. The RFP generated four bids; one inland river bid, one terminal bid, and two
2 unsolicited rail bids from CSX. It probably should have resulted in more bids, but it
3 did not, due, as Mr. Wells notes, to the RFP's many restrictive and unreasonable
4 terms. Tampa Electric evaluated the bids with the assistance of outside consultants.
5 Mr. Brent Dibner assisted in the evaluation of the inland river and terminal bids and
6 Sargent & Lundy assisted in the evaluation of the rail bids.

7 **Q. Why do you say the rail bids were unsolicited?**

8 A. The bidding railroad was not originally provided with a copy of the RFP. The
9 railroad received one only after contacting Tampa Electric and requesting a copy.
10 The Company considered the rail bids to be "nonconforming" because they were not
11 for the provision of waterborne transportation.²⁵ However, the Company did evaluate
12 the bids. The benchmark is based on rail rates. It is appalling that a rail bid was
13 rejected as nonconforming, given that the so-called competitive benchmark is based
14 on rail to begin with.

15 **Q. What was the result of Tampa Electric's evaluation of the bids received in
16 response to its RFP?**

17 A. Mr. Dibner reviewed the terminal and inland river bids and Sargent & Lundy
18 reviewed the rail bids. TECO rejected the rail bids for various reasons, including the
19 belief that the bids underestimated the costs for necessary infrastructure additions and
20 improvements and that the Company would incur additional operating expenses in
21 shifting from waterborne to rail delivery.²⁶ The inland river bid was rejected because
22 the bidder is in Chapter 11 bankruptcy proceedings. Upon analyzing the bid, Mr.
23 Dibner determined that the bidder may be reorganized, broken up or liquidated, the
24 bidder had requested to restructure or terminate contracts, and the bidder's fleet size

²⁵ Id., page 23.

²⁶ Testimony of Joann T. Wehle, January 5, 2004, page 31.

1 had decreased dramatically.²⁷ Mr. Dibner opined that the bidder might not be able to
2 meet its obligations should it be awarded the business. While he felt that the bid was
3 not a true market bid due to the financial status of the bidder and the bidder's fleet
4 size, he admitted that the bid could serve as a practical market indicator.²⁸ He did,
5 however, accept the terminal bid as being a viable market rate.

6 **Q. Were any of the bids put forth to TECO Transport to "meet or beat?"**

7 A. TECO Transport was given the rates provided in the terminal bid to "meet or beat."

8 **REJECTION OF RAIL AND INLAND RIVER BIDS**

9 **Q. What is your opinion regarding TECO's rejection of the rail bid?**

10 A. It appears that the rail bid was rejected primarily due to capital costs. Tampa Electric
11 evaluated the rail bid using the full capital costs which Sargent & Lundy claimed
12 were vastly understated. This was improper because such capital costs are part of
13 base rates and would not and should not be reflected in the fuel adjustment charge,
14 which is what is at issue in this matter. Water facilities, such as docks, are capital
15 items covered in base rates. To get a proper "apples to apples" comparison, the
16 capital costs of the rail bid must be kept on the rate base side of the equation. The
17 rail and dock capital costs are not relevant in this proceeding.

18 **Q. Are there any other reasons that TECO rejected the rail bids?**

19 A. Yes. After rejecting the bids due to capital considerations, Ms. Wehle layered
20 several new costs on to the rail bids. Thus, TECO's overall approach was to add
21 costs, both capital and operating, to the rail bid as a reason to reject it. The rail bids
22 were at least \$*C* per ton less than Mr. Dibner's rates. TECO should have presented
23 the rail bids to TECO Transport.

24 **Q. Do you have an opinion regarding TECO's rejection of the Inland River Bid?**

²⁷ Testimony of Brent Dibner, January 5, 2004, page 27.

²⁸ Id., page 28.

1 A. I cannot understand why it was not submitted to TECO Transport. TECO has a
2 fiduciary duty to negotiate the lowest possible price. TECO Transport would have
3 then had to meet that lower bid under its right of first refusal.

4 **Q. Was the Company correct in rejecting the rail and inland river bids?**

5 A. No. The bids should not have been disregarded in the context of evaluating the
6 validity of the prices resulting from Mr. Dibner's market model. Mr. Dibner's rates
7 are higher, even though he is supposed to represent TECO.

8 AFFILIATE TRANSACTIONS

9 **Q What is the relationship between Tampa Electric and TECO Transport?**

10 A. Tampa Electric and TECO Transport are both subsidiaries of TECO Energy, Inc.
11 Tampa Electric is a regulated utility and TECO Transport is an unregulated affiliate.
12 Transactions between the two companies are "affiliate transactions", that is
13 transactions between related companies with the profits from such transactions
14 flowing to the parent company.

15 **Q. In your opinion, can affiliate transactions be problematic?**

16 A. Yes, when the reasonableness of rates is an issue, affiliate transactions are always
17 problematic, particularly when a regulated affiliate like TECO is making purchases
18 from an unregulated affiliate such as TECO Transport. There are endless
19 opportunities for the unregulated affiliate to derive cross-subsidies from the
20 customers of the regulated affiliate, and the incentive to overcharge always exists.

21 **Q. Are such transactions even more worrisome in this instance?**

22 A. Yes, the transactions between TECO and TECO Transport flow dollar-for-dollar into
23 ratepayers' bills and from there into TECO Transport's cash account. Any cross-
24 subsidies or excessive profits flow from TECO Transport's cash account into its
25 parent's, TECO Energy's, available funds. Therefore, it is in TECO Energy's best

1 interests for TECO Transport to charge as much as possible to TECO for waterborne
2 transportation.

3 **Q. How are affiliate transactions regulated generally?**

4 A. Typically rules exist to ensure that the unregulated affiliate recovers no more than its
5 cost; in fact, I am aware of rules which restrict the prices to the lower of cost or
6 market. Clearly, prices higher than a competitive market rate are at odds with
7 common wisdom.

8 **Q. What is the history of TECO Transport's prices?**

9 A. Until 1988, they were based on cost. Thereafter the Commission adopted a market
10 price standard that places particular emphasis on a valid market price.

11 **Q. What assumptions underlie a focus on a market price?**

12 A. The assumption of a market price assumes that TECO will aggressively pursue the
13 lowest possible competitive price from all available sources. It assumes that TECO
14 will be an aggressive negotiator and work hard to get the best deal for ratepayers,
15 particularly given the fact that its customers bear all of the risks associated with fuel
16 costs.

17 **Q. Are there any obvious abuses of the TECO/TECO Transport affiliate
18 relationship apparent in this proceeding?**

19 A. Yes, recall Mr. Dibner's original recommendation, i.e., to use his recommendations
20 as a basis for negotiations. TECO accepted Mr. Dibner's September 25, 2003
21 recommendation and signed a new contract with TECO Transport on October 6, 2003
22 to continue to provide these transportation services for the next five years. Mr.
23 Dibner's \$*C* average river rate and his \$*C* ocean rate were presented to
24 TECO Transport to meet or beat. TECO Transport accepted the rates and a contract
25 was signed. Mr. Dibner also recommended acceptance of a single \$*C* bid for

1 terminal services as a market proxy and TECO Transport agreed to match that rate in
2 the new contract.

3 **Q. Why is this an abuse of the TECO/TECO Transport affiliate relationship?**

4 A. Mr. Dibner, a consultant to TECO (the regulated entity), in a negotiation with TECO
5 Transport (the unregulated entity) appears to be acting in the best interest of TECO
6 Transport rather than TECO. Rather than helping TECO select and/or negotiate the
7 lowest possible rates, he rejected alternative market bids and proposed his proxy
8 market rates. These proxy rates are based on his model, which clearly overstates
9 prices, particularly in a competitive market. I believe that this is a clear abuse of an
10 affiliate relationship.

11 **Q. Before discussing Mr. Dibner's results in detail, do you have any general
12 recommendations concerning his participation in this proceeding?**

13 A. There is an irony in this proceeding. TECO Transport's rates are at issue, but the
14 evidence in support of higher rates for TECO Transport is sponsored by TECO,
15 which has an obligation to its customers rather than its affiliate. Mr. Dibner is
16 TECO's witness, and I am certain that his fees are being treated by TECO above-the-
17 line, i.e., charged to TECO ratepayers. Therefore, my first recommendation is to
18 disallow Mr. Dibner's fees from TECO's regulated costs. The expense relating to Mr.
19 Dibner should be taken "below-the-line." In addition to Mr. Dibner, TECO hired
20 Sargent & Lundy ("S&L") to discredit another bid that apparently is less than Mr.
21 Dibner's proposed waterborne rates. S&L's fees should also be disallowed.

22 TECO's consultants should have been striving to obtain lower, not higher,
23 transportation rates for ratepayers. TECO's consultants should also be explaining to
24 TECO that it is in its ratepayers' best interests to have competitive sources of

1 transportation for its fuel. TECO should be pitting these sources against one another,
2 not eliminating one source, with a lower rate, merely because it is not waterborne.

3 Mr. Dibner's services and fees (and Sargent & Lundy's services and fees) do
4 not help TECO's ratepayers; to the contrary, they help TECO Transport and TECO's
5 parent, TECO Energy, by ensuring that TECO Energy will continue to provide
6 waterborne transportation service to TECO, at higher-than-market rates, with the
7 revenues from the transaction flowing to the parent. Ratepayers do not need the kind
8 of help that increases their costs unnecessarily, and they should not be required to pay
9 for that kind of help.

10 **Q. Before returning to Mr. Dibner, do you have any other comments concerning**
11 **Sargent & Lundy?**

12 A. Yes, it is my understanding that S&L's primary problem with the rail bid was that it
13 would cost too much for TECO to build the infrastructure necessary to facilitate rail
14 transportation into its plant. First of all, as I have already discussed, that is capital
15 cost, not variable fuel cost that would flow through the fuel charge. Furthermore, in
16 my opinion, TECO always has the right, in fact the obligation, to negotiate with the
17 rail provider to fund more, if not all of that infrastructure cost, as well as the price.

18 **Q. Do you believe the negotiations between TECO and TECO Transport were**
19 **"arms length?"**

20 A. Absolutely not. If these negotiations were arm's length, TECO would have proposed
21 much lower "meet or beat" rates to TECO Transport in the first place. As it is, TECO
22 Transport merely accepted TECO's request to pay rates based on Mr. Dibner's model
23 which are demonstrably higher than they should be in a competitive market. This is
24 precisely why affiliate transactions are so dangerous and must be closely monitored
25 and evaluated.

DIBNER MODELS

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Q. How did the Company determine the appropriate market rate for its waterborne transportation services since it rejected all but the terminal bid?

A. Mr. Dibner evaluated the bids resulting from the RFP²⁹ and then constructed “market rates” for the inland and ocean going portions of the voyage using his own models. Tampa Electric relied upon an analysis Mr. Dibner prepared as a “proxy” for the market price. This is the price that was offered to TECO Transport and which it accepted. Mr. Dibner constructed two “models”-- one to reflect the inland barge portion of the trip, and the other to reflect the cross-Gulf portion. I discuss his models and the results below.

Q. Have you reviewed Mr. Dibner’s models?

A. Yes. The Company initially refused to provide the models, stating that they were proprietary. Subsequently, Mr. Dibner and the Company agreed to allow intervenors to review and utilize a copy of the models at the offices of Ausley & McMullen, the Company’s attorneys. They also offered a training session.

Q. Did you attend the training session?

A. Yes. At this session, I determined that Mr. Dibner had developed a “front-end” to his models, to allow a user to change certain variables within the model, and view the results. While the formulae in the model itself were available for viewing, they were locked from any editing. Mr. Dibner selected the variables he would allow the user to test, or change. When questioned about this at the meeting, Mr. Dibner indicated that any further changes would result in the model no longer being his proprietary model. In other words, if the user felt it necessary to change any additional variables or calculations within the model, he would have to develop his own model.

²⁹ Mr. Dibner did not evaluate the bid from CSX.

1 **Q. Is this a problem?**

2 A. Yes. Mr. Dibner made certain assumptions in his models that appear unreasonable
3 on their face, for example, his assumptions about backhaul. However, these are not
4 included among the variables he opened for change. As the models are being held
5 forth as a tool for calculating the proxy market rate in this proceeding, it is reasonable
6 that the Commission Staff and intervenors should be able to change all variables,
7 based on their recommendations. The Commission could then decide whether the
8 changes, and the results they produced, were reasonable.

9 **Q. What was the source of the data used in the models?**

10 A. It appears, based on comments that Mr. Dibner made at the technical meeting, that
11 the majority of the data is derived from Mr. Dibner's head.³⁰

12 **Q. Is this a problem?**

13 A. It could be. While it is true that Mr. Dibner has extensive experience in the area of
14 waterborne transportation, data derived from his own experience cannot necessarily
15 be verified by others.

16 BACKHAUL

17 **Q. Did you ask any questions at the meeting where Mr. Dibner discussed his
18 model?**

19 A. Yes, I asked at least two questions relating to "backhaul" assumptions.

20 **Q. What is backhaul?**

21 A. When TECO Transport delivers a load of coal or petroleum coke from the mines
22 along the Mississippi or other rivers to the terminal in New Orleans, or from New
23 Orleans to the Big Bend plant, it must then make a return trip to the original
24 destination. Sometimes, it carries non-TECO related cargo on that return trip. That

³⁰ Direct response to question in technical session.

1 cargo is termed "backhaul." TECO Transport earns revenues from these backhaul
2 movements.

3 **Q. What questions did you ask?**

4 A. I asked Mr. Dibner if either his River Model or his Ocean Model accounted for
5 backhaul traffic. Mr. Dibner said "no." I also asked if I could actually run the model
6 and change that fundamental characteristic, i.e., could I account for backhaul. Mr.
7 Dibner stated that if anyone wanted to make a backhaul assumption, they could do so
8 in their own model, or they could take out their pencils and paper. Mr. Dibner also
9 stated that he preferred not to discuss the issue of backhaul further in the meeting.

10 **Q. What did you discover when you ran Mr. Dibner's model later at Ausley &
11 McMullen's office?**

12 A. It appears that Mr. Dibner priced one-way shipments based on roundtrip costs. For
13 example, in the river model, his calculation of "@ trip voyage days" consists of the
14 distance multiplied by two and divided by the miles per hour multiplied by 24. For
15 some hourly costs, he multiplies the cost by 24 and then by 365, in other words, Mr.
16 Dibner assigns all costs related to that item to the TECO operation. Likewise, in the
17 Ocean model, Mr. Dibner calculated his Voyage Time at Sea by doubling the one-
18 way trip time. This in turn doubles, among other items, the time charter expense.

19 **Q. Did you see any indication that Mr. Dibner assigned anything to backhaul
20 traffic?**

21 A. No, I did not see any reduction to the price or any assignment of the generic costs in
22 Mr. Dibner's model to backhaul traffic, thus confirming Mr. Dibner's assertion that he
23 had not accounted for or reflected backhaul revenue in his market model. In
24 addition, OPC's Second Set of Interrogatories, Interrogatory No. 54 asks, "Please
25 state specifically how backhaul was handled in both the inland river model and the

1 ocean model.” The Company responded as follows: “As previously stated, Mr.
2 Dibner does not consider backhaul relevant to either the inland river or ocean
3 transportation markets. Therefore, it was not considered or included in either
4 model.”³¹

5 **Q. Is this a significant omission?**

6 A. Yes, in my opinion this is a significant omission in a competitive market. It seems
7 reasonable to me that the first thing to go in a competitive market is the gravy
8 provided by backhaul. In other words, if I am competing with the next guy and I can
9 allocate a portion of my costs to backhaul, I can reduce my competitive rate and
10 hopefully capture that customer. In a non-competitive market, I can charge all of my
11 costs to TECO, and keep the backhaul revenues as “gravy.” That is what Mr. Dibner
12 proposes.

13 **Q. Does TECO Transport have backhaul traffic?**

14 A. Yes, TECO Transport has a substantial amount of backhaul traffic. For example,
15 information from the Port of Tampa indicates that the very vessels that Mr. Dibner
16 shows as being dedicated to TECO actually transport materials from Tampa back to
17 Louisiana, after making the trip to Tampa to deliver TECO coal. In calculating his
18 market rate, Mr. Dibner assigns *C* days (with the remaining days being
19 maintenance time) worth of the operating costs for these ships to TECO operations,
20 despite the fact that these vessels spend some of their time carrying cargo for other
21 companies. Exhibit__(MJM-2) is an analysis I conducted of the Port of Tampa
22 data. I will discuss this analysis later in my testimony

23 **Q. Does TECO have inland river backhaul traffic in addition to its ocean**
24 **backhaul?**

³¹ Company response to OPC’s Second Set of Interrogatories, Interrogatory No. 54.

1 A. Yes. It appears that TECO Transport relies upon this backhaul in its business.

2 For instance, TECO Transport's web site states:

3 TECO Barge Line is growing. Its fleet is rapidly
4 expanding, and has grown by more than 20 percent in 1998.
5 Its geographic market coverage and cargo mix are
6 diversifying. This is evidenced by the success TECO
7 Barge Line has enjoyed with its northbound shipping.³²

8
9 Also, TECO Energy's 2002 10K Report states the following:

10
11 Northbound river shipments of steel-related raw materials
12 are expected to improve in 2003 as the U.S. economy
13 improves....In the meantime, TECO Transport expects to
14 move increased volumes of fertilizers and petroleum coke
15 northbound on the river system.³³

16
17 **Q. Is there any precedent in Florida concerning backhaul traffic?**

18 A. Yes. Backhaul traffic was addressed in Docket No. 850001-EI-A, Order No. 14782,
19 issued August 28, 1985. In that case, involving Florida Power Corporation ("FPC"),
20 the Commission found that "profits or losses derived from the transportation of
21 commodities in the barges considered dedicated to FPC will be used to offset the cost
22 of coal transportation for FPC."³⁴ This was in addition to the fact that Electric Fuels
23 Corporation, the subsidiary of FPC providing the transportation, only assigned a
24 portion of the return trip costs to FPC, not the entire trip (as Mr. Dibner has done).

25 **Q. Is Mr. Dibner's model a cost model?**

26 A. No, it is a market model and has no relationship to TECO Transport's costs. That is
27 why his failure to recognize backhaul is a significant omission. In a truly competitive
28 market, it is questionable whether TECO Transport would be able to assign all of its
29 costs to one-way movements and still remain competitive. A good case in point is

³² <http://www.tecobargeline.com/TRMSTAbout.html>. Printed March 5, 2004.

³³ TECO Energy, Inc., December 31, 2002 10K Report, Item 7. Management's Discussion & Analysis of Financial Condition & Results of Operations, TECO Transport, page 34.

³⁴ Docket No. 850001-EI-A, Order No. 14782, issued August 28, 1985, page 4.

1 the difference between the rail bids and Mr. Dibner's so-called market rates. The rail
2 bids are lower than Mr. Dibner's rates, and perhaps could be lower still.

3 **Q. Should backhaul traffic be reflected in a market model?**

4 A. Yes. Backhaul should be reflected in a competitive market model because
5 that is one of the first places that competition would have an impact, i.e., in
6 the ability to assign 100 percent of the backhaul cost to the originating
7 movement. Furthermore, Mr. Dibner, as TECO's consultant, is the one who
8 should have raised the issue. The only parties to the negotiation who benefit
9 from not recognizing backhaul are TECO Transport and TECO Energy.
10 Clearly, TECO and its ratepayers are harmed from this benign approach to
11 negotiations. The contract was up for renewal – there were over four million
12 tons of backhaul a year. What a perfect opportunity to renegotiate and lower
13 costs for ratepayers.

14 **PREFERENCE TRADE PREMIUM**

15 **Q. Can you provide another example of an assumption that Mr. Dibner has not
16 allowed users of his models to change?**

17 A. Yes. Mr. Dibner also increased his ocean-going market price to include a Preference
18 Trade Premium.

19 **Q. What are Preference Trades?**

20 A. Preference trades are U.S. government-impelled grain export programs that donate
21 grain, expedite grain donations, or finance grain purchased to developing and less-
22 developed nations.³⁵

³⁵ Testimony of Brent Dibner, January 5, 2004, page 38.

1 **Q. Why did Mr. Dibner increase the ocean-going market price for preference**
2 **trade?**

3 A. Mr. Dibner claims that preference trade hauls tend to be more lucrative than coal
4 hauls.³⁶ As such, he considered the earning potential related to these types of hauls in
5 developing his market rate. According to Mr. Dibner, this represents an opportunity
6 cost to TECO Transport of deciding to serve Tampa Electric's needs.³⁷

7 **Q. How did Mr. Dibner assign this opportunity cost?**

8 A. Mr. Dibner analyzed more than 135 preference trade voyages of U.S. flag Jones Act
9 vessels between years 2000 and 2003 to estimate the time charter earnings for the full
10 range of differently sized vessels.³⁸ He used the pattern of time charter earnings to
11 establish a trend curve by which each size vessel could have a preference time charter
12 rate assigned to it.³⁹ Mr. Dibner then assigned a "maximum" time charter rate for
13 each of the vessels that are "dedicated" to serving TECO's needs. He averaged those
14 maximum rates with his "minimum" time charter rates calculated by his model, to
15 arrive at his recommended time charter rate for each vessel.

16 **Q. Do you agree with this premium?**

17 A. No. In my opinion, such a premium would not be used in the model of a competitive
18 market. Again, on behalf of TECO and its ratepayers, Mr. Dibner makes an
19 adjustment to increase charges to ratepayers. It would seem that this would be more
20 appropriate for TECO Transport to suggest than TECO's consultant.

21 **ADJUSTMENTS TO DIBNER'S MODELS**

22 **Q. Have you made any adjustments to the results of Mr. Dibner's model?**

³⁶ Id.

³⁷ Id., page 39.

³⁸ Id., page 40.

³⁹ Id.

1 A. Yes. I have made two very basic adjustments to those results. First, I have made an
2 adjustment to recognize backhaul in both the river and ocean models. Second, I have
3 eliminated the preference trade premium from the ocean model.

4 However, I would like to note that the fact that I made only these two
5 adjustments does not mean that I agree with the rest of the assumptions in Mr.
6 Dibner's models. The two adjustments I make are so significant as to cast grave
7 doubt on the rest of the model. In addition, as discussed above, since it was
8 impossible to change many significant variables in the model due to the "locked"
9 nature of the critical assumptions, the models prevented users, like myself and Staff,
10 from testing many of the inputs and assumptions.

11 **Q. Please explain how you arrived at these adjustments.**

12 A. I began by adjusting Mr. Dibner's ocean model to remove the preference trade
13 premium. I did this manually by simply using Mr. Dibner's TECO time charter rate
14 in the calculations, instead of the average of the TECO time charter rates and the
15 preference time charter rates.

16 Next, I adjusted the ocean model for backhaul. Using data from the Port of
17 Tampa, I was able to determine, by vessel, TECO Transport's actual percentage of
18 roundtrips from Louisiana to Tampa and back that involved some sort of backhaul.
19 In other words, I calculated how many times a given TECO Transport vessel carried
20 cargo on its return trip to Louisiana, after dropping off a load in Tampa for TECO.
21 Because some of Mr. Dibner's calculations in his ocean model are based on time, I
22 adjusted the voyage time to account for the backhaul percentage.

23 For instance, Mr. Dibner's model calculates a voyage based on the round trip
24 time involved. If a given vessel had a 50% backhaul ratio, meaning 50% of the trips
25 involved backhaul, I removed 25% of the time involved (50% of the return trips.)

1 These adjustments affected the Voyage Time at Sea, the Delay at 15% of Voyage
2 Time at Sea, and the total Time Charter Expense. I also similarly adjusted the Fuel at
3 Sea, Tug Generating Fuel, Barge Fuel and Lube Oil.

4 **Q. How did you adjust the river model for backhaul?**

5 A. As mentioned above, I did not have specific information regarding river
6 backhaul. Due to the lack of data quantifying this backhaul, I have used the
7 average backhaul ratio of the ocean vessels, which is 69.34%, to adjust Mr.
8 Dibner's river rates.⁴⁰ I reduced Mr. Dibner's inland river rates by one-half
9 this amount, or 34.67%.

10 **Q. What are the results of these adjustments?**

11 A. As a result of my adjustments, Mr. Dibner's average ocean rate is reduced from
12 \$*C*/ton to \$*C*ton.⁴¹ Although Mr. Dibner recommended individual inland river
13 rates depending on the origin point, he calculated an average rate for comparison
14 purposes on page 41 of his report. This was based on the average of all regions of
15 interest to Tampa Electric.⁴² I have calculated an adjusted average inland river rate
16 using these same origins, and reducing Mr. Dibner's rates by 34.67% as discussed
17 above. As a result, Mr. Dibner's average inland river rate has been reduced from
18 \$*C*/ton to \$*C*/ton. My calculations are shown in Exhibit___(MJM-3).

19 **Q. What do you conclude?**

20 A. Mr. Dibner's model overstates any reasonable market rate.

⁴⁰ This is my best estimate of the river backhaul. Clearly, data relating to TECO Transport's actual river backhaul would be preferable for use in making this calculation.

⁴¹ \$*C*/ton is the initial rate proposed to TECO Transport, before errors were fixed.

⁴² Dibner Report, page 41.

1 **Q. Do you have any corroboration, in addition to the rail bid, the inland river bid,**
2 **and the adjusted Dibner results, to confirm that Mr. Dibner's market rates are**
3 **vastly overstated?**

4 A. Yes. I also have data relating to the rates JEA pays its suppliers for transportation of
5 petroleum coke from East Texas to Jacksonville, Florida. Mr. Dibner proposed a rate
6 of \$*C* per ton to TECO for the transportation of petroleum coke from East Texas to
7 the Big Bend plant in Tampa. On the other hand, JEA only pays \$9.00 for
8 transportation all the way to Jacksonville, over 500 miles further.⁴³ Significantly,
9 TECO Transport is the carrier providing this \$9.00/ton transportation to JEA!⁴⁴

10 **Q. Is this a problem?**

11 A. Yes. Mr. Dibner is proposing that TECO ratepayers pay higher prices to TECO
12 Transport than TECO Transport charges other utilities! I consider this to be a serious
13 problem and further evidence of the problems inherent in this affiliate transaction.

14 **Q. Do you have a summary of all of the available rates that you have considered in**
15 **evaluating Mr. Dibner's proxy market rates?**

16 A. Yes. I have created a matrix of all of the available rates for consideration. The
17 matrix is attached as Exhibit_(MJM-5 pg 1). The first five columns relate to the rates
18 TECO had at its disposal for consideration. These include the current rates, Mr.
19 Dibner's rates, and the three bids TECO received. The sixth column is Mr. Dibner's
20 rates adjusted for preference trade and backhaul as discussed above. The next
21 column is the rate paid by JEA for transportation of petroleum coke from East Texas.
22 The last column is the Snavely King proxy market prices.

23 **Q. What do you recommend?**

⁴³ Distance taken from http://www.maritimechain.com/partners/port_distance_call.asp.

⁴⁴ The vessels identified in the JEA invoices are TECO Transport vessels: Sheila McDevitt, Marie Flood and Pat Cantrell. See Exhibit__(MJM-4).

1 A. I recommend that *C* % of TECO's payments to TECO Transport be disallowed
2 entirely. My recommendation assumes a maximum rate of \$*C*/ton. This reflects
3 the two obvious adjustments to Mr. Dibner's models described above and the \$*C*
4 terminal rate from the prior contract.

5 **Q. Why are you keeping the current rate for terminal costs?**

6 A. It is my understanding that the contract has a "meet or beat" provision. I find no
7 reason to justify a higher rate than is currently being charged. This is supposed to be
8 a competitive process. TECO Transport's current rate beats the competition.

9 **THE WATERBORNE TRANSPORTATION BENCHMARK**

10 **Q. Please provide a brief history of the waterborne transportation benchmark.**

11 A. In Docket No. 870001-EI-A, FPSC Order No. 20298, issued November 10, 1988, the
12 Commission established a waterborne coal transportation benchmark to which Tampa
13 Electric would compare its coal transportation costs each year. The purpose of the
14 benchmark was to measure whether or not the amounts Tampa Electric paid to its
15 affiliate, TECO Transport, for the transportation of its coal were reasonable. The
16 benchmark is the average of the two lowest comparable publicly available rail rates
17 for coal to other municipal utilities in Florida. As long as TECO Transport's rates are
18 lower than the benchmark, they are considered reasonable and recovered through the
19 fuel clause. If the rates exceed the benchmark, Tampa Electric must justify the
20 higher rates before recovery is allowed. A stipulation reaffirming the benchmark was
21 included in Order No. PSC-93-0443-FOF-EI, issued March 23, 1993 in Docket No.
22 930001-EI.

23 **Q. How has the benchmark compared to the waterborne transportation costs**
24 **actually incurred by Tampa Electric?**

1 A. The benchmark has been consistently higher than the rates paid by TECO to TECO
2 Transport.

3 **Q. Do you believe the benchmark is useful in evaluating TECO Transport's**
4 **waterborne transportation rates?**

5 A. No. The benchmark is clearly out of date and is highly overstated at the present time.
6 We know that based on the results of even a flawed RFP process. According to Mr.
7 McNulty's Exhibit WBM-3 in Docket No. 030001-EI, the average benchmark from
8 1988 to 2002 was \$*C*.⁴⁵ This was *C* percent higher than TECO's average
9 waterborne transportation cost of \$*C* during the same period. It is *C* percent
10 higher than the rail bid received in response to the RFP.⁴⁶ It is *C* % higher than
11 Mr. Dibner's market model and *C* % higher than Mr. Dibner's market model as
12 adjusted for obvious judgmental errors as discussed above.⁴⁷

13 **Q. Do you have any empirical data or information demonstrating that the**
14 **benchmark is not a useful surrogate in today's market?**

15 A. Yes. The current (2002) benchmark of \$23.87 is *C* percent higher than the recent
16 rail bid received by TECO.⁴⁸

17 **Q. Please summarize your testimony.**

18 A. The RFP process TECO used was flawed and it also presumed that its affiliate would
19 "win" the bid. Therefore, the prices which TECO has contracted to pay TECO
20 Transport for the next five years are unreasonable and overstated and should not be
21 flowed through to ratepayers. I recommend the rates that I have proposed for the
22 reasons set-forth above. On the other hand, I remind the Commission that

⁴⁵ Supplemental Direct Testimony of William B. McNulty, Docket No. 030001-EI, October 23, 2003, Exhibit WBM-3.

⁴⁶ Average rail rate of \$*C* per ton as calculated on McNulty Exhibit WBM-1.

⁴⁷ See Exhibit___(MJM-5).

⁴⁸ Average rail rate of \$*C* used.

1 TECO/TECO Transport have opposed the use of actual costs in this docket. The use
2 of actual costs, verified by an audit, is always a viable alternative.

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

4 **A. Yes, it does.**

1 BY MS. KAUFMAN:

2 Q Mr. Majoros, do you have a summary of your testimony
3 this afternoon?

4 A Yes, I do. Again, good afternoon. My name is
5 Michael J. Majoros, Jr. Appendix A to my testimony contains a
6 summary of my qualifications, my education, my background for
7 about the last 30 years. Of that, about 23 years has been
8 devoted to studying public utility rate issues.

9 My testimony addresses several flaws in the
10 waterborne transportation rates that TECO is paying to its
11 unregulated affiliate, TECO Transport, under the new contract
12 it signed effective 1/1/04. The issue we are faced with now is
13 how much of those rates will be allowed as charges to
14 ratepayers in the fuel adjustment clause. Whether or not there
15 is a market is a bogus issue. The contract has been signed,
16 the deal is done.

17 Based on the information available in this
18 proceeding, and any reasonable common sense interpretation of
19 what constitutes competitive waterborne transportation rates,
20 this Commission should disallow a significant percentage of
21 TECO's waterborne transportation costs for the next five years.
22 The quantification and reasons for the disallowance are
23 explained in my testimony. TECO hired a highly educated
24 consultant who has vast experience in waterborne costs to help
25 it in its deliberations with TECO Transport. Unfortunately,

1 while Mr. Dibner may be well-versed in barge and tug costs, he
2 seems to know nothing about public utility ratemaking.

3 TECO was granted a privilege with respect to its fuel
4 cost recovery as a result of the early 1970s Arab oil embargo.
5 It is allowed to collect its fuel costs, including
6 transportation, as a direct dollar-for-dollar passthrough to
7 its ratepayers. In return for this privilege, TECO has the
8 fiduciary responsibility to aggressively negotiate for the
9 lowest possible fuel and transportation prices. That is this
10 Commission's charge to TECO, and it is this Commission's
11 obligation to ratepayers to ensure that this occurs.

12 Instead, TECO hired a consultant on behalf of its
13 ratepayers who thinks that higher prices are better. Mr.
14 Dibner built a market proxy model for the waterborne
15 transportation, but before presenting that model to TECO
16 Transportation to meet or beat, he increased the resulting
17 prices -- and please follow me on this -- he increased the
18 resulting prices to charge TECO's ratepayers, TECO's captive
19 ratepayers, for the cost of backhaul for which TECO Transport
20 is already receiving unregulated revenues.

21 He did this by doubling the one-way or so-called
22 headhaul costs. Next, he increased that price for an
23 opportunity cost which is equivalent to additional profit for
24 TECO Transport that he alleges may be lost. After increasing
25 these prices, Mr. Dibner recommended on 9/25/03 that TECO

1 should submit these inflated rates to TECO Transport to meet or
2 beat. What do you think TECO Transport did? They accepted
3 them. They also met a higher terminal bid. There was no
4 negotiation. And ratepayers don't need this kind of help.
5 Ratepayers want someone to negotiate for lower, not higher
6 prices.

7 I have removed a portion, but not all of the backhaul
8 allocation to ratepayers from Mr. Dibner's model, and I have
9 removed that unnecessary increase to the terminal price. What
10 I want you to understand, in my opinion, this is not rocket
11 science, Mr. Dibner may know a lot about the transportation
12 industry, but his proposal is offensive to this Commission's
13 obligation to protect the ratepayers. His recommendations are
14 offensive to this Commission's common sense. His proposals fly
15 in the face of common sense, and that is what my testimony
16 proves.

17 Q Does that conclude your summary?

18 A Yes.

19 MS. KAUFMAN: Mr. Majoros is available for cross
20 examination.

21 CHAIRMAN BAEZ: Go ahead, Mr. Fons.

22 MR. FONTS: It is my understanding that I will be the
23 last to cross-examine the intervenor witnesses.

24 CHAIRMAN BAEZ: Yes, it is. I didn't ask if there
25 was friendly cross.

1 Majoros has testified a number of times on regulatory policy
2 matters. I think this is a regulatory policy matter, and I was
3 trying to avoid the voir dire predicates.

4 CHAIRMAN BAEZ: Mr. Fons, Mr. Majoros has testified
5 here. If your objection is on the basis of whether he has the
6 expertise, I think he has --

7 MR. FONTS: On this particular subject matter. There
8 has been no establishment that he has had any experience with
9 regard to either the preparation, dissemination, or review of
10 requests for proposals or with contracts in this particular
11 industry.

12 MS. KAUFMAN: I don't know if it is appropriate for
13 me to comment, but I think that Mr. Majoros is opining in
14 regard to the prudent or imprudent actions of a regulated
15 utility in entering into this transaction, and he has more than
16 ample experience to give that opinion.

17 CHAIRMAN BAEZ: Mr. Fons, and that is the question I
18 heard, so I am going to overrule the objection. Go ahead and
19 ask your question. Or, Mr. Majoros, do you need the question
20 repeated?

21 THE WITNESS: No, I remember the question; and some
22 folks may not like the answer.

23 I don't particularly object to that provision as long
24 as this company exercises prudent business acumen when it deals
25 with that. You don't go in when you have a meet or beat clause

1 with the highest possible price you can get. You go in with
2 the lowest possible price you can get. And that is why Mr.
3 Dibner, who also knows that they have a meet or beat clause,
4 did a disservice to this company and to these ratepayers. It
5 was an abuse of an affiliate transaction, in my opinion.

6 BY MR. WRIGHT:

7 Q Thank you. On Page 12 you discuss Tampa Electric's
8 handling of the bids it receives from CSX Transportation?

9 A Yes.

10 Q You there make the statement, "It is appalling that a
11 rail bid was rejected as nonconforming given that the so-called
12 competitive benchmark is based on rail to begin with."

13 My question for you is this: Are you aware of
14 testimony in this case that CSX had presented price and
15 quantity proposals to Tampa Electric earlier, including in
16 October of 2002?

17 A I would say I understand that you submitted two bids.

18 Q Do you know whether -- you have been present both
19 days. Do you know whether CSX submitted bids in October of
20 2002 as well as in response to the RFP?

21 A Yes, I heard that testimony.

22 Q Okay. What do you think about the way Tampa Electric
23 handled those proposals that were submitted in October of '02?

24 A I think that it was -- I explained, I think in my
25 testimony, what I would do if I were Tampa Electric, and what I

1 would expect as a ratepayer of this company. I want Tampa
2 Electric pitting your clients against TECO Transport, that is
3 what I want. That is the way I would handle it.

4 Q Are there other utilities of which you are aware that
5 pit the railroad company against the barge company?

6 A Well, this is the first time that I have been
7 involved in a case in which that was an issue. I have been in
8 various projects where the utilities, you know, take coal by
9 barge and rail, but I don't know whether they were as
10 aggressive as I would like them to be, but I didn't address
11 that issue.

12 Q I was just trying to follow up on your idea of
13 pitting the railroad company against the barge company.

14 A Right. It seems to make sense.

15 Q Yes. Would it be better to pit them against each
16 other in hypothetical contract negotiations or pit them against
17 each other with facilities on the ground?

18 A I guess I don't understand what you mean there.

19 Q Well, if you had rail delivery capability at Big
20 Bend, wouldn't it be a more effective means of competing rail
21 against barge?

22 A Yes.

23 Q You discuss some flaws, on Page 13 you discuss some
24 flaws in Ms. Wehle's analysis of the rail bid. Do you know
25 whether her analysis of the rail bid included any consideration

1 of the volume discounts available through the rail bid?

2 A No, I didn't -- you know, I only read what was
3 available to me. And it was my understanding that it was
4 rejected sort of out of hand due to capital considerations.
5 And then Ms. Wehle in her testimony added -- we were looking at
6 it today, added layers of additional costs on what you had
7 proposed.

8 Q In your opinion, in evaluating the costs that were
9 proposed by CSX, would it be appropriate to include volume
10 discounts that were included in the bid?

11 A I would think so.

12 Q Would it be appropriate to include escalation factors
13 applicable to the water transportation costs?

14 MR. FONS: Mr. Chairman, I'm going to object. He has
15 not set a foundation that this witness knows anything about the
16 contracts. The witness has already testified he merely
17 reviewed the testimony, he has not looked at the documents
18 themselves, and has not established that he has any expertise
19 in this area.

20 MR. WRIGHT: Mr. Chairman, I believe in response to a
21 previous question he testified that he was looking at earlier
22 today Ms. Wehle's analysis that a rail bid versus the water bid
23 in which he pointed out that she layered some additional costs
24 on that. I'm asking about other related cost factors.

25 MR. FONS: I think other costs, just because she

1 related to some doesn't give him an opening to ask about
2 others.

3 CHAIRMAN BAEZ: Well, look, I think this is where we
4 are replaying, again, your objection to his being able to
5 comment on Ms. Wehle's analysis and Mr. Dibner's analysis, and
6 I think I have already addressed that. So I don't know that he
7 is getting so far afield with the previous objection that he
8 can't comment on this. Overruled. Go on.

9 THE WITNESS: And I think you should try to make an
10 apples-to-apples comparison.

11 BY MR. WRIGHT:

12 Q Would you believe that it would be appropriate to
13 include the cost to get the coal from the mine to the river
14 barge in any such comparison?

15 A You know, I heard that testimony today, too. And if
16 it is common, you know, I think -- I mean, you should, if it is
17 not common to both, yes. But the testimony I heard was that it
18 is common to both, and I would have to look at some documents
19 to --

20 Q This is a predicate question to a follow-up question
21 that I intend to ask you. At Pages 28 and 30 you discuss your
22 views on the benchmark, and I would ask you without revealing
23 any of the confidential information there to summarize your
24 views on the benchmark, please?

25 A Well, my views on the benchmark are at this point it

1 is irrelevant because the deal is done and it is demonstrably
2 high, and it is just -- it is providing meaningless
3 information. It is not useful. And to rely on that benchmark
4 merely results in overcharges to ratepayers.

5 And, as I heard today, it was supposed to be a sanity
6 check. And I was thinking it is perhaps an insanity check at
7 this point. We ought to ditch it. It is not doing anybody any
8 good. Ms. Wehle said that the fact that the rates that they
9 just agreed to are so far less than that benchmark shows that
10 they have been -- that they are good for ratepayers. And I
11 have demonstrated that the rates that Mr. Dibner calculated are
12 bad for ratepayers.

13 Q Sticking with the benchmark for one more question.
14 Would you agree that actual railroad rates, coal-by-rail rates
15 available to Tampa Electric would be a better measure of a
16 benchmark than what they were using, i.e., than this
17 conglomerated rate of publicly available information?

18 A Used as what?

19 Q As a benchmark, as a test, a sanity check?

20 A I don't like benchmarks, sir, at all. But what I do
21 know, my firm has a transportation division, and it is common
22 knowledge -- well, I don't deal over there all the time. It is
23 common knowledge that those benchmarks in that industry are
24 vastly overstated because they don't reflect volume discounts
25 of things like that. And it was my assumption when I first got

1 into this proceeding, without knowing much about this benchmark
2 at all, that it was probably not a reliable indicator of
3 anything because it didn't reflect what would happen in a
4 competitive market through tough negotiations.

5 Q Understanding that you generally don't like
6 benchmarks, I'll just ask you, would you think that the actual
7 rail rates that would be available to a utility company, in
8 this case Tampa Electric Company, would be a better benchmark
9 if one were going to be considered than some average of
10 publicly available information?

11 A Yes.

12 MR. WRIGHT: Thank you. That's all I have.

13 COMMISSIONER BRADLEY: Mr. Chairman.

14 CHAIRMAN BAEZ: Go ahead, Commissioner Bradley.

15 COMMISSIONER BRADLEY: Yes. I would like to just ask
16 a question about the benchmark method and what Mr. Majoros was
17 suggesting in lieu of the benchmark. And let me tell you what
18 I'm getting at. I read just briefly up top in your testimony,
19 and you made the statement that the benchmark method provides
20 bad information that should be eliminated. And what I have not
21 been able to locate in your testimony is the method by which
22 you would suggest that -- and I'm just curious -- what method
23 the competitors would use that would be more accurate than
24 benchmarking to determine the value of the transportation
25 service.

1 THE WITNESS: And you understand that Mr. Dibner
2 built what he called a market proxy model. This isn't based on
3 TECO's costs, this is based on some generic cost that he has
4 gathered from publicly available information about the
5 industry. And so he built what he called a market proxy model.
6 That is what he proposed be used on behalf of ratepayers and
7 offered -- essentially offered to TECO Transport. Once that is
8 used, the benchmark has not much more meaning anyway. So my
9 proposal is -- and you have to understand this, I hope you
10 follow me -- the deal is done, they have signed the contract.

11 If they don't operate under that contract -- you
12 heard all of that talk about liquidated damages and dead
13 freight, if they obviate that contract, you will have this
14 company in here in a year or two trying to collect money from
15 ratepayers for liquidated damages. So the deal is done.

16 My recommendation -- and I don't care about the
17 benchmark. I'm telling you that Dibner's market proxy model
18 did not reflect a competitive market. Mr. Dibner's model,
19 believe it or not, and if you read through the transcripts of
20 his -- and even think about what he was saying to you
21 yesterday. What he was saying to you, that the market that he
22 is talking about is a monopoly market, and in that market he is
23 proposing that TECO Transport maximize its profits. The deal
24 is done. TECO Electric is already paying those charges, and
25 they want to pass them through the fuel adjustment clause.

1 What I am saying is you have to now reflect a competitive
2 market, because those are the adjustments I made, and anybody,
3 everybody knows it.

4 COMMISSIONER JABER: Commissioner Bradley, let me get
5 some clarification from you. If I could ask you, Commissioner,
6 what your question -- your question was what method would the
7 competitors use, is that accurate?

8 COMMISSIONER BRADLEY: The competitive market use in
9 order to determine --

10 THE WITNESS: I think the competitors would do
11 essentially the same model that Dibner did, but it would make
12 the same two adjustments that I made. That is what a
13 competitive market would do. That should have been Dibner's
14 starting point in the negotiations with TECO Transport, but
15 they didn't even negotiate. They went in with inflated prices,
16 and then they want to pass that through to ratepayers. It
17 makes no sense.

18 COMMISSIONER BRADLEY: Let me ask this in passing
19 through to the ratepayers. Let's assume that the contract is
20 bid out and TECO accepts a contract from a bidder. What are
21 some of the components, or some of the clauses that would need
22 to be in that contract in order to ensure that the ratepayers
23 are going to have a reliable source of transportable coal in
24 this instance, one that is sustainable, one that is reliable,
25 one that is going to be available to power up the generators?

1 And this is exactly what I am getting at. Sometimes,
2 you know, when you low bid, that is not a good means of doing
3 business even though government tends to sometimes think that
4 it is. But then you have instances where individuals will bid
5 low and decide later on that the bid is inadequate. What is
6 there that should be included in this contract that would
7 ensure that if this component of transportation is bid out that
8 the bidder is not going to renege on his or her, that the
9 company will not renege on its contract?

10 THE WITNESS: Well, first of all, remember this --

11 COMMISSIONER BRADLEY: Would you suggest a bond or
12 what?

13 THE WITNESS: What I would suggest -- I'm not a
14 lawyer, I don't write contracts, but I would say this. If I
15 were TECO negotiating with TECO Transport, I would have huge
16 penalties if TECO Transport didn't deliver what it was supposed
17 to do. That is what I would do. But the thing is --

18 COMMISSIONER BRADLEY: I'm not talking about TECO
19 Transport. I'm saying if --

20 THE WITNESS: That's what I'm talking about.

21 COMMISSIONER BRADLEY: -- someone bids and gets the
22 bid, and I am thinking what needs to be included in the
23 contract to protect the ratepayers and makes sure they have --
24 the lights are not going to go off because TECO has now bid
25 out this portion of their operation and the person who won the

1 bid decides that maybe the bid was too low and they want to
2 renegotiate or maybe -- and I'm just --

3 THE WITNESS: You need the reverse of those
4 liquidated damages clauses or those dead freight. Here is a
5 proceeding in which -- well, this plus the prior one -- the
6 dead freight almost got paid for -- in fact, I think it is
7 embodied in these new rates, but what you need is TECO
8 Electric, if it was prudent, should be able to sue the heck out
9 of TECO Transport if they don't provide the service that they
10 contract for. That should be built right into the contract.
11 But, again, remember this, you know, I agree with you on that,
12 and that is the provision that I think should be in there,
13 something like that.

14 COMMISSIONER BRADLEY: Right. But I'm not -- and I
15 guess maybe I'm not understanding. What I'm trying to get from
16 you is what if an independent company wins the bid and later
17 on, you know, it is determined that it bid it too low, TECO has
18 liquidated all of its barges, and tug boats, and gotten rid of
19 its staff, what is there that is going to be in place to make
20 sure that the ratepayers are not going to suffer if that
21 company decides that it can't deliver at the price of its bid?

22 THE WITNESS: Well, what is in place is their
23 franchise obligation to provide electricity.

24 COMMISSIONER BRADLEY: Beg your pardon?

25 THE WITNESS: What is in place is TECO's franchise

1 obligation to provide electricity. They bear that risk because
2 we are allowing them a privilege, we are allowing them to pass
3 that cost through.

4 COMMISSIONER BRADLEY: Okay.

5 CHAIRMAN BAEZ: Where were we?

6 COMMISSIONER JABER: Commissioner, do you mind if I
7 follow up on that?

8 CHAIRMAN BAEZ: Not at all.

9 COMMISSIONER JABER: Mr. Majoros, let me start by
10 telling you I appreciate your expertise in this matter and
11 certainly thank you for being here.

12 THE WITNESS: Thank you.

13 COMMISSIONER JABER: And I have been listening very
14 carefully to your answers, and I do understand that you believe
15 the deal has been done. So with that out of the way --

16 THE WITNESS: Okay.

17 COMMISSIONER JABER: -- I think we are looking for a
18 different answer here to a very good question.

19 THE WITNESS: Okay.

20 COMMISSIONER JABER: You have two concerns. One, as
21 I understand it, is that this company has included -- in your
22 opinion, the model includes backhaul revenues. Your second
23 concern is that the model inappropriately includes -- your
24 words -- opportunity costs.

25 In that regard, Commissioner Bradley's question is an

1 excellent one. If we agree with you and the opportunity costs
2 are not appropriate, costs that are designed to cover what TECO
3 Transport believes it needs to be dedicated solely for TECO,
4 right?

5 THE WITNESS: Uh-huh.

6 COMMISSIONER JABER: The question is a good one.
7 What do ratepayers expect when TECO Transport goes away and
8 there aren't very many competitors in the market to provide
9 transportation service that is needed to make those lights go
10 on?

11 THE WITNESS: See, I just -- I don't know where you
12 are -- I was with you right up until the final question. I do
13 not understand the point of your question. What do we
14 expect -- the ratepayers expect TECO to provide service. You
15 understand that -- you know about base rates. This company
16 has --

17 COMMISSIONER JABER: Let me interrupt you, Mr.
18 Majoros. I have been accused of knowing just a little bit
19 about base rates, so I want you to assume that I know just
20 little bit of what I'm talking about. And let me try to
21 rephrase my question.

22 If TECO Transport frees itself up to provide
23 transport service to companies other than TECO, and it is not
24 available when TECO needs to have its coal transported, the
25 question is a simple one, what do we do. What choices are

1 available?

2 THE WITNESS: Well, they will have to get coal some
3 other way.

4 COMMISSIONER JABER: And what might -- give me an
5 answer, how?

6 THE WITNESS: Well, I mean, they could either get it
7 from, you know, across the water or they can get it from the
8 railroad.

9 CHAIRMAN BAEZ: Mr. Twomey, you had indicated that
10 you had a couple of questions.

11 MR. TWOMEY: Yes, sir, I do.

12 CROSS EXAMINATION

13 BY MR. TWOMEY:

14 Q My first question, Mr. Majoros -- and good evening to
15 you, or afternoon, or whatever it is. My first question is
16 would you agree that what TECO is actually paying to rail ship
17 coal to Gannon, for example, in the year 2001, which presumably
18 would include any volume discounts it was able to obtain, would
19 be a better sanity check on transportation rates than using the
20 published rail rates for shipping to municipalities which don't
21 include volume discounts?

22 A It sounds reasonable.

23 Q Do you know what those rates were most recently when
24 they were declassified?

25 A No, I don't.

1 MR. TWOMEY: Mr. Chairman, I would like to ask that
2 the Commission accept a late-filed exhibit that would consist
3 of the most recent 12 months of declassified 423 data from
4 Tampa Electric Company that would show, in fact, what the rail
5 rates to Gannon were on a dollar per ton basis.

6 CHAIRMAN BAEZ: For the most recent --

7 MR. TWOMEY: Twelve months that are declassified.

8 CHAIRMAN BAEZ: The most recent 12 months that are
9 declassified.

10 MR. TWOMEY: Yes, sir. As you know, Mr. Chairman,
11 they maintain their classification for 24 months.

12 CHAIRMAN BAEZ: Right. I just wanted to get your
13 request clear. Mr. Keating, help me out here. We need TECO to
14 provide that? Now I'm --

15 MR. FONS: We don't even have a witness on the stand.

16 CHAIRMAN BAEZ: It is 5:00 o'clock, so, Mr. Keating,
17 how do we need to entertain Mr. Twomey's request?

18 MR. KEATING: I'm not real sure. I was kind of
19 pausing waiting for Tampa Electric to jump in. I have a
20 concern that it looks a little to me like making a direct case
21 at this point in time.

22 MR. BEASLEY: It does. And Mr. Twomey had an
23 opportunity to cross-examine all of our witnesses.

24 CHAIRMAN BAEZ: And this is my quandary; I'm in a
25 gray area because we are here on cross from -- I mean, it is

1 not really cross now, is it? So, I don't know who would
2 provide that --

3 MR. TWOMEY: Mr. Chairman --

4 CHAIRMAN BAEZ: -- based on the witness who is
5 sitting there.

6 MR. TWOMEY: A quick answer, and I will, of course,
7 accept whatever your ruling is. I would observe -- first of
8 all, I would offer to collect the documents and get them
9 certified by your clerk, they are in your possession. And I
10 would note, additionally, that the documents that I will
11 collect were prepared -- I'm not sure if they are certified,
12 but were prepared by the utility itself. There is nothing --
13 this is their own information, so there is nothing terribly
14 complicated about it.

15 CHAIRMAN BAEZ: Well, there wasn't anything terribly
16 complicated about Mr. Wright's proffer, and I didn't think that
17 that was appropriate either, because this is almost tantamount
18 to building a direct case, as Mr. Keating has suggested. So I
19 think at this point I'm going to deny the request, and you can
20 go on and ask your questions.

21 MR. TWOMEY: Yes, sir. I've got an exhibit I would
22 like to pass out, please. Mr. Poucher.

23 Mr. Chairman, this is a confidential exhibit. It is
24 the late-filed deposition Exhibit MJM-1 to the deposition of
25 Michael J. Majoros. And I would ask that it be identified,

1 please.

2 CHAIRMAN BAEZ: Show the late-filed deposition
3 Exhibit MJM-1 to the deposition of Michael J. Majoros marked as
4 Confidential Exhibit 99.

5 MR. TWOMEY: Thank you, Mr. Chairman.

6 (Confidential Exhibit 99 marked for identification.)

7 BY MR. TWOMEY:

8 Q Mr. Majoros, I presume I am correct in understanding
9 that you prepared this document, is that correct?

10 A It was prepared by my associate.

11 Q Yes, sir. And what does that -- I see that all the
12 numbers on that page are -- apparently all of them are
13 confidential, correct?

14 A Yes.

15 Q The front page?

16 A Yes.

17 Q I understand why Mr. Dibner's rate on Line 1 is
18 confidential. Why is your apparent recommended rate on Line 2
19 confidential, the result of your model?

20 A Because I made adjustments to his model, I take it.

21 Q I see.

22 A I didn't put these yellow marks on it, so --

23 Q Okay. In any event, Line 1 shows Mr. Dibner's
24 proposed rates, correct?

25 A That's correct.

1 Q Line 2 shows yours?

2 A Yes.

3 Q Three is the difference, correct?

4 A That's right.

5 Q And apparently Line 4 through 8 are what, an
6 explanation to explain the difference?

7 A Yes. They break out the difference by reason. The
8 first reason is the difference between Mr. Dibner's and my
9 backhaul rate on the river. The adjusted Dibner model with
10 backhaul on the river. The second on Line 5 is the impact of
11 the ocean preference trade premium increase included in Mr.
12 Dibner's model. Line 6 is the difference in the ocean rate
13 resulting from Mr. Dibner's increase, and then my adjustment to
14 that increase to allocate some of those costs.

15 Q But you didn't take it all out?

16 A I didn't take it all out; no, sir.

17 Q Okay. And the last?

18 A And the last one is the difference between the new
19 terminal rate and the existing terminal rate.

20 Q And the remaining pages of the document which are
21 apparently all classified, that is supporting data to the --

22 A That is correct.

23 MR. TWOMEY: Thank you, sir. Nothing further, Mr.
24 Chairman.

25 CHAIRMAN BAEZ: Thank you, Mr. Twomey. I think we

1 were going to do staff's questions first and then have Mr. Fons
2 wind up with cross.

3 MR. KEATING: Staff has no questions.

4 CHAIRMAN BAEZ: Okay. Mr. Fons. I could hold you
5 off no longer.

6 CROSS EXAMINATION

7 BY MR. FONS:

8 Q I will say good evening, Mr. Majoros.

9 A Good evening, Mr. Fons.

10 Q We are not strangers, are we, Mr. Majoros?

11 A No, we aren't.

12 Q We have been in other proceedings like this, have we
13 not?

14 A Yes, we have.

15 Q And when I say other proceedings, proceedings before
16 this Commission?

17 A That is correct.

18 Q We have never been in a proceeding like this before,
19 have we?

20 A No, sir.

21 Q Let me just ask you a little bit about your
22 background and experience. As I understand it from your
23 exhibit to your testimony, your Attachment A -- Appendix A,
24 that your testimony is basically in the area of cost of service
25 with regard to regulated utilities, isn't that correct?

1 A Cost of service, it is summarized there. Divestiture
2 accounting, I guess. You know, cost of service, taxation,
3 revenue requirements, rate base, nuclear decommissioning, that
4 sort of thing. I do a lot of work in the depreciation area.

5 Q This is not a depreciation case, is it?

6 A No.

7 Q And it is not a tax case, is it?

8 A No, sir.

9 Q What experience do you have, Mr. Majoros, in the
10 maritime backhaul market?

11 A As I stated in the deposition, about a year or year
12 and a half ago, I assisted the Hawaii Consumer Advocate in its
13 analysis of a barge company's barge costs, and that did involve
14 backhaul.

15 Q And am I correct that this particular proceeding that
16 you participated in before the Hawaii PUC regarded a company
17 called Young Brothers?

18 A That is correct.

19 Q And were you hired to analyze a model that was used
20 by Young Brothers developed by a company called Marsoft
21 (phonetic)?

22 A Yes, sir.

23 Q And is Young Brothers a common carrier regulated by
24 the Florida -- I'm sorry, the Hawaii Public Utility Commission?

25 A Yes, it is.

1 Q And what is its business?

2 A Oceangoing barge hauling.

3 Q Would it be classified as intrastate barge traffic?

4 A It has intrastate -- what we did was a fully
5 allocated cost of service study that reconciled to a revenue
6 requirement, but they did have an interstate aspect to that
7 business. And it is quite complicated, and I don't recall
8 exactly all the details of what costs were inter versus
9 intrastate, but it is primarily an intrastate carrier, much
10 like a telephone company.

11 Q And the only rates that the Hawaii Commission were
12 interested in were the intrastate rates charged by Young
13 Brothers, is that correct?

14 A Yes, but the inter versus intrastate allocation was
15 an issue.

16 Q And were the Young Brothers' rates with regard to the
17 transport of personal property and merchandise like
18 refrigerators and other things?

19 A Automobiles, dry bulk, agricultural products. They
20 had refrigerated agricultural products, as well, so there were
21 about 20 product lines that they transported.

22 Q And this regulation of the prices was pursuant to
23 state statute, was that correct?

24 A Yes, sir.

25 Q Does Hawaii PUC regulate any other intrastate water

1 carrier other than Young Brothers?

2 A I don't think so. I think that Young Brothers is --
3 you know, it's them and then a bunch of -- one or two
4 interstate carriers.

5 Q Now, are the water carriers, the barge carriers in
6 this proceeding, are they regulated by the Florida Public
7 Service Commission?

8 A No.

9 Q Are they regulated by the Interstate Commerce
10 Commission or any federal agency?

11 A I don't think they are regulated by the ICC. I don't
12 even think that exists anymore. But, you know, I'm not an
13 expert in maritime law, and so I don't know the extent of any
14 federal or international regulation of the maritime field.

15 Q Are oceangoing vessels regulated by the State of
16 Florida?

17 A I don't believe so.

18 Q And other than the oceangoing vessels that Young
19 Brothers has for transporting goods between the various
20 Hawaiian islands, they are not regulated by any agency, are
21 they?

22 A I think they are subject to federal regulation, that
23 is the distinction between inter and intrastate.

24 Q You are saying that oceangoing vessels are regulated
25 by some federal agency?

1 A There is some law and, yes, they report -- they have
2 tariffs and, yes. I'm not an expert in it. I mean, I'm not
3 even professing to be, but --

4 Q Okay. That's what I'm trying to get at.

5 A -- I know they have tariffs and that was the big
6 issue about the inter versus intra split, what was that all
7 about.

8 Q And now with regard to the backhaul market that you
9 say existed with regard to Young Brothers, was that backhaul
10 market for the intrastate portion regulated by the Hawaii PUC?

11 A Yes.

12 Q Okay.

13 A And there it was a cost allocation issue more than a
14 market issue, I would think.

15 Q So that is the limit of your experience, it was an
16 allocation issue on the backhaul, is that correct?

17 A How to allocate costs, and that is what I am talking
18 about in my testimony in this case.

19 Q What costs are you seeking to have allocated in this
20 proceeding?

21 A I'm seeking -- as I explained earlier, Mr. Dibner
22 increased the headhaul costs by a factor of generally two,
23 which resulted in an increase in cost for return trips.

24 Q Now, you are talking --

25 A I want to finish answering the question.

1 Q I'm sorry, I thought you were finished.

2 A That cost, that increased cost, my recommendation is
3 that a portion of that, and it is based on the actual data, the
4 Port of Tampa data, should be allocated to the backhaul. I
5 know yesterday Mr. Willis said that I had incorporated backhaul
6 revenues in my calculations. That was not a true statement.
7 That was a false statement. All I'm doing is I don't want all
8 of those costs allocated to ratepayers. This company can keep
9 all the backhaul revenues it wants. I hope it earns more, and
10 more, and more, and more, but I don't want all of those costs
11 allocated to the regulated ratepayer.

12 Q Let's talk about those so-called costs. What costs
13 are you talking about that are allocated -- that Mr. Dibner
14 includes in his model?

15 A Voyage time at sea he doubled, and this is in the --
16 this is all in the oceangoing barge costs, but the voyage time
17 at sea he essentially doubled; delay time at 15 percent, avoids
18 time at sea, fuel at sea, tug generating fuel, barge fuel, and
19 lube oil.

20 Q Those are costs that are incurred in backhaul, are
21 they not?

22 A Yes.

23 Q Okay. And those costs would be deducted from the
24 revenues from backhaul?

25 A I don't care what TECO Transport does with the costs.

1 You have to understand here is what Mr. Dibner did. He started
2 out figuring out, for example, what is the voyage time at sea
3 for a one-way trip. Then he doubled that to account for the
4 return trip. That doubled -- that cost, the doubled cost is
5 what he wants to charge to ratepayers. Now, what I know, based
6 on the information we got from the Port of Tampa, is that 70
7 percent of the time that return trip has backhaul, and they
8 get -- I don't care how much revenues, I don't care. Keep
9 them, but I don't think it is fair. It is not even reasonable,
10 particularly in a competitive market, to assume that TECO
11 Transport could charge twice the amount of the cost in a
12 competitive market.

13 I'm not trying to do a cost allocation. I
14 understand, I understand because Mr. Dibner told us all he
15 never looked at any of TECO Transport's costs, he did a market
16 model. A market proxy model. But do you think that in a
17 competitive market when everybody in the market knows that
18 backhaul exists that they are going to allow you to charge
19 twice the amount of the headhaul? Do you think you would get
20 the business? I don't think so.

21 Q Mr. Majoros, your study that you relied upon from the
22 Port of Tampa, that information?

23 A Yes.

24 Q The information that you relied upon merely shows
25 that the barge was going from Louisiana to Tampa, and then from

1 Tampa to Louisiana. Do you know where the barge on its return
2 trip was going in Louisiana?

3 A No.

4 Q So you don't know whether it was going back to Davant
5 or was going somewhere else?

6 A No.

7 Q And if it was going somewhere else other than Davant,
8 then it would not be a backhaul, would it?

9 A Well, I guess I disagree with you.

10 Q Well, on what basis do you disagree with that, Mr.
11 Majoros? Either it is going back to the same terminal that it
12 originated from and if it didn't, wouldn't you agree with me it
13 was not backhaul?

14 A No.

15 Q Suppose the vessel was going up the Mississippi River
16 to a fertilizer plant?

17 A Suppose it was.

18 Q It wouldn't be backhaul, would it?

19 A We can call it what you want. We will call it a
20 return trip.

21 Q But it is not backhaul?

22 A If it is going back loaded, it is backhaul in my
23 mind.

24 Q Suppose it was going merely a portion of the way to
25 Louisiana and then on to Houston, Texas. Wouldn't that be a

1 different trip, it would not be backhaul?

2 A Not in my mind. And so what? I mean, the issue is a
3 market rate.

4 Q Exactly. The market rate and --

5 A The market rate. A competitive market rate, not a
6 monopoly market rate.

7 Q And you would agree that the model that Mr. Dibner
8 created was a proxy for the competitive market?

9 A Absolutely not. He said essentially, it is a proxy
10 for a monopoly market rate, and he said you can use that as
11 proxy for a monopoly market rate because we have captive
12 customers.

13 Q Where did he say that?

14 A I've read it. I think he said it several times
15 yesterday, but you had to listen.

16 Q Mr. Majoros, would you turn to Page 28 of your
17 testimony, please. Look at Lines 6 through 8. Is this your
18 testimony with regard -- and your only testimony with regard to
19 the terminal cost or the terminal rate?

20 A Yes.

21 Q And am I correct that you are saying that the
22 terminal rate should be adjusted because even though TECO
23 Transport, Tampa Electric got a bid from another terminal that
24 Tampa Electric could not accept that bid?

25 A No, I'm not saying that at all. What I am saying

1 is -- I'm not going to use the same word that Mr. Dibner used,
2 you know, the D word. But if you want to agree to a higher
3 rate and not negotiate it down, fine. But that difference
4 should be disallowed as far as the fuel adjustment charge is
5 concerned.

6 Q Now, wasn't this bid that Tampa Electric received an
7 arm's-length bid?

8 A Sure.

9 Q It was a market price bid, was it?

10 A I guess.

11 MR. FONS: I have no further questions.

12 CHAIRMAN BAEZ: Commissioner Bradley.

13 COMMISSIONER BRADLEY: I have a question. And, Mr.
14 Majoros, I'm just trying to get a grasp on some things, and you
15 seem to be an excellent witness who has a lot of expertise in
16 this area. Headhaul and backhaul.

17 THE WITNESS: Yes, sir.

18 COMMISSIONER BRADLEY: When headhaul occurs, does
19 backhaul always also happen?

20 THE WITNESS: No. When headhaul occurs, that is
21 going from the origination to the destination. That is the
22 headhaul. And typically, at least in this operation as I
23 understand it, what you have is a return trip. And I think
24 that always happens. We can assume that the return trip always
25 happens. When that return trip has cargo on it, that is

1 backhaul.

2 COMMISSIONER BRADLEY: Right. And I heard what you
3 said about costs and profit that is made by the transportation
4 company when backhaul occurs, and how that maybe should be
5 factored in in order to create a better financial deal for the
6 ratepayers. But my question is this: A competitive bidder,
7 how would we factor in the issue of headhaul and backhaul, if a
8 competitive bidder was allowed to transport coal to TECO? How
9 would we factor this in so that the ratepayers would also
10 participate in the backhaul factor, if backhaul, if we don't
11 know if backhaul is going to occur every time headhaul occurs?
12 I'm trying to get my hands around the conceptual issue here.

13 THE WITNESS: I apologize. I wasn't trying to argue,
14 I was trying to answer.

15 COMMISSIONER BRADLEY: You may not be able to answer
16 that.

17 THE WITNESS: I think I could. I think I can. First
18 you have to understand that what we have here is a regulated
19 utility making purchases from an unregulated affiliate. If
20 that were not an affiliate, if it were not an affiliate, and if
21 that market for that waterborne transportation, forget the rail
22 for now, were competitive, and TECO Electric issued an RFP for
23 that transportation service, what you would expect to happen,
24 since all of the competitors, given that there is a substantial
25 amount of backhaul in Florida, would recognize that in their

1 bids and they would have come down relative to what Mr. Dibner
2 calculated. Now, that is what we would expect.

3 I believe, and I'm trying to understand, I think that
4 your concern is that you are worried that if you were to
5 disallow the percentage that I am recommending here, which is,
6 I believe, a competitive rate, not just by the calculations,
7 but by comparisons to all kinds of other real rates. But your
8 concern is that you are afraid -- I mean, not afraid, but is
9 that probably the company has somehow suggested that if you
10 disallow that much, TECO Transport will dry up and go away and
11 then the ratepayers will have a big problem and they will be
12 subject to -- and this is what Dibner was saying, too -- to the
13 railroads and they will be captive customers to the railroad.

14 Now, I think that one way you might want to solve
15 that, I haven't dealt with it, is you can, you know, force
16 them -- I don't know. I mean, I'm not a lawyer. They have
17 signed that contract, they have already signed the contract,
18 maybe you ought to reregulate them. You know, backhaul, the
19 way I'm talking, and if you want to -- you have them do an
20 actual cost study, and you could do the allocation like that.
21 Maybe you ought to require them to build a facility, or
22 consider requiring them to build the facilities to allow rail
23 transportation. It is my understanding from my partners in the
24 transportation business that that is one industry where
25 competition works.

1 CHAIRMAN BAEZ: Commissioners, any other questions?
2 No? I'm sorry, Commissioner Deason.

3 COMMISSIONER DEASON: Mr. Majoros, from your
4 testimony here today I take it that you don't like benchmarks,
5 you don't like Mr. Dibner's study, but you would agree that
6 transporting coal is a necessary cost. It is a question of
7 what is a reasonable necessary cost. How do we determine, what
8 is your recommendation as to how we determine what a reasonable
9 cost would be to allow to be included in the fuel adjustment
10 factor?

11 THE WITNESS: Well, that is what I am recommending
12 here. I mean, I don't know -- Mr. Dibner did the model, and I
13 made two basic adjustments to them, and they were fairly
14 conservative. I did not eliminate -- I did not allocate all of
15 the backhaul, you know, all of his increase to that backhaul
16 traffic.

17 COMMISSIONER DEASON: So if we make the two
18 adjustments, even though you disagree with the study, if we
19 make the two adjustments you recommend you think that is a
20 reasonable rate to be included in fuel adjustment recovery?

21 THE WITNESS: Well, I'm not sure. I think that is
22 the rate that I have seen here that is most -- you know,
23 assuming that Dibner's model is good to begin with, that is the
24 rate that is reflective of a market price. That is the market
25 proxy.

1 COMMISSIONER DEASON: And we should allow that rate
2 for the five years of the contract?

3 THE WITNESS: My position is you should disallow the
4 ratio that I have shown in my testimony.

5 COMMISSIONER DEASON: And you believe that is
6 reasonable because it is a market rate with necessary
7 adjustments to reflect --

8 THE WITNESS: A competitive market.

9 COMMISSIONER DEASON: -- a competitive market?

10 THE WITNESS: Yes, sir. And that is what I think the
11 standard is in Florida.

12 COMMISSIONER DEASON: Do you have a position on
13 whether an RFP process is superior to the model, or is the
14 model a necessary given the limited amount of bidding that took
15 place?

16 THE WITNESS: I have accepted the model. I have told
17 you my qualifications, but I have accepted it. The RFP process
18 obviously didn't work. And my associate, Pat Wells is really
19 the expert on that, but it didn't work. But regardless of
20 that, I mean, I'm operating under the assumption, I'm operating
21 under the assumption that Mr. Dibner made a calculation of the
22 charges that TECO Transport should give to -- I mean, that TECO
23 Electric should provide to TECO Transport to meet or beat.
24 TECO Transport elected to meet them, and now they have a
25 contract and those are the prices that are being charged.

1 And what I have made -- and so the basis of those
2 charges is Dibner's model. And there are two very fundamental
3 problems with that model as far as a competitive market is
4 concerned. They allocate 100 percent of the backhaul costs to
5 ratepayers. They don't recognize, they don't recognize that
6 they would not be able to do that -- they don't recognize that
7 you wouldn't be able to double cost in a competitive market,
8 and they don't recognize that you wouldn't be able to add an
9 opportunity cost in a competitive market.

10 So unless we don't -- you know, Dibner's model set
11 the price and that is what is being charged. The contract has
12 been signed. Given what we have heard, if we abrogate that
13 contract, this Commission -- I'm afraid the company is going
14 come in and start charging ratepayers for liquidated damages.
15 So it seems to me, you know, that is why I made this
16 recommendation. From the ratepayers' perspective, okay, you
17 are paying that, but you have to reduce it by a significant
18 percentage to reflect a competitive market price.

19 CHAIRMAN BAEZ: Thank you, Commissioner Deason.

20 We are on redirect, Ms. Kaufman.

21 COMMISSIONER BRADLEY: I want to ask one more.

22 CHAIRMAN BAEZ: Oh. I'm sorry, Commissioner Bradley.

23 COMMISSIONER BRADLEY: Mr. Majoros, let me ask this
24 question. If the contract is put out to the -- I wouldn't say
25 the lowest bidder, but I would say the best bidder, what

1 portion of that should be allocated or allotted to TECO
2 Electric as a part of its rate base to administer the contract
3 and to -- well, to administer the contract?

4 THE WITNESS: Whatever -- I mean, I don't know.

5 COMMISSIONER BRADLEY: Was that included in your
6 calculations?

7 THE WITNESS: Are you asking me what part should be
8 allocated to TECO Electric --

9 COMMISSIONER BRADLEY: Right.

10 THE WITNESS: For administering that contract?

11 COMMISSIONER BRADLEY: For monitoring or
12 administering.

13 THE WITNESS: Through the fuel clause?

14 COMMISSIONER BRADLEY: Yes.

15 THE WITNESS: Nothing. That is all base rate
16 activity. You know, Ms. Wehle, her salary is in base rates,
17 and she is the one that does that.

18 CHAIRMAN BAEZ: Ms. Kaufman.

19 MS. KAUFMAN: Just really two mercifully short
20 questions.

21 REDIRECT EXAMINATION

22 BY MS. KAUFMAN:

23 Q Mr. Majoros, do you still have -- I guess it is
24 Exhibit Number 98. Mr. Twomey asked you about the late-filed
25 deposition exhibit?

1 A Yes.

2 Q Without articulating obviously any of the numbers, if
3 you look on Lines 4, 5, 6, and 7, am I correct that those are
4 the adjustments you recommend to each segment of the move? For
5 example, is Line Number 4 the adjustment that you recommend to
6 come to a competitive rate for the river backhaul?

7 A Yes, that is correct.

8 Q And are those numbers -- they would be on a per ton
9 basis, correct?

10 A Yes.

11 Q So if you wanted to get an order of magnitude, you
12 would multiply the total times, for example, the 5.5 million
13 tons Ms. Wehle talked about, correct?

14 MR. FONTS: May I object? It is clearly leading.

15 MS. KAUFMAN: I will rephrase it.

16 BY MS. KAUFMAN:

17 Q How would you calculate the amount of disallowance
18 that you are recommending from your late-filed exhibit?

19 A The amount of disallowance -- overall, or for each
20 component?

21 Q I think you can just tell you us, how would you do it
22 to get the total dollar amount on an annual basis? And don't
23 reveal any of the numbers; tell us methodologically.

24 A Well, the total per ton is shown on Line 8. And on
25 an annual basis, you would multiply that by the 5.5 million

1 tons. On a percentage basis you would divide that by
2 Mr. Dibner's (confidential number).

3 CHAIRMAN BAEZ: I wish you hadn't done that,
4 Mr. Majoros.

5 THE WITNESS: Sorry.

6 CHAIRMAN BAEZ: Can we have that stricken, please.
7 Your next question, Ms. Kaufman.

8 MS. KAUFMAN: I'm kind of scared to ask anymore
9 questions.

10 CHAIRMAN BAEZ: I'm scared of asking more questions,
11 too.

12 MS. KAUFMAN: Okay. This question doesn't go near
13 any confidential information.

14 THE WITNESS: All right.

15 BY MS. KAUFMAN:

16 Q Several the Commissioners were asking you, I think,
17 what they could do to protect the ratepayers. Do you recall
18 the dialogue that you had with the Commissioners?

19 A To protect the ratepayers?

20 Q Right, from abuses from affiliate transactions, for
21 example?

22 A Yes.

23 Q In addition to what you have recommended in your
24 testimony, is there any other approach that the Commissioners
25 could adopt to figure out what the appropriate charges should

1 be from TECO Transport to Tampa Electric?

2 A Well, I think that also available is the audit
3 process that exists and used by other utilities. That is one
4 way. But I don't know if that -- well, that might be one way.

5 MS. KAUFMAN: Thank you. That's all I have.

6 CHAIRMAN BAEZ: Thank you, Ms. Kaufman.

7 Thank you, Mr. Majoros.

8 THE WITNESS: Thank you.

9 CHAIRMAN BAEZ: We have some exhibits. Mr. Twomey, I
10 think you had an exhibit.

11 MR. TWOMEY: Yes, sir. I move Confidential 99.

12 CHAIRMAN BAEZ: I've got you, Confidential 99.

13 Without objection, show Confidential 99 admitted.

14 (Confidential Exhibit 99 admitted into the record.)

15 MS. KAUFMAN: Excuse me. I think we move 13 through
16 18, I believe.

17 CHAIRMAN BAEZ: I am showing 13 through 18. Without
18 objection, show them admitted into the record.

19 (Exhibits previously admitted.)

20 MR. VANDIVER: The Citizens would call H.G. Wells.

21 CHAIRMAN BAEZ: Mr. Wells.

22 H.G. WELLS

23 was called as a witness on behalf of the Citizens of the State
24 of Florida and the Florida Industrial Power Users Group, and
25 having been duly sworn, testified as follows:

DIRECT EXAMINATION

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BY MR. VANDIVER:

Q Good evening, Mr. Wells.

A Good evening.

Q Could you state your name and address for the record, please, sir?

A My name is H.G. "Pat" Wells, 38 Beach Street, Homosassa, Florida.

Q Did you cause to be filed in this proceeding 11 pages of testimony with five exhibits, sir?

A Yes, I did.

Q Do you have any changes to that testimony or exhibits at this time, sir?

A No, I do not.

MR. VANDIVER: Mr. Chairman, I believe those exhibits have been denominated as Exhibits 8 through 12, and at this time I would like to ask for the insertion of Mr. Wells' testimony as though read.

CHAIRMAN BAEZ: Without objection, show that the direct testimony of H.G. "Pat" Wells entered into the record as though read. And let the record reflect that his accompanying exhibits have been previously numbered as Exhibits 8 through 12.

MR. VANDIVER: Thank you, Mr. Chairman.

CHAIRMAN BAEZ: Go ahead, Mr. Vandiver.

TESTIMONY AND EXHIBITS

OF

H.G. WELLS

DOCKET NO 031033-EI

I. INTRODUCTION

7 **Q. Please state your name and business address.**

8 A. My name is H.G. (Pat) Wells and my business address is 38 Beech Street,
9 Homasassa, Florida 34446.

10 **Q. On whose behalf are you appearing?**

11 A. I am appearing on behalf of the Florida Office of Public Counsel (OPC) and the
12 Florida Industrial Power Users Group (FIPUG).

13 **Q. Please describe your educational and work experience.**

14 A. For more than 10 years with Florida Power Corporation (FPC, currently known as
15 Progress Energy Florida), I served as Transmission Engineer, Director of
16 Transmission Engineering, Director of System Planning, Director of Corporate
17 Planning (includes Rate Department), and Assistant Vice President of Corporate
18 Planning. Then for over 12 years, I served as President, CEO and member of the
19 Board of Directors of Electric Fuels Corporation (Electric Fuels), a subsidiary of
20 FPC. Attached as Exhibit No. ____ (HGW-1) is a brief description of my
21 qualifications and experience.

22 **Q. Describe your work experience in the area of fuel procurement and**
23 **transportation.**

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

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

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

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

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

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

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

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

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

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

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

1 A. Yes.

2 Q. Please summarize the problems with the RFP.

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

7 The problems included:

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

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

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

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

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

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

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

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

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

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

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

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

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

23 A. Yes.

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

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

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

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

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

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

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

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[REDACTED]

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

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

9 Q. Did TECo establish a dialogue with bidders?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 A. Yes.

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

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

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

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

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

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

5 **A. Yes.**

1 BY MR. VANDIVER:

2 Q Mr. Wells, have you prepared a summary of your
3 testimony?

4 A Yes, I have.

5 Q Could you provide that at this time, please?

6 A Yes, sir. Thank you. Good afternoon. My name is
7 Pat Wells. I'm appearing on behalf of the Office of Public
8 Counsel and the Florida Industrial Power Users Group. I have
9 testified before this Commission before, but it has been quite
10 sometime, and I'm pleased to be back here.

11 For over 12 years I served as president and CEO of
12 Electric Fuels Corporation, a subsidiary of Florida Power, now
13 going under another name. In that capacity I was responsible
14 for the procurement and transportation of about five and a half
15 million tons, plus or minus, of coal a year to Florida Power
16 Corp's facilities at Crystal River by both rail and barge, and
17 both somewhat unsegmented and some segmented sections that you
18 have been hearing about. I also am experienced in backhaul,
19 which may get me more questions than I want. This
20 transportation system is very similar, but not exactly like
21 that of TECO. That is the summation.

22 The principle conclusions of my testimony are that
23 TECO did not follow good practice in its RFP process. And I
24 have some comments about that. The RFP stated a preference for
25 integrated bids. Bidders were given an unreasonably short

1 response time. The RFP was not provided to the railroad.
2 Staff's suggested changes were not addressed, and there was a
3 lack of dialogue with the bidders.

4 TECO then failed to be a tough negotiator and did not
5 present any of the very few bids they received to TECO
6 Transport to either meet or beat. These items taken together
7 skewed the results of the solicitation toward TECO's sister
8 company, TECO Transport, and discouraged bidders from coming
9 forward. Additionally, I support the concept explained in Mr.
10 Majoros's testimony that considers backhaul in setting rates.

11 Q Does that conclude your summary, Mr. Wells?

12 A Yes, it does.

13 MR. VANDIVER: The witness is tendered for cross, Mr.
14 Chairman.

15 CHAIRMAN BAEZ: Thank you, Mr. Vandiver.

16 Mr. Wright, do you have questions?

17 MR. WRIGHT: Yes, sir, I do.

18 CROSS EXAMINATION

19 BY MR. WRIGHT:

20 Q Good afternoon, Mr. Wells.

21 A How are you, Mr. Wright?

22 Q I'm doing great, and it is nice to have you back
23 here. I have a number of questions for you that relate to how
24 your statements regarding Tampa Electric Company's handling of
25 the RFP and CSX's bid were informed.

1 Regarding your understanding of the bid, do you
2 understand the lowest amount of coal that CSX is willing to
3 transport pursuant to either of its bids?

4 A I didn't hear the very last.

5 Q I'm sorry. I'm having a little trouble keeping the
6 mike and my mouth together. Do you know what the lowest annual
7 tonnage that was available for carriage by CSX Transportation
8 was?

9 A I don't remember the exact number at this time. I
10 did know and I may have it here somewhere.

11 Q Is it your understanding there were two bids and one
12 was for a smaller amount and one was for a bigger amount?

13 A Yes, I did.

14 Q Thank you. At Page 8 of your testimony you make the
15 statement that CSX (sic) did not consider low bidders it
16 actually had in hand, is that correct?

17 A That TECO?

18 Q Yes.

19 A Yes.

20 Q What were some of the defects in Tampa Electric
21 Company's consideration of the CSX bid?

22 A In order to put that in just a little context, a
23 successful RFP gets bids. If they don't get bids, it is not
24 successful. And so you want to do everything you can to get as
25 many bids as you can. You can do a very complex RFP process,

1 and I would say that Tampa's is somewhat, but you have to sell
2 that RFP to the bidders. Particularly if you have been buying
3 from the same supplier since 1950. You have got to entice
4 people to come bid on your business. They don't think you are
5 going to give it to them. So you have to work every step of
6 the way to bring these guys in and bid.

7 And if you continue to do it over, and over, and
8 over, you may be able to just put a note in one of the coal
9 magazines that says, we are going to buy coal next year or buy
10 transportation next year, and here is how much, and the phone
11 will ring. You don't even have to do any more than that as an
12 RFP. You have to let that competitive market know that you are
13 willing to accept bids, and then when you have a need, you are
14 going to bring them in and listen to them. And so you do all
15 of these things you can to make that one objective occur.

16 Get them to bid, get them to bid low, and then after
17 they do that, bring them in and see if you can negotiate a
18 better deal either on terms, conditions, or price. And
19 anything short of that is going to be more, just drive that
20 particular business right back into the competition. So the
21 particular points I make are much less important than the
22 effort that it takes to get in there and get the people in to
23 bid, and that takes dialogue and action.

24 Q I wanted to ask you specifically about Tampa
25 Electric's handling of the bids submitted by CSXT?

1 A Oh, by CSXT.

2 Q Yes, sir. And I can just start by asking you whether
3 in your opinion Tampa Electric's handling of CSXT's bids
4 submitted to it was prudent?

5 A No.

6 Q Would you please explain what that opinion is and
7 then explain that opinion?

8 A I'm going to incorporate my last statement because it
9 has to do with that, and that is that if you are going to take
10 a bid, you have got to be realistic about it. Get them in and
11 talk to them about it. And in this particular case I believe
12 there was a gift horse involved where they were going to put up
13 some capital, and they never offered that to me. And I would
14 have -- the first thing I would do is when can you start. And
15 so that was a mishandling right there. That would tell me that
16 they don't want any competition.

17 It would be great to have both rail and water
18 transportation. I had the highest traffic cost on the Gulf.
19 TECO had the lowest. And I couldn't compete with them on
20 cross-Gulf traffic. And so I had rail. And while they were
21 good at that, the rail beat them a lot of times.

22 Q In your previous answer you mentioned that it would
23 be great to have both rail and barge. What, if anything, would
24 be the benefits of having both rail and barge capability?

25 A Well, you have got two competitors now. That's the

1 first thing.

2 Q And what benefit does that provide, if I may?

3 A Lower cost almost always.

4 Q Thank you.

5 A Then you also have access to other coal fields. TECO
6 has done a very excellent job of picking the lowest cost coal
7 suppliers close to the transportation system. And when you
8 have rail, you don't send them there.

9 So if you do a comparison at the end of the day of
10 delivering TECO's coal specifically selected to be a low cost
11 on the river, it is very likely that is not the best mine for
12 delivering rail coal. You find the rail coal mine that already
13 loads coal on the railroad, and usually that is right at the
14 mine instead of having a long truck haul or a long rail haul
15 just to get to the river. They load right at the plant. And
16 they have the capability of meeting all the criteria of
17 railroad demurrage, and off we go. And so those are the mines
18 that you would have a whole set of different mines for the
19 railroad than you would for a coal, and maybe if you are lucky
20 you may have one or two that can do both ways. But all of that
21 is going to lead to more and more competition. So that is my
22 answer.

23 Q When you were at EFC and -- well, you actually got
24 the barge system going at EFC, did you not?

25 A Yes. We originally contracted all of it, but we did

1 build one segment.

2 Q Thank you. When you were at EFC, what were the
3 approximate percentages of coal that were carried by barge and
4 by rail for Florida Power Corporation?

5 A It was more or less half and half for a long time,
6 but I think it grew more on the railroad over time.

7 Q Thank you. Do you know what the current percentages
8 are?

9 A No, I don't.

10 Q Did EFC, as the barge carrier, and CSXT or its
11 predecessor at the railroad co-exist peacefully during that
12 time?

13 A Oh, yes. We had a good relationship. We had
14 arguments, and I think you expect that.

15 Q Did you have any problems with CSXT as a vendor of
16 transportation services?

17 A Not at all.

18 Q I know that you have been present for virtually all
19 of these last two long days, Mr. Wells, and I wanted to ask you
20 did you hear testimony given as to whether Tampa Electric ever
21 actually negotiated with CSX Transportation?

22 A I heard some of that testimony.

23 Q And what that was the nature of that testimony, had
24 they negotiated with CSXT or not?

25 A No, they did not.

1 Q Was it prudent for them not to negotiate with CSXT?

2 A No, it was not.

3 MR. BEASLEY: Objection, I think that is outside the
4 scope of Mr. Wells' direct testimony.

5 CHAIRMAN BAEZ: Mr. Wright, can you point to Mr.
6 Wells' testimony for the basis of your question?

7 MR. WRIGHT: I'm asking him -- yes, he refers to
8 their rejection of the handling of the bids. I think he has
9 testified, and now I'm asking him would it have been
10 appropriate for them to negotiate in the context of having
11 received bids.

12 CHAIRMAN BAEZ: Overruled. Go ahead.

13 THE WITNESS: Please ask the question again.

14 BY MR. WRIGHT:

15 Q My question for you is was it prudent for Tampa
16 Electric not to negotiate with CSXT having received the bids
17 that it received?

18 A No, it was not.

19 Q Thank you. Mr. Wells, in an effort to hurry some
20 things along here, before you took the stand, I handed you a
21 copy of what has been introduced as interrogatory number --
22 Tampa Electric's response to the staff's Interrogatory 93?

23 A Yes.

24 Q Did you have a chance to review that?

25 A Yes, I glanced through it.

1 Q What do you interpret that interrogatory to be saying
2 as to why Tampa Electric didn't do more with the CSX bids?

3 A Frankly it sounds like they were too busy.

4 Q Is that a reasonable explanation for not engaging in
5 negotiations?

6 A No, it is not.

7 Q This is a question like several that have been posed
8 by Commissioners during the day, particularly today. If you
9 were a utility fuel procurement manager or director and you got
10 an offer like this, what would you do?

11 A I would call them in.

12 Q And then what?

13 A We would sit down and we would discuss the terms,
14 conditions, and the ramifications of it, the impact on what I'm
15 already doing. If I didn't have railroad, I would discuss a
16 long time about the timing, because I know that my coal mines
17 are not all strategically located, and I've got contracts and a
18 lot of other problems. You have got to solve a lot of things.
19 So it would not be a don't call us, we'll call you. I would
20 call them in immediately.

21 Q You made a reference to timing in your remarks just
22 now and your answer just now. Can you explain what you were
23 referring to there, please?

24 A Well, we know that in this case Tampa or the railroad
25 jointly somehow would build a facility. They couldn't take the

1 coal immediately. And so that would be part of the timing.
2 And it could be that their coal arrangements, and I'm not an
3 expert on this, but they may have everything tied up for the
4 next year already. I understand, and I heard just awhile ago
5 that the contracts are all signed with TECO Transport and that
6 may make that moot now, but that certainly wouldn't have been
7 at the time, I don't think. I think there was time to work
8 something out that would work beneficially to both companies.

9 Q Well, if it were you, and assuming that there were
10 some constraints due to existing contracts, would you talk to
11 the railroad company about some appropriate starting time in
12 the future?

13 A Oh, yes.

14 Q In previous answers you referred to the benefits from
15 intermodal, i.e., rail versus barge competition. Is that
16 competition more effective when you have both facilities in
17 place?

18 A Oh, yes.

19 MR. BEASLEY: Mr. Chairman, I would like to object.
20 There weren't any previous questions. Mr. Wright is the only
21 questioner, and Mr. Wells' testimony regarding the railroad is
22 Lines 1 through 18 on Page 9 of his testimony, and that is
23 pretty much it. And we have spent probably four or five times
24 that much in Mr. Wright's questioning of the witness.

25 CHAIRMAN BAEZ: Show me the numbers again. Mr.

1 Wright, how much more do you have on this line?

2 MR. WRIGHT: On this line very, very little. I do
3 have a couple more questions about Mr. Wells' exhibits.

4 CHAIRMAN BAEZ: Pick the two best and move on,
5 please.

6 MR. WRIGHT: Well, I like the question that I just
7 asked, and then I was going to go to the exhibits.

8 CHAIRMAN BAEZ: Answer the question, Mr. Wells.

9 THE WITNESS: All right. And the question was? A
10 brief of your question.

11 BY MR. WRIGHT:

12 Q The question was, in a previous answer to my
13 questions relating to the benefits that would be obtainable
14 through intermodal competition, you said it is great to have
15 both rail and barge. I believe those were your words. Is that
16 about right?

17 A That is exactly right.

18 Q And my question for you is is it better to have both
19 of them available to deliver coal with facilities on the
20 ground?

21 A Yes.

22 Q Thank you. I would like to ask you to look at your
23 Exhibit 10. Excuse me, what is Exhibit 10, which I believe is
24 your Exhibit 3.

25 A What is the --

1 Q It is the trade press article from Platt's. I
2 believe it is nonconfidential.

3 A Oh, the trade press. All right.

4 Q Yes, sir.

5 A Okay. I have that.

6 Q What does this tell you about the quality of Tampa
7 Electric's RFP?

8 A This is admitting that the market thinks they are not
9 going to warrant anything. Confirming it I would say.

10 Q And I wanted to ask you a couple of questions about
11 barge companies. Are you familiar with major United States
12 barge companies?

13 A Yes, some of them.

14 Q Would you expect there to be more than one bid
15 submitted in response to a good RFP by such barge companies?

16 A That requires more than one answer. There would be
17 more than one on the cross-Gulf portion, but not a lot. There
18 would be very few, but there would be more than one. And I
19 think I refer to that in my testimony. And on the river
20 portion, there would probably be a lot more, although there are
21 diminished numbers. I understand there are fewer barge lines
22 operating on the river now than when I had the pleasure of
23 doing this. There still are quite a few that are capable of
24 doing at least a part and some that could do the whole thing.
25 Now, at the terminal, that probably wouldn't change.

1 Q I have a question for you about your Exhibit 4, which
2 has been marked for identification as Exhibit 11. I think the
3 name of the company is confidential.

4 A Yes.

5 Q But do you view that as confirming the same thing
6 that the trade press article said?

7 A This is one from -- I won't give the name, but it is
8 probably the largest and certainly the most innovative operator
9 in the Gulf. I don't think anybody can match him for
10 innovation. They made me an offer I sometimes wish I had
11 taken. But that certainly does confirm it.

12 Q I have one more follow-up question on an earlier
13 answer that you gave to my questioning. You mentioned that
14 there appeared to be a gift horse in the CSX bid where CSX was
15 willing to pay so much money for the installation of
16 facilities. Do you recall that question?

17 A Yes. I do.

18 Q And I think your answer to that was to ask them could
19 they start tomorrow or something like that?

20 A Well, I would ask them when they could start.

21 Q When they could start. That's what you said. And my
22 question for you is do you have an opinion as to -- you know,
23 obviously they can't start tomorrow, but would you invite them
24 in and talk about what was really going to get built and how
25 much it was going to cost and who was going to pay for what?

1 A Well, I have had experience building just a facility
2 almost like that, and you do need a better part of a year to do
3 it, and maybe more now because of the environmental
4 restrictions keep getting more and more difficult. But it will
5 take a big period of time. And I don't think it is a whole lot
6 different than the time it would take for TECO to start trying
7 to phase this other option in and get a real competitor in this
8 business. And you wouldn't have to worry about these hearings
9 over whether these rates are right or not. The market is going
10 to determine it as soon as you get some of them in here. And
11 that is my answer to that question.

12 Q Thank you. I was really trying to ask you on the
13 point of working out the capital expenditures required when in
14 this case the railroad made the offer to pay for it. Would you
15 invite them in and sit down and say, look, guys, how much is it
16 really going to cost, what would you do?

17 A Absolutely. We would go through all of your bid,
18 everything about it in detail, and we would determine not only
19 when we could start it, but what mines you have, have you got
20 suggestions for us if we start looking for coal on your
21 railroad, because you are the only guy serving us on the rail,
22 you would be the guy with no competition on the railroad. And
23 so we would be looking at you as hard as I'm sure this
24 Commission would like to look at TECO right now.

25 MR. WRIGHT: Thank you very much, Mr. Wells. Thank

1 you, Mr. Chairman.

2 CHAIRMAN BAEZ: Mr. Twomey, from your absence from
3 the table --

4 MR. TWOMEY: No questions, sir.

5 CHAIRMAN BAEZ: That was my bet. Staff?

6 MR. KEATING: No questions.

7 CHAIRMAN BAEZ: Mr. Beasley?

8 MR. BEASLEY: Just a few, sir.

9 CROSS EXAMINATION

10 BY MR. BEASLEY:

11 Q Good evening, Mr. Wells.

12 A Good evening. Mr. Fons, is that it?

13 Q No, it's Mr. Beasley. Jim Beasley.

14 A Oh, I'm sorry, I know you. Thank you.

15 Q Mr. Wells, based on your considerable experience,
16 would you agree that from the perspective of a waterborne
17 transportation carrier that there are significant risks
18 involved in attempting to line-up and secure backhaul of bulk
19 commodities on a waterborne carrier basis?

20 A Very much so. Being the high cost bidder -- carrier
21 I know really how tough that is.

22 Q I'm sorry?

23 A Yes.

24 Q Your testimony indicates that you credited earnings
25 on backhaul activity to reduce coal transportation costs when

1 you were the president of Electric Fuel Corporation back in the
2 1980s, is that correct?

3 A Yes. And the '70s.

4 Q Is it true that the Commission required that because
5 your transportation rates for backhaul or waterborne coal
6 transportation were regulated on a cost-of-service type basis
7 as opposed to a market-related type basis?

8 A I wouldn't call what we were doing was a cost of
9 service. There was no cost-of-service type ratemaking on
10 Electric Fuels.

11 Q It was cost-based charges to Florida Power
12 Corporation, wasn't it? Wasn't what they were allowed to
13 recover based on what your costs were?

14 A That's correct.

15 Q Okay. And when you were asked that, you said in your
16 testimony, yes, that is the case. The Commission had not moved
17 to a market proxy form of regulation. Is that correct?

18 A That is correct.

19 Q Why in your view did the Commission not require that
20 backhaul earnings to be credited after it moved to a
21 market-based form of regulation?

22 A They did. They did require that I credit a portion
23 of the backhaul revenue to reduce Florida Power's cost.

24 Q That was when it was cost-based cost recovery, is
25 that correct?

1 A Yes.

2 Q But were you there at Electric Fuels Corporation when
3 the Commission moved to a market proxy form of regulation?

4 A No.

5 Q Okay. So you don't know then whether that continued
6 after that point?

7 A Well, I wasn't around when they went to the market
8 proxy.

9 Q You didn't perform a detailed side-by-side analysis
10 of the rates in the CSXT bid versus the rates that have been
11 incorporated in the new contract between Tampa Electric and
12 TECO Transport, did you?

13 A Yes, I have, but it was not part of my testimony.

14 Q What did you compare in that detailed analysis?

15 A Well, I wasn't totally complete with it, but I
16 compared the coal at the mine, cost to the river in its current
17 contract, which I understand is included in the cost of coal in
18 some cases, and I was able to find how much that was in certain
19 cases and who the carrier was in certain cases.

20 Q You didn't review Tampa Electric's current contract
21 with TECO Transport, did you?

22 A The contract itself?

23 Q Yes.

24 A I believe I read it, but I didn't make a thorough
25 look at the contract itself, no.

1 Q Did you analyze the capital costs specific to Big
2 Bend Station that would be required in order to put in rail
3 facilities?

4 A No, sir.

5 MR. BEASLEY: That's all I have. Thank you, sir.

6 CHAIRMAN BAEZ: Redirect?

7 MR. VANDIVER: No redirect.

8 CHAIRMAN BAEZ: Commissioners, did you have any
9 questions?

10 Commissioner Deason, did you have questions?

11 Exhibits.

12 MR. VANDIVER: Yes, sir. I would move for admission
13 of Exhibits 8 through 12.

14 CHAIRMAN BAEZ: Without objection, show Exhibits 8
15 through 12 admitted.

16 (Exhibits 8 through 12 previously admitted into the
17 record.)

18 CHAIRMAN BAEZ: And I think that does it for the
19 exhibits, right? I'm not holding any for anyone else. All
20 right. Mr. Wells, thank you.

21 THE WITNESS: Thank you.

22 CHAIRMAN BAEZ: I appreciate you holding out.

23 THE WITNESS: I'm sorry?

24 CHAIRMAN BAEZ: We appreciate you waiting so
25 patiently for us.

1 THE WITNESS: Thank you.

2 CHAIRMAN BAEZ: All right. That is our last witness
3 today. Is there anything we need to discuss before we recess?

4 MR. BEASLEY: Did you mention a start time for the
5 next session?

6 CHAIRMAN BAEZ: 9:30, June 10th. And, Mr. Keating,
7 what I need you to do is figure out what the impact -- we may
8 need to slide some briefing dates, obviously.

9 MR. KEATING: We definitely will, and that is
10 something that I have on my list is we will look back at the
11 calendar. I have got some preliminary dates, but I don't think
12 we need to go through them now. I have a couple of other
13 housekeeping tips I think are important. One, there are a lot
14 of red folders sitting around here.

15 CHAIRMAN BAEZ: There are a lot of red folders.

16 MR. KEATING: Everybody needs to gather their
17 confidential documents they handed out, and I need to gather
18 the staff documents that were handed out.

19 CHAIRMAN BAEZ: Very well.

20 MR. KEATING: Two, I would just like some
21 clarification, if I could get it, that over the next 10 to 12
22 days we are not going to be extending any opportunity for
23 discovery in this case.

24 CHAIRMAN BAEZ: Oh, boy. If we weren't shut down
25 before, ladies and gentlemen, we are shut down now, okay. So

1 whatever we have got, whatever we have to deal with that is
2 still floating around we will deal with, but there will be no
3 new requests for discovery or anything else.

4 I think that's it. Have a safe weekend, everyone.
5 And safe trips home, those of you that are traveling.

6 (The hearing adjourned at 6:15 p.m.)

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1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

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5 I, JANE FAUROT, RPR, Chief, Office of Hearing
6 Reporter Services, FPSC Division of Commission Clerk and
7 Administrative Services, do hereby certify that the foregoing
8 proceeding was heard at the time and place herein stated.

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

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

19 DATED THIS 2nd day of June, 2004.

20

21



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23 JANE FAUROT, RPR
24 Chief, Office of Hearing Reporter Services
25 FPSC Division of Commission Clerk and
Administrative Services
(850) 413-6732

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