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Re: Review of Tampa Electric Company's Waterborne
Transportation Contract and Related Benchmark, PSC Docket
No. 031033-EI

Dear Ms. Bayo:

Enclosed for filing are the original and fifteen copies of CSX
Transportation's post-hearing brief, including CSXT's post-hearing
statement of issues and positions, CSXT's legal brief, and CSXT's
proposed findings of fact, in the above-styled docket. I will
appreciate your confirming receipt of this filing by stamping the
attached copy thereof and returning same to my attention.

As always, my thanks to you and to your professional Staff for
their kind and courteous assistance. If you have any questions,
please give me a call at (850)681-0311.

Cordially yours,



Robert Scheffel Wright

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Review of Tampa Electric Company's)
2004-2008 Waterborne Transportation Contract) DOCKET NO. 031033-EI
with TECO Transport and Associated Benchmark) Filed July 12, 2004

**CSX TRANSPORTATION'S POST-HEARING STATEMENT, LEGAL BRIEF,
AND PROPOSED FINDINGS OF FACT**

CSX Transportation ("CSXT"), pursuant to Order No. PSC-03-1398-PCO-EI and Order No. PSC-04-0535-PHO-EI, hereby files its Post-Hearing Statement of Issues and Positions, including its Legal Brief and Proposed Findings of Fact, in this docket. CSXT's Post-Hearing Statement includes a summary of CSXT's positions on the issues; specific detailed discussion of these issues, including CSXT's analyses and recommendations for remedies to be implemented by the PSC for the protection of Tampa Electric Company's ("TECO") customers; legal briefing addressing (a) the legal effect of prior stipulations in the context of this docket, (b) the PSC's authority to require TECO to conduct a new, impartial, and meaningfully supervised procurement process, (c) the PSC's authority to require TECO to negotiate in good faith with CSXT, and (d) the PSC's authority to open a new docket to investigate the effects of, and appropriate remedies for, TECO's having concealed the true cost of transporting coal from the mine to its power plants, in violation of the Commission's orders; and CSXT's proposed findings of fact.

INTRODUCTION AND SUMMARY OF CSXT'S POSITIONS

TECO is a public utility subject to the Florida Public Service Commission's ("PSC" or "Commission") plenary regulation pursuant to Chapter 366, Florida Statutes.¹ CSXT is a million-dollar-a-year customer of TECO, T 905,² and is also in the business of transporting coal to electric

¹ All references to the Florida Statutes herein are to the 2003 edition thereof.

² Citations to the hearing transcript are in the form T abc, where abc indicates the page number cited. Citations to exhibits are in the form EX #, xyz, where # indicates the exhibit number assigned during the hearing and xyz indicates the page number of the exhibit cited.

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power plants in the eastern United States; as a provider of coal transportation services, beginning in October 2002, CSXT made firm, specific offers to provide cost-effective coal transportation services to meet TECO's needs for its Big Bend and Polk generating stations. TECO Transport is an affiliate of TECO; pursuant to a contract between these two affiliated companies, TECO Transport is (apparently) to provide all of TECO's coal transportation services from January 1, 2004 through December 31, 2008. T 358, 375.

TECO's practices associated with procuring coal transportation services, including its inextricably intertwined practices of coal procurement, have been and continue to be grossly and willfully imprudent, resulting in dramatically excessive costs, potentially well over \$7 per ton, per Dr. Sansom's analyses, T 1051, EX 39 -- well into the tens of millions of dollars per year -- that TECO is attempting to pass on to its captive residential, commercial, industrial, governmental, and institutional customers, including CSXT, the members of the Florida Industrial Power Users Group ("FIPUG") and the residential customers that have intervened in this proceeding. Witness Michael Majoros testified that the excess charges are of a similar order of magnitude. T 788. The Commission should, at a minimum, disallow the costs of coal transportation above those that TECO could have achieved had it behaved prudently with respect to specific, firm offers made to TECO by CSXT beginning in October 2002. CSXT respectfully recommends that the PSC should take additional actions, within the scope of its powers and duties under Chapter 366, to ensure that TECO in fact utilizes the most cost-effective means of coal transportation and the full range of coal supplies available to it, for the benefit of its captive customers.

Summary of Issues and CSXT's Positions

Issue 1: Is Tampa Electric's June 27, 2003, request for proposals sufficient to determine the current market price for coal transportation?

CSXT POSITION: *No. TECO's request for proposals ("RFP") was defective in many respects, including TECO's failure to solicit bids from CSXT and TECO's failure to accurately evaluate the bids that CSXT provided. Moreover, TECO's related practices of willfully avoiding negotiations with CSXT were grossly imprudent.*

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

CSXT POSITION: *No. TECO's projected costs are excessive and imprudent. The PSC should limit TECO's cost recovery to what TECO would have incurred had TECO negotiated in good faith with CSXT beginning in 2002. The PSC should also investigate potential past overrecoveries due to TECO's understating its true transportation costs.*

Issue 3: Should the Commission modify or eliminate the waterborne coal transportation benchmark that was established for Tampa Electric by Order No. PSC-93-0443-FOF-EI, issued March 23, 1993, in Docket No. 930001-EI?

CSXT POSITION: *Yes. The benchmark is utterly worthless, as demonstrated by the gross disparity between the benchmark and actual, historical rail transportation costs to TECO's Gannon Station. The benchmark is also invalid because it is based on inaccurate data, erroneously ignores rail transportation volume discounts, and erroneously includes private rail car costs.*

STATEMENT OF THE CASE AND FACTS

In Order No. 20298,³ issued in 1988, the PSC approved the use of a "benchmark" for evaluating TECO's costs for waterborne coal transportation. In that order, the PSC made clear that the benchmark was intended to be a measure of the competitive price or cost of transporting coal "from the mine to the generating plant." Order No. 20298 at 14, 15. That order approved a stipulation between TECO and the Office of Public Counsel ("OPC"); FIPUG and the Commission Staff were parties to the docket, but not to the stipulation. CSXT did not participate in that docket. The PSC again approved the benchmark in 1993, and has continued to use it to evaluate

³ In Re: Investigation Into Affiliate Cost-Plus Fuel Supply Relationships of Tampa Electric Company, Docket No. 870001-EI-A, Order No. 20298 (Fla. Pub. Serv. Comm'n, November 10, 1988) (hereinafter referred to as Order No. 20298).

TECO's coal transportation costs. For this entire period, TECO has procured the vast majority of all coal transportation services for its Big Bend and Polk Stations from its affiliate, TECO Transport, and also most of the coal transportation service for its Gannon Station (another TECO generating plant located approximately ten to twelve miles north of Big Bend, also on the eastern shore of Tampa Bay) from TECO Transport, until the conversion of TECO's Gannon Station to gas-fired operation.

Beginning at least as early as the PSC's 2003 Fuel and Purchased Power Cost Recovery proceedings, Docket No. 030001-EI (the "2003 Fuel Docket"), several parties questioned whether the benchmark still had meaningful value for evaluating the competitiveness of the prices paid by Tampa Electric to its affiliate, TECO Transport. These concerns, which included TECO's initially balking at the Staff's suggestion that TECO should conduct a solicitation or "request for proposals" ("RFP") process to determine the market for coal transportation services, as well as TECO's maintaining that it is not required to conduct an RFP, T 367, as well as the specifics of the RFP that TECO did eventually conduct, as well as the evaluation of the various bids submitted, and other issues, led the PSC to spin off this docket from the 2003 Fuel Docket.

Hearings were held in this docket on May 27 and 28, and June 10, 2004, at which the PSC received the testimony of four TECO witnesses, Joann Wehle, Brent Dibner, Paula Guletsky, and Frederick Murrell; two witnesses on behalf of the OPC and the FIPUG, Michael Majoros and H.G. "Pat" Wells; three witnesses on behalf of CSXT, Robert F. White, Robert L. Sansom, Ph.D., and John B. Stamberg, P.E.; and one witness, Anatoly Hochstein, Ph.D., on behalf of Helen Claypool and seven other residential customers of TECO (collectively, the "Residential Customers"). TECO Transport did not participate in this proceeding and thus, obviously, did not present any testimony.

Beginning at least as early as May 2002, CSXT attempted to meet with TECO fuel

transportation procurement personnel to offer to provide cost-effective coal transportation service to TECO for its needs at Big Bend and Polk. T 905-06. In May 2002, CSXT personnel met with TECO personnel to propose such an arrangement. T 905-06. Following that meeting, and following a limited tour of Big Bend and Polk, T 906-07, on October 23, 2002, CSXT submitted a formal proposal to TECO for the provision of such services. T 908, EX 22. CSXT believes that the rates offered were very favorable to TECO; even TECO's witness recognized that the rates were "aggressive." T 593, see also EX 100 at 28, L 14-16. In fact, the prices offered by CSXT in October 2002 were comparable to, and generally slightly less than, the most recent prices, (i.e., \$16.00/ton to \$16.35/ton), at which CSXT had transported coal to Gannon Station (10-12 miles north of Big Bend) in 2000 and 2001. T 538-39, EX 101 (May 2000 and May 2001). CSXT's offer also provided for CSXT to make the capital expenditures necessary to install the infrastructure necessary for TECO to receive and handle rail-delivered coal at Big Bend and Polk. T 909-10, EX 22.

TECO acknowledged the work that CSXT had put into the offer, T 920, but effectively rebuffed all of CSXT's numerous, persistent efforts to have further discussions regarding CSXT's proposal for several months, T 593-94, 921; apparently, TECO was too busy to do so. **See EX 100** at 77, L 24-25; EX 82; T 878. No meaningful analysis of CSXT's 2002 proposal was prepared by TECO personnel. EX 100 at 28. The available evidence indicates that TECO recognized that CSXT's offer was favorable and serious, T 552, EX 100 at 28, yet TECO did nothing meaningful toward evaluating CSXT's offer, nor toward attempting to negotiate a deal with CSXT to take advantage of that serious and favorable offer. Another meeting was held more than three months later, on March 12, 2003. T 914-15. Again, however, TECO did nothing toward negotiating with CSXT to attempt either to take advantage of CSXT's offer or to seek improvements in that offer

for the benefit of its captive customers. T 915.

In June 2003, TECO issued its RFP. T 369, EX 111. TECO did not send the RFP to CSXT. T 916. CSXT learned that the RFP had been issued from the trade press and requested a copy, which TECO provided on July 21, 2003. T 916, 923. CSXT prepared its proposals in response to the RFP and timely submitted those proposals on July 31, 2003. T 916, EX 28. The prices in CSXT's July 2003 proposals were essentially the same as those offered in October 2002. T 916. CSXT's July 2003 proposals also included substantial "volume discounts" for any coal obtained from CSXT-rail-direct origins/sources. T 917-18, EX 28. CSXT's proposals also included offers to pay for all needed coal-by-rail delivery and handling infrastructure up to significant amounts, well above \$10 million, including a substantial contingency allowance above CSXT's estimated costs. T 917, EX 28.

TECO, however, did not even seek to negotiate with CSXT in either 2002 or 2003. T 536, 584, 918. What TECO did was hire Sargent & Lundy ("S&L") in late August 2003, not to conduct a feasibility study, not to attempt to identify a least-cost solution that would facilitate the installation of coal-by-rail infrastructure at Big Bend, and not for any other legitimate business purpose, but rather to do a very quick, rigid, over-engineered, made-for-litigation study of infrastructure costs that TECO could use as an ex post justification for rejecting CSXT's 2003 proposals. Most of S&L's study was performed in approximately 8 days, from August 27, 2003 to September 4, 2003, spanning the Labor Day weekend. T 1192-93, EX 51. S&L's documentation of estimates was never provided, apparently because it wasn't retained. T 1343-44. The estimates prepared by S&L included no vendor quotes and no site-specific analyses T 1328; the S&L estimates were several times the estimates of the needed infrastructure expenditures prepared by CSXT and, accordingly, were significantly greater than the amounts CSXT offered to pay.

Compare EX 22 at 2 and EX 28 at 19-20 to T 1289-90.

TECO apparently prepared some analyses of CSXT's offers in October of 2003, as an exhibit to PSC Document No. 10778-03, Witness Wehle's rebuttal testimony in the 2003 Fuel Docket, referring to analyses by Mr. McNulty (apparently William McNulty of the PSC Staff), after having awarded the contract to its affiliate, and updated those analyses in the course of preparing its testimony in the current docket in 2004. Cf. EX 6 to EX 83. For the waterborne transportation option, TECO did not include the costs to get coal from the mine to the river and onto barges. T 555, 1090. TECO did not recognize volume discounts available through CSXT's offers. See EX 83. TECO did not evaluate the costs -- and accordingly, the cost savings available from reducing such costs -- associated with reducing the losses from additional handling of coal in waterborne transportation, the additional inventories that TECO maintains because it chooses to use solely waterborne transportation, or the additional thermal costs associated with the additional moisture that water-transported coal picks up in transit. T 1061-63, EX 37; see also EX 6, EX 83.

TECO, of course, as anticipated by others in the coal transportation industry, see EX 67 (letter from major barge company declining to participate in the RFP) and T 161-62 (trade press articles describing the RFP process as an "exercise in futility"), once again selected its affiliate, TECO Transport, as the entity with whom it wished to do business.

TECO, for the first time in its rebuttal testimony filed in May 2004, raised the issue of CSXT's reliability. See T 436-37, 928. The only evidence in the record on this subject indicates the following: that, as of October 2002 and July 2003, there were no indications of any issues with CSXT's service quality or reliability T 928; that the current issues are largely, if not entirely, the result of CSXT's customers having told CSXT that they wanted certain volumes of coal delivered in 2004 and then dramatically increasing those volumes well after CSXT had already completed its

planning for 2004, T 925-26; and that, despite its customers having told CSXT one thing and then greatly increasing their demands for CSXT's coal transportation services, CSXT is already well above and ahead of its year-to-date deliveries compared to 2003 and also well above and ahead of the amounts that CSXT's customers forecasted to CSXT when CSXT asked them for that information in the summer and fall of 2003. T 925-26, 931. Most importantly, and most significantly, CSXT has never failed to meet the generation needs of its utility customers, T 927, and no Florida utility, or any other utility served by CSXT, has ever run out of coal because of CSXT's inability or failure to deliver it on time. T 939. Moreover, if TECO had contracted with CSXT for coal transportation services and had given CSXT accurate forecasts of how much coal TECO wanted CSXT to deliver in 2004, CSXT would have incorporated TECO's needs into its planning and would have delivered the requested coal accordingly. T 935-36.

Most power plant coal in the eastern United States moves by rail. EX 20 at 11. CSXT delivers approximately 50 to 60 percent of all power plant coal that is burned in Florida. *Id.* CSXT delivers coal to every other utility in Florida that has coal-fired power plants, and also to the two coal-fired cogeneration plants in Florida. EX 20 at 10.

The average one-way transit time to supply TECO's Big Bend plant with coal by rail would be approximately 4 days. T 932, 934. In stark contrast, the one-way transit time to supply TECO with coal by barge is approximately 20 to 22 days. T 934.

TECO's coal transportation needs are similar to those of another Peninsular Florida utility that uses coal to generate a large amount of electricity, Progress Energy Florida, Inc. ("Progress"). It is common knowledge in the Florida power industry that TECO and Progress each have four coal-fired units at one station, TECO at Big Bend and Progress at Crystal River. The Commission can readily verify from their ten-year site plans that the amounts of coal that TECO and Progress

are projected to burn in 2004 and 2005 are not significantly different. Unlike TECO, however, Progress delivers approximately two-thirds of its coal via rail. T 1119.

The following are CSXT's discussions of the three issues identified in the prehearing order. These discussions also naturally address what CSXT believes are the appropriate remedies for the PSC to impose to protect TECO's captive customers from TECO's woeful failures in its duties as a public utility. The issues of the PSC's authority to implement these remedies are addressed in CSXT's Legal Brief, which follows within this document. CSXT's post-hearing filing concludes with CSXT's Proposed Findings of Fact.

I. TECO'S 2003 RFP AND ITS OTHER ACTIVITIES RELATING TO ITS PROCUREMENT OF COAL TRANSPORTATION SERVICE, AS WELL AS THE INEXTRICABLY INTERTWINED PROCUREMENT OF COAL SUPPLIES, WERE FATALLY FLAWED AND IMPRUDENT. ACCORDINGLY, THE RFP MAY NOT BE RELIED UPON TO DETERMINE THE MARKET COST OF SUCH SERVICES AND SUPPLIES, AND MOREOVER, TECO'S OTHER FAILURES REFLECT A WILLFUL INDIFFERENCE TO THE INTERESTS OF ITS CUSTOMERS.

TECO's 2003 RFP was fatally flawed and may not be relied upon for any legitimate regulatory purpose. T 862, 1038, 1072. The only actual use that TECO made of its RFP results was to increase the rate that it offered to its affiliate for terminaling services. T 275-77, 388-89. Moreover, all of TECO's actions with respect to even considering the potential cost savings, and other benefits, available through rail transportation of part of its coal needs were grossly imprudent; indeed, they were essentially non-existent except as to TECO's attempts to avoid giving meaningful consideration to, and to avoid doing anything to take advantage of, CSXT's October 2002 and July 2003 offers. Finally, TECO's willful restriction of itself to water-origin coals has the effect of further compounding the adverse effects that TECO's imprudence imposes on its captive customers

by foreclosing major coal supplies from any meaningful consideration in TECO's coal procurement activities.

A. TECO's RFP Was Fatally Flawed and May Not Be Relied Upon As A Source Of Market Cost Or Price Data For Use In Evaluating TECO's Coal Transportation Costs.

Ms. Wehle concedes that, having decided to issue an RFP, TECO was obligated to use the best RFP possible. T 507. However, TECO's 2003 RFP was flawed in numerous respects and thus failed to meet this requirement. The solicitation date was too late and the response time was too short. The outcome was widely perceived by the coal transportation industry as foreordained by TECO's affiliate relationship with TECO Transport. See EX 10, 11, 67; T 880-82. TECO did not send the RFP to CSXT, the only viable potential competitor to provide all of TECO's coal transportation, until after CSXT learned of the RFP through the trade press and requested it from TECO. T 916. Even knowing that CSXT had cost-effectively delivered coal to TECO's Gannon Station before it was converted to gas-fired operation, and even knowing that CSXT's 2002 and 2003 offer prices were comparable to, or lower than, its most recent Gannon rates, TECO never negotiated with CSXT to attempt to determine whether a better deal was available. T 584, 918. Moreover, TECO never attempted to negotiate with its affiliate, TECO Transport, to attempt to determine whether a better deal was available from its sister company. T 505, 541. Of course, it is thus obvious that TECO never attempted to use CSXT's bids and proposals as a negotiating tool to attempt to get a better deal for its customers from TECO Transport. Significantly, the only actual use that TECO made of the bids that it received was to use the one external bid that it received for terminaling services to increase the rate that it pays for terminaling services from its affiliate; the river and barge rates that it offered (without any negotiations) to TECO Transport were those developed by its consultant, Mr. Dibner. T 275-77, 388-89.

These failures all demonstrate the worthlessness of TECO's RFP, and of TECO's related actions and inactions, for determining the real market costs of coal transportation from the coal fields to Tampa Bay. The other parties in this case, *i.e.*, OPC, FIPUG, and the Residential Customers, are developing in more detail the evidence demonstrating that TECO's RFP was not, and is not, useful for evaluating the real cost of TECO's coal transportation alternatives.

B. TECO'S Willful Failure And Refusal To Negotiate In Good Faith With CSX Transportation For The Installation Of Coal Delivery And Handling Infrastructure At TECO'S Big Bend Station Was Grossly Imprudent And Violative Of TECO's Obligation to Seek The Most Cost-Effective Means Of Transporting Coal For The Benefit Of Its Captive Customers.

Beginning in May 2002, CSXT continued its earlier efforts to provide TECO with offers for cost-effective coal transportation service to Big Bend and Polk. T 905-06. CSXT eventually met with TECO on May 9, 2002, and CSXT personnel were given limited tours of Big Bend and Polk on May 21 and September 6, 2002. T 906-07. Using the best, albeit limited, information available to it, CSXT on October 23, 2002, presented a formal offer to TECO for coal transportation that TECO could have accepted, or that TECO could have used as a basis for further negotiations with CSXT. T 908-09. The terms of this offer are shown in Exhibit 22. Compared to Exhibit 101, which shows the prices charged by CSXT for coal transportation service to TECO's Gannon Station in 2000 and 2001, Exhibit 22 shows that the prices offered by CSXT in 2002 were comparable to, perhaps (depending on the exact origin of the coal transported) somewhat less than, its 2000 and 2001 rates to Gannon (about 12 miles up the shore of Tampa Bay from Big Bend). CSXT also offered to pay for infrastructure improvements needed to accommodate rail delivery of coal to Big Bend and Polk. See EX 22 at 2

TECO effectively did nothing: TECO performed no meaningful evaluation of CSXT's October 2002 offer, even though TECO recognized that the offer was aggressive, favorable, and

serious. T 593-94. TECO spurned and rebuffed CSXT's persistent efforts to have further meetings to discuss CSXT's offer. T 921. TECO never even attempted to negotiate with CSXT to determine whether an even better deal might be available for the benefit of its customers, or even to determine whether it might have a better -- lower cost -- alternative to use in negotiations (which, of course, never occurred) with its affiliate, TECO Transport. T 536, 584, 918.

TECO's witness Joann Wehle claims that TECO told CSXT that CSXT's offer wouldn't work for TECO. T 551-52. The written evidence clearly shows otherwise. An e-mail shortly after TECO received CSXT's October 2002 proposal, from TECO employee Martin Duff, a fuel strategist employed by TECO, indicated TECO's appreciation for the amount of work that CSXT had put into its offers. See EX 100. A letter dated March 21, 2003, showed that CSXT understood TECO to be considering its offers, see EX 27 at 1, and no written correspondence from TECO indicates that it ever told CSXT that the offers would not work for TECO. TECO apparently did not act on CSXT's "aggressive" offer because TECO's fuel transportation procurement staff were too busy. T 877-78, EX 83; see also EX 100 at 27, L 24-25. Ms. Wehle's assertion is further belied by the fact that, due to CSXT's persistence, another meeting was eventually held on March 12, 2003. T 914-15, EX 20, EX 100 at 27.

TECO's purported "CSXT reliability" argument was cooked up by TECO after the fact: there is no reference in any 2002 or 2003 correspondence or any other documents indicating any concern on TECO's part regarding CSXT's reliability. Mr. White testified that, in fact, in 2002 and 2003, there were no issues or concerns anywhere regarding CSXT's reliability.⁴ T 928. The facts

⁴ TECO's efforts in this regard ignore the basic principle of prudence evaluation that utilities are to be judged by what they knew, or reasonably should have known, when decisions were made. If TECO wishes to be judged by this standard regulatory principle, then its argument about CSXT's reliability, which TECO itself only surfaced for the first time in its May 2004 rebuttal testimony, must be completely rejected here. If, on the other hand, TECO wishes to

further show that, based on what its customers told CSXT in the last six months of 2003, CSXT planned to transport approximately 154,000 tons of coal in the first four months of 2004. EX 98 at 12. In fact, on a year-to-date basis, CSXT has transported approximately 12 percent more coal in 2004 than it did in 2003, and CSXT has also transported approximately 6 percent more coal in 2004 than its customers told CSXT they were expecting CSXT to transport. T 296, EX 98 at 12, EX 102. The facts also show that CSXT's customers have requested even more transportation service than they requested last year, and that while CSXT is presently unable to meet all of these customer-revised requests, CSXT is currently undertaking substantial efforts, and making expenditures in the hundreds of millions of dollars, to provide the requested services. More importantly, the record is uncontroverted that CSXT has supplied sufficient coal to meet the generating requirements of all of CSXT's utility customers. T 927.

H.G. "Pat" Wells, formerly the president of Electric Fuels Corporation, has the most experience with utility coal transportation to Florida of any witness in this case. See T 859. Mr. Wells testified that TECO's appropriate response to CSXT's offers would have been to ask CSXT when they could start with the installation of the rail delivery facilities.⁵ T 882. TECO's witness Murrell testified that he didn't think that the offers made by CSXT were the right ones for TECO to accept at this time, T1421, but acknowledged that he didn't see any of his alleged concerns actually articulated in CSXT's offers, see T 1424, and testified that the offers were "exciting" and that he would "want to be doing something" with CSXT based on what he understood CSXT's offers to be after hearing Mr. White's testimony. T 1421, 1423-24.

abandon this principle, then the entire gamut of its decisions here should be subject to the same, broader scope of review.

⁵ Mr. Wells described CSXT's offer to pay for capital improvements at TECO's Big Bend plant as a "gift horse." T 874.

The real point here is that TECO's actions were grossly imprudent, to the detriment of TECO's customers. TECO never asked CSXT for further information regarding CSXT's offers, never attempted to work cooperatively with CSXT toward getting rail infrastructure installed, and never even attempted to negotiate with CSXT. If TECO had done so, it would have learned what the offers meant and could have sought potentially better terms, but of course TECO did none of these things.

Dr. Sansom, who -- unlike any of TECO's witnesses -- has conducted numerous prudence evaluations of utility coal transportation procurement practices and has testified thereon in numerous regulatory proceedings, T 1028-30, EX 29, testified that TECO's failures to negotiate and to adequately evaluate CSXT's offers, were prima facie imprudent. T 1074. Mr. Wells testified that the availability of both barge and rail transportation capability "with facilities on the ground" would benefit TECO in improved reliability, in improved price competition between the two modes, and in access to more coal fields. T 875, 880. Mr. Majoros testified similarly that he would favor competition between the two modes. T 822-23. Even TECO's own witness, Ms. Wehle, conceded that having bi-modal coal supply options could enhance TECO's reliability. T 597.

The bottom lines with regard to TECO's failures to act prudently in response to CSXT's favorable offers are these: TECO willfully ignored CSXT's offers, and willfully decided not to attempt to determine how good a deal might be available to TECO from CSXT, whether as a true rail-delivery option or as a negotiating tool to use to get lower prices from TECO Transport. Against the backdrop of TECO's continuing its self-dealing with TECO Transport, it appears readily apparent that TECO didn't want to know whether lower prices were available because it wanted to pay TECO Transport as much as it thought it could get away with in the PSC's fuel cost recovery proceedings, including this proceeding. Finally, TECO's customers are entitled to know

that TECO will adequately evaluate all attractive offers that are made available to TECO. In short, TECO's customers are entitled to know that somebody's minding the store. It is clear in this case that TECO was not minding the store for the benefit of its customers, and that the only store that TECO was minding was the till of its parent, TECO Energy, for the benefit of TECO's shareholders and probably TECO's management. The PSC must remedy this with all the powers at its command.

Here, the PSC must do the following: reject TECO's RFP and find that TECO has failed to fulfill its duty to explore all available alternatives to obtain the lowest cost coal transportation (and coal supply) for the benefit of its customers; and use CSXT's offers as a cap or ceiling on TECO's cost recovery (see the discussion in section II below regarding the dollar amounts involved), regardless what actions TECO takes.

C. TECO'S Willful Restriction Of Itself To Considering Only Water-Origin Coal Supplies Was And Is Also Imprudent And Contrary To The Interests Of TECO's Captive Customers.

Consistent with its longstanding practices, TECO solicited and continues to solicit only "FOB barge" coal for its needs. T 559, 1053. TECO even rejected a bid in a recent solicitation because it was a rail-origin bid. T 1060; see also EX 100 at 50. In so doing, TECO has restricted, and continues to restrict, its choices of coal supplies and suppliers by excluding a large number of potential supplies. This self-imposed restriction has been unnecessary and imprudent since at least early 2004, because TECO could have had rail delivery capability in place at Big Bend as of that time had it behaved prudently with regard to CSXT's October 2002 offers. T 1046-47, 1056-57, EX 33,

Prudent utilities, including Louisville Gas & Electric, Seminole Electric Cooperative, and the Tennessee Valley Authority, buy coal from both rail and barge origins and transport that coal by

rail and barge to achieve least-cost fuel supplies. T 1040. Progress Energy Florida also takes coal by both rail and barge and competes each mode against the other. T 1094. TECO, of course, does not follow this prudent practice. The record indicates that TECO paid significantly more for coal from the same mine than did Seminole in 2003 and 2004, T 1041-43, and that the majority of these cost differences is not attributable to either (a) differences in the distance from the mine to Palatka and to Big Bend, T 1110-1111, or (b) differences in commodity costs. T 1041-43, 1152-53. In the opinion of Dr. Sansom, the only witness in this docket with extensive experience regarding utility fuel procurement prudence reviews, TECO's December 2003 water-origin coal solicitation "appears to be designed to further foreclose rail-origin coals from TECO's supply portfolio in order to further enhance TECO Transport's position as TECO's sole supplier of coal transportation services." T 1057. TECO's intentional avoidance of rail-origin coals, particularly in light of TECO's other actions favoring its affiliate, highlight the fact that TECO does not synchronize its coal supply procurement and coal transportation procurement actions, to the detriment of TECO's customers. T 1060.

Moreover, TECO's current continuation of these practices puts TECO's captive customers at risk of further, and potentially long-term, over-payments for coal supply and transportation. Dr. Sansom testified that in 2003 and 2004, TECO has again solicited only waterborne coal. This will result in TECO further limiting its coal supply options in the future to the detriment of its ratepayers. T 1057-61.

II. THE COSTS THAT TECO PROPOSES TO RECOVER FOR PAYMENTS MADE TO ITS AFFILIATE, TECO TRANSPORT, ARE UNREASONABLE AND GROSSLY IMPRUDENT, AND CONSEQUENTLY, A LARGE AMOUNT OF THOSE COSTS -- IN THE TENS OF MILLIONS OF DOLLARS PER YEAR -- SHOULD BE DISALLOWED FOR COST RECOVERY PURPOSES.

The Commission should remember the requirement of Order No. 20298 that the relevant

measure of competitive transportation costs is the cost to get coal “from the mine to the generating plant.” Order 20298 at 14. It is obvious, as a fundamental matter of regulation and the regulated utility’s obligations under Florida’s regulatory framework, that this principle must carry over into the general requirement that a utility must undertake all reasonable efforts to ensure that it is getting the lowest total delivered costs of coal (or other fuels, as applicable), including both commodity and transportation costs, for the benefit of its captive customers. The record of this case demonstrates, compellingly, that TECO has failed miserably even to attempt to do so. As described above, TECO failed to even negotiate with CSXT, even where TECO itself recognized that CSXT’s offer was favorable; TECO failed to negotiate with its affiliate in any effort to get better rates from that company; and TECO willfully and intentionally excluded rail-origin coals from the universe of potential supplies for its plants, notwithstanding the fact that there are many rail-origin coal sources producing coals that are satisfactory for use in TECO’s power plants. See T 559, 1038-39, 1053.

The Commission should also keep in mind the fundamental principle that a utility, TECO in this instance, is to have the prudence of its decisions analyzed according to what it knew, or reasonably should have known, at the time its decisions were made.⁶

When all costs of getting coal from the mines where it is produced to the power plant are taken into account, it would be cheaper for TECO to procure rail-origin coal and to transport that coal to Big Bend via rail. TECO’s analyses are biased and incomplete and failed to even attempt to optimize the potential mix of barge and rail transportation to minimize costs for the benefit of its captive customers

⁶ All prudence reviews are inherently ex post analyses to some degree, but as a matter of regulatory principle and policy, they are based on what the utility knew or reasonably should have known at the time it made the decisions under review.

A. TECO Knew, And Reasonably Should Have Known, That CSXT's Offers Were Favorable, And TECO Acted Imprudently With Regard To Those Offers.

The PSC should evaluate the prudence of TECO's decisions with reference and regard to what TECO knew, and reasonably should have known, when it made its decisions not to negotiate with CSXT in 2002 and again in 2003. As of these times, and earlier, the record demonstrates that TECO knew, or at least reasonably should have known, the following:

1. TECO knew that CSXT had delivered coal to its Gannon Station, a mere 10 to 12 miles north of Big Bend Station on Tampa Bay, in 2000 and 2001 for less than TECO's incomplete (incomplete because those costs omitted the cost of getting coal from the mine to the river and onto barges) waterborne coal transportation costs. T 576-77, 1052.
2. TECO knew that CSXT's offer prices for delivery from the same coal-producing regions in October 2002, and also in July 2003, were somewhat less than, or roughly comparable to, the prices charged by CSXT for delivery to Gannon in 2000 and 2001. T 538-39; also cf. the rates and costs in EX 22 at 4 and EX 28 at 14 to the rail rates to Gannon for May 2000 and May 2001 shown in EX 101. TECO should also have known, based on its own experience with rail costs to Gannon, that rail rates had fallen and were continuing to fall for coal transportation service.
3. TECO knew, or reasonably should have known, that CSXT had CSXT-direct access to significant coal supplies in the Illinois Basin and in the Pittsburgh Seam 8 ("Pitt 8") region that would be entirely satisfactory for use in both Big Bend and Polk Stations. EX 20 at 6-9; EX 21 at 5, 7, 15; EX 22 at 4 (rate districts for Illinois Basin and Pitt 8 coals); EX 28 at 14 (same); T 1043, 1050-51; see also T 1037-45.
4. TECO knew, or reasonably should have known, that no Florida rail customer of CSXT pays

the full escalation charges referred to in CSXT's tariff, and as a presumptively prudent business entity, TECO should also reasonably have known that negotiations would likely have produced more favorable terms from CSXT. T 584; see also T 1425.

- 5 TECO knew or should reasonably have known that it had in hand firm offers from CSXT that it could have accepted, T 1008, or that it could have used as a basis for further negotiations with CSXT, and that it could have used to attempt to get lower prices from its affiliate, TECO Transport. See T 1035.
6. TECO knew that those offers included proposals by CSXT to fund, without obligation beyond the initial contract term, the capital infrastructure improvements necessary to accommodate rail delivery of coal to Big Bend. EX 22 at 2, EX 28 at 19-20. (The October 2002 offer was contingent on further action by CSXT's board of directors; the July 2003 offer was not contingent on any such action.) Id.

Against this knowledge, TECO effectively did nothing to attempt to take advantage of CSXT's offers for the benefit of its captive customers. TECO did not pursue negotiations with CSXT. In fact, after receiving CSXT's October 2002 offers and recognizing that they were attractive, TECO put off CSXT for more than three months, despite persistent efforts by CSXT, T 593-94, 914, before agreeing to a further meeting with CSXT, which occurred in March 2003. TECO never asked for clarification of CSXT's offers. TECO never raised any concern regarding CSXT's reliability. T 928. TECO, in short, never lifted a finger to attempt to get a better deal for its customers, not even to attempt to get a better firm-price offer in hand that it could then use to attempt to negotiate a better deal with its affiliate, TECO Transport. TECO did, however, find the time to engage S&L in an effort to create an ex post justification for rejecting CSXT's 2003 proposals. Of course, it appears now, as it appeared to most of the waterborne transportation

industry in 2003, that this was because TECO was completely intent on once again giving the business to its affiliate at the highest price that it thought it could persuade the PSC to allow for cost recovery.

TECO's after-the-fact analyses of CSXT's offers, apparently done in the fall of 2003 in the context of the 2003 fuel cost recovery proceedings, were defective in a number of ways. Contrary to the requirements of Order No. 20298, TECO ignored the costs to get coal from the mine (or the processing plant) to the river and onto barges. T 555, 1090; see also EX 83, EX 101. TECO ignored volume discounts available through CSXT's offers. See EX 7, EX 83. TECO ignored the additional costs associated with waterborne transport, including additional losses of coal from being handled 3 to 5 times more than coal is handled when transported by rail, including thermal losses caused by the additional heat required to burn coal that has picked up moisture, which it is significantly more prone to do when transported by barge, see T 1061-62, including the additional inventory carrying costs necessitated by (a) the much longer transit times for waterborne transport than for rail, see T 934, and (b) the actual inventory carried by TECO, which is much greater than any other utility in Florida carries. See T 1033, 1065-66. TECO also failed to even attempt to conduct any optimization analyses to determine whether a least-cost coal transportation plan might be available by having part of its coal transported by rail and part transported by barge. T 592.

Of course, this behavior by TECO is all part of the same cloth, woven by TECO to avoid reasonable consideration of anything that might prevent its giving its coal transportation business to its affiliate. Just as TECO ignored all of the above relevant factors in purporting to analyze CSXT's proposals, TECO never took the first step to even avail itself -- i.e., to negotiate with CSXT -- of the favorable, beneficial, aggressively-priced opportunities offered to it by CSXT. T 586. TECO didn't attempt to require its affiliate to bid. TECO didn't even attempt to negotiate

better rates with its affiliate -- it simply took the rates proposed by its consultant and offered them to TECO Transport. T 505. This is gross, willful imprudence, and the Commission cannot tolerate it. See T 874, 1031.

What TECO should have done, had it behaved prudently and with its customers' best interests truly at heart, was the following:

1. In October 2002, TECO should have immediately begun good-faith negotiations with CSXT toward a contract that would have matched TECO's end-of-2003 timetable for considering renewal of its contract with TECO Transport. T 877-78. TECO's own witness, Mr. Murrell, stated that CSXT's offer was "exciting" and that it "bears additional work." T 1423. Those negotiations should have addressed all terms and conditions of the potential deal, including CSXT's already-expressed willingness to pay for the coal-by-rail infrastructure at Big Bend, pricing, timing, and escalation factors. T 1043.
2. TECO should have proceeded to get the rail infrastructure installed as soon as possible in order to take maximum advantage of its new potential to reduce total coal cost. T 874-75, 880.
3. TECO should have undertaken all post-October 2002 coal supply solicitations in an all-sources (i.e., both FOB barge and FOB rail), and all-modes framework. T 1037, 1077.

This is the standard against which TECO's actions, and the results thereof, should be evaluated.

TECO's practices and actions in this instance, as well as historical data introduced into the record in this proceeding, further highlight TECO's longstanding imprudence in avoiding installing rail facilities at Big Bend, and avoiding even discussing the prospect of having CSXT pay for such facilities, even when TECO knew, and reasonably should have known, that the true transportation cost, from the mine to the generating plant, for Gannon coal had been less by rail than by barge for

many years. T 1155, 1158; see also EX 101. This is so because TECO knew that the rail cost to Gannon was less in 2000 and 2001 than TECO's incomplete waterborne transport costs to Gannon, and because TECO reasonably should have known that the costs to get coal from the mine (or processing plant) onto barges should have been added onto the barge cost from the river dock to Gannon, and that the resultant total waterborne transport cost was greater than the actual rail cost. For example, as shown in the following table, TECO's de-classified PSC Form 423 data show that, when adjusted by adding \$4.10 per ton, as per Dr. Sansom's analyses (T 1155, 1158; see also T 1052), to the waterborne transport cost excluding the mine-to-river-to-barge costs, the waterborne transportation cost for Gannon coal exceeded the rail cost in every year since 1994 except 1999.

Comparison of TECO's Benchmark to Gannon Rail and Waterborne Costs, 1994-2001

<u>Year</u>	<u>Benchmark</u>	<u>Rail Cost</u>	<u>Waterborne Cost</u>
1994	25.70	17.27	19.34-29.60
1995	27.08	17.47	25.59
1996	25.35	17.76	20.60
1997	N/A	N/A	N/A
1998	28.14	18.63	19.78
1999	25.85	19.16	18.23
2000	26.23	16.00	20.33
2001	25.13	16.35	19.99

NOTES: All values in dollars per ton. Benchmark values taken from the following PSC orders: 1994 - PSC-95-0946-PHO-EI; 1995 - PSC-96-1172-FOF-EI; 1996 - PSC-97-0976-PHO-EI; 1998 - PSC-99-2271-PHO-EI; 1999 - PSC-00-2385-FOF-EI; 2000 - PSC-01-2516-FOF-EI; 2001 - PSC-02-1761-FOF - EI. Waterborne costs include \$4.10 per ton estimated cost to get coal from the mine onto barges. Rail to Gannon, and unadjusted waterborne to Gannon, values are from TECO's Form 423 data in EX 101; values for 1994, 1995, 1996, 1999, 2000, and 2001 are for May; value for 1998 is for August. 1997 data not available.

TECO, of course, knows how close Gannon is to Big Bend, and TECO should also have reasonably known that every other coal-burning utility in Florida, as well as the two large coal-fired cogeneration plants in Florida, receives coal transportation via CSXT's service, and TECO should thus have reasonably known that cost-effective coal transportation via CSXT was available for Big Bend. TECO should accordingly have sought the installation of rail delivery facilities at Big Bend to take advantage of that service. TECO's utter failures to do so, and even to pursue such installation and service, were grossly imprudent.

B. When All Costs Of Procuring And Transporting Coal To TECO's Power Plants Are Considered Properly, It Is Clear That TECO Is Overpaying (And Plans To Continue Overpaying) TECO Transport For Coal Transportation Services.

When all costs of obtaining appropriate coals from rail-origin coal suppliers are taken into account, TECO could have, and would have, saved substantial amounts of money, for the benefit of its captive customers, by pursuing a deal with CSXT.

Dr. Sansom showed what the outcomes should have been. First, Dr. Sansom showed that the installation of rail infrastructure could have been accomplished in approximately 16 months, by the first quarter of 2004. T 1047, EX 33. If necessary, TECO could and should have put off signing the new contract with TECO Transport, probably simply extending it for a period of months. There was no need for TECO to sign a five-year contract in 2003. Nor should the PSC have any compunction whatsoever about disallowing any amount of the costs incurred by TECO pursuant to its new contract with TECO Transport: TECO's actions were all at its peril. TECO even acknowledged that it was on notice in Docket No. 020001-EI that the benchmark could be changed. T 515-16. TECO could have sought, but did not seek, advance PSC approval of that action, either via a petition for rate approval or via a petition for declaratory statement. Dr. Sansom also showed that TECO could have obtained 1.0 to 1.5 million tons ("MMT") of CSXT-

rail-direct coal in 2004 and at least 2.0 MMT in 2005 and thereafter. T 1055-57.

Taking all relevant direct savings into account, Dr. Sansom showed that obtaining the lesser amount of coal-by-rail transportation in 2004 would have resulted in savings to TECO's captive customers of a significant amount of money, specifically the amount shown at confidential T 1064, L 23; see also EX 39, EX 40, and EX 41. Actually, potentially greater savings were available because TECO had terminated another contract, T 1024, resulting in the volume of TECO's 2004 coal commitments being correspondingly reduced by a significantly greater amount, see Table 3, T 1056, thus resulting in greater opportunity for TECO to take CSXT-direct coal at substantial savings for TECO's customers. Dr. Sansom's testimony also showed that the savings in 2005 and thereafter would have been more than twice that amount; to see this, multiply the 2.5 MMTPY rail delivery capability at T 1063 times the dollars per ton savings shown at T 1064, line 24. As a result of TECO's terminating another coal contract (identified in Table 3, T 1056) in 2003, TECO could have obtained even more CSXT-direct coal in 2004 and 2005. T 1024, 1056; see also EX 100. Because the volume discounts offered by CSXT would continue at greater volumes, the greater the volume, the greater would be TECO's – and its customers' – savings from rail transportation of TECO's coal requirements.

Moreover, even greater savings are available to TECO. In particular, TECO no longer needs to blend coal at Davant. T 1067-68. The coal storage areas at Big Bend will, according to TECO's own documents, accommodate storage of at least seven different coals and petcoke, T 1213, and the blending capabilities will accommodate blending six different blends of coal. T 1212. The larger-volume CSXT proposal would not impact Big Bend's blending capabilities; while the smaller-volume CSXT proposal would impact Big Bend's blending capabilities, even following the installation of that system, Big Bend would continue to have excellent blending capability. T 1213.

This would eliminate the costs associated with transloading at Davant of all coal that would be delivered by rail. T 1068. It is noteworthy that TECO adduced no competent, substantial evidence to support any assertion that it needs Davant for blending. Mr. Dibner does not claim expertise in coal blending, T 222, and neither does Ms. Wehle, who is not even an engineer. T 356-57, 529. The only competent witness who addressed this issue is Dr. Sansom, who has reviewed utility coal yard and blending operations at many power plants and has testified as an expert witness regarding same. EX 29, T 1064-65. Dr. Sansom testified unequivocally that TECO does not need Davant for blending its fuels, because TECO has more than adequate blending capabilities at Big Bend. T 1068.

Finally, as noted above and as developed in Dr. Sansom's testimony, TECO could have and should have used the existence of CSXT's offer as a negotiating tool in its dealings with its affiliate, TECO Transport, in order to obtain even lower total transportation costs for the benefit of its customers. See T 1035, where Dr. Sansom testifies that "effective management of rail vs. water transportation competition would also have reduced the rate for water borne transportation as well." Of course, TECO did not do so, and this failure was grossly imprudent. (See the discussion in Section II.E. below.)

C. TECO's Payments To TECO Transport Are Likely To Escalate More Rapidly Than Payments Would Have In A Contract With CSXT.

Both CSXT's offers and TECO's contract with TECO Transport have escalation clauses built into them. See EX 28 and T 230, 574-76. However, the record shows that no CSXT Florida customer pays the full amount of CSXT's tariffed escalation charges for either fuel or general price escalation (implemented via the Rail Cost Adjustment Factor, which exists in both adjusted and unadjusted formats). T 947. Moreover, because of the relative fuel-intensity of waterborne

transportation and because of the relatively lesser fuel efficiency of waterborne transportation (compounded by the much longer distances that TECO's coal has to travel by barge than the same coal would have to travel by rail), the fuel cost escalation applied under TECO's contract with TECO Transport would, under current fuel market conditions, exceed the sum of the Rail Cost Adjustment Factor ("RCAF") and the CSXT fuel charge, even at their full values.

To see this, refer to EX 28 for rail costs and EX 69 for waterborne costs. Assuming a \$16 per ton rail rate, i.e., the actual 2000 rate to Gannon and acknowledged to be comparable to CSXT's 2002 and 2003 bid prices, and assuming a 50 percent increase in the fuel cost indexes for both waterborne and rail transportation, the fuel surcharge for rail transportation would be about 80 cents per ton. The corresponding adder for waterborne fuel costs would be 1.5 times the value shown on the last page of EX 69 for the River Component fuel charge plus 1.5 times the value shown at the same cite for the Ocean Component fuel charge. Together, these escalated values are much greater -- well above 50 percent greater in cents per ton -- than the fuel surcharge that would be applied to the rail rate, even assuming that the total rail fuel surcharge would be paid and even ignoring any volume discounts, which would, of course, result in lower fuel surcharges in addition to overall lower transportation rates. Assuming (even though it is conceded that no CSXT customer pays both the total RCAF and the total fuel surcharge) that the inflation index was between 2 percent and 3 percent for both rail and waterborne, it is true that the inflation adjustment for the rail charge would be greater than that for the waterborne charge (because it applies only to the variable component of the barge legs), but this would not be great enough to offset the significantly greater fuel surcharge applicable to the barge rate. This result occurs because the barge trip is much longer than the rail trip, T 1101, and because the barge rates are more fuel intensive than the rail rates. T 1156.

Even though TECO knew that its last two contract extensions with CSXT for coal transportation to TECO's Gannon Station had no escalation clauses, TECO never attempted to negotiate with CSXT for a reduced escalation factor in response to CSXT's 2002 or 2003 offers to provide coal transportation service to Big Bend. T 584.

D. TECO Acted Imprudently With Regard To CSXT's Offers To Pay For Coal-by-Rail Delivery Infrastructure And Has Now Attempted, Late In The Day, To Justify That Decision By Means Of An Exaggerated, Inadequately Supported, Made-For-Litigation "Study" That Is In Turn Supported By Questionable Testimony.

Rather than attempt to negotiate with CSXT toward the highly desirable installation of rail delivery facilities at Big Bend, and rather than attempt to obtain all of the attendant benefits of that capability for TECO's customers, TECO rebuffed and willfully ignored CSXT's offers beginning at least as early as October 2002. TECO never sought any additional information or clarification of CSXT's proposals from CSXT. See T 509, 915, 920-21. TECO never attempted to work with CSXT to determine exactly what CSXT's offers would pay for or to compare those offers to what TECO and CSXT might mutually agree would be required to accomplish coal-by-rail delivery at Big Bend. Id. Late in the day, about a month after receiving CSXT's July 2003 offer, TECO hired S&L to perform a very-high-altitude, non-specific study that purported to estimate the costs of rail delivery infrastructure. TECO's witness on this subject was Paula Guletsky, P.E., a S&L employee. CSXT's witness was John B. Stamberg, P.E., an employee of Energy Ventures Analysis, Inc.

Ms. Guletsky's analyses were apparently based on an internal S&L model that was not provided. See T 1203-04. Her analyses were based on earlier estimates that were never provided, apparently because they were not kept. T 1343-44. S&L's estimates are highly questionable because of their lack of foundation and because so many of the actual numeric values were

multiples of the same exact number. T 1034, 1070. Moreover, Ms. Guletsky did not visit Big Bend until after she filed her testimony. T 1316. In addition, Ms. Guletsky was unable to perform the conveyor sizing analyses prescribed by the Conveyor Equipment Manufacturers Association (“CEMA”); she was only able to perform S&L’s belt-width calculation. T 1314-15.

Ms. Guletsky testified that S&L does not approve of conveyors that operate at speeds greater than 600 feet per minute. T 1298. However, at least one conveyor at Big Bend operates at more than 900 feet per minute, according to TECO’s coal yard operations manual. EX 107. Her “back-up” or reference data had almost all references to belt speeds redacted. See EX 108. However, they did contain sufficient data to calculate the speed of at least one of the reference conveyors, specifically the diameter of the head pulley and the speed, in revolutions per minute (“RPM”), of that conveyor. Id. Astonishingly, Ms. Guletsky professed not to be able to calculate the speed in feet per minute of this reference conveyor from the data given. T 1326-27. CSXT submits that this is a simple arithmetic calculation, namely Pi (a well-known constant) times diameter (given) times the pulley speed in RPM (also given). As applied to the data in EX 108, this simple calculation shows that Ms. Guletsky’s reference conveyor would operate at more than 750 feet per minute. Ms. Guletsky’s inability to perform this simple calculation and the industry-standard CEMA calculations cast severe doubt on her credibility. See T 1314-15. (Her excuse that the speed of a conveyor could be used to identify it to a specific client is simply absurd.)

Ms. Guletsky’s, and S&L’s, estimates contained no specific vendor quotations. T 1328. Consistent with TECO’s own behavior, Ms. Guletsky never even attempted to contact anyone at CSXT to inquire or clarify the sources, basis, or content of CSXT’s estimates. Ms. Guletsky did not contact anyone at either FMC or Continental Conveyors, two well-known conveyor vendors. T 1336. Ms. Guletsky did not know the soil type at Big Bend. T 1328. The only plot plans that Ms.

Guletsky that TECO furnished to her were those of the limestone pit and those included in CSXT's 2003 proposal. T 1340. Ms. Guletsky did not review any permitting documents in connection with her project, nor did she contact anyone at either the Florida Department of Environmental Protection or at the Hillsborough County Environmental Protection Commission. T 1342. Ms. Guletsky did not speak to anyone at the Hillsborough County Tax Assessor's Office in connection with the estimated tax component of operating and maintenance costs associated with her estimates. T 1344-45. Ms. Guletsky conducted no optimization studies of the rail coal handling system. T 1345. Ms. Guletsky conceded that there were no fatal flaws in Mr. Stamberg's basic design. Id.

In stark contrast, Mr. Stamberg's analyses were thoroughly documented, albeit sometimes by hand. Mr. Stamberg did in fact visit Big Bend and Polk and Gannon before filing his testimony. T 1178. Mr. Stamberg's estimates were based on specific vendor quotes, including quotes from the vendor/constructor of the existing conveyors at Big Bend. See T 1186-89, Exhibits 44-47, 106, and 107. Mr. Stamberg had discussed CSXT's initial estimates with Mr. White and Mr. Richard Schumann, an engineering contractor who had done much of the work to prepare CSXT's initial estimates. T 1174. Mr. Stamberg determined that (even accounting for a calculation error identified in cross-examination by TECO's attorney) CSXT's estimates, including the contingency built into those estimates, were more than sufficient to pay for needed rail delivery and handling infrastructure at Big Bend. T 1185, 1261; EX 28 at 19-20.

Again, the more significant fact is that TECO never attempted to see how good a deal it could obtain from CSXT via good-faith negotiations. Rather, TECO spent its time, efforts, and money on finding ways to avoid doing so and on finding trumped-up, after-the-fact justifications for doing so with which it continues to attempt to mislead the PSC. The PSC should have none of it.

E. Even If The PSC Were To Determine That Maintaining Bi-Modal Transportation Were Appropriate For TECO, It Does Not Follow That TECO Is Entitled To Recover Excessive Costs For Waterborne Transportation Service.

Maintaining inter-modal competition might possibly justify some premium for the more expensive mode, although TECO's own preferences and beliefs, as evidenced by its steadfast refusal to even negotiate with CSXT, seem to indicate that it does not subscribe to that position. If the Commission were to deem some premium appropriate, it would have to determine how much.

Although CSXT has not advocated, and does not advocate, that all of TECO's coal should be transported by rail, see T 594, 601, 1077, there are further remaining questions concerning whether some barge delivery capability is to be maintained for the sake of preserving competition. Those questions are: (a) how much coal should continue to be transported by water? and (b) what should be the allowable price of waterborne transportation for cost recovery purposes?

Just because barge delivery is selected, or just because it may be deemed appropriate to maintain barge delivery capability, does not mean that the barge company gets to charge whatever it wants or that TECO is entitled to recover from its captive customers whatever it pays to the barge company. (Nor does it mean that the waterborne transportation option should be exempt from mandatory, fair, impartial, PSC-supervised bidding with PSC enforcement of the outcomes to protect captive customers and the public interest.) Suppose, for example, that barge transportation costs \$10 per ton more than rail transportation: would the Commission approve maintaining the barge capability at 50 percent of TECO's total requirements? CSXT would suggest that such an action would be contrary to the public interest. This may also be viewed as a question of degree: that is, it may be acceptable for diversity's sake to maintain a certain amount of barge capacity at a price premium of 10 cents or even 50 cents per ton, but not acceptable to maintain the same level where the differential is \$7 or more per ton, as Dr. Sansom's testimony shows it is here. T 1024,

EX 39. The Commission should note well that the savings shown in the last line of Exhibit 39 are based on only a limited realization of volume discounts, which would significantly increase the total savings available for the benefit of TECO's customers as total CSXT-direct coal volumes increased.

Again, maintaining barge capability is acceptable, because, as described above, bi-modal delivery capability is highly desirable, even optimal, for a coal shipper, but TECO's customers should not be forced to overpay for the benefits thus provided. Given that the burden is on TECO to demonstrate that its rates (and underlying costs) are fair, just, reasonable, and prudent, the Commission should disallow any costs greater than the CSXT rate(s) unless and until TECO demonstrates, in an appropriate proceeding, that a greater rate is necessary to keep the barge option viable. CSXT would also suggest that, even given such a determination, that so long as the CSXT rates are less than the total -- i.e., mine to generating plant -- waterborne costs and rates, TECO's barge volumes should be capped at 33 percent of TECO's total coal transportation volumes, based on the fact that Progress transports about 33 percent of its coal via barge, T 1119, without adverse effect on the barge company, T 876, and with demonstrable cost-savings and other benefits to Progress's customers, T 874-75, 880.

III. THE "BENCHMARK" FOR EVALUATING THE PRUDENCY AND REASONABLENESS OF TECO'S WATERBORNE COAL TRANSPORTATION COSTS IS WORTHLESS AND SHOULD BE REJECTED.

The facts established in the evidentiary record of this case demonstrate, compellingly, that the benchmark methodology approved in 1988 is utterly worthless. T 815, 825-26, 1072, 1080, 1086-87. In particular, the rail prices that have been used to calculate the benchmark do not accurately reflect the costs by which TECO could have obtained rail transportation service for its

coal supply; in fact, TECO's de-classified Form 423 data show that the benchmark is not remotely close to either the actual rail costs incurred by TECO for delivery to Gannon nor to its actual barge costs. T 1080, EX 81; see also the table in Section II.B above. Moreover, the benchmark is not even comparable to the waterborne transportation costs reported by TECO because (contrary to the requirements of Order No. 20298) TECO's reported costs do not include the cost to get coal from the mine to the river and onto barges. T 1089-90, 1154. The data are useless and accordingly, the benchmark has not served the public interest. T 1086-87. More specifically, the benchmark includes only publicly available data, which are not reflective or indicative of the costs that were and are available to TECO, nor do they include the volume discounts that are available to CSXT's customers. See T 536, 826-27, 1074.

CONCLUSION

The bottom line is this: TECO has played hide the ball for too long. TECO has hidden behind its "no rail facilities at Big Bend" excuse for not soliciting rail-origin coal for too long. The emperor is now exposed: in October 2002, CSXT offered to install the needed delivery and handling infrastructure at its own expense, subject to TECO taking only 1 Million tons per year (less than 20 percent of TECO's total projected solid fuel burn for Big Bend and Polk) of CSXT-direct coal per year for only five years. Despite TECO's witnesses attempts to characterize CSXT's efforts as a bait and switch ploy, there is simply no evidence to support those claims. Moreover, what TECO claims to fear has never happened: none of TECO's witnesses could point to a single example where a railroad company got business with a utility by offering favorably low prices, then put the alternate transport mode out of business, and then raised its prices significantly. See T 243-44, 600-01, 1428. (The recent rate cases involving CSXT and other utilities were initiated by those utilities and involved significantly different facts. See T 1428.) TECO's claimed

fear that the barge company could go out of business if it lost part of the business is refuted by the direct, well-known experience of its similarly situated -- geographically and operationally -- neighbor utilities, Progress Energy Florida, Inc. and JEA. See T 1429.

TECO has behaved with willful disregard for its customers' interests for years. TECO has willfully hidden the ball, and the facts regarding the real cost to get coal "from the mine to the generating plant" as required by Order No. 20298, from the PSC for too many years. TECO has hidden behind the benchmark, with TECO's own engineered, incomplete-by-design comparisons (leaving out the cost to get coal from the mine onto barges), for too many years. The Commission cannot tolerate this any longer and must act, immediately and decisively, to protect TECO's customers.

CSX TRANSPORTATION'S LEGAL BRIEF

CSXT here provides its legal brief. In summary, the briefing presented here demonstrates that, as matters of law: (A) the prior stipulations and the Commission's prior orders regarding the benchmark have no binding effect with regard to the Commission's actions in this docket; (B) the PSC has the authority to require TECO to conduct a new, impartial solicitation process involving all potential suppliers of coal transportation, to determine the "winners" of that process, and to enforce the outcomes of that process; (C) the PSC has the authority to require TECO to negotiate in good faith with CSXT for the installation of coal-by-rail delivery infrastructure at Big Bend and to require TECO to effectively and meaningfully solicit coal from rail-origin mines/suppliers such that TECO will get the lowest possible coal costs for the benefit of its captive customers; and (D) the PSC has the authority to open a new docket to investigate the effects of, and consider appropriate remedies for, TECO's having concealed the true cost of getting coal "from the mine to

the generating plant,” as required by Order No. 20298, from the PSC and from all parties by its practices of (i) soliciting coal on a “freight on board barge” basis and (ii) not reporting the costs incurred to get coal from the mine (or processing plant) to the river and loaded onto barges.

A. THE PRIOR STIPULATIONS AND THE COMMISSION’S PRIOR ORDERS REGARDING THE BENCHMARK HAVE NO BINDING EFFECT WITH REGARD TO THE COMMISSION’S ACTIONS IN THIS DOCKET.

As a foundation principle, it is clear that the burden of proof in cost recovery proceedings lies with the utility seeking cost recovery, *i.e.*, seeking the PSC’s approval of the rates it hopes to charge, to prove, by a preponderance of the evidence that the proposed rates, and the costs underlying those rates, are fair, just, reasonable, and not unduly discriminatory. See Florida Power Corp. v. Cresse, 483 So. 2d 1187, 1191 (Fla. 1982). TECO has attempted to shift the burden of proof in this case to the intervenors, asserting -- without any legal basis whatsoever -- that the intervenors bear the burden of proving that the benchmark methodology should be eliminated. See T 17. This is contrary to black-letter law and to the PSC’s own orders involving TECO’s benchmark.

The Commission has clearly and unambiguously addressed the issue of its power, and its responsibility, to modify rate orders on a prospective basis. Indeed, the PSC has done so in a case involving TECO’s own coal supply price benchmark. In its Order No. PSC-92-1048-FOF-EI,⁷ the PSC denied TECO’s petition to modify calculations involving the benchmark, concluding that the record did not demonstrate a need to correct any defects in the calculations. Order No. 92-1048 at 10. The PSC went on to state clearly the law applicable to the benchmark, and to rate orders

⁷ In Re: Petition for Clarification and Guidance on Appropriate Market Based Pricing Methodology for Coal Purchased from Gatliff Coal Company by Tampa Electric Company, Docket No. 920041-EI, Order No. PSC-92-1048-FOF-EI (Fla. Pub. Serv. Comm’n 1992).

generally, as follows

That is not to say that we could not [emphasis in original] modify the manner in which the benchmark is calculated if circumstances warranted such a modification. We are not precluded by any legal doctrine from considering Tampa Electric's petition, from reviewing the correctness and effectiveness of its market-based pricing method, or from modifying that method if we determine that it is in the public interest to do so. To the contrary, we are required to review and modify our rate decisions, on a prospective basis, by virtue of our continuing duty to regulate the rates and service of electric utilities. If we determine that the rates charged by a utility are not fair, just and reasonable, either to the company or to its ratepayers, we have the obligation to fix them. This continuing obligation applies to rates for fuel cost recovery as well as to other forms of rates, and it applies perhaps most crucially to experimental rates.

Ratemaking is an ongoing, legislative function intended to be responsive to changing economic conditions.

* * *

We cannot modify our prior rate orders capriciously, without sufficient demonstration that the public interest requires the modification; but where the demonstration has been adequately made, we not only have the authority to make the appropriate modifications, we have the obligation to make them. Tampa Electric has not adequately demonstrated in this case that a modification to Order No. 20298's market pricing index is necessary; but if Tampa Electric had adequately shown the need for a change, we would certainly have the authority to make it, in spite of the fact that the original rate setting order was based upon a stipulation between the parties.

* * *

A stipulation in a ratemaking proceeding before the Florida Public Service Commission can not be carved in stone. That is not to say that parties' stipulations should be ignored or treated lightly. But where the public interest requires that we modify an order or any part of an order that adopted a stipulation, we would have the obligation to do so.

Order No. 92-1048 at 10-12 (emphasis supplied).

B. THE PSC HAS THE AUTHORITY (1) TO REQUIRE TECO TO CONDUCT A NEW, FAIR, RFP PROCESS, (2) TO SUPERVISE AND DETERMINE THE “WINNERS” OF SUCH PROCESS, AND (3) TO REQUIRE THAT TECO ENTER INTO APPROPRIATE CONTRACTS WITH THE “WINNERS” OF THE RFP PROCESS FOR THE BENEFIT OF ALL OF TECO’S CAPTIVE CUSTOMERS.

In discussion during the last day of the hearing, on June 10, 2004, Commissioner Jaber raised issues regarding the Commission’s authority to implement various remedies in this fuel cost recovery proceeding and suggested that she might appreciate the parties briefing these issues in their post-hearing filings. See T 1124-30. It is clear beyond argument that the PSC can disallow TECO’s request to recover any costs that the PSC deems imprudent or unreasonable. This leaves the questions of what, if anything, the PSC may do with regard to the defects, asserted by the intervenors, in TECO’s RFP and related procurement practices, including the absence of prudent procurement practices, for coal transportation services

As developed above, the PSC should require TECO to conduct a new, impartial RFP process. To protect TECO’s captive customers and the public interest, the PSC must supervise that process and determine the “winners” of such process, and the PSC must also enforce the outcomes of that process by requiring TECO to enter into appropriate contracts with the “winners.” In this case, there are no “lingering doubts” about the fairness of TECO’s selection process: the doubts here are widely recognized in the coal transportation industry, and all of TECO’s actions in implementing it, were demonstrably flawed and biased in favor of TECO once again awarding all of its coal transportation business to its affiliate, TECO Transport. Accordingly, CSXT here presents its legal analysis of the PSC’s jurisdiction and power to implement remedies addressing these issues in order to protect TECO’s customers and the public interest.

Chapter 366, Florida Statutes, the PSC’s organic statute that governs its regulation of

public utilities, including TECO, provides a declaration that the regulation of public utilities is in the public interest, that public utilities are prohibited from subjecting any person to any undue prejudice or disadvantage in any respect, and that where the PSC finds the practices of a public utility relating to rates to be unjust, unreasonable, or unjustly discriminatory or preferential, the PSC has the authority to remedy such defects by prescriptive action.

Section 366.01 provides as follows:

366.01. Legislative declaration. The regulation of public utilities as defined herein is declared to be in the public interest and this chapter shall be deemed to be an exercise of the police power of the state for the protection of the public welfare and all the provisions hereof shall be liberally construed for the accomplishment of that purpose.

Section 366.03 provides in pertinent part as follows:

No public utility shall make or give any undue or unreasonable preference or advantage to any person or locality, or subject the same to any undue or unreasonable prejudice or disadvantage in any respect.

(Emphasis supplied.)

Section 366.07 provides as follows:

366.07 Rates; adjustment. – Whenever the commission, after public hearing either upon its own motion or upon complaint, shall find the rates, rentals, charges or classifications, or any of them, proposed, demanded, observed, charged or collected by any public utility for any service, or in connection therewith, or the rules, regulations, measurements, practices or contracts, or any of them, relating thereto, are unjust, unreasonable, insufficient, excessive, or unjustly discriminatory or preferential, or in anywise in violation of law, or any service is inadequate or cannot be obtained, the commission shall determine and by order fix the fair and reasonable rates, rentals, charges or classifications, and reasonable rules, regulations, measurements, practices, contracts or service, to be imposed, observed, furnished or followed in the future.

(Emphasis supplied.)

These statutory provisions empower the PSC to take whatever steps necessary to (1) ensure

that a public utility's practices, as they affect rates, are non-discriminatory, and (2) to prevent a public utility from imposing any undue prejudice or disadvantage on any person, in any context -- "in any respect." In this case, these provisions give the PSC the jurisdiction, and the power, a hearing having been held on the PSC's own motion, to mandate that appropriate -- just, reasonable, and not unduly discriminatory, prejudicial, or disadvantageous to any person -- practices be followed by TECO in this situation, i.e., to require TECO to conduct a new, impartial solicitation process involving all potential suppliers of coal transportation, to determine the "winners" of that process, and to enforce the outcomes of that process to prevent the unjust, unreasonable, and unjustly discriminatory and preferential results that TECO's self-dealing has produced.

The Commission should note that CSXT is not suggesting, let alone advocating, that the PSC should attempt to rescind or void TECO's contract with TECO Transport. Such an effort would be beyond the PSC's statutory powers: only courts can rescind contracts. See United Telephone v. Clark, 695 So. 2d 304 (Fla. 1997) (PSC could not override or modify a contract between telephone companies). However, this does not prevent the PSC from acting to protect ratepayers.

The PSC should note well that the PSC did not approve the contract in this case, thus eliminating any potential estoppel argument by either TECO or TECO Transport. TECO could have sought -- but did not seek -- either via an appropriate rate proceeding or perhaps via a declaratory statement action pursuant to Chapter 120, Florida Statutes, the PSC's advance approval of its contract with TECO Transport: TECO apparently decided, on its own initiative, to risk the PSC's exercising its powers as suggested above. In any event, TECO and TECO Transport executed their contract at their peril: any losses to either due to the PSC's actions herein, or in any hypothesized contract action brought by TECO Transport against TECO if the PSC were

to require TECO to implement alternative coal transportation practices are clearly and solely only for the account of TECO and TECO Transport. TECO's captive customers cannot be held liable for any such costs. As described above, it was imprudent for TECO to execute its contract with TECO Transport in any event, and doubly so for it to execute that contract without advance PSC approval of the costs to be incurred pursuant to that contract; accordingly, any adverse economic impacts on TECO are solely for its account.

C. THE COMMISSION HAS THE AUTHORITY TO REQUIRE TECO TO NEGOTIATE IN GOOD FAITH WITH CSXT FOR THE INSTALLATION OF COAL-BY-RAIL DELIVERY INFRASTRUCTURE AT BIG BEND AND TO REQUIRE TECO TO EFFECTIVELY AND MEANINGFULLY MANAGE COMPETITION BETWEEN WATERBORNE AND RAIL TRANSPORTATION IN ORDER TO PROVIDE THE LOWEST POSSIBLE FUEL SUPPLY COSTS FOR THE BENEFIT OF TECO'S CAPTIVE CUSTOMERS.

The same analysis set forth above applies to the issue whether the PSC can require TECO to negotiate in good faith with CSXT for the installation of coal-by-rail delivery and handling infrastructure at Big Bend and also require TECO to manage its resulting rail and barge delivery options in an optimizing, competitive manner so as to provide the lowest possible fuel supply costs for the benefit of TECO's captive customers. In summary, the above-cited provisions of Sections 366.01, 366.03, and 366.07, Florida Statutes, give the PSC the jurisdiction, and the power, a hearing having been held on the PSC's own motion, to mandate that appropriate -- just, reasonable, and not unduly discriminatory, prejudicial, or disadvantageous to any person -- practices be followed by TECO, i.e., to require TECO to negotiate in good faith with CSXT for the installation of coal-by-rail delivery infrastructure at Big Bend and to manage its resulting rail and barge delivery options so as to minimize the total delivered fuel costs to its captive customers. As with TECO's discriminatory and biased RFP process, the PSC has the power to remedy, and to prevent

recurrences of, the unjust, unreasonable, and unjustly discriminatory and preferential results that TECO's self-dealing has produced.

D. TECO'S INTENTIONAL PRACTICES OF BUYING COAL "FREIGHT ON BOARD BARGE" AND OF NOT REPORTING THE COSTS TO GET COAL FROM THE MINES WHERE THE COAL IS PRODUCED ONTO BARGES HAVE HAD THE EFFECTS OF SYSTEMATICALLY CONCEALING THE TRUE COST OF WATERBORNE TRANSPORTATION FROM THE PSC AND OF PREVENTING MEANINGFUL ANALYSIS OF THE REASONABLENESS OF TECO'S COAL TRANSPORTATION COSTS. THIS WILLFUL CONCEALMENT BY TECO HAS RESULTED IN GROSSLY EXCESSIVE COSTS BEING RECOVERED FROM TECO'S RATEPAYERS, AND THE PSC SHOULD OPEN ANOTHER DOCKET TO DETERMINE THE AMOUNTS THAT TECO SHOULD BE ORDERED TO REFUND TO ITS CUSTOMERS AS A RESULT OF THESE DECEPTIVE PRACTICES.

As described above, TECO solicits coal on a "FOB barge" basis, which enables it to avoid reporting the cost to get coal from the mine to the river dock, and the cost for transloading coal onto barges. This in turn results in TECO's reported waterborne coal transport costs being incomplete and violative of Order No. 20298, in that they do not represent the costs to transport coal "from mine to generating plant." Order No. 20298 at 14. With rare exceptions, TECO also fails to report the cost to get coal from the mine onto the barge. These actions by TECO constitute willful⁸ and intentional concealment by TECO of key information from the PSC regarding the true cost of TECO's coal transportation "from mine to generating plant." Accordingly, the Commission

⁸ The Commission has recognized that willful violations of its orders can be either acts of commission or omission. See, e.g., In Re: Compliance Investigation of Global Crest Communications, Inc. d/b/a Minensions for Apparent Violation of Section 364.02(13), Florida Statutes, Definitions, Docket No. 040210-Ti, Order No. PSC-04-0528-PA-TI, 2004 WL 1240541 (Fla. P.S.C., May 24, 2004). Here, it appears that TECO has intentionally not obtained or reported the total cost to get coal from the mine to the generating plant, and that it has intentionally avoided bidding coal supply procurements on an all-source basis with the same result, and the Commission should investigate this to determine whether further action is appropriate to protect TECO's captive customers.

should open a new docket to investigate whether this concealment has resulted in the PSC's having erroneously, albeit unknowingly and unintentionally, approved the recovery of imprudent coal transportation costs from TECO's captive customers.

The key legal issue here is whether the Commission's prior approval of TECO's fuel cost recovery charges may be revisited. Consistent with the Florida Rules of Civil Procedure and with pertinent PSC orders, the Commission has such power where its orders have been procured by concealment of key information. The general principle of administrative finality holds that orders of administrative agencies must eventually pass out the agency's control and become final, and thus no longer subject to modification. Peoples Gas System, Inc. v. Mason, 187 So. 2d 335 (Fla. 1966). However, an order made through deceit or mistake may be opened, vacated, or modified at any time, on the proper showing by injured parties. Davis v. Combination Awning & Shutter Co., 62 So. 2d 742, 745 (Fla. 1953). The PSC has followed, indeed cited, these principles in later orders. For example, in its Order No. 25668, regarding the legal effects of the PSC's approval of power purchase agreements between public utilities and qualifying facilities, the Commission stated the following:

Once an order approving a negotiated [QF] contract becomes final by operation of law, we may not at a later date deny cost recovery to the utility, absent a showing that our approval was induced through . . . the intentional withholding of key information.⁹

See also Rule 1.540(b), Fla. R. Civ. Proc., which provides that judgments may be modified where procured by misrepresentation or other misconduct.

TECO's practices in this regard patently contravene the intent of Order No. 20298 by systematically and intentionally comparing the rates paid to TECO Transport to only part of the

⁹ In Re: Implementation of Rules 25-17.080 through 25-17.091, F.A.C., Regarding Cogeneration and Small Power Production, 92 FPSC 2:24, 38.

transportation of coal to TECO's power plants: rather than comparing the costs of TECO Transport's services to the cost to transport coal "from the mine to the generating plant," TECO willfully omits the costs to transport coal from the mine to the river dock, and the costs to transload coal from the dock onto barges.

TECO could have sought coal FOB mine, but intentionally seeks coal only FOB barge. TECO could have obtained and reported the costs of getting coal from the mine (or processing plant) to the river and transloaded onto barges, but intentionally does not.

This is plainly a systematic program of "hiding the ball" -- concealing key information -- from the PSC in its fuel cost recovery proceedings, and has resulted in inappropriate analyses and comparisons. TECO's willful omissions violate Order No. 20298, are contrary to the public interest, and are contrary to the interests of TECO's captive customers in that they frustrate the PSC's ability to accurately evaluate the reasonableness of TECO's costs.

CONCLUSION

In summary, Sections 366.03 and 366.07, Florida Statutes, grant the Commission broad authority to protect TECO's captive customers. With this authority and the overarching statutory mandate to regulate in the public interest, the Commission should, and arguably must, exercise its powers to protect TECO's customers by requiring TECO to procure needed services at the lowest reasonably available cost, to use the mix of services that provides the lowest and most reliable service, to negotiate with CSXT for the installation of coal-by-rail delivery and handling facilities at Big Bend in order to take advantage of the many advantages available from bi-modal transportation, and to ensure that TECO's employees are vigilant in "minding the store" for the benefit of TECO's customers rather than minding the store to avoid such opportunities so that TECO can continue giving business to its affiliate. The Commission should also investigate

TECO's practices of not revealing the true total costs of waterborne coal transportation and determine whether past overrecoveries should be refunded to TECO's customers.

CSXT'S PROPOSED FINDINGS OF FACT

Pursuant to Rule 28-106.215, Florida Administrative Code, CSXT proposes the following findings of fact and respectfully requests that the Commission make these findings in its final order in this proceeding.

1. No electrical power plant, in Florida or anywhere else, that receives coal transportation service from CSXT has ever run out of coal due to CSXT's inability or failure to deliver coal to such plant. T 939.
2. CSXT has never failed to meet the generation needs of its utility customers. T 927.
3. Most power plant coal in the eastern United States moves by rail. EX 20 at 11.
4. CSXT delivers approximately 50 to 60 percent of all power plant coal that is burned in Florida. EX 20 at 11.
5. In the first four months of 2004, CSXT delivered approximately 12 percent more coal to its Florida customers than it did in 2003, and approximately 6 percent more coal to its Florida customers than those customers told CSXT, during CSXT's planning process in the second half of 2003, they expected to want delivered during that time period. T 926.
6. TECO did not attempt to negotiate with CSXT toward a rail transportation service contract for TECO's power plants. T 536, 915.
7. TECO did not attempt to negotiate with CSXT for the installation, at CSXT's expense, of infrastructure for delivery and handling of coal delivered to Big Bend Station (or Polk Station) by rail. T 536, 584, 918.

8. Rail transportation is the only competitive alternative to waterborne transportation for TECO to transport the volume of coal that TECO requires. T 104.
9. Transporting coal from the relevant Illinois Basin and Pitt 8 coal fields takes approximately 20 to 22 days by waterborne transportation, T 934, and about 4 days by rail transportation. T 932, 934, 1011.
10. No TECO witness could identify a single instance where a railroad company increased its rates for coal transportation after winning coal transportation business away from a barge company. T 243-44, 600-01; see also T 1428.
11. The rates paid to CSXT by TECO for rail transportation of coal to TECO's Gannon Station during the last two contract periods were less than the benchmark and less than the waterborne costs for the same periods. T 546-47; EX 101.
12. TECO conducted no analyses to attempt to optimize any mix of rail and waterborne coal transportation. T 592.
13. TECO did not evaluate any partial coal-by-rail transportation options, even though CSXT's bids offered transportation service for as little as 1 million tons per year. T 591.
14. Having both rail and barge coal transportation capability in place will provide benefits to utilities and their customers, including potentially lower costs, enhanced reliability, and access to more coal suppliers. T 597, 875, 880, 1093-94, 1434.

Respectfully submitted this 12th day of July, 2004.

LANDERS & PARSONS

A handwritten signature in black ink that reads "Robert Scheffel Wright". The signature is written in a cursive style with a horizontal line drawn across the middle of the text.

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