

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Tampa Electric )  
Company's Waterborne Transportation ) DOCKET NO. 031033-EI  
Contract With TECO Transport and ) FILED: September 13, 2004  
Associated Benchmark )

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RESPONSE OF CSX TRANSPORTATION TO TECO'S MOTION TO HOLD  
PROCEEDING IN ABEYANCE AND OFFER OF SETTLEMENT

CSX Transportation ("CSXT"), by and through undersigned counsel, pursuant to Rule 28-106.204(1), Florida Administrative Code, and subject to its pending unopposed motions for extension of time, hereby files its response to the Motion to Hold Proceeding in Abeyance and Offer of Settlement ("Motion") filed in this proceeding by Tampa Electric Company ("Tampa Electric" or "TECO").

In summary, CSXT supports the implementation of timely refunds to TECO's customers. A "rebid" for TECO's coal transportation services may, if properly implemented, provide significant value to consumers. CSXT remains deeply concerned, however, as to whether TECO's proposal would meaningfully address the defects in TECO's previous actions identified by the Commission Staff. Even with these concerns, CSXT remains willing, as it has since 2002 and earlier, to work cooperatively

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with Tampa Electric, the Commission, and all other parties toward a cooperative solution that would provide optimized coal procurement and coal transportation decisions in the best interests of all of TECO's customers. To that end, CSXT has responded to TECO's letter of September 9, 2004, confirming CSXT's willingness to participate in the settlement discussions proposed in that letter. Pending the outcome of those discussions, CSXT offers the following limited responses and reserves all rights to address the Commission regarding TECO's motion (and any related settlement offer) and to seek other legally appropriate relief.

CSXT intervened in this proceeding as a substantial (\$1 million per year) customer of Tampa Electric. CSXT also supplies coal transportation services to every other coal-burning utility in Florida, and to both of Florida's large coal-fired cogeneration plants. CSXT offered -- in October 2002 and again in July 2003 -- to provide coal transportation services to Tampa Electric at what CSXT believes are very favorable and cost-effective rates relative to those that Tampa Electric has paid and is paying to its affiliate, TECO Transport. CSXT also offered to pay for the infrastructure improvements necessary to accommodate delivery of coal by rail to Big Bend Station.

All parties to this proceeding, including Tampa Electric through its own witness, Frederick J. Murrell, recognize the desirability and benefits of intermodal -- rail and barge -- competition. At the risk of stating the obvious, the only way to realize the benefits of intermodal competition is to have real, live, intermodal competition. As the Staff recognized, while CSXT made credible, serious, good-faith offers to TECO, TECO did not seriously consider or properly evaluate CSXT's offers. Staff Recommendation at 20-22, 36. Rather, Tampa Electric effectively ignored and avoided CSXT's proposals.

The record, as interpreted in the Staff Recommendation filed on August 26, demonstrates that Tampa Electric is overcharging its captive customers by at least \$13 million per year, and probably by more than \$20 million per year. **The Staff** Recommendation indicates that transporting only 2 million tons per year of coal by rail would save TECO's customers approximately \$6 million per year more than only making the adjustments suggested by Staff to TECO's waterborne costs; it is fair to infer that transporting greater volumes by rail would provide even greater savings. Interestingly, even though the Staff noted that the Commission lacks the power to rescind TECO's contract with TECO Transport, TECO's Motion (at page 4) makes clear, by declaring TECO's willingness to enter into a

"new contract beginning effective July 1, 2005," that TECO itself is willing and able to terminate its contract with TECO Transport, or at least to live with the consequences of doing so.

TECO's actions and decisions -- i.e., the decisions that TECO made in 2002 and 2003 -- have set the course for the present and foreseeable future. TECO should not, however, be allowed to avoid the consequences of its actions in 2002 and 2003 based on the normal regulatory prudence review standard, i.e., that decisions are to be evaluated as of the time that they are made. The Commission should preserve its power and ability to keep the existing evidentiary record open and to simply make its decisions based on that record. Similarly, TECO must not be allowed to bias any rebid process by insisting on coal sources that it chose between 2002 and the present, when it should have been fairly evaluating rail-accessible coal supply bids and the rail delivery proposals offered to it by CSXT.

In CSXT's view, a fair, objective rebid could be part of an equitable approach to maximizing benefits (and minimizing costs) to TECO's customers. Regarding TECO's proposed rebid process, TECO's Motion essentially repeats the Staff's recommended major points (Staff Recommendation at 41-42), with no specifics. The "points of clarification," which accompanied TECO's September 9

letter, appear to be constructive, but even these would require a great amount of fleshing out in order to ensure that any rebid process is fair and that it produces the best results for TECO's customers. As the old saying goes, "the devil is in the details." If any rebid were to be done, its success would depend critically on the manner in which it was implemented. Toward the goal of a successful rebid, CSXT stands ready, willing, and able to participate in the proposed settlement discussions and to work cooperatively with the Commission, Commission Staff, TECO, and the other parties to ensure that any rebid process is fair and produces the best results for TECO's customers. CSXT strongly believes that any fair evaluation would again show what every other coal-burning utility in Florida knows: that rail transportation is cost-effective vs. barge transportation.

In the spirit of cooperation with which it responded to Tampa Electric's September 9 letter, CSXT respectfully reserves further comments until the parties have had the opportunity offered by those discussions.

Respectfully submitted this 13th day of September 2004.

LANDERS & PARSONS



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by U.S. Mail or hand delivery (\*) this 13th day of September, 2004, on the following:

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