

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power  
cost recovery clause with  
generating performance incentive  
factor.

DOCKET NO. 030001-EI  
ORDER NO. PSC-03-1359-PCO-EI  
ISSUED: December 1, 2003

The following Commissioners participated in the disposition of  
this matter:

LILA A. JABER, Chairman  
J. TERRY DEASON  
BRAULIO L. BAEZ  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON

ORDER DEFERRING ISSUES TO SEPARATE PROCEEDING

BY THE COMMISSION:

I. CASE BACKGROUND

During the week of June 24, 2003, Tampa Electric Company (Tampa Electric) issued a request for proposals (RFP) to begin the process of selecting a waterborne coal transportation service (WCTS) provider to provide service for the five-year period beginning January 1, 2004, when Tampa Electric's current contract with its affiliate, TECO Transport, is scheduled to expire. According to a preliminary timetable provided to our staff in early July, 2003, Tampa Electric targeted October 6, 2003, as the date it would sign a contract with the selected provider.

On September 12, 2003, pursuant to the procedural schedule established in Order No. PSC-03-0113-PCO-EI, issued January 21, 2003, Tampa Electric filed the direct testimony of its witnesses Brent Dibner and Joann T. Wehle, among others, to be heard in our November 12-14, 2003, hearing in this docket. Among other things, witness Wehle's testimony was offered to describe and support Tampa Electric's RFP process. In her testimony, witness Wehle indicated that Tampa Electric expected to sign a new contract for WCTS in November, 2003, rather than the preliminary date of October 6,

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2003. Witness Dibner's testimony was offered to support the RFP process, also. In his testimony, witness Dibner indicated that he would provide supplemental testimony by September 25, 2003, containing his analysis of an appropriate market rate for Tampa Electric's WTCS.

On September 25, 2003, Tampa Electric filed a motion for leave to file the supplemental direct testimonies of its witnesses Dibner and Wehle and witness Dibner's supplemental exhibit, which were filed with the motion. Witness Dibner's supplemental testimony and exhibit described and provided the results of his market rate analysis. Witness Wehle's supplemental testimony indicated that Tampa Electric had evaluated and rejected a bid for rail transportation service and had accepted Mr. Dibner's market analysis for use as a starting point in negotiations for a contract with TECO Transport. Ms. Wehle also indicated that Tampa Electric now planned to sign a new contract for WCTS in early October, 2003. On September 29, 2003, the Florida Industrial Power Users Group (FIPUG) filed a response in opposition to Tampa Electric's motion. On September 30, 2003, the Office of Public Counsel (OPC) filed a motion in opposition to Tampa Electric's motion, requesting that the issues addressed by the supplemental testimony of witnesses Dibner and Wehle be deferred from consideration at our November, 2003, hearing in this docket. On October 3, 2003, Tampa Electric filed a response opposing OPC's motion in opposition.

On September 30, 2003, Tampa Electric, in an effort to respond to the concerns raised by FIPUG and OPC in opposition to Tampa Electric's motion for leave to file supplemental testimony, filed a motion to alter the testimony filing schedule established in Order No. PSC-03-0113-PCO-EI. On October 1, 2003, and October 3, 2003, FIPUG and OPC, respectively, filed responses opposing Tampa Electric's motion to alter the schedule.

On October 8, 2003, Catherine L. Claypool, Helen Fisher, William Page, Edward A. Wilson, Sue E. Strohm, Mary Jane Williamson, Betty J. Wise, Carlos Lissabet, and Lesly A. Diaz (TECO residential customers) filed a motion to establish a separate docket in which to consider the issues addressed by the supplemental testimony of witnesses Dibner and Wehle. The TECO residential customers adopted FIPUG's and OPC's position in objection to this Commission's consideration of Tampa Electric's

supplemental direct testimony and exhibit at the November, 2003, hearing in this docket. On October 10, 2003, Tampa Electric filed a response in opposition to the TECO residential customer's motion. On October 23, 2003, CSX Transportation (CSXT) filed a notice of joinder in the TECO residential customers' motion to establish a separate docket and in OPC's motion in opposition.

By Order No. PSC-03-1137-PCO-EI, issued October 13, 2003, the Prehearing Officer for this docket granted Tampa Electric's motion for leave to file supplemental direct testimony and established extended deadlines for intervenors and staff to prepare testimony in response to Tampa Electric's supplemental direct testimonies and exhibit. The Prehearing Officer reserved for subsequent consideration the question of whether or not the issues addressed in the supplemental filing, i.e., issues surrounding Tampa Electric's waterborne coal transportation arrangements, should be addressed at the November, 2003, hearing in this docket. We address that question in this Order and find that the issues should be addressed in a separate proceeding subsequent to our November, 2003, hearing.

We have jurisdiction over this matter pursuant to Chapter 366, Florida Statutes, including Sections 366.04, 366.05, and 366.06, Florida Statutes.

## II. DECISION

As identified at the Prehearing Conference in this docket, the following three issues concerning the prudence of Tampa Electric Company's purchases of waterborne coal transportation services (WCTS) were listed for this proceeding:

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

ISSUE 17F: 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?

ISSUE 17G:       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?

Issues 17E and 17F are directly related to waterborne coal transportation costs to be incurred by Tampa Electric under a five year contract signed October 6, 2003, with its affiliate, TECO Transport. Issue 17G addresses the continued usefulness of the existing benchmark mechanism that was established fifteen years ago to help the Commission assess the prudence of Tampa Electric's purchases of WCTS from its affiliate.

In general, OPC, FIPUG, CSXT, and the TECO residential customers contend that their ability to pursue these issues will be substantially impaired if we address these issues at our November, 2003, hearing. These parties contend that even under the extended testimony filing schedule, they were provided only three weeks to conduct discovery concerning a complex and voluminous market rate analysis, retain experts to review that analysis, and prepare responsive testimony. These parties assert that three weeks was not sufficient time to conduct those activities. Accordingly, these parties request that the issues concerning Tampa Electric Company's coal transportation arrangements be addressed in a proceeding subsequent to the November, 2003, hearing in this docket to allow for a more thorough review of these issues.

In response, Tampa Electric asserts that the parties have conducted extensive discovery in this docket concerning these issues and, given the extended testimony filing schedule, were placed in the same procedural posture in which they would have been if Tampa Electric's supplemental filing had been made at the time of its original filing on September 12, 2003. Noting that intervenors take the case as they find it, Tampa Electric points out that the TECO residential customers intervened only after Tampa Electric filed its supplemental testimony, and CSXT did not intervene until the October 23, 2003, Prehearing Conference in this docket. Further, Tampa Electric contends that attacks in the press and in anonymous letters based on misinformation concerning these issues have negatively impacted their customer relations and that any delay in addressing these issues may further aggravate that

situation. Tampa Electric argues that these issues should be addressed at the November, 2003, hearing to provide certainty to the company and to remove the cloud over the company created by these attacks.

We recognize the validity of some of Tampa Electric's concerns. First, we fully agree with Tampa Electric that intervenors take the case as they find it. The TECO residential customers did not intervene until October 8, 2003. CSXT did not intervene until October 23, 2003, after the extended date established for intervenor testimony on these issues. Thus, these two parties are not in a position to assert that their due process rights would be affected by addressing these issues at the November, 2003, hearing. However, both OPC and FIPUG, who have been parties to this ongoing docket for years, are in a position to make such a claim.

Second, we are sympathetic to Tampa Electric's concerns over misinformation being publicly disseminated. Our staff has indicated that, based on its review of the confidential rate information filed by Tampa Electric in this docket and some of the information publicly disseminated, some of the publicly disseminated statements appear to be based on erroneous assumptions. Certainly, such statements have the potential to impact Tampa Electric's customer relations.

Even given these concerns, we find that additional time to review the issues concerning Tampa Electric Company's coal transportation arrangements is appropriate because it would allow both this Commission and the parties the opportunity to more fully evaluate the market rate analysis that Tampa Electric Company has offered to serve as the basis for the cost of waterborne coal transportation services to be charged to customers over the next five years. Many complex and difficult matters are addressed each year in our hearing in this docket under a demanding schedule. Many such issues are also deferred to subsequent proceedings to allow for further review.

The results of the market rate analysis offered by witness Dibner comprise a 102-page confidential exhibit and are based on two proprietary models created by witness Dibner over many years. In deposition, witness Dibner indicated that applying these two

models in this case took him approximately three weeks and two months, respectively. We share OPC's and FIPUG's concerns that three weeks is little time to evaluate and respond to the market rate analysis, particularly where parties are also preparing to address several other issues at the November, 2003, hearing. Additional time would allow for a more full evaluation of Tampa Electric's market rate analysis and potential identification of any flaws in the underlying models. We also note with some concern the reluctance of Tampa Electric and witness Dibner, as expressed in deposition, to provide these proprietary models for review.

The market rate analysis offered by Tampa Electric is most relevant to Issue 17F which, as stated above, addresses the prudence of the costs to be incurred under Tampa Electric's new contract with TECO Transport over the next five years. Arguably, additional time to review the market rate analysis would not impact the ability of parties to address Issues 17E and 17G at this time. We believe, however, that Issues 17E (concerning the reasonableness of the RFP process that led to the new contract) and 17G (concerning the continued validity of the existing benchmark price for the Tampa Electric contract with TECO Transport) are so closely related to Issue 17F that these issues should be addressed in the same proceeding.

In conclusion, we find that the issues identified above concerning Tampa Electric Company's coal transportation arrangements shall be addressed in a separate proceeding subsequent to our November, 2003, hearing to allow for a more thorough review of the issues.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the issues identified in the body of this Order concerning Tampa Electric Company's coal transportation arrangements shall be addressed in a separate proceeding subsequent to our November, 2003, hearing in this docket. It is further

ORDERED that this docket shall remain open.

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By ORDER of the Florida Public Service Commission this 1st Day  
of December, 2003.

BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records and Hearing  
Services

( S E A L )

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.