

AUSLEY & McMULLEN

ATTORNEYS AND COUNSELORS AT LAW

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

December 15, 2003

HAND DELIVERED

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

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

Dear Ms. Bayo:

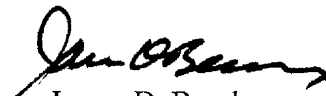
Enclosed for filing in the above docket are the original and ten (10) copies of each of the
following:

- 13029-03 1. Tampa Electric Company's Objections in Response to the Florida Industrial Power
Users Group's First Request for Production of Documents to Tampa Electric
Company (Nos. 1-23).
- 13030-03 2. Tampa Electric Company's Objections in Response to the Florida Industrial
Power Users Group's First Set of Interrogatories to Tampa Electric Company
(Nos. 1-34).

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

Thank you for your assistance in connection with this matter.

Sincerely,


James D. Beasley

JDB/pp
Enclosures

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

DOCUMENT NUMBER-DATE
13029 DEC 15 8
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Tampa Electric Company's)
Waterborne transportation contract with) DOCKET NO. 031033-EI
TECO Transport and associated benchmark.) FILED: December 15, 2003
_____)

**TAMPA ELECTRIC COMPANY'S OBJECTIONS
IN RESPONSE TO THE FLORIDA INDUSTRIAL POWER
USERS GROUP'S FIRST REQUEST FOR PRODUCTION OF
DOCUMENTS TO TAMPA ELECTRIC COMPANY (NOS. 1-23)**

Pursuant to Rule 1.351, Florida Rules of Civil Procedure and Rule 28-106.206, Florida Administrative Code, Tampa Electric Company ("Tampa Electric" or "the company"), by and through its undersigned counsel, hereby files its objections to the First Request for Production of Documents (Nos. 1-23) served by Florida Industrial Power Users Group ("FIPUG") on Tampa Electric, and says:

The above objections stated herein are preliminary in nature and are made at this time for the purpose of complying with the ten (10) day notice requirement typically set forth in the Commission's Orders Establishing Procedure. Should additional grounds for objection be discovered as Tampa Electric reviews its answers to interrogatories and documents, the company reserves the right to supplement, or revise or modify its objections prior to the time it serves answers to interrogatories or produces any documents. Should Tampa Electric determine that a protective order is necessary with respect to any of the information requested by FIPUG, Tampa Electric reserves the right to file a motion with the Commission seeking such an order at the time it serves its written responses to FIPUG.

DOCUMENT NUMBER-DATE

13029 DEC 15 03

FPSC-COMMISSION CLERK

This document shall also serve as Tampa Electric's written response to FIPUG's First Request for Production of Documents. The actual due date for the company's response is January 5, 2004. Tampa Electric reserves the right to supplement and modify its written response by January 5, 2004, to the extent the company determines the same may be warranted during the company's further review of the nature of the documents requested and whether and the extent to which such documents exist.

The short response time for objections requires the company's response to be somewhat broad and protective. Tampa Electric intends to be cooperative and reasonably responsive to appropriate discovery requests. Many of FIPUG's requests appear to be broader than the subject matter of this docket.

Notwithstanding the bases for the objections posed herein, Tampa Electric will strive to respond to all relevant discovery requests from FIPUG which reasonably relate to the subject matter of this docket. The company will do so in an effort to avoid unnecessary litigation costs for all parties to this proceeding, and to facilitate the timely resolution of this docket in accordance with the current schedule. In certain instances, for example, where a particular request is clearly overbroad, susceptible of differing interpretation, unclear or otherwise subject to objection, Tampa Electric will state its particular objection to the request, then identify and offer to produce those documents which the company believes are relevant and fully within the reasonable scope of what FIPUG seeks by way of such request.

The company will continue to work with FIPUG to refine FIPUG's requests for production of documents which are reasonably related to this proceeding.

General Objections

1. Tampa Electric objects to each and every document request to the extent that such request call for information that is exempt from discovery by virtue of the attorney/client privilege, work privilege, or other applicable privilege or protection provided by law, whether such privilege or protection appears at the time response is first made to these requests for documents or later determined to be applicable based on the discovery of documents, investigation, or analysis.

2. Tampa Electric objects to each and every document request insofar as the request is vague, ambiguous, overly broad, and imprecise or uses terms that are subject to multiple interpretations but are not properly defined or explained.

3. Tampa Electric objects to each and every document request to the extent that the information sought is already in the public record before this Commission or elsewhere, and is available to FIPUG through normal procedures.

4. Tampa Electric objects to any document request that calls for confidential proprietary business information and/or the compilation of information that is considered confidential proprietary business information, including "trade secrets" which are privileged pursuant to Section 90.506, Florida Statutes.

5. Tampa Electric objects to any document request that calls for the creation of information as opposed to the reporting of presently existing information or that purport to expand Tampa Electric's obligations under the Florida Rules of Civil Procedure or Florida Law.

Motion for Protective Order

6. Tampa Electric's objections to FIPUG's discovery requests are submitted pursuant to the authority contained in Slatnick v. Leadership Housing Systems of Florida, Inc., 368 So.2d

79 (Fla. 3rd DCA 1979). To the extent that a Motion for Protective Order is required, Tampa Electric's objections are to be construed as a request for a Protective Order.

Specific Objections

7. Tampa Electric objects to Request for Production No. 14, which calls for the model(s) used to establish the market rates recommended by Dibner Maritime Associates to Tampa Electric including, but not limited to, the inland river barge model and the ocean model. Tampa Electric does not have possession, custody or control of such models and even if it had possession, custody or control has not been authorized by Dibner Maritime Associates to provide these proprietary models to any person.

8. Mr. Dibner's models are the essence of proprietary confidential business information in that they contain many details of Mr. Dibner's knowledge and expertise developed throughout his career. Attached here to as Exhibit "A" is a copy of an Affidavit of Mr. Dibner explaining the need to protect these models from disclosure to any person. The original of this Affidavit will be filed and served on December 16, 2003.

9. The proprietary value of the models cannot be protected through the means of a non-disclosure agreement inasmuch as once the information contained in the models is disclosed, the individual to whom it is disclosed cannot thereafter cease to have knowledge of the proprietary information in question.

10. Tampa Electric further objects to each other FIPUG request for production of documents to the extent that the request may be construed to require production of the Dibner Maritime Associates' models.

11. Tampa Electric further objects to each FIPUG request for production to the extent that it calls for information Tampa Electric deems to be proprietary confidential business

information exempt from public disclosure, pursuant to Section 366.093, Florida Statutes, absent Tampa Electric and FIPUG executing a mutually acceptable non-disclosure agreement.

DATED this 15th day of December 2003.

Respectfully submitted,



LEE L. WILLIS
JAMES D. BEASLEY
Ausley & McMullen
Post Office Box 391
Tallahassee, Florida 32302
(850) 224-9115

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Objections in Response to FIPUG's First Request for Production of Documents (Nos. 1-23), filed on behalf of Tampa Electric Company, has been furnished by U. S. Mail or hand delivery (*) on this 15th day of December 2003 to the following:


Mr. Wm. Cochran Keating, IV*
Senior Attorney
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0863

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

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

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

Mr. Robert Scheffel Wright
Mr. John T. LaVia, III
Landers & Parsons, P.A.
Post Office Box 271
Tallahassee, FL 32302



ATTORNEY

AFFIDAVIT OF BRENT DIBNER

I, Brent Dibner, am the President of Dibner Maritime Associates, LLC with my primary business address at 151 Laurel Road, Chestnut Hill, MA 02467.

I am in possession of the Florida Industrial Power Users Group's First Request for Production of Documents to Tampa Electric Company (Nos. 1-23). I have reviewed the definitions, instructions, and requests. Request for Production of Documents No. 14 instructs me to provide full, working copies of the "Inland Model" and the "Ocean Model" that were used to develop the rates that are the subject of my work for Tampa Electric and are pertinent to Tampa Electric's coal transportation hearing before the Florida Public Service Commission.

The models requested are proprietary models that represent the sum of my knowledge and expertise in the inland river and ocean transportation industries. I do not make them public or even available for sale to the public precisely because they represent my intellectual property and form the basis of my livelihood. These two models are custom-built to accurately describe the specific barge, towboat, and ocean-vessel operations that are necessary to transport coal from specific locations to specific destinations. The models are large and complex, and draw upon more than 27 years of management consulting experience and expertise that I have gained from almost continuous involvement in this industry, including consulting to many leading inland barge lines as well as a number of shippers. My career as a management consultant specializing in the maritime industry, and particularly the U.S. maritime industry, is based upon factual development of intellectual capital that has been carefully created, maintained, and utilized. My livelihood is based upon the competitive advantages that I have relative to other sources of information, analysis, insight, and expertise. These competitive advantages depend on not providing other existing or potential competitors with the benefit of my 27 years of experience. In my 27 years of practice, I have sold, managed and delivered between \$50 million and \$80 million of consulting services on a wide range of topics, but a significant portion of this revenue was tied to U.S.-flag maritime transportation and inland river transportation. It is reasonable to assume that my expertise in these areas represents many millions of dollars of past revenue and many millions of dollars of potential revenue in my future career. My models are supported by related or separate insights and databases of information that collectively, along with my models, represent my expertise. If my intellectual capital is disseminated to others, the value of my future career will be impaired.

In addition, the models that I and others in this industry use must be managed by highly knowledgeable users. In the hands of another person with less understanding, experience, knowledge, and/or sensitivity a model can quickly produce misleading, erroneous or harmful results. My models are not designed to be stretched or pulled to the point of breakage by other parties but are tools with which to apply my expert knowledge and assumptions. My models are also supported by many other efforts that represent an even greater portion of my knowledge, expertise and competitive advantage. I rarely transfer models to my clients precisely because they are highly prone to misuse.

BD

My models should not be produced for the reasons given above. In addition to those facts, the reality is that my models are not necessary to gain an understanding of the evaluation and analysis I completed for Tampa Electric. The recommended market rates are straightforward and based on bids received or the market analysis I completed. All of my work is described in detail in my testimony and final report. In my testimony and exhibit filed in Docket No. 030001-EI and to be filed in Docket No. 031033-EI, I have provided descriptions of the principles, results, and explanations of these models, as well as comparisons of the market rates with bid rates. I have answered all questions asked of me concerning these models. I have described or discussed many of the drivers of the inland and ocean modes in my report and during the deposition. During my deposition with Tampa Electric witness, Joann Wehle, I reviewed information presented to me and offered guidance on its usefulness, accuracy and limitations. I compared my model's results with bids and with Tampa Electric's current rates. I described the core return assumptions, the value of barges, and the modest returns on asset value that I assumed. The composition of rates provides further insights into the capital costs, variable costs, and fuel costs. In my report, filed as the exhibit to my testimony, I provided precise guidance as to many of the contractual terms, operational factors and elements that are the basis for the established market rates. In my report pages 8, 9, 10, 11, 12, 16, 17, 18, 19, 20, 21, 22,23, 24, 25, 26, 27, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44, 45, 47, 48, 49, 50, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 68, 70, 71, 74, 75, 76, 77, and 78 provide a comprehensive description of factors, assumptions, cost structures, considerations, competitive rates, etc. The information included in my report is sufficient to provide any persons with a passing knowledge of the general transportation industry with the basis to create or modify their own straightforward model to approximate rates and evaluate whether the bids received and the rates I developed are of a reasonable order of magnitude, without the production of the models themselves.

Brent D. Dibner

Brent Dibner, President
Dibner Maritime Associates, LLC

Angela Lynn Llewellyn



MASSACHUSETTS
#S 77729481