

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Review of Tampa Electric )  
Company's 2004-2008 Waterborne ) DOCKET NO. 031033-EI  
Transportation Contract with TECo )  
Transport and Associated Benchmark ) FILED: DECEMBER 16, 2003  
\_\_\_\_\_)

CSX TRANSPORTATION'S PETITION TO INTERVENE

CSX Transportation ("CSX"), pursuant to Chapter 120, Florida Statutes,<sup>1</sup> and Rules 25-22.039 and 28-106.201, Florida Administrative Code ("F.A.C."), hereby petitions to intervene in the above-styled docket. In summary, CSX is a substantial customer of Tampa Electric Company ("TECO") and petitions to intervene in order to protect its interests in having the Commission determine fair, just, and reasonable fuel cost recovery charges to be charged by TECO and in having the Commission take such other action to protect the interests of CSX and of all of TECO's customers as the Commission may deem appropriate. In further support of its Petition to Intervene, CSX states as follows.

1. The name and address of the Petitioner are:

CSX Transportation  
Attention: Mr. Gil Feltel, Esquire  
500 Water Street, J150  
Jacksonville, Florida 32202  
(904) 359-1958.

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<sup>1</sup> All references herein to the Florida Statutes are to the 2003 edition thereof.

2. All pleadings, orders and correspondence should be directed to Petitioner's representatives as follows:

Robert Scheffel Wright, Attorney at Law  
John T. LaVia, III, Attorney at Law  
Landers & Parsons, P.A.  
310 West College Avenue (ZIP 32301)  
Post Office Box 271  
Tallahassee, Florida 32302  
(850) 681-0311 Telephone  
(850) 224-5595 Facsimile.

3. The agency affected by this Petition to Intervene is:

Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850.

4. This proceeding is designed to address issues relating to TECO's practices for procuring coal transportation services, its practices in contracting for such services, and how much of the costs of such services TECO may be allowed to recover from its captive customers.

#### **CSX TRANSPORTATION'S SUBSTANTIAL INTERESTS**

5. CSX Transportation was previously granted intervention, over TECO's objections, in the Commission's 2003 Fuel and Purchased Power Cost Recovery Clause proceedings, Docket No. 030001-EI (hereinafter, the "Fuel Docket"), in which the issues to be addressed herein originated. CSX Transportation has the same substantial interests in the outcome of this proceeding. PSC Order No. 03-1258-PCO-EI, November 7, 2003. (Having been granted intervention in the original proceeding, CSX believes that it should automatically be considered an intervenor in this spin-off

docket, but is filing this petition to intervene as a cautionary measure.) CSX owns and operates a significant number of railroad facilities in Florida and provides rail transportation to several Florida electric utilities and other Florida industrial customers. CSX is a significant customer of TECO, having several different accounts, served under different rate schedules, at several different points of delivery located within TECO's service area. In round numbers, CSX purchases approximately \$1 Million of electric service from TECO annually.

6. CSX's substantial interests are of sufficient immediacy to entitle it to participate in the proceeding and are the type of interests that the proceeding is designed to protect. To participate as a party in this proceeding, an intervenor must demonstrate that its substantial interests will be affected by the proceeding. Specifically, the intervenor must demonstrate that it will suffer a sufficiently immediate injury in fact that is of the type the proceeding is designed to protect. Ameristeel Corp. v. Clark, 691 So. 2d 473 (Fla. 1997); Agrico Chemical Co. v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981), rev. denied, 415 So. 2d 1359 (Fla. 1982). As a substantial retail electric customer of TECO, CSX is subject to the rate impacts that will result from whatever decisions the Commission makes in this proceeding. To the extent that TECO's rates may -- and will, if TECO's claimed coal transportation costs paid to its affiliate, TECo Transport, are approved for

recovery through retail rates -- be set at levels that are unfair, unjust, and unreasonable, CSX's interests will be immediately and adversely affected. (As noted below, CSX alleges that the rates that TECO proposes to charge are unfair, unjust, and unreasonable in that they include costs to be paid to TECO's affiliate, TECo Transport, that are unreasonably and imprudently high for the transport of coal to TECO's Big Bend electric generating station.) It is facially obvious that this docket, like the Fuel Docket in which the issues relating to TECO's coal transportation costs initially arose, is designed to protect TECO's captive customers against practices and charges that are unfair, unjust, and unreasonable.

#### DISPUTED ISSUES OF MATERIAL FACT

7. Disputed issues of material fact include, but are not limited to, the following, as set forth in the numbered in the Order Deferring Issues to Separate Proceeding, Order No. PSC-03-1359-PCO-EI, issued in the Fuel Docket on December 1, 2003:

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?

CSX reserves all rights to raise additional issues of fact, law, and policy in accordance with the procedural requirements established for this spin-off proceeding.

#### ADDITIONAL ISSUES OF LAW AND FACT

8. Additionally, CSX believes that the following issues, which include issues of law and mixed issues of law and fact, should also be considered and decided in this proceeding:

Issue: What, if any, action should the Commission take with respect to TECO's procurement practices affecting and relating to the transportation of coal to TECO's coal-fired electrical power plants?

Issue: Does the Commission have the statutory power to require TECO to conduct an open, impartial competitive procurement or bidding process for the purpose of procuring the most cost-effective coal transportation services?

Issue: If the answer to the preceding issue is affirmative, should the Commission require TECO to conduct an open, impartial competitive procurement or bidding process for the purpose of procuring the most cost-effective coal transportation services?

Issue: Does the Commission have the statutory power to require TECO to conduct an open, impartial competitive procurement or bidding process for the purpose of obtaining competitive market data that the Commission may then use to evaluate whether TECO has procured the most cost-effective coal transportation services?

Issue: If the answer to the preceding issue is affirmative, should the Commission require TECO to conduct an open, impartial competitive procurement or bidding process for the purpose of obtaining competitive market data that the Commission may then use to evaluate whether TECO has procured the most cost-effective coal transportation services?

Issue: Does the Commission have the statutory power to require TECO to use any particular source, or combination of sources, for coal transportation services, if the Commission determines that the use of such source or sources is the most cost-effective means for TECO to obtain needed coal transportation services, or that the use of such source or sources is otherwise in the best interests of TECO's captive customers, or both?

Issue: If the answer to the preceding issue is affirmative, should the Commission require TECO to use the particular source, or the combination of particular sources, for coal transportation services, that the Commission determines to be the most cost-effective means for TECO to obtain needed coal transportation services, or that the use of such source or sources is otherwise in the best interests of TECO's captive customers, or both?

#### **ULTIMATE FACTS THAT ENTITLE CSX TRANSPORTATION TO RELIEF**

9. The ultimate facts that entitle CSX to relief are as follows.
- a. CSX is a retail customer of TECO.
  - b. TECO turned down offers for coal transportation services from CSX that would have saved TECO's retail customers, including CSX, millions of dollars over the period 2004 through 2008.
  - c. TECO's decision to turn down CSX's offers and to contract instead with its affiliate, TECo Transport, was imprudent and unreasonable and will, if implemented, result in TECO's fuel cost recovery charges being unfair, unjust, and unreasonable.
  - d. TECO's June 27, 2003, request for proposals was not

sufficient to determine the current market price for coal transportation.

- e. 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, is no longer appropriate for use to determine TECO's allowable coal transportation costs for cost recovery purposes because (i) it is outdated and (ii) its use is directly invalidated by the availability of direct market cost data for alternative costs of transporting coal to TECO's coal-fired electrical power plants.
- f. TECO's projected coal transportation costs for 2004 through 2008 under the purported winning bid to TECO's June 27, 2003, request for proposals for coal transportation are not reasonable for cost recovery purposes. In fact, these projected costs are unreasonable and imprudent.

**STATUTES AND RULES THAT ENTITLE CSX TRANSPORTATION TO RELIEF**

10. The applicable statutes and rules that entitle CSX Transportation to relief include, but are not limited to, Sections 120.569, 120.57(1), 366.04(1), 366.05(1), 366.06(1)&(2), and 366.07, Florida Statutes, and Rule 25-22.039 and Chapter 28-106, Florida Administrative Code.

11. Statement Explaining How the Facts Alleged By CSX Relate to the Above-Cited Rules and Statutes In Compliance With Section 120.54(5)(b)4.f, Florida Statutes. Rules 25-22.039 and 28-106.205, F.A.C., provide that persons whose substantial interests are subject to determination in, or may be affected through, an agency proceeding are entitled to intervene in such proceeding. As a substantial retail customer of TECO, CSX's substantial interests are subject to determination in and will be affected through the Commission's decisions in this docket, and accordingly, CSX is entitled to intervene herein. The above-cited sections of Chapter 366 relate to the Commission's jurisdiction over TECO's rates, and TECO's practices affecting rates, and the Commission's statutory mandate to ensure that TECO's rates are fair, just, and reasonable. The facts alleged here by CSX demonstrate (a) that the Commission's decisions herein will have a significant impact on TECO's fuel cost recovery rates and charges, and (b) accordingly, that these statutes provide the basis for the relief requested by CSX herein.

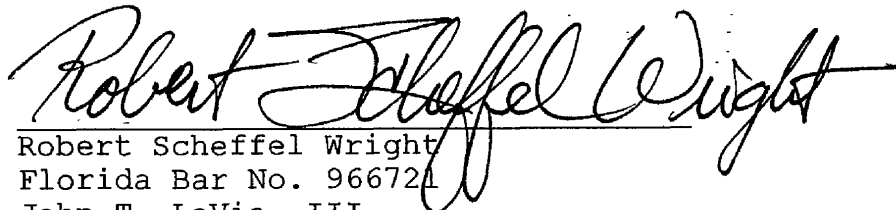
#### **RELIEF REQUESTED**

**WHEREFORE**, CSX Transportation respectfully requests the Florida Public Service Commission to enter its order GRANTING this Petition to Intervene and authorizing CSX Transportation to intervene in this proceeding with full party status, and requiring that all parties to this proceeding serve copies of all



pleadings, notices, and other documents on CSX Transportation's representatives indicated in paragraphs 1 and 2 above.

Respectfully submitted this 16th day of December, 2003.



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Attorneys for CSX Transportation

CERTIFICATE OF SERVICE  
DOCKET NO. 031033

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by U.S. Mail or hand delivery (\*) this 16<sup>th</sup> day of December, 2003 on the following:

Wm. Cochran Keating, Esq.\*  
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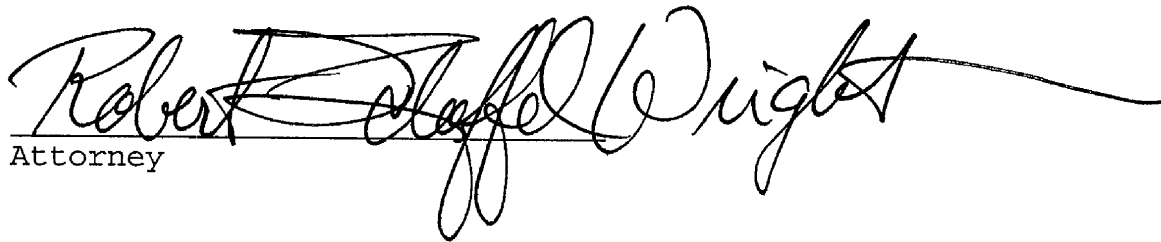
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A large, stylized handwritten signature in black ink that reads "Robert Page Wright". The signature is written over a horizontal line.

Attorney