

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: JANUARY 14, 2004
_____)

CSX TRANSPORTATION'S RESPONSE TO TECO'S OBJECTION
AND MOTION FOR PROTECTIVE ORDER

CSX Transportation ("CSX"), pursuant to Rule 28-106.206, Florida Administrative Code ("F.A.C."), hereby files its response to the objection and motion for protective order filed herein by Tampa Electric Company ("TECO") on January 2, 2004.

Briefly, TECO's motion, which seeks the extreme remedy of preventing CSX from conducting any discovery of confidential information, should be denied. To the extent that the information that TECO seeks to protect from being seen by key CSX personnel is truly confidential, proprietary business information for which appropriate protection is available under the law, the appropriate remedy is a protective order or a confidentiality agreement between TECO and CSX that allows the information to be viewed, reviewed, and analyzed by CSX's experts, on a "need to know" basis, while implementing appropriate safeguards to prevent the information from being disclosed to CSX personnel who are in a position to use the information to TECO's competitive disadvantage.

CSX recognizes that this issue, i.e., discovery of competitively sensitive information by competitors, is a two-way street. CSX believes and asserts that it has offered to provide the coal transportation services desired by TECO at costs much less than those that TECO proposes to pay to its affiliate, TECO Transport, but CSX also considers much of its pricing information to be competitively sensitive, particularly as it relates to entities other than TECO, which already has received the proposed pricing.

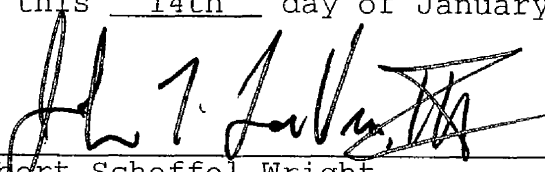
Accordingly, CSX Transportation stands ready to work with TECO to craft an appropriate confidentiality agreement, which may be incorporated into a confidential protective order, that will satisfy CSX's legitimate needs for the subject information in order to protect its interests in this proceeding while also protecting TECO's interests in protecting its confidential, proprietary business information from disclosure to persons (within CSX and elsewhere) who would be in a position to use that information to TECO's competitive disadvantage. This is not unusual: such protective orders have been entered into in power plant need determination cases where independent power producers and investor-owned utilities have been competing over whose power plant proposal was the most cost-effective alternative.

RELIEF REQUESTED

WHEREFORE, CSX Transportation respectfully requests the Florida Public Service Commission to enter its order denying

TECO's motion for protective order and instead issuing an appropriate protective order that will both enable CSX to conduct discovery in this proceeding, with appropriately defined use of TECO's information by CSX's experts with a "need to know," while protecting TECO's confidential information from disclosure to persons in a position to use such information to TECO's competitive disadvantage.

Respectfully submitted this 14th day of January, 2004.



Robert Scheffel Wright
Florida Bar No. 966721
John T. LaVia, III
Florida Bar No. 853666
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

Attorneys for CSX Transportation

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 14th day of January, 2004, on the following:

Wm. Cochran Keating, Esq.*
Jennifer Rodan, Esq.
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Robert Vandiver, Esq.
Associate Public Counsel
Office of Public Counsel
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400

Lee L. Willis, Esq.*
James D. Beasley, Esq.
Ausley & McMullen
227 South Calhoun Street
Tallahassee, FL 32301

Vicki Gordon Kaufman, Esq.
McWhirter, Reeves, McGlothlin, Davidson
Decker, Kaufman, Arnold & Steen, P.A.
117 South Gadsden Street
Tallahassee, FL 32301

Carlos Lissabet
2802 W. Kirby Street
Tampa, FL 33614

Catherine L. Claypool/Betty J. Wise
3002 W. Kirby Street
Tampa, FL 33614

Edward A. Wilson
3003 W. Sitka Street
Tampa, FL 33614

Florida Industrial Power Users Group
c/o John W. McWhirter, Jr., Esq.
McWhirter Reeves
400 North Tampa Street, Suite 2450
Tampa, FL 33602

Florida Retail Federation
John Rogers, Esq.
227 South Adams Street
Tallahassee, FL 32301

Helen Fisher
3004 W. Kirby Street
Tampa, FL 33614

Lesly A. Diaz
2806 W. Kirby Street
Tampa, FL 33614

Mary Jane Williamson
7712 North Orleans Avenue
Tampa, FL 33604

Sue E. Strohm
2811 W. Sitka Street
Tampa, FL 33614

Ms. Angela Llewellyn
Regulatory Affairs
P.O. Box 111
Tampa, FL 33601-0111

William H. Page
3006 W. Kirby Street
Tampa, FL 33614

Mr. Michael B. Twomey, Esq.
P.O. Box 5256
Tallahassee, FL 32314-5256



Attorney