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MARTIN L. GARCIA
OF COUNSEL
DAVID E. WARD, JR.
OF COUNSEL

January 23, 2004

Hand Delivery

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

Re: Review of Tampa Electric Company's waterborne transportation contract
with TECO Transport and associated benchmark; FPSC Docket No.
031033-E1

Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of TECO Transport Company's Motion to Quash Subpoena Duces Tecum.

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

DOCUMENT NUMBER DATE

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FPSC-COMMISSION CLERK

Ms. Blanca S. Bayo
January 23, 2004
Page 2

Thank you for your assistance in connection with this matter.

Sincerely,

HILL, WARD & HENDERSON, P. A.

By 
Benjamin H. Hill, III

BHH,III/ket

Enclosures

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

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Tampa Electric Company's)
Waterborne transportation contract with)
TECO Transport and associated benchmark.)
_____)

DOCKET NO. 031033-EI
FILED: January 23, 2004

**MOTION OF TECO TRANSPORT CORPORATION
TO QUASH SUBPOENA DUCES TECUM**

TECO Transport Corporation (TECO Transport), a non-party to the above entitled and numbered proceeding, pursuant to Rule 28-106.212 of the Florida Administrative Code, and Rules 1.280 and 1.351 of the Florida Rules of Civil Procedure, by and through its undersigned attorneys, respectfully moves the Florida Public Service Commission (Commission) for an order quashing the Subpoena Duces Tecum served by the Office of Public Counsel (OPC) on TECO Transport in this proceeding. This motion to quash is made on the grounds that the subpoena is unreasonable and oppressive, and that it seeks irrelevant information at the expense of TECO Transport's proprietary interests. In support of this motion, TECO Transport states:

1. TECO Transport is not a party to the above-entitled proceeding and is not regulated by the Commission. TECO Transport is a competitive entity operated entirely separate from Tampa Electric Company. By filing the instant motion to quash, TECO Transport does not subject itself to the Commission's jurisdiction and does not waive any objections to the Commission's jurisdiction over TECO Transport.

2. The above entitled and numbered proceeding involves the Commission's inquiry to determine whether the price that Tampa Electric Company has agreed to pay to TECO Transport for waterborne transportation services is reasonable for cost recovery purposes. Tampa Electric Company determined that price based upon a market pricing standard that was

approved by the Commission in both 1988 and 1993. See Order Nos. 20298 & PSC-93-0443-FOF-EI. Testimony previously filed in this proceeding clearly establishes that TECO Transport had no role in establishing the market price that is being evaluated in this proceeding. (See generally Prepared Direct Testimony of Joann T. Wehle, Doc. No. 00089.)

3. Despite these undisputed facts, the OPC served TECO Transport with an expansive and vaguely worded Subpoena Duces Tecum dated January 9, 2004. A copy of the Subpoena Duces Tecum is attached as Exhibit A. The Subpoena Duces Tecum requests documents that include all manner of income statements, balance sheets, budgeting information, correspondence, evaluations, costs elements, indicia of profitability, planning documents, revenue and expense projections and the like pertaining to a non-regulated non-party to this proceeding.

4. Compliance with OPC's subpoena would require TECO Transport to expend tremendous resources including thousands of hours of manpower to locate, evaluate, and produce documents that have no bearing on the Commission's present inquiry. The subpoena includes requests for information regarding TECO Transportation's commercial dealings with all of TECO Transport's customers over the past three years. TECO Transport provides bulk commodity transportation services to more than 100 customers—not just to Tampa Electric Company.

5. With these customers, TECO Transport has entered into hundreds of detailed contracts, many containing confidentiality agreements requiring TECO Transport to notify the customer prior to disclosing any information. These contracts, which are located in several different states, would have to be compiled and extensively evaluated to determine whether they are responsive and whether they contain confidential information that is entitled to protection.

TECO Transport would also be obligated to contact and explain to all customers who have a confidentiality agreement why it is their proprietary information is being disclosed. Many of these customers are in competition with each other. Disclosure of information about the transportation of their commodities could compromise their respective market positions. To force TECO Transport to disclose the requested information is therefore extremely oppressive and unreasonable and the ramifications of such production will cause irreparable harm to TECO Transport and its customers. Attached as Exhibit B is the Affidavit of Timothy M. Bresnahan fully setting forth facts detailing the unreasonableness and oppressiveness of OPC's subpoena.

6. OPC's Subpoena Deuces Tecum is nothing more than a "fishing expedition" and is unreasonable and oppressive. Additionally, the information sought is not relevant to any issue before the Commission in this proceeding, is not likely to lead to the discovery of admissible evidence, and disclosure of that information would irreparably harm TECO Transport's position in this highly competitive industry due to customer concerns regarding the confidentiality of their dealings with TECO Transport.

7. In Order No. 020384-GU, Order on Discovery Motions, issued November 21, 2002, Commissioner Baez, as Prehearing Officer precluded the OPC from discovering information that is substantially similar to the information requested in the subpoena served on TECO Transport. The Commission in that proceeding was evaluating the reasonableness of costs incurred by Peoples Gas System. The OPC filed a motion to compel Peoples Gas System to provide documents in the possession of TECO Energy, Inc., Tampa Electric Company, and TECO Partners Inc. Commissioner Baez denied OPC's motion to compel and held that "[t]he information sought by OPC does not appear to be reasonably calculated to lead to the discovery of admissible evidence." *Id.* at 14-19. Commissioner Baez further stated: "The TECO

documents sought by OPC relate to TECO's costs, not to Peoples' costs. The documents will show what TECO pays to provide services for Peoples, itself and other affiliated companies, not what Peoples pays or is budgeted to pay for the services rendered by TECO." Id. at 7.

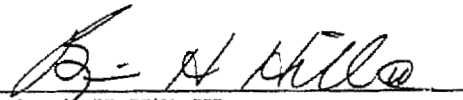
8. Likewise, in the present matter, the information sought in the Subpoena Duces Tecum is not relevant to any issue before the Commission in this proceeding nor is it likely to lead to the discovery of admissible evidence. OPC has been provided access to the transportation agreement pursuant to which TECO Transport provides transportation services for Tampa Electric Company. OPC does not need access to TECO Transport's proprietary competitive information in order to test the reasonableness of amounts paid by Tampa Electric for those transportation services. If OPC feels that it needs information about the general costs of water transportation in the industry, there are more appropriate and less intrusive means available to OPC such as hiring an industry expert or performing an industry-wide survey. OPC should be required to explore these alternative methods for discovery of this information, rather than shifting this onerous burden and expense to a non-party under a "broad discovery" ruse.

9. While information about Tampa Electric Company's costs may be relevant to the Commission's inquiry, information about TECO Transport's costs and dealings is not. Requiring TECO Transport to amass the various documents described in the Subpoena Duces Tecum would unreasonably burden a non-party to this proceeding and significantly jeopardize the legitimate competitive business interests of TECO Transport. See Naples Cmty Hosp., Inc. v. State, 687 So. 2d 62, 63-64 (Fla. 1st DCA 1997) (holding that hearing officer departed from the essential requirements of the law by enforcing overbroad subpoena duces tecum that constituted a serious encroachment of the proprietary interests of non-parties). The undeniable damage that TECO Transport will suffer in disclosing its books and records in this proceeding

far outweighs any possible benefit that could accrue to the parties to this proceeding or the Commission.

WHEREFORE, TECO Transport moves the Commission for entry of an order quashing the Subpoena Duces Tecum dated January 9, 2004.

Respectfully submitted,



Benjamin H. Hill, III
Florida Bar No. 094585
Landis V. Curry III
Florida Bar No. 0469246
HILL, WARD & HENDERSON, P.A.
101 East Kennedy Boulevard, Suite 3700
Post Office Box 2231
Tampa, Florida 33601
(813) 221-3900

**Attorneys for TECO TRANSPORT
COMPANY**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Motion to Quash has been furnished by U.S. Mail or hand delivery on this 23 day of January 2004 to the following counsel of record:

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

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

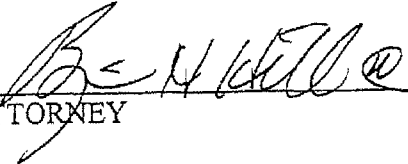
Mr. Michael B. Twomey
Post Office Box 5256
Tallahassee, FL 32314-5256

Ms. Vicki Gordon Kaufman
Mr. Timothy J. Perry
McWhirter, Reeves, McGlothlin,
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117 S. Gadsden Street
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McWhirter, Reeves, McGlothlin,
Davidson, Kaufman & Arnold, P.A.
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Mr. Robert Scheffel Wright
Mr. John T. LaVia, III
Landers & Parsons, P.A.
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Tallahassee, FL 32302

Lee L. Willis
James D. Beasley
Ausley & McMullen
227 S. Calhoun Street
Tallahassee, FL 32302


ATTORNEY

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Tampa Electric Company's
2004-2008 waterbound transportation
contract with TECO transport and trade

Docket No. 031033-EI

Filed: January 9, 2003

**NOTICE OF INTENT TO SERVE SUBPOENA ON NONPARTY PURSUANT TO
RULE 1.351, FLORIDA RULES OF CIVIL PROCEDURE**

Comes now the Citizens of the State of Florida by and through the Office of Public Counsel (Citizens) and hereby file this notice pursuant to Rule 1.351, Florida Rules of Civil Procedure. Notice is hereby given that pursuant to the attached subpoena (Attachment 1), Citizens of the State of Florida request production of documents as listed in the attached subpoena from:

S. M. McDevitt
702 N. Franklin Street
Tampa, FL 33602
Registered Agent for TECO Transport, Inc

Respectfully submitted,



Robert Vandiver

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Docket No. 031033-EI)
Review of Tampa Electric Company's 2004-2008)
waterborne transportation contract with TECO)
Transport and associated benchmark.)

SUBPOENA DUCES TECUM
WITHOUT DEPOSITION

THE STATE OF FLORIDA

TO: S.M. McDevitt, Registered Agent for TECO Transport, Inc., 702 N. Franklin Street, Tampa, Florida 33602

YOU ARE COMMANDED to appear at 702 N. Franklin Street, Tampa, Florida 33602, on Monday, January 26, 2004, at 11:00 a.m., or at such other time and place as may be mutually agreed upon by counsel, and to have with you at that time and place the following: All documents set forth as Attachment A, Requested Documents.

These items will be inspected and may be copied at that time. You will not be required to surrender the original items. You may comply with this subpoena by providing legible copies of the items to be produced to the attorney whose name appears on this subpoena on or before the scheduled date of production. You may mail or deliver the copies to the attorney whose name appears on this subpoena and thereby eliminate your appearance at the time and place specified above. You have the right to object to the production pursuant to this subpoena at any time before production by giving written notice to the attorney whose name appears on this subpoena. THIS WILL NOT BE A DEPOSITION. NO TESTIMONY WILL BE TAKEN.

YOU ARE SUBPOENAED by the following attorney to (1) appear as specified, or (2) furnish the records instead of appearing as provided above, and unless excused from this subpoena by this attorney or the Commission you shall respond to this subpoena as directed.

DATED on January 9, 2004.

(S E A L)



Blanca S. Bayó, Director
Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission

Rob Vandiver, Esq.
c/o The Florida Legislature
111 W. Madison St., Room 812
Tallahassee, FL 32399-1400
Attorneys for Office of Public Counsel

Attachment

PSC/CCA016-C (Rev 9/02)

Attachment A
Requested Documents

Produce the balance sheet and income statement for TECO Transport for December 31, 1992 and the past five years.

Provide all reports, correspondence, notes, memoranda, e-mails, presentations, evaluations, assessments and/or other documents in the possession of TECO Transport that relate to the negotiations, acceptance, signing of and the administration of the current contract for waterborne transport services provided to Tampa Electric by TECO Transport, its affiliates and its subsidiaries.

Provide copies of all billing in the possession of TECO Transport from TECO Transport, its affiliates and/or its subsidiaries to Tampa Electric for waterborne transportation services on a monthly basis since December 1, 2001, through January 1, 2003.

Provide copies of all reports, correspondence, notes, memoranda, e-mails, presentations, evaluations, assessments and/or other documents in the possession of TECO Transport that relate to the revenues, cost and/or profitability of the waterborne transport services rates charged to TECO Transport that were originated since December 31, 2001 to the present date.

Provide copies of all reports, correspondence, notes, memoranda, e-mails, presentations, evaluations, assessments and/or other documents in the possession of TECO Transport that concern the costs of waterborne transport rate elements provided for Tampa Electric as opposed to the rates TECO Transport charges third parties for similar waterborne transport services that were originated since December 31, 2001, to the present date.

Provide copies of all reports, correspondence, notes, memoranda, e-mails, presentations, evaluations, assessments and/or other documents in the possession of TECO Transport that characterize or evaluate the costs, revenues and profitability of TECO Transport's waterborne transport services in general that have been originated since December 31, 2001, to the present date.

Provide copies of all TECO Transport monthly budget analysis reports in the possession of TECO Transport for waterborne transport services, including budget variances originated by the company since December 31, 2001, to the present date.

Provide copies of all reports, correspondence, notes, memoranda, e-mails, presentations, evaluations, assessments and/or other documents in the possession of TECO Transport that relate to the competitive rates that apply for similar waterborne transport service elements that are included in the Tampa Electric waterborne transport contract originated since December 31, 2001, including upriver, terminal and cross-gulf.

Provide copies of all depreciation schedules prepared by the company for use in providing waterborne transport services in the possession of TECO Transport relating to the Tampa Electric contracts originated by the company since January 1, 2001, to the present date. If such data is unavailable, provide copies of depreciation schedules relating to TECO Transport's total barge and terminal depreciation expense.

Provide copies of all documents in the possession of TECO Transport that show the tonnage and/or rates for Petcoke coal shipped direct from Texas to Tampa in 2001 and 2002, listed separately.

Provide copies of all documents in the possession of TECO Transport that concern the cost of handling foreign coal at the terminal, the appropriate rate for such transactions, and/or the difference between the cost of handling foreign coal at the terminal as opposed to the cost of handling river barge coal at the terminal under the Tampa Electric contract originated since January 1, 2002.

Provide copies of all maps or other documents in the possession of TECO Transport that show the physical location of mines up river to the physical location of docks and terminals upriver that provide coal under the Tampa Electric contract originated since January 1, 2002.

Provide copies of all documents in the possession of TECO Transport that show the cost and/or rates for truck or rail transport to the upriver barges that are passed on to Tampa Electric under the waterborne transport contract originated since January 1, 2002.

Provide copies of all documents in the possession of TECO Transport that show the cost and/or rates for upriver terminal services, by location, that are passed on to Tampa Electric under the waterborne transport contract originated since January 1, 2002.

Provide copies of all documents in the possession of TECO Transport that show the cost and/or rates for transport of coal to the Polk plant, including the tonnages shipped and the rates charged for year 2001, 2002 and 2003.

Provide copies of all documents in the possession of TECO Transport that show tonnages and/or rates and/or total revenues, by each rate element charged and/or combined rate elements under the Tampa Electric contract that are projected for 2004.

Provide copies of all documents in the possession of TECO Transport that show the revenues and expenses that TECO Transport projects for 2004 under the existing contract with Tampa Electric.

Provide copies of all documents shown in the possession of TECO Transport revenues and expenses that TECO Transport projects for 2004, in total.

Provide copies of all documents in the possession of TECO Transport that TECO Transport has received from or sent to Tampa Electric's parent corporation relating to the revenues, costs, terms or conditions of the existing contract with Tampa Electric, including all projections of revenues and costs that relate to that contract originated since January 1, 2002.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Tampa Electric Company's)
Waterborne transportation contract with)
TECO Transport and associated benchmark.)
_____)

DOCKET NO. 031033-EI
FILED: January 23, 2004

AFFIDAVIT

Timothy M. Bresnahan, being duly sworn, deposes and says:

1. I am over the age of 21 years, and I have personal knowledge of all matters set forth herein.
2. I am the Vice President and Controller for TECO Transport Corporation (TECO Transport). I have been employed by TECO Transport since 1979 and have served as Controller since the early 1980's.
3. I am responsible for administering all TECO Transport contracts, and for maintaining TECO Transport's financial books and records.
4. This affidavit is made in support of a Motion by TECO Transport to quash a Subpoena Duces Tecum served upon TECO Transport by the Office of Public Counsel (OPC).
5. TECO Transport is not a party to this proceeding and is not regulated by the Florida Public Service Commission. TECO Transport is operated as a corporate entity separate and apart from Tampa Electric Company. There is no sharing of books and records between Tampa Electric Company and TECO Transport.
6. TECO Transport did not have a role in determining the market price underlying the current transportation agreement between TECO Transport and Tampa Electric Company.

7. Per the terms of the contract, TECO Transport simply made a business decision whether it would meet or reject the market prices presented to it by Tampa Electric Company for this contract. TECO Transport decided to meet the market prices established by Tampa Electric Company.

8. The appropriateness of amounts paid by Tampa Electric Company to TECO Transport pursuant to the current transportation agreement is governed by the terms and conditions of that transportation agreement and not by the books and records of TECO Transport.

9. Nevertheless, OPC served on TECO Transport a broad and vaguely worded Subpoena Duces Tecum that requests a vast array of proprietary documentation regarding TECO Transport's income statements, balance sheets, budgeting information, correspondence, email, cost elements, cost comparisons, indicia of profitability, planning documents, and other information generally associated with waterborne transportation services.

10. Compliance with this subpoena would require non-party TECO Transport to dedicate tremendous resources including thousands of hours of manpower to locate, evaluate, and produce information that is wholly irrelevant to an evaluation of the price paid by Tampa Electric Company under the transportation agreement.

11. This subpoena is therefore unreasonable and oppressive, and serves only to harass TECO Transport as is detailed below.

12. TECO Transport has more than 100 customers for which waterborne transportation services (including upriver, terminal, and ocean) are provided. TECO

Transport has entered into hundreds of contracts with these customers over the past three years.

13. Compliance with the subpoena would require TECO Transport to assess the thousands of pages contained in these contracts. This documentation is not easily accessible. Some of the documentation is located in Tampa, some is in Illinois, and some is in Louisiana.

14. Once all of the requested documentation is located, someone qualified to determine whether information is responsive, privileged, or confidential would have to evaluate every page of each document. Many of the customer contracts contain confidentiality agreements that require TECO Transport to provide notice to the customer that a request has been made for the disclosure of proprietary and confidential information. Many of TECO Transport's customers, such as those in the phosphate, petcoke and steel industries, are extremely sensitive about the confidentiality of their rates, volumes and cargo mix information and are therefore expected to have additional objections to the disclosure of any information related to their contracts.

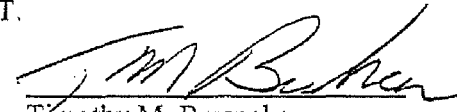
15. Finally, TECO Transport will have to clearly identify all confidential business information, provide specific reasoning of why the information is confidential, and provide redacted copies with specific citations to where the confidential information and reason for confidentiality can be located. This task in and of itself is unreasonable and oppressive given the volume of confidential business information requested by the OPC.

16. Moreover, compliance with the subpoena would require TECO Transport to compromise proprietary information about both TECO Transport and its customers.

Indeed, the very act of releasing the information requested by the subpoena (even if the information is deemed to remain confidential) would irreparably damage TECO Transport's relationship with all of its customers due to the fact that many of the customers have confidentiality agreements with TECO Transport and are extremely sensitive about any possible compromise of confidential information. This would severely damage TECO Transport's position in this highly competitive industry by affecting TECO Transport's credibility with both current customers and potential future customers.



17. Producing its books and records would also jeopardize TECO Transport's competitive interests, particularly inasmuch as CSX Transportation, a direct competitor of TECO Transport in the transportation industry, has been authorized to intervene in this docket.

FURTHER AFFIANT SAYETH NAUGHT.


Timothy M. Bresnahan

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

SWORN TO AND SUBSCRIBED before me this 23rd day of January, 2004, by Timothy M. Bresnahan, who is personally known to me or who has produced _____ as identification.


Notary Public Mary L. Proust
 My Commission DD112586
Expires June 01 2006

(Print, Type or Stamp Name)

My Commission Expires: