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January 28, 2004

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

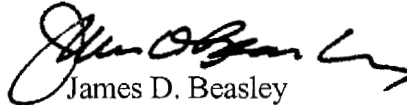
Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Tampa  
Electric Company's Motion for Protective Order.

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  
Enclosure

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

DOCUMENT NUMBER DATE

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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: January 28, 2004  
\_\_\_\_\_ )

**TAMPA ELECTRIC COMPANY'S  
MOTION FOR PROTECTIVE ORDER**

Tampa Electric Company ("Tampa Electric" or "the company") pursuant to Section 366.093, Florida Statutes, Rule 25-22.006, Florida Administrative Code, and Rule 1.280(c), Florida Rules of Civil Procedure, moves the Commission for entry of a protective order for the reasons set forth below:

1. Tampa Electric is producing its expert witness, Brent Dibner, for a session in which to educate the Staff, Office of Public Counsel and authorized representatives of the Florida Industrial Power Users Group and certain residential customers represented by Michael B. Twomey on the use, operation and workings of two computer models utilized by Mr. Dibner in preparing his testimony in this proceeding. This educational session is scheduled to be conducted on January 29, 2004. Representatives of FIPUG and the residential customers have executed non-disclosure agreements, and the information supplied during the educational session and during any follow-up meeting for purposes of utilizing the models will be tendered as confidential proprietary business information. As such, the parties are obligated by the non-disclosure agreements not to disclose that information.

2. The information Mr. Dibner will impart during the educational session, the workings of his two computer models, including inputs used by Mr. Dibner and the outputs of the models, all constitute proprietary confidential business information the public disclosure of

which would be very harmful to the livelihood of Mr. Dibner and the competitive position of Tampa Electric and its affiliate, TECO Transport. 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 hereto as Exhibit "A" and incorporated herein by reference is a copy of an Affidavit in which Mr. Dibner explains the need to protect these models from disclosure to any person. The original of this Affidavit was filed and served in this proceeding on December 16, 2003. In addition, public disclosure of information or data contained in or utilized by the model, the results or output of the model or the final report of Tampa Electric's waterborne transportation consultant, Mr. Dibner, would provide company and industry specific information that would reveal competitive bid information provided in response to Tampa Electric's RFP and compromise the competitive interests of the companies analyzed by Mr. Dibner.

3. Tampa Electric is making Mr. Dibner available on an expedited basis in the spirit of compromise in order to facilitate the timely disposition of this proceeding. Section 366.093, Rule 25-22.006, Florida Administrative Code, and Rule 1.280(c), Florida Rules of Civil Procedure all contemplate the entry of a protective order to prevent the public disclosure of precisely the type of information to be imparted to participants at the educational session to be conducted January 29 by Tampa Electric and Mr. Dibner. Rule 1.280(c)(7) contemplates that trade secrets or other confidential research, development or commercial information not be disclosed or be disclosed only in a designated way. Section 366.093 contemplates the protection against public disclosure of among other things:

- (a) Trade secrets
- \* \* \*
- (d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public

utility or its affiliates to contract for goods or services on favorable terms.

- (e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

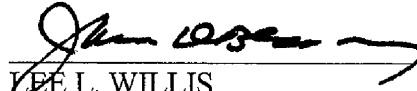
Each of these authorities contemplates and is designed to protect against public disclosure the information that will be imparted to participants at the training session on January 29, and in any follow-up sessions where the models are used or tested.

4. For the foregoing reasons, Tampa Electric urges the Commission to enter a protective order requiring that each and every participant in the training session to be conducted January 29, 2004 by Tampa Electric and Mr. Dibner refrain from disclosing to any other person any information derived from said training session, including information concerning Mr. Dibner's models, how they operate, any information concerning the inputs to the models utilized by Mr. Dibner or the outputs derived therefrom and any information concerning bids evaluated by Mr. Dibner or cost estimates made by Mr. Dibner in his use and operation of the models. The protective order should apply not only to information supplied during the January 29 training session, but also to any information supplied during any follow-up meetings where participants are allowed to utilize the models for testing purposes. Such an order will enable this docket to move forward and at the same time protect the competitive and proprietary interests of Mr. Dibner, Tampa Electric, TECO Transport and other entities who may have submitted bids in response to Tampa Electric Company's RFP for waterborne coal transportation services.

WHEREFORE, Tampa Electric urges the Commission to enter a protective order mandating the protective measures described above.

DATED this 28<sup>th</sup> day of January 2004.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lee L. Willis", is written over a horizontal line.

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 copy of the foregoing Motion for Protective Order, filed on behalf of Tampa Electric Company, has been furnished by U. S. Mail or hand delivery (\*) on this 28<sup>th</sup> day of January 2004 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

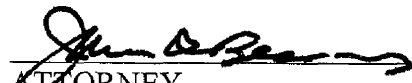
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Post Office Box 271  
Tallahassee, FL 32302

  
\_\_\_\_\_  
ATTORNEY

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## 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.

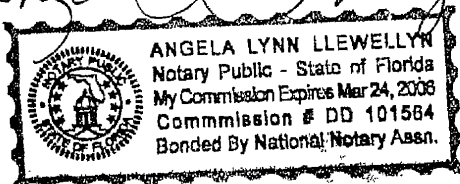
In addition, the models that I and others in this industry use must be managed by highly knowledgeable users. In the hands of another person with less understanding, experience, knowledge, and/or sensitivity a model can quickly produce misleading, erroneous or harmful results. My models are not designed 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, President  
Dibner Maritime Associates, LLC



MASSACHUSETTS  
#S 77729481