

LAW OFFICES OF  
**HILL, WARD & HENDERSON**

PROFESSIONAL ASSOCIATION  
3700 BANK OF AMERICA PLAZA  
101 EAST KENNEDY BOULEVARD  
TAMPA, FLORIDA 33602-5195  
(813) 221-3900  
TELECOPIER (813) 221-2900

MAILING ADDRESS  
Post Office Box 2231  
TAMPA, FLORIDA 33601-2231  
WWW.HWHLAW.COM

January 30, 2004

ROSALIND K. BAK  
THOMAS W. BLACK  
MARIE ATTAWAY BORLAND  
GREGORY P. BROWN  
MICHAEL P. BRUNDAGE  
ROCCO CAFARO  
JOHN C. CONNERY JR.  
MARK J. CRISER  
CASSANDRA N. CULLEY  
LANDIS V. CURRY, III  
LAUREN S. CURTIS  
SCOTT W. DIBBS  
DAVID S. FELMAN  
ROY J. FORD, JR.  
TIMOTHY C. FORD  
S. KATHERINE FRAZIER  
TROY A. FUHRMAN  
ROBERT M. FULTON  
ROBERT B. GOUGH, III  
JOHN B. GRANDOFF, III  
WILLIAM C. GUERRANT JR.  
LINDA D. HARTLEY  
J. MICHAEL HAYES  
THOMAS N. HENDERSON III  
HILARY C. HIGH  
BENJAMIN H. HILL, III  
K. TYLER HILL  
JOHN L. HOLCOMB  
STEPHEN M. HUDOBA  
TIMOTHY A. HUNT  
C. HOWARD HUNTER  
JONATHAN P. JENNEWAIN

ROBERT E. V. KELLEY, JR.  
DAVID T. KNIGHT  
TARA B. KOCH  
MARGARET J. LARGUIER  
R. CRAIG MAYFIELD  
DERRILL McATEER  
SCOTT A. McLAREN  
ALISON K. MORELLO  
BRETT J. PRESTON  
PATRICK J. RISCH  
R. JAMES ROBBINS JR.  
LYNN W. SHERMAN  
ROBERT A. SHIMBERG  
W. LAWRENCE SMITH  
DAVID W. STEPHENSON  
KEVIN H. SUTTON  
LARA J. TIBBALS  
DAVID R. TYRRELL  
DENNIS P. WAGGONER  
JEFFREY W. WEAVER  
STEVEN A. WILLIAMS

ANDREW J. LUBRANO  
(1952-1999)  
DOUGLAS P. McCLURG  
(1949-2002)  
MARTIN L. GARCIA  
OF COUNSEL  
DAVID E. WARD, JR.  
OF COUNSEL

**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-EI

Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of TECO Transport Company's Reply to The Office of Public Counsel's Response to the Motion to Quash Subpoena Duces Tecum, and Request for Oral Argument.

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

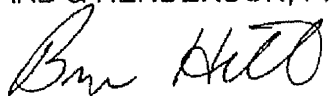
DOCUMENT NUMBER-DATE  
01408 JAN 30 04  
FPSC-COMMISSION CLERK

Ms. Blanca S. Bayo  
January 30, 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/encs.)

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 30, 2004

**TECO TRANSPORT CORPORATION'S REPLY  
TO THE OFFICE OF PUBLIC COUNSEL'S RESPONSE  
TO MOTION TO QUASH SUBPOENA DUCES TECUM  
AND REQUEST FOR ORAL ARGUMENT**

TECO Transport Corporation (TECO Transport), a non-party to the above entitled and numbered proceeding, files its reply to statements made by the Office of Public Counsel (OPC) in its response to TECO Transport's Motion to Quash Subpoena Duces Tecum, and states:

1. OPC's response fails to address the arguments made and precedent cited in TECO Transport's motion. OPC's response simply cites two orders from the Florida Public Service Commission (Commission) that address motions filed to compel a party to produce documents in the party's possession that are relevant to the Commission's inquiry. See Order No. PSC-01-1725-PCO-EI; Order No. PSC-01-2475-PCO-EI. Neither order addresses the present situation where the OPC has served a nonparty with a broad subpoena requesting information that is entirely irrelevant to the Commission's inquiry.

2. OPC's response states that OPC requested the broad array of information from TECO Transport based on a concern that TECO Transport could be using revenue derived from Tampa Electric Company to "subsidize" its business with other customers. See OPC's Response ¶ 3 ("The concern here is that the regulated entity revenues could be used to subsidize the non-regulated business."). OPC's concern, however, has nothing to do with this Commission's present inquiry. This Commission's present inquiry concerns the reasonableness of what Tampa

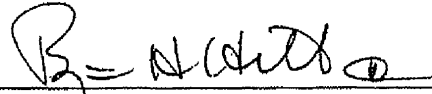
Electric Company pays for waterborne transportation services under the terms of the contract with TECO Transport, and whether the benchmark used to determine that payment should be revisited. This Commission's inquiry does not concern what TECO Transport's nonregulated customers pay for waterborne transportation services. If OPC is seeking an open market pricing comparison for waterborne transportation services, it should do so through proper and less invasive means (such as through its own industry expert), without forcing TECO Transport to expend tremendous resources and compromise its position in this highly competitive industry.

3. Although OPC recognizes the unreasonableness and oppressiveness of its subpoena by offering "to reduce the volume of information," OPC provides no guidance as to how it could make its request reasonable under the circumstances of this proceeding. Offering to accept redacted records does not eliminate the unreasonableness and oppressiveness of an expansive subpoena that requests irrelevant information from a nonparty, especially when disclosure of any such information will undoubtedly harm the nonparty's legitimate business interests. See Naples Cmty. Hosp., Inc v. State, 687 So. 2d 62, 63-64 (Fla. 1st DCA 1997). The act of redacting the requested information would alone require hundreds of hours of manpower even if the actual volume of information requested is reduced.

4. TECO Transport reiterates that it is not a party to the above-entitled proceeding and is not regulated by the Commission. By filing this reply, 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.

5. TECO Transport respectfully requests an opportunity to present oral argument regarding this matter.

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 30 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

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

Mr. John W. McWhirter, Jr.  
McWhirter, Reeves, McGlothlin,  
Davidson, Kaufman & Arnold, P.A.  
400 North Tampa Street, Suite 2450  
Tampa, FL 33601-5126

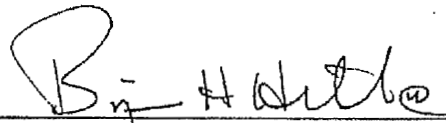
Mr. Robert Vandiver\*  
Associate Public Counsel  
Office of Public Counsel  
111 West Madison Street – Suite 812  
Tallahassee, FL 32399-1400

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

Lee L. Willis  
James D. Beasley  
Ausley & McMullen

227 S. Calhoun Street  
Tallahassee, FL 32302

  
\_\_\_\_\_  
ATTORNEY