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February 13, 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

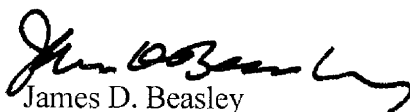
Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Tampa Electric Company's Rebuttal Comments Concerning FIPUG's Response in Opposition to Tampa Electric's Request for Confidential Classification.

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

02083 FEB 13 2004

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: February 13, 2004
_____)

**TAMPA ELECTRIC COMPANY'S REBUTTAL COMMENTS CONCERNING
FIPUG'S RESPONSE IN OPPOSITION TO TAMPA ELECTRIC'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION**

Tampa Electric Company ("Tampa Electric" or "the company") submits the following comments in rebuttal to certain observations set forth in the Florida Industrial Power User Group's ("FIPUG") response in opposition to Tampa Electric's request for confidential classification and, says:

1. In paragraph 2 of its response FIPUG claims that "much of Exhibit BD-1 contains information either compiled from public sources or of such a general nature as not to be proprietary." Exhibit BD-1 is the report from Dibner Marine Associates ("DMA") which is a copyright protected document. Mr. Dibner has allowed Tampa Electric to copy and utilize a confidential copy of the report and to make it available to parties on a confidential basis for purposes of regulatory review. However, publication of the report as suggested in FIPUG's non-confidential ruling request would compromise Mr. Dibner's copyright entitlement and do harm to his intellectual property right which are the basis of his copyright. All of this is detailed in Mr. Dibner's Affidavit original filed in this docket in December of 2003, a copy of which is attached hereto as Exhibit "A".

2. In addition, Tampa Electric disagrees with FIPUG's assertion, quoted above, regarding the "public sources" and "general nature" of Mr. Dibner's work. FIPUG lists a

number of pages of the report which it claims fall into this non-proprietary category. However, even if some data utilized by Mr. Dibner in his analysis and report are publicly available, Mr. Dibner's choice as to which data is representative and appropriate as well as his application of the data constitute proprietary work product that is based on his years of experience in the waterborne transportation industry. This work reflects Mr. Dibner's knowledge, judgment and expertise developed throughout his career and upon which his future livelihood rests.

3. If the report was made public, it would allow others to utilize Mr. Dibner's methods and data without compensating him as was discussed in detail in the aforementioned Affidavit.

4. FIPUG and its consultants have access to the confidential report pursuant to a Non-Disclosure Agreement and can utilize the material in question during hearings in the docket should that need arise under the commonly used hearing procedure for reviewing confidential information. There is no justification or need to make Mr. Dibner's proprietary work product public. FIPUG's rights are not compromised by treating this information confidentially. The only effect of FIPUG's efforts in this regard would be to harm Mr. Dibner professionally.

5. Tampa Electric's response to FIPUG's Interrogatory No. 8, served in this docket on January 5, 2004, explains the reasons why Mr. Dibner's report is confidential. A copy of that response is attached hereto and incorporated herein by reference as Exhibit "B".

6. With respect to paragraphs 4 and 5 of FIPUG's response in opposition, the calculation provided on Bates stamp pages 6-11 of Tampa Electric's response to OPC's Interrogatory No. 4 and on Bates stamp pages 5-10 of Tampa Electric's response to FIPUG's Interrogatory No. 4 is not in the public domain as FIPUG asserts. Tampa Electric requested Mr. Dibner to prepare and provide this sample calculation to aid the parties in understanding his

market analysis. While it is correct that the calculations do not represent Mr. Dibner's models, they are substantially similar, which is the reason that they were developed and provided to the parties. These calculations represent Mr. Dibner's proprietary work product, methods and procedures, and are entitled to confidential protection for the same reasons stated above in response to paragraph 2 of FIPUG's memorandum in opposition. Again, the parties have access to these materials and there is no need or justification to make Mr. Dibner's proprietary work product public. The only purpose to be served by FIPUG's efforts is to harm Mr. Dibner's career.

7. With respect to Bates stamp page nos. 34 and 35, referenced in paragraph 6 of FIPUG's response in opposition, disclosure of the information contained on these pages would harm Tampa Electric and TECO Transport because it reveals competitive contract terms. Disclosure would also adversely affect Tampa Electric's ability to contract for future goods and services on favorable terms by disclosing confidential contractual terms to the public and to their competitors. In addition, detailed discussions of why these responses are entitled to confidential treatment would likely reveal the nature of the confidential information which would be self defeating. FIPUG clearly recognizes this. FIPUG has access to this information and has presented no justification for doing harm to Tampa Electric and TECO Transport through publicly disclosing the information in question.

WHEREFORE, Tampa Electric submits the foregoing rebuttal comments in response to FIPUG's response in opposition to the company's January 26, 2004 request for confidential classification.

DATED this 13th day of February 2004.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James D. Beasley", 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 Response to FIPUG's Response In Opposition to Tampa Electric's Request For Confidential Classification, filed on behalf of Tampa Electric Company, has been furnished by U. S. Mail or hand delivery (*) on this 13th day of February 2004 to the following:

Mr. Wm. Cochran Keating, IV*
Senior Attorney
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Florida Public Service Commission
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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

TAMPA ELECTRIC COMPANY
DOCKET NO. 031003-EI
FIUG'S 1st SET OF INTERROGATORIES
INTERROGATORY NO. 8
PAGE 1 OF 1
FILED: JANUARY 5, 2004

8. Why is each and every page of Mr. Dibner's "Final Report", including title pages and the table of contents, attached as an exhibit to his Supplemental Testimony filed in Docket No. 030001-EI claimed to be confidential? Explain how this claim of confidentiality comports with the Commission's confidentiality procedures and policies and with Chapter 119, Florida Statutes.
- A. All of the information contained in the report represents Mr. Dibner's intellectual property and the basis of his livelihood. Mr. Dibner's report is protected by copyright to safeguard his investment in collecting and validating the information, developing qualitatively and quantitatively sound methods of analysis including his models, and the judgment necessary to make assumptions and determine reasonable operations and results of analysis. Throughout the report, Mr. Dibner's assumptions, methods and data he has developed or collected as a result of 27 years of experience in this industry are described. If Mr. Dibner's models or methods and assumptions are revealed, his competitive interests as an expert consultant to the waterborne transportation services industry will certainly be harmed. Furthermore, Tampa Electric's competitive interests would be harmed because the company would not be able to hire quality consultants to prepare market and other studies. Knowing that the intellectual property used in creating a report would be published and therefore freely given to others who have not invested time and effort to develop those skills and knowledge, any quality consultant would decline to provide services to Tampa Electric.

In addition, the report contains confidential, competitive bid terms, conditions and prices taken from the responses to Tampa Electric's RFP. Revealing bid information, which was provided to Tampa Electric with the expectation of confidential treatment, would not only harm the interests of the bidders, but it would also harm Tampa Electric's competitive position and interests with regard to future RFPs. Knowing that their competitive information would be revealed to the public and to its competitors, any company would be faced with a disincentive to submit a bid in response to a Tampa Electric RFP. The report also contains confidential, competitive information about potential providers in the inland river, terminal services and ocean transportation markets, that if revealed, would harm the competitive interests of each provider. As stated above, these items are an integral part of Mr. Dibner's work and livelihood, but they also represent high-quality estimates of financial and other operating factors that competitors closely guard from each other. Revealing this information could hurt a bidder's position in competition for a contract with a non-bidder. A non-bidder that was analyzed and described by Mr. Dibner because it was considered to be a potential supplier could also be harmed in its future negotiation for a contract compared to a non-bidder whose company was not analyzed in the report.