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April 5, 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

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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 to Compel Responses to Discovery and for a Determination as to Non-
Confidential Nature of Certain CSXT Provided Information.

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 (signature)

JDB/pp
Enclosure

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

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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: April 5, 2004  
\_\_\_\_\_ )

**TAMPA ELECTRIC COMPANY'S MOTION TO COMPEL RESPONSES  
TO DISCOVERY AND FOR A DETERMINATION AS TO  
NON-CONFIDENTIAL NATURE OF CERTAIN CSXT PROVIDED INFORMATION**

Tampa Electric Company ("Tampa Electric" or "the company") moves the Commission for entry of an order compelling CSXT to provide expedited responses to certain interrogatories contained in Tampa Electric Company's First Set of Interrogatories to CSXT (Nos. 1-65) and for a determination that certain information designated as confidential in CSXT's answers to such interrogatories does not, in fact, constitute proprietary confidential business information entitled to protection as such under Section 366.093, Florida Statutes, and as grounds therefor, says:

1. As a general observation all of CSXT's objections are nothing more than boiler plate legal conclusions which lack any factual explanation as to how CSXT has reached the legal conclusion that any particular interrogatory is objectionable. Self-serving legal conclusions that a particular interrogatory is "unduly burdensome" or "not relevant" or "not likely to lead to the discovery of admissible evidence," without more, is not a valid objection but, instead, constitutes nothing more than a refusal to respond.

2. Tampa Electric's Interrogatory No. 6 asks whether CSXT's bids A and B include a provision that the bid price be adjusted by CSXT's fuel surcharge per tariff CSXT 8200 for all shipments of coal to Tampa Electric's Big Bend Station. CSXT claims that its response constitutes confidential proprietary business information. Whether or not a shipment is subject to CSXT's fuel surcharge per its tariff CSXT 8200 does not constitute proprietary confidential

business information. The applicability or non-applicability of a tariff provision is a matter of public record and Tampa Electric requests a determination that no aspect of CSXT's answer to Interrogatory No 6 constitutes proprietary confidential business information. Tampa Electric further moves the Commission for an order compelling CSXT to provide a full and complete answer to Interrogatory No. 6 on a non-confidential basis.

3. The same observations made with respect to CSXT's answer to Tampa Electric's Interrogatory No. 6 apply with respect to CSXT's answer to Interrogatory No. 7. Tampa Electric requests a determination by the Commission that the information for which CSXT claims is confidential proprietary business information in its answer to Interrogatory No. 7 does not, in fact, constitute proprietary business information but, in fact, is information publicly disclosed by CSXT. Tampa Electric further requests that CSXT be required to provide a complete response to Interrogatory No. 7 on a non-confidential basis.

4. Interrogatory No. 8 asks whether CXST's bids A and B include a provision that the bid price be adjusted upward if the cargo hauled is synfuel and, if so, how much the synfuel charge is per ton. CSXT has claimed that its answer to Interrogatory No. 8 is confidential. Tampa Electric believes that the requested information is CSXT tariffed information. If this is the case, CSXT's answer is not, in fact, confidential proprietary business information but, instead, is publicly disclosed by CSXT. Tampa Electric seeks a determination that CSXT's answer to Interrogatory No. 8 is not confidential. Tampa Electric further requests that CSXT be required to fully respond to Interrogatory No. 8 on a non-confidential basis.

5. Interrogatory No. 9 asks whether CSXT's bids A and B provided for rail delivery of petroleum coke to Tampa Electric. CSXT claims that its response is confidential proprietary business information. The mere fact of whether or not CSXT's bids provided for rail deliveries

of petroleum coke cannot in and of itself constitute proprietary confidential business information. Note that in Interrogatory No. 10 CSXT states on a non-confidential basis how it would provide petroleum coke deliveries to Tampa Electric, which assumes that it would offer to provide such delivery. Moreover, CSXT has not directly responded to Interrogatory No. 9. Tampa Electric requests a determination that Tampa Electric's Interrogatory No. 9 does not call for the disclosure of proprietary confidential business and requests that CSXT be required to respond fully to this interrogatory on a non-confidential basis.

6. Interrogatory No. 11 asks the expected per ton discharge rate at Big Bend Station using the equipment proposed in CSXT's bids A and B. CSXT claims that its response constitutes confidential proprietary business information. This interrogatory addresses a Tampa Electric specific discharge rate at Tampa Electric's Big Bend Station under a proposal specific to Tampa Electric. It is difficult to fathom how this information can constitute confidential proprietary business information and CSXT has included no detail in its claim of confidentiality to explain how it is confidential. Tampa Electric requests a determination that the answers do not, in fact, constitute proprietary confidential business information and requests that CSXT be required to fully respond to Interrogatory No. 11 on a non-confidential basis.

7. Interrogatory No. 18 asks which origination points listed in the RFP or specified in CSXT's proposal do not have direct rail service by CSXT. Again, CSXT claims that the answer to this interrogatory constitutes confidential proprietary business information. However, in the non-confidential portion of its answer it states that the confidential portion was stated in bids A and B. Therefore, by its own admission, CSXT has already provided this information to Tampa Electric. Tampa Electric seeks a determination that the portion of CSXT's response to Interrogatory No. 18 that it claims is confidential should not be considered confidential for

purposes of precluding Tampa Electric from reviewing that portion of the response, given the fact that CSXT states that it has already provided this information to Tampa Electric.

8. Interrogatory No. 34 asks, under CSXT's bids A and B, what additional charge per ton would be applicable for tonnage shipped in 75 car trains. CSXT claims that its response to this interrogatory constitutes confidential proprietary business information. If, in fact, the additional charge per ton is derived from CSXT's tariff, then the information requested does not constitute confidential proprietary business information but, instead, is publicly disclosed in CSXT's tariff. Tampa Electric requests that CSXT be compelled to indicate whether its answer to Interrogatory No. 34 is an additional charge per ton published in CSXT's tariff. If it is, Tampa Electric requests a determination that CSXT's answer does not constitute confidential proprietary business information and asks that CSXT be compelled to fully respond to Interrogatory No. 34 on a non-confidential basis.

9. Interrogatory No. 36 asks what amount does CSXT estimate would be added as a surcharge to Tampa Electric under the 75 car train shipment provisions in CSXT bids A and B to Tampa Electric in each year 2004-2008. CSXT claims that a portion of its answer constitutes proprietary confidential business information. However, if the claimed confidential portion of the answer is a published CSXT tariff rate, then it cannot constitute proprietary confidential business information. Tampa Electric urges that CSXT be ordered to disclose whether the confidential portion of its answer is published in CSXT's tariff. If it is, Tampa Electric requests that CSXT be ordered to fully respond to Interrogatory No. 36 on a non-confidential basis.

10. Interrogatory No. 38 asks CSXT to provide its estimate of revenues it expected to receive from Tampa Electric in each year 2004-2008 pursuant to its bid proposals A and B. CSXT claims that its answer constitutes confidential proprietary business information. However,

it would appear that Interrogatory No. 38 calls for information that would be derived directly from CSXT's published tariff. If that is the case, then the answer cannot constitute confidential proprietary business information. Tampa Electric requests that CSXT be ordered to state whether its information supplied in response to Interrogatory No. 38 reflects revenues CSXT would derive pursuant to its published tariff. If so, Tampa Electric requests a determination that the answer provided does not constitute proprietary confidential business information and requests that CSXT be ordered to fully respond to Interrogatory No. 38 on a non-confidential basis.

11. Interrogatory No. 40 asks CSXT to provide its estimate of costs it expected to incur in each year 2004-2008 in providing service to Tampa Electric under its bid proposals A and B. CSXT objects to the interrogatory on the grounds that its is not reasonably calculated to lead to the discovery of admissible relevant evidence and claims that its costs are not at issue in this proceeding. CSXT further claims that it would be unduly burdensome to respond to this interrogatory and, therefore, CSXT refuses to answer. CSXT submitted two bids to Tampa Electric Company. The viability of those bids and CSXT's ability to perform pursuant to those bids are directly affected by a comparison of the revenues CSXT would derive from providing the services proposed and the costs associated with the provision of those services. The requested cost information goes to the heart of the viability and credibility of the CSXT bids. If the estimated costs exceed the estimated revenues CSXT's bid by definition has to be considered non-viable and unrealistic. As such, it clearly falls within the realm of information reasonably calculated to lead to the discovery of relevant admissible evidence: CSXT has placed its costs and revenues at issue in this proceeding. On the question whether providing the cost information would be unduly burdensome, Tampa Electric suggests that any provider of transportation


services who does not estimate what its costs and revenues will be under a particular bid is either not a serious bidder or does not care whether it makes a profit on a business proposal. Unless CSXT is willing to concede that its bids were not serious or that it did not care whether it made a profit on providing service to Tampa Electric, CSXT should be required to fully respond to Interrogatory No. 40.

12. Interrogatory No. 43 asks CSXT to describe in detail the circumstances surrounding CSXT's increase in rates charged to Duke Power for provisions of rail transportation to Duke Power. CSXT claims that its entire response is proprietary confidential business information. However, on an in camera inspection, the Prehearing Officer will note that all of CSXT's response to Interrogatory No. 43 appears to be nothing more than a description of matters of public record. Consequently, Tampa Electric requests that the Commission determine that CSXT's answer to Interrogatory No. 43 does not constitute proprietary confidential business information and order CSXT to fully respond to this interrogatory on a non-confidential basis.

WHEREFORE, Tampa Electric respectfully requests a determination that the challenged claims of proprietary confidential business information identified above do not constitute proprietary confidential business information and an order compelling CSXT to respond to each of the above-described interrogatories on an expedited, non-confidential basis.

DATED this 5<sup>th</sup> day of April 2004.

Respectfully submitted,



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ATTORNEYS FOR TAMPA ELECTRIC COMPANY



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Motion to Compel Responses to Discovery and for a Determination as to Non-Confidential Nature of Certain CSXT Provided Information, filed on behalf of Tampa Electric Company, has been furnished by U. S. Mail or hand delivery (\*) on this 5<sup>th</sup> day of April 2004 to the following:

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Senior Attorney  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0863

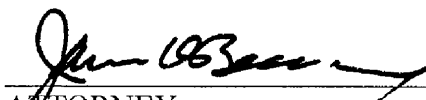
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