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May 10, 2004

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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 Prehearing Statement.

Also enclosed is a high density diskette containing the above-referenced Prehearing
Statement generated on a Windows 98 operating system and using Word 2000 as the word
processing software.

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.

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Sincerely,

James D. Beasley

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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: May 10, 2004
_____)

**TAMPA ELECTRIC COMPANY'S
PREHEARING STATEMENT**

A. APPEARANCES:

LEE L. WILLIS
JAMES D. BEASLEY
JOHN P. FONS
Ausley & McMullen
Post Office Box 391
Tallahassee, Florida 32302
On behalf of Tampa Electric Company

B. WITNESSES:

<u>Witness</u>	<u>Subject Matter</u>	<u>Issues</u>
(Direct)		
1. Joann T. Wehle (TECO)	Reasonableness of Tampa Electric's RFP and bid evaluations; reasonableness and sufficiency of the RFP and market analysis activities to establish new contract market rates; whether the transportation benchmark should be modified or eliminated	1, 2, 3
2. Brent Dibner (TECO)	Reasonableness and appropriateness of Tampa Electric's RFP; evaluation of the RFP process and bids received, current status of waterborne transportation market; Mr. Dibner's recommendations as to how Tampa Electric should fulfill its needs for waterborne transportation services; market rates for each segment	1, 2, 3

of the waterborne transportation network;
 continuing usefulness and sufficiency of
 Tampa Electric's benchmark for waterborne
 transportation costs

(Rebuttal)

- | | | | |
|----|--------------------------------|---|---------|
| 1. | Brent Dibner
(TECO) | Rebuttal of Intervenor's testimony and exhibits through a comparison of the appropriateness of Tampa Electric's direct case with the deficiencies in the testimony and proposals of Intervenor witnesses Hochstein and Majoros | 1, 2, 3 |
| 2. | Frederick J. Murrell
(TECO) | Rebuttal of Intervenor witnesses' testimony and exhibits by reference to the reasonableness of Tampa Electric's current contract rates and their relationship to the market for transportation services; appropriateness of the design and issuance of Tampa Electric's RFP and the evaluation of resulting bids; relationship of Tampa Electric transportation costs to the market and benefits to Tampa Electric's customers of the current contract relative to the market; continuing validity of benchmark | 1, 2, 3 |
| 3. | Paula Guletsky
(TECO) | Rebuttal of the inaccuracies put forth by CSXT's witnesses Sansom and Stamberg's testimony regarding Sargent & Lundy report and approach by reference to a detailed description of Sargent & Lundy cost estimates for rail retrofit at Tampa Electric Big Bend and Polk Plants | 1, 2 |
| 4. | Joann T. Wehle
(TECO) | Rebuttal of inaccuracies and false allegations in the testimony of rebuttal witnesses; Tampa Electric's prudent conduct under Commission policies; the pricing of Tampa Electric's current transportation contract with TECO Transport at or below market and the resulting continued benefits to Tampa Electric customers | 1, 2, 3 |

C. EXHIBITS:

(Direct)

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Brent Dibner	TECO	(BD-1)	Exhibit to the Direct Testimony of Brent Dibner

Joann T. Wehle (Rebuttal)	TECO	(JTW-1)	Exhibit to the Direct Testimony of Joann T. Wehle
Brent Dibner	TECO	(BD-2)	Exhibit to the Rebuttal Testimony of Brent Dibner
Paula M. Guletsky	TECO	(PMG-1)	Exhibit to the Rebuttal Testimony of Paula M. Guletsky
Frederick J. Murrell	TECO	(FJM-1)	Exhibit to the Rebuttal Testimony of Frederick J. Murrell
Joann T. Wehle	TECO	(JTW-2)	Exhibit to the Rebuttal Testimony of Joann T. Wehle

D. STATEMENT OF BASIC POSITION

Preface

The three issues deferred from last November's fuel adjustment hearing cannot properly be taken up without first considering the context in which those issues are framed. Those considerations include the existing Commission policy, the background of Tampa Electric's development of a waterborne coal transportation system and the competitive motivation behind the various outcomes and remedies proposed by certain Intervenor in this proceeding.

Existing Commission Policy

This Commission's existing policies with respect to the determination of reasonableness of prices paid by Tampa Electric to its affiliate TECO Transport are set out in Order No. 20298 issued on November 10, 1988 and reaffirmed in Order No. PSC-93-0443-FOF-EI on March 3, 1993. The Commission's current policy provides in pertinent part:

Considering the many advantages offered by a market pricing system, we, as a policy matter, shall require its adoption for all affiliated fuel transactions for which comparable market prices may be found or constructed.

* * *

As a result of numerous and lengthy negotiations, the parties have arrived at a Stipulation (Attachment A to this order) which they have submitted for our approval. According to the Stipulation, TECO shall be free to negotiate its contracts with its affiliates in any manner it deems fair and reasonable. TECO agrees to prudently administer the provisions of its contracts. Furthermore TECO agrees to report to the Commission the actual transfer prices paid by it to its affiliates under the contracts in the normal course of the fuel adjustment proceedings.

* * *

The Stipulation approved Order No. 20298 stated as follows:

As a result of these discussions, Staff, OPC and Tampa Electric agree as follows: Public Counsel and Staff agree that the specific contract format, including the pricing indices which Tampa Electric may include in its contracts with its affiliates, are not subject to this proceeding and Tampa Electric may negotiate its contracts with its affiliates in any manner it deems to be fair and reasonable.

Order No. 20298 specifically acknowledges that counsel to the Florida Industrial Powers Users Group (FIPUG) [the only other party to the proceeding] had received a copy of the Stipulation and that FIPUG had advised that it had no objection to the Commission's final action on it. (See Order No. 20298, page 14.)

In Order No. 20298, at page 15, the Commission explained its rationale for relying upon published rail rates to calculate a benchmark value to these the reasonableness of Tampa Electric's waterborne transportation costs:

If one considers the objective of coal transportation services to be the movement of the coal from mine to the generating plant, then rail service and the total waterborne system are not only comparable, but competitive to a large degree as well. We believe using the average of the two lowest public available rail rates for coal being shipped to Florida will provide a reasonable market price indication the value being provided by TECO's affiliate waterborne system.

Tampa Electric and all the Parties to this docket are obligated to acknowledge and follow the policies of this Commission established in Order No. 20298 and reaffirmed by the Commission's 1993 until those policies are changed and applied prospectively. Tampa Electric was both entitled and obligated to recognize the provisions of the Commission's existing policies. Neither Staff nor any other party can unilaterally change the Commission's policies. This change must occur only after notice and opportunity for hearing.

Order No. 20298 acknowledges that the rates charged by TECO Transport to Tampa Electric under its then existing contract were below the rail benchmark calculated in accordance with the Stipulation approved by the Commission in Order No. 20298. At all times subsequent to 1988 the rates charged by TECO Transport to Tampa Electric have been well below the rail benchmark. In 2002, the last time for which data was available at the time of the last fuel hearing, the rates charged by TECO Transport to Tampa Electric were at or about the same percentage difference below the rail benchmark as they were at the outset of the benchmark methodology in 1988.

Background

TECO's waterborne coal transportation system was created in the 1950's dramatically altered the market for both fuel and fuel transportation by electric utilities in Florida. This transportation system has benefited not only Tampa Electric's customers but all customers within the state by providing competition with railroads and among the various providers of boiler fuels to electric utilities. Since its creation, TECO Transport has delivered coal to Tampa Electric and has backhauled phosphate for the phosphate companies over the years since its inception. TECO Transport has continued to acquire bigger, faster and more adaptable vessels which have been finely tailored to the needs of Tampa Electric. This transportation system since it was inaugurated in the 1950's has consistently provided Tampa Electric with cost-effective transportation which is reliable and much less expensive than any available alternative. TECO Transport has also developed a very sophisticated terminal located at Davant, LA at which coals are stored, blended and trans-loaded onto ocean-going vessels for delivery to Tampa. Blending is essential because coal is not a fungible or interchangeable product. Each boiler has unique operating characteristics and is capable of burning only a limited range of different coals. Environmental regulations also dictate an appropriate mix of fuels to reduce emissions to acceptable levels.

The Intervenors

It is important for the Commission to understand the commercial interests being represented by the Intervenors in this proceeding. CSXT is a customer of Tampa Electric and has been allowed to intervene for that purpose. It is crystal clear, however, that their only real interest is in developing new business in Florida. Intervenors represented by Mr. Twomey are being sponsored and financed by competitive fuel transportation interests who seek to have this Commission provide those undisclosed interests with a commercial advantage in attempting to procure Tampa Electric's business.

Without any doubt, the rates in the existing contract between Tampa Electric and TECO Transport which went into effect on January 1, 2004 provides the lowest cost reliable service to Tampa Electric for the delivery of fuel from the mines where Tampa Electric's coal supply is located to the generation stations in Tampa Electric's service territory.

The remedies sought in this proceeding by various Intervenors are not available to the Commission. The Commission has no authority to abrogate an existing valid contract between Tampa Electric and TECO Transport. The Commission does not have authority to require

Tampa Electric to rebid the RFP which under the Commission's existing policies at the time the RFP was issued did not require any RFP to be issued at all. The remedies sought further violate the Stipulation approved in Order No. 20298 which is incorporated into and constitutes a part of the Commission's order and policies. There has been no showing of changed circumstances which would warrant a change in the Commission's policies established in 1988 after an extensive hearing and stipulated settlement among all the parties to the docket. Some of the Intervenors in this proceeding have sought to have this Commission require Tampa Electric to buy coal from sources other than its existing sources in order to enable the interests represented by those Intervenors to obtain Tampa Electric's business. Tampa Electric contends that all of the testimony and assertions with respect to Tampa Electric's sources of coal supply are beyond the scope of this proceeding which is for the Commission to judge the reasonableness of the prices paid by Tampa Electric to its affiliate, TECO Transport for the transportation of coal from the Midwest to Tampa. This Commission does not have before it a general investigation of the fuel procurement practices of Tampa Electric Company. While the Commission could initiate such an investigation, there is no evidence presented that such an investigation is warranted or necessary.

It is crystal clear from the evidence presented that there is a competitive market for transportation of coal from the mine to the generation station in Tampa. The existence of that market is the whole purpose of CSXT's intervention here. The Florida Supreme Court has ruled that where there is a market for the service provided it is error for the Commission to impose cost of service regulation as advocated by some Intervenors. It would be totally inappropriate for the Commission to analyze the market based on its various pieces as the Commission recognized in 1988 and is certainly true today. The object of coal transportation is to get the coal from the mine to the generation station. Consequently, in any event, there is a definite market for each leg of the transportation by water to Tampa.

Having addressed the context in which the deferred issues reside, Tampa Electric states its basis position on the three spinoff issues:

Tampa Electric Company's Statement of Basic Position:

Each of the three issues deferred from the November 2003 fuel adjustment proceeding should be resolved in Tampa Electric's favor. Tampa Electric's June 27, 2003 RFP for coal transportation services was very carefully and properly structured and issued, and the resulting proposals were evaluated in a manner designed to produce the best reflection of market prices for the needed waterborne coal transportation services. That information and the market pricing recommendations of Tampa Electric's expert consultant provide compelling evidence as to the appropriate market price for coal transportation services TECO Transport is providing to Tampa Electric. The market prices generated by the RFP process and Mr. Dibner's conclusions and recommendations are corroborated by Intervenors' own witnesses. The transportation rates included in the October 6, 2003 contract between Tampa Electric and TECO Transport are at or below market; are lower than the rates under the contract that expired at the end of 2003; and have enabled Tampa Electric to lock into lower rates in advance of significant increases in market rates for available coal transportation services. Consequently, prices paid by Tampa

Electric under its new contract with TECO Transport are beneficial to Tampa Electric's ratepayers and are reasonable for cost recovery purposes.

The waterborne coal transportation benchmark was established for Tampa Electric in 1988 and reaffirmed in 1993 remains a valid Commission approved standard with which to assess the appropriateness of prices paid by Tampa Electric to TECO Transport. No party has assumed, much less carried, the burden necessary to justify any modification or elimination of this valuable regulatory tool. The Intervenor have simply assumed, rather than demonstrated, that this carefully approved and reapproved regulatory standard should simply be disregarded by the Commission. Intervenor's to facilitate their own objectives does not justify any modification or abandonment of the existing approved benchmark methodology.

E. STATEMENT OF ISSUES AND POSITIONS

ISSUE 1: Is Tampa Electric's June 27, 2003, request for proposals sufficient to determine the current market price for coal transportation?

TECO: Yes. As explained by witnesses Wehle, Dibner and Fred Murrell, the RFP was designed, structured and distributed in a manner that clearly articulated Tampa Electric's waterborne coal transportation needs to the broadest range of potential suppliers. The RFP produced bids that were carefully and professionally evaluated. Those bids, including the proposals by CSXT, taken together with the market price analysis performed by Mr. Dibner, provided a clear picture of the then current market rates for coal transportation services. The reasonableness of the result is actually corroborated by Intervenor witnesses. Given the subsequent dramatic upturn in waterborne transportation market prices, Tampa Electric and its customers are beneficiaries of the timing of the RFP and the resulting contract. Any delay in that process no doubt would have produced a significantly higher market price assessment. (Witnesses: Dibner, Wehle, Guletsky, Murrell)

ISSUE 2: Are Tampa Electric's projected coal transportation costs for 2004 through 2008 under the winning bid to its June 27, 2003, request for proposals for coal transportation reasonable for cost recovery purposes?

TECO: Yes. As stated in response to Issue 1, the pricing of the current contract is based on a careful evaluation of the bids and a comprehensive review and analysis of the relevant market. The reasonableness of the pricing is corroborated by CSXT's own properly evaluated proposal, when properly evaluated, and by the fact that the new Tampa Electric/TECO Transport contract rates are lower than those they replace. In view of the direction of the market since the current contract was entered into in October, 2003, Tampa Electric and its customers clearly benefited from the timing of the new contract. Finally, the rates paid by Tampa Electric to TECO Transport over time have been consistently below the benchmark by a relatively stable percentage. All of these considerations support the reasonableness of the transportation rates paid under the current contract.

Payments made pursuant to the current contract should, therefore, be approved for cost recovery purposes. (Witnesses: Wehle, Dibner, Guletsky, Murrell)

ISSUE 3: Should the Commission modify or eliminate the waterborne coal transportation benchmark that was established for Tampa Electric by Order No. PSC-93-0443-FOF-EI, issued March 23, 1993, in Docket No. 930001-EI?

TECO: No. As OPC has stated previously, once entered into, an agency should not ignore or set aside a stipulation without record evidence of fraud, overreaching, misrepresentation or withholding facts by the adversary or some other reason rendering it void. Other than vague references to the relatively short length of time the stipulation has been in place, no party has put forth any significant fact or changed circumstance that would justify any modification to or elimination of the benchmark as a valid and proven tool for evaluating the reasonableness of prices paid by Tampa Electric to TECO Transport for the services it provides. Instead, the Intervenor simply assume that the benchmark should be rejected in order to clear the way for their different proposals. On the contrary, the benchmark continues to provide the same valid and useful information with which to test the reasonableness of the price paid by Tampa Electric to TECO Transport as it did when it was initially adopted and later reaffirmed by the Commission. The difference between the benchmark price and the prices Tampa Electric is paying TECO Transport remains very similar to the difference that existed when the benchmark was first adopted. The validity of the benchmark as a pricing assessment tool is corroborated by the RFP results, by Mr. Dibner's expert conclusions and by admissions by Intervenor's own witnesses. (Witnesses: Wehle, Dibner, Murrell)

F. STIPULATED ISSUES

TECO: At the outset of various depositions conducted in this proceeding the parties have entered into stipulations regarding the handling and protection of information designated proprietary confidential business information. These stipulations are reflected in the transcripts of the various depositions.

In addition, Tampa Electric, FIPUG and OPC entered in a procedural stipulation dated March 10, 2004 that was subsequently approved in Order No. PSC-04-0289-PCO-EI, issued March 15, 2004.

The parties entered into an electronic stipulation on or about March 31, 2004 regarding the handling and confidential protection of information designated as confidential information in the testimonies and exhibits of witnesses in this proceeding as those testimonies and exhibits were provided by the party sponsoring the testimony and exhibit to the other parties to the proceeding.

G. MOTIONS

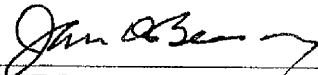
TECO: Tampa Electric's current appraisal of motions it has filed which have not been ruled upon, withdrawn, rendered moot by subsequent actions or otherwise resolved are set forth in Attachment "A" hereto.

H. OTHER MATTERS

TECO: None at this time.

DATED this 10th day of May 2004.

Respectfully submitted,



LEE L. WILLIS
JAMES D. BEASLEY
Ausley & McMullen
Post Office Box 392
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(850) 224-9115

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of foregoing Prehearing Statement, filed on behalf of Tampa Electric Company, has been furnished by U. S. Mail or hand delivery (*) on this 10th day of May:2004 to the following:

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Senior Attorney
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
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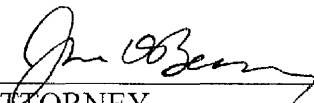
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ATTORNEY

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Tampa Electric Company's Pending Motions

<u>Date Filed</u>	<u>Description</u>
1/5/04	Motion for temporary protective order of information supplied pursuant to OPC's 1st Request for Production of Documents (Nos. 1-9)
1/5/04	Motion for temporary protective order of information supplied pursuant to OPC's 2nd Request for Production of Documents (No. 10)
1/5/04	Notice of intent to seek confidential classification and motion for temporary protective order of testimony and exhibit of witnesses Joann Wehle and Brent Dibner
1/5/04	Notice of intent to seek confidential classification and motion for temporary protective order, for portions of its answers to the First Set of Interrogatories (Nos. 4-5), propounded by OPC
1/5/04	Motion for temporary protective order and notice of intent to seek confidential classification regarding answers to 1st Set of Interrogatories (Nos. 4-7, 14, 16, 20 and 26-27) of FIPUG
1/28/04	Motion for protective order for 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
1/28/04	Motion for temporary protective order for certain information included in answers to OPC's 4th Request for Production of Documents (Nos. 30-76)
3/4/04	Motion for temporary protective order of information supplied pursuant to OPC's 5th Request for Production of Documents (No. 77)
3/15/04	Notice of intent to seek confidential classification and motion for protective order of DN 03480-04
3/18/04	Notice of intent to seek confidential classification and motion for temporary protective order for DN 03668-04
3/30/04	Motion for temporary protective order [for testimony and exhibits of] Dr. Anatoly Hochstein (DN 04137-04), Michael J. Majoros, Jr. (DN 04023-04), H.G. Wells (DN 04026-04), Dr. Robert L. Sansom (DN 04086-04), John B. Stamberg (DN 04087-04), and Robert F. White (DN 04033-04), filed March 29-31

4/1/04 Notice of intent to seek confidential classification and motion for temporary protective order, of DN 04196-04

4/19/04 Motion to compel residential customers

4/23/04 Motion for temporary protective order for confidential DN 04023-04

5/3/04 Motion for temporary protective order of portions of Prepared Rebuttal Testimonies and Exhibits of Joann T. Wehle, Brent Dibner, Paula Guletsky and Frederick J. Murrell