

REDACTED

ORIGINAL

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 030133-EI

In re: Review of Tampa Electric Company's  
waterborne transportation contract with  
TECO Transport and associated benchmark.

**REDACTED**

TRANSCRIPT

DEPOSITION OF: WILLIAM B. McNULTY

TAKEN AT THE INSTANCE OF: Tampa Electric Company

DATE: Friday, April 2, 2004

TIME: Commenced at 10:09 a.m.  
Recessed at 4:22 p.m.

LOCATION: 227 South Calhoun Street  
Tallahassee, Florida

REPORTED BY: MARY ALLEN NEEL, RPR  
Notary Public, State  
of Florida at Large

- CMP \_\_\_\_\_
- COM \_\_\_\_\_
- CTR \_\_\_\_\_
- ECR \_\_\_\_\_
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VOLUME 1  
Pages 1 - 135

**REDACTED** TRANSCRIPT

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## ALSO PRESENT:

TODD BOHRMANN  
 DEIDRE A. BROWN  
 EARL POUCHER  
 DENISE JORDAN  
 BILLY STILES

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1 PROCEEDINGS

2 The following deposition was taken on oral  
3 examination, pursuant to notice, for purposes of  
4 discovery, for use as evidence, and for such other uses  
5 and purposes as may be permitted by the applicable and  
6 governing rules. Reading and signing of the deposition  
7 transcript by the witness is not waived.

8 MR. FONS: Let's take appearances. My name is  
9 John Fons with the Ausley law firm representing  
10 Tampa Electric Company.

11 MR. TWOMEY: I'm Mike Twomey representing the  
12 residential consumers.

13 MR. VANDIVER: Rob Vandiver appearing on behalf  
14 of the Citizens of the State of Florida.

15 MR. KEATING: Cochran Keating appearing on  
16 behalf of the Commission.

17 MS. KAUFMAN: Vicki Gordon Kaufman on behalf of  
18 the Florida Industrial Power Users Group.

19 Thereupon,

20 WILLIAM B. McNULTY

21 the witness herein, having been first duly sworn, was  
22 examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. FONS:

25 Q Good morning, Mr. McNulty.

1 A Good morning.

2 Q I'm going to be asking you some questions today  
3 concerning matters in Docket 031033-EI. And if any of  
4 the questions I ask you today aren't clear or you don't  
5 understand them, will you stop me and ask that I clarify  
6 the question?

7 A Yes, I will.

8 Q And can I assume that if you don't stop me and  
9 ask for clarification that you fully understand the  
10 question?

11 A Yes.

12 Q Would you state for the record your full name,  
13 please.

14 A William Brian McNulty.

15 Q Mr. McNulty, by whom are you employed?

16 A The Florida Public Service Commission.

17 Q And in what capacity?

18 A I am a Public Utilities Supervisor in the  
19 Division of Economic Regulation.

20 Q And what's your office address?

21 A 2540 Shumard Oak Boulevard, Tallahassee,  
22 Florida 32399.

23 Q All right. Mr. McNulty, did you cause to have  
24 filed in Docket No. 030001-EI direct testimony and  
25 exhibits dated October 23, 2003?

1 A Yes, I did.

2 MR. FONS: Before we go further, we're going to  
3 probably need to get into some confidential  
4 documents. And what I would like to do is have a  
5 stipulation that after Mr. McNulty's deposition is  
6 taken that we will review the record and outline  
7 those particular pieces of the deposition that  
8 contain confidential information. Does anybody have  
9 a problem with that, before we send it on to the  
10 witness or to the parties?

11 MR. KEATING: I assume that everybody else here  
12 is covered under some sort of --

13 MR. FONS: I would assume that they are.  
14 That's what my assumption is.

15 MR. KEATING: All right.

16 MR. FONS: I think it will just make it easier  
17 for the flow of the deposition that we have the  
18 ability to talk about confidential information  
19 without the risk that it be made public. And  
20 everybody stipulates and agrees to that?

21 I see nods of heads, so I'm assuming that  
22 there's no objection to that.

23 MS. KAUFMAN: Just so we're clear, we're fine  
24 with that procedure, but we're not waiving our right  
25 to challenge what you might claim is confidential.

1           MR. FONS: I understand, and that's not the  
2           intention of it.

3           MS. KAUFMAN: I just wanted the record to be  
4           clear.

5           BY MR. FONS:

6           Q     Mr. McNulty, as I recall, your testimony that I  
7           just described, the October 23, 2003 testimony, does  
8           contain confidential information, does it not?

9           A     Yes, it does.

10          Q     Mr. McNulty, you're here today pursuant to a  
11          subpoena duces tecum?

12          A     Yes.

13          Q     And under the subpoena duces tecum, you were  
14          asked to bring all documents replied upon by you in  
15          preparing that testimony. Did you bring those  
16          documents?

17          A     Yes, I did.

18          Q     And do you have them with you?

19          A     Yes, I do.

20          Q     May I see them, please?

21          A     Yes.

22                 MR. FONS: May we have a moment?

23                 MR. TWOMEY: Let the record reflect they just  
24                 gave them two feet of paper.

25                 (Discussion off the record.)

1           MR. FONS: Let's go back on the record for a  
2           moment.

3           BY MR. FONS:

4           Q     I have looked through three of the binders, two  
5           blue ones and a green one. One is called "Production of  
6           Documents." The green one is "TECO WCTS Files," and the  
7           third one is "Interrogatories and Testimonies."

8                     Were any of these documents in these three  
9           binders produced per the Public Records Act request?

10          A     I believe that they all were, because the  
11          public records request required it.

12          MR. KEATING: And I think that would exclude  
13          the confidential files that you have not looked at  
14          yet.

15          MR. FONS: Okay. I'm just going through the  
16          three binders right now.

17          BY MR. FONS:

18          Q     So this is the same material that was produced  
19          in the public records request?

20          A     Yes. It's a subset of that.

21          Q     A subset of it. But everything in here was  
22          produced in that public records request?

23          A     Yes.

24          Q     I'm looking at an accordion file well that does  
25          not have a label. Yes, it does. It says "Depositions."



1 And are these depositions that were taken in this  
2 proceeding? And when I say this proceeding, 030001.

3 A The folder you were looking at contains  
4 deposition material from 030001, as well as other  
5 testimony from that same docket.

6 Q Okay. I'm looking at a file well which says  
7 "Docket 031033 ROGS." And is that short for  
8 interrogatories?

9 A Yes, it is.

10 Q I also note in thumbing through it that there's  
11 also answers to the first request for admissions. So in  
12 addition to interrogatories, there are other documents  
13 in here, production of document materials as well as  
14 interrogatories; is that fair?

15 A Yes.

16 Q Were any of these materials in this particular  
17 well or in the one that we had discussed previously  
18 produced in the Public Records Act request?

19 A Yes.

20 Q Now, in the front of this binder or this well  
21 that says ROGS, there is a Commission calendar revised  
22 March 15, 2004. Clearly, that wasn't produced in that  
23 --

24 A That's correct. As far as I know, there may be  
25 in that folder -- in that manila folder, within that,

1           there may be some updated material that was provided  
2           post the public records request.

3           Q     Next is a binder called "Publications/Reports."  
4           And the first document I see in there is a letter from  
5           James D. Beasley to Blanca Bayo, which includes the  
6           subpoena duces tecum.  But the rest of it are all  
7           reports, is that correct, publications and reports?

8           A     They're all publications and reports, except it  
9           does have a copy of the RFP that was issued in June of  
10          2003 by Tampa Electric Company, and it contains a map  
11          that was provided by Progress Energy.

12          Q     These documents in this file well, were these  
13          produced in response to the Public Records Act request?

14          A     Yes.

15          Q     All of them, including the map?

16          A     Yes.

17          Q     And I'm now looking at the first of several red  
18          binders or red envelopes.  And the first one I'm looking  
19          at is the Transportation, Storage and Transfer Agreement  
20          between Tampa Electric and TECO Transport dated October  
21          6, 2003.  Is that --

22          A     Yes.

23          Q     And the next envelope contains Wehle's direct  
24          testimony in 030001-EI.  But I also note in there that  
25          there's some testimony from another Tampa Electric

1 employee, Benjamin F. Smith.

2 A Yes.

3 Q And then the next one contains a copy of the  
4 supplemental direct testimony of William B. McNulty and  
5 a confidential version of the Joann Wehle testimony  
6 dated October 30, 2003. Would you verify that I've  
7 accurately described that?

8 A Yes.

9 Q The next binder says "Dibner Model Run," the  
10 next file envelope. Would you verify that for me,  
11 please?

12 A Yes.

13 Q And the next file is, I believe, labeled  
14 "M-10," and it's Dibner supplemental testimony and Wehle  
15 supplemental testimony. Would you verify that that's in  
16 there, please, for me?

17 A Yes.

18 Q And let me also then ask you to look at this  
19 binder that's called "ROGS, M-26." It says "ROGS and  
20 Testimony" in one place and "ROGS" in the other. I'm  
21 just trying to determine what it is that's in that.

22 A Excuse me. You would like me to identify  
23 what's in this as being interrogatories and testimony?

24 Q Yes.

25 A This actually contains interrogatories and

1 production of documents and testimony.

2 Q And the five -- I'm sorry, the six or seven  
3 binders we've just talked about -- I guess there's six.  
4 Was any of this material produced in response to the  
5 Public Records Act request?

6 A I don't believe it could be, since it was  
7 considered confidential.

8 Q All right. And the final binder is -- it's not  
9 a binder. It's a red envelope. It says "CSXT Bid,  
10 M-20." Would you verify that that's what's in that  
11 envelope?

12 A Yes. This is a production of documents that  
13 contains that CSX bid.

14 Q And that was a production of documents by Tampa  
15 Electric?

16 A Yes.

17 Q One moment, please.

18 In the blue envelope -- this was in here, as I  
19 recall. Is that correct?

20 A I think so.

21 Q I thought they were all in wells.

22 Within this one called "Depositions," there was  
23 a manila envelope or folder that included a number of  
24 documents, including a document dated March 11, 2004.  
25 Would you take a look at that document, please?

1 A Okay.

2 MR. FONS: Okay. Mr. Keating, may we get a  
3 copy of this document, please? I may want to ask  
4 him some questions about this.

5 MR. KEATING: Okay.

6 (Off the record briefly.)

7 BY MR. FONS:

8 Q Mr. McNulty, the copy of your testimony that  
9 you brought with you, is that annotated?

10 A Yes, it is.

11 Q May I see it, please?

12 A Yes.

13 Q The annotations that I note are M-1, M-2, M-3.  
14 What do these designate, the M-1, M-2?

15 A M stands for McNulty, and the 1 stands for  
16 reference material that I use as support material for  
17 the statements that are made within my testimony.

18 Q May I see those, please?

19 A (Tendering documents.)

20 Q Thank you.

21 A You're welcome.

22 Q Mr. McNulty, how long have you been employed  
23 by the Florida Public Service Commission?

24 A Since July of 1989.

25 Q And when you first came to work for the Florida

1 Public Service Commission, in what capacity were you  
2 hired?

3 A I was hired as a Regulatory Analyst I in the  
4 Division of Communications.

5 Q And how long did you stay in the Division of  
6 Communications?

7 A Approximately three years.

8 Q And from the Division of Communications, to  
9 which department or division were you assigned?

10 A The Division of Auditing and Finance.

11 Q And the Division of Auditing and Finance, who  
12 was the division head?

13 A Tim Devlin.

14 Q And how long did you work for Mr. Devlin in  
15 that division?

16 A Approximately six years.

17 Q So that takes us up to about the year 2000; is  
18 that correct?

19 A Actually, I was promoted in May of 1998 to the  
20 Division of Research and Regulatory Review.

21 Q And who heads up that division?

22 A That division no longer exists, but at the time  
23 it was Dan Hoppe.

24 Q And how long were you there?

25 A About a year.

1 Q And thereafter, where did you go to work?

2 A I went to the Division of Water and Wastewater.

3 Q And to whom did you report there?

4 A I reported to Dan Hoppe once again.

5 Q And how long were you in the Division of Water  
6 and Wastewater?

7 A About 10 months.

8 Q And from that division, where did you go?

9 A I went to the Division of Safety and Electric  
10 Reliability.

11 Q And who was the division director?

12 A Joseph Jenkins.

13 Q And how long did you remain in that division?

14 A I'm still in that division. The division has  
15 changed names.

16 Q All right. What's it called now?

17 A It has been merged into the Division of  
18 Economic Regulation.

19 Q And the director of the Division of Economic  
20 Regulation is Tim Devlin?

21 A Correct.

22 Q And to whom do you report?

23 A I report directly to Robert Trapp.

24 Q And what's his title?

25 A I believe his title is -- we've just recently

1 had some changes in our organization. I believe his  
2 title is Associate Director.

3 Q Was he previously known as Deputy Director?

4 A Deputy Director, yes.

5 Q Is that what he's known as now?

6 A I believe it's Deputy Director. It was a  
7 recent change.

8 Q And prior to that, you were in that same  
9 division. You just said it changed and merged. Who did  
10 you report to prior to reporting to Mr. Trapp?

11 A Roland Floyd.

12 Q Is Roland Floyd still in that division?

13 A Yes, sir.

14 Q But you don't report to him?

15 A Correct.

16 Q And ultimately you report up to Mr. Devlin?

17 A Yes.

18 Q But prior to the change, you reported to  
19 Mr. Jenkins; is that correct? Or you reported to Roland  
20 Floyd. Did he report to Mr. Jenkins?

21 A Yes.

22 Q Now, the Division of Economic Regulation, it's  
23 broken up into several pieces. Is one of them  
24 associated just with electric services?

25 A That hasn't been clearly defined yet. As I



1 say, we're in transition. I would say that a good  
2 majority of our group of people is involved in electric  
3 regulation.

4 Q When you say group of people, are you talking  
5 about the Cost Recovery Section?

6 A It includes the Cost Recovery Section.

7 Q What else does it include?

8 A It includes Electric Studies, and it includes  
9 System Planning.

10 Q And is there a cross-relationship within those  
11 other sections?

12 A I don't understand.

13 Q Do people in the Electric Reliability Section  
14 do work also in the Electric Studies Section, and do  
15 people in the Electric Studies Section also do work in  
16 the Cost Recovery Section?

17 A There are sometimes assignments on various  
18 dockets that will incorporate more than one section.  
19 And so, yes, they do work together.

20 Q And the supervisor in the Electric Studies  
21 Section, is that Martha Golden?

22 A Yes.

23 Q And in what's called the Electric Reliability  
24 Section, is that Tom Ballinger?

25 A Yes.

1 Q Now, do you have people working with you,  
2 Mr. McNulty, working for you that you supervise?

3 A Yes.

4 Q How many people do you have that you supervise  
5 at this time?

6 A Five.

7 Q And would you name them for me, please?

8 A Sure. Todd Bohrmann, Jim Breman, Sid Matlock,  
9 Bernie Windham, and Daniel Lee.

10 Q Can you tell me what the difference between an  
11 Engineer III and a Regulatory Analyst III might be?

12 A The difference between an Engineer III and a  
13 Regulatory Analyst III is often based upon the  
14 educational background the individual has. Obviously,  
15 an engineer is going to have engineering training, and  
16 they're also going to be assigned to the sorts of issues  
17 very often that are more engineering-related, although  
18 that's not an absolute rule.

19 Q How about -- is it an economic analyst?

20 A Yes.

21 Q And what's the foundation for that title?

22 A A person fulfilling that role often has  
23 educational background in economics and is assigned to  
24 reviewing and analyzing cost and rate information in the  
25 main.

1           Q     In the docket that we are here appearing on  
2     today, 031033, who of your people that you supervise are  
3     assigned to that docket?

4           A     Todd Bohrmann, Sid Matlock, and Bernie Windham.

5           Q     In the previous docket in which you filed  
6     testimony, the 01 docket, were those same three people  
7     assigned to that docket as well?

8           A     I believe they were.

9           Q     And of these three people, is there a lead  
10    person of that team that reports to you?

11          A     There's a lead person that reports to me that's  
12    on that team, and it's Todd Bohrmann.

13          Q     And would Bernie Windham then report to Todd  
14    Bohrmann?

15          A     Bernie Windham reports directly to me, but he  
16    works cooperatively with the lead on the docket.

17          Q     How long have you been working on this matter  
18    involving Tampa Electric waterborne costs?

19          A     The issue first came up in the fall of 2002 and  
20    was part of the 2002 fuel hearing.

21          Q     And were you at that time in the organization  
22    that had been overseen by Roland Floyd?

23          A     Yes.

24          Q     So you were assigned by Roland to work on that  
25    matter?

1           A     Yes.

2           Q     How long had you been involved with electric  
3     company related matters at that time?

4           A     About eight years.

5           Q     In those eight years, in what departments or  
6     divisions had you been for those eight years that you  
7     had been working on electric matters? I thought you  
8     told me you were in Communications, and then you were in  
9     Safety, and then you were in Water and Wastewater.

10          A     Yes. After working in Communications, I was  
11     then working in the Division of Auditing and Finance,  
12     financial analysis, and within that division I was -- my  
13     function was to analyze fuel -- excuse me, not fuel  
14     forecasts, but forecasts of load and customers in  
15     various rate cases, including both telecommunications  
16     companies as well as electric utilities.

17          Q     Tell me how in a telecommunications case you  
18     would be involved with forecasting load.

19          A     Well, I guess in the case of communications,  
20     you're forecasting minutes of use, call volumes,  
21     customers, and the like. You're forecasting essentially  
22     what sales are. So perhaps I should have stated that as  
23     sales rather than generically as load across both of  
24     those industries.

25          Q     And in all that time, you were working in a

1 division that had as its director Tim Devlin; is that  
2 correct?

3 A Yes.

4 Q So you've worked for a Tim Devlin division for  
5 what, eight, ten years?

6 A Yes.

7 Q Was there any particular reason why you and  
8 your team were selected to be involved in the waterborne  
9 cost recovery?

10 A The designated task and role of our section is  
11 cost recovery, and we basically are responsible for  
12 reviewing fuel cost recovery, environmental cost  
13 recovery, and capacity cost recovery. So it fell within  
14 our jurisdiction, if you will, to analyze all issues  
15 relating to fuel that we could identify within the fuel  
16 docket.

17 Q How long has Todd Bohrmann worked for you?

18 A Since I started in the Division of Safety and  
19 Electric Reliability.

20 Q Which would be back to when, what date?

21 A That would be back to May of 2000.

22 Q How about Bernie Windham?

23 A The same.

24 Q Were they already in that division when you  
25 came to it?

1           A     Yes, they were.

2           Q     And when you came to that division in '99 or  
3     2000, did you come as their supervisor?

4           A     Yes, I did.

5           Q     So you're familiar with their work?

6           A     Yes, I am.

7           Q     And in working with them, do you provide them  
8     with particular assignments?

9           A     Yes.

10          Q     And are you a hands-on supervisor?

11          A     I try to be.

12          Q     Do you expect your people that you supervise to  
13     report to you frequently on a periodic -- report to you  
14     frequently about what they're doing?

15          A     I expect them to report periodically, and very  
16     often it is structured such that I may hear more from  
17     the lead on a docket than those people who are working  
18     within the docket that are not assigned as lead. But I  
19     tend to check with each one of them from time to time,  
20     and they tend to report to me from time to time.

21          Q     If one of your people that you supervise  
22     performs a certain act, can we assume that whatever act  
23     they did they did at your direction?

24          A     No, I wouldn't say that that specific act was  
25     directed by me. There is -- while I would agree that I

1 am a hands-on sort of manager in most instances, there's  
2 also a degree of flexibility that is allowed employees  
3 to fulfill their assigned roles.

4 Q In making assignments, do you give specific  
5 guidelines that you want the people that you supervise  
6 to adhere to in fulfilling whatever responsibility or  
7 assignment that you've given to them?

8 A I do make assignments, and sometimes provide  
9 guidelines for how to carry out those assignments.

10 Q In your experience, have any of the people that  
11 you supervised ever deviated from or gone beyond what  
12 you have asked them to do on a particular assignment?

13 A Yes.

14 Q Can you give me a "for instance"?

15 A (No response.)

16 Q I assume that you're thinking and you're not  
17 waiting for another question.

18 A Yes.

19 MR. KEATING: Would it be helpful to move on  
20 and allow him to think about that question?

21 MR. FONTS: Well, let me see if I can help.

22 BY MR. FONTS:

23 Q Have there been occasions when you've either  
24 had to discipline or counsel one of the people that you  
25 supervise for taking an act that was beyond what you had

1 instructed them to do?

2 A Yes.

3 Q And can you tell me whether or not one of those  
4 -- well, have you ever had to discipline or counsel  
5 Bernie Windham?

6 A Yes.

7 Q Can you tell me in what respect you've had to  
8 counsel or discipline Bernie Windham?

9 A Yes. I'm not sure of the exact time frame in  
10 which it occurred, but at one point in this particular  
11 docket, Bernie Windham had engaged another PSC employee  
12 to look into some of the port activity in the Tampa Bay  
13 area. And my concern with him doing that was not the  
14 fact that that information didn't need to be gleaned or  
15 that that wasn't relevant to the case that he was on.  
16 It was that he was engaging somebody who wasn't directly  
17 involved in the docket.

18 And that's a fairly minor offense. It's not a  
19 serious offense, but I felt it strayed slightly out of  
20 the bounds of what our normal managerial process is for  
21 handling dockets. And so I told him, "While you have  
22 instructed an individual to assist you in the gathering  
23 of some information, that person, not being on the  
24 docket, not being assigned to the docket, you probably  
25 should have checked with me first before you did that."



1           Q    Is that the only instance in this docket in  
2           which you had to counsel or discipline Bernie Windham or  
3           any of the other members of the team?

4           MR. KEATING:  John, before we keep going any  
5           further on this, I do want to question -- it seems  
6           like we're starting to stray a little bit from even  
7           things that I would consider reasonably likely to  
8           lead to the discovery of admissible evidence in this  
9           proceeding.  I'm curious as to why PSC employee  
10          disciplinary matters relate to this case.

11          MR. FONS:  What we're trying to determine is  
12          whether or not whatever his people have done has  
13          been done at his direction.  And what I'm trying to  
14          find out as we go through these things is whether or  
15          not when there have been contacts outside of the  
16          Commission with various people, whether or not they  
17          were at Mr. McNulty's direction or whether somebody  
18          was on a lark or they were freebooting and taking  
19          things into their own hands.

20          MR. KEATING:  I guess I'm still not sure how  
21          that ties into the substantive issues in this case.

22          MR. FONS:  I think I can tie it all together,  
23          Cochran.

24          MR. KEATING:  I understand that discovery is  
25          fairly broad, and I just wanted to raise that

1 concern early on.

2 BY MR. FONS:

3 Q In your work in this docket and on this matter,  
4 you've relied upon the advice of counsel in the work  
5 that you've done; is that correct?

6 A Yes.

7 Q And you've worked mainly with Mr. Keating in  
8 this respect?

9 A Yes.

10 Q And if you had any perceived problems that you  
11 thought were going beyond what was the accepted practice  
12 in the Commission, you would share that with  
13 Mr. Keating; is that correct?

14 A Yes.

15 Q Have you ever had to share any information with  
16 Mr. Keating of that type?

17 A Not that I recall.

18 Q Does the Commission have procedures for dealing  
19 with outside parties in connection with docketed  
20 matters? For example, does the Commission have  
21 procedures for dealing with parties to a proceeding as  
22 far as exchange of information?

23 A Certainly.

24 Q And what are those procedures?

25 A In a docketed matter before the Commission, if

1       there is going to be any communication between more than  
2       two people, that communication or that meeting must be  
3       noticed.

4           Q     And has that particular procedure been adhered  
5       to in every instance in this proceeding?

6           A     As far as I know.

7           Q     How about just a one-on-one?  Have you had  
8       discussions with any of the participants in this  
9       proceeding on a one-on-one basis?

10          A     Yes, I have.

11          Q     And with whom have you had those discussions?

12          A     I'm not certain I could recall everyone that I  
13       spoke to on a one-on-one basis.  I believe I have spoken  
14       one-on-one with most of the representative parties in  
15       the docket.

16          Q     Okay.  Does the Commission have any procedures  
17       on dealing with the press?

18          A     Yes, it does.

19          Q     And do those procedures allow for staff members  
20       to provide information to members of the press?

21          A     There are certain designated staff members of  
22       the Public Service Commission that are designated to  
23       deal with the press.

24          Q     Are you one of those people that are designated  
25       to deal with the press?

1           A     No.

2           Q     And have you ever dealt with the press on a  
3 one-on-one basis in this proceeding?

4           A     I have a little bit of difficulty in answering  
5 that question, in the sense that sometimes the press may  
6 call you, and sometimes it's not clear what the press  
7 is. There have been some gray areas surrounding those  
8 questions.

9                     So if, for instance, someone calls you and --  
10 excuse me. If someone calls me and they want to talk  
11 about, you know, the case, it could be the press, and at  
12 that point I'm having dealings with them, if nothing  
13 more than to say, you know, "I'm not the person you need  
14 to talk to. You need to talk to Kevin Bloom," and give  
15 them that number.

16                    Other times, there are entities out there that  
17 aren't officially press, yet they may have a publication  
18 that they produce, and it's not also clear to me, you  
19 know, exactly what that fine line distinction might be  
20 between press and non-press.

21           Q     Suppose someone called up and said, "I'm a  
22 reporter for a newspaper." Would you then talk to that  
23 person about matters in the case?

24           A     I would transfer that matter to our Office of  
25 Public Information.

1 Q In this proceeding, have you ever spoken with  
2 the press with regard to this ongoing proceeding?

3 A I may have received a call from an individual  
4 with the press that asked me for information and asked  
5 me to provide that information, and I may have sent that  
6 information to them because they directed it directly to  
7 me. I think in that instance, I told the Office of  
8 Public Information what I was doing. My recollection on  
9 it is quite hazy.

10 Q Have you ever been directed by anyone above you  
11 in your chain of command to provide information to the  
12 press?

13 A Not that I recall.

14 Q You never recall Mr. Devlin instructing you to  
15 provide certain information to a member of the press?

16 A I don't recall, but I'm anxious to hear if you  
17 have something to tell me about it.

18 Q (Tendering document.)

19 MS. KAUFMAN: Do have an additional copy?

20 MR. FONS: Sure. Why don't we have this marked  
21 as Exhibit Number 1.

22 (Deposition Exhibit 1 was marked for  
23 identification.)

24 BY MR. FONS:

25 Q I've handed you what has been marked as Exhibit

1 Number 1. Do you recognize this document?

2 A Yes, I do.

3 Q And what is this document, Mr. McNulty?

4 A It's a Public Service Commission facsimile  
5 transmittal cover sheet.

6 Q And to whom is the facsimile directed?

7 A Louis Hau.

8 Q And who is Mr. Louis Hau?

9 A He is a reporter with the St. Petersburg Times.

10 Q And what are you sending Mr. Hau, according to  
11 this facsimile transmittal?

12 A I was sending him the staff's third set of  
13 staff interrogatories to Tampa Electric via fax.

14 Q And the comments say Tim Devlin directed that  
15 this be done; is that correct?

16 A Yes.

17 Q Did you have any discussions with Mr. Devlin  
18 about sending this information?

19 A Yes, I did.

20 Q And what was the nature of that discussion?

21 A As best I can recollect, it was that Mr. Devlin  
22 had received a phone call from Mr. Louis Hau, and that  
23 he wanted certain information to be sent to him.

24 Q Did you speak with Mr. Hau himself?

25 A I don't recall.

1 Q Would it be unusual for you to speak to a  
2 reporter?

3 A It would be unusual for me to speak to a  
4 reporter.

5 Q But you don't recall whether you spoke to  
6 Mr. Hau in this case?

7 A If I spoke to Mr. Hau, it was certainly a  
8 perfunctory and quite limited conversation.

9 Q And you don't remember that conversation?

10 A No.

11 MR. FONS: Would you mark this as Exhibit  
12 Number 2, please.

13 (Deposition Exhibit 2 was marked for  
14 identification.)

15 BY MR. FONS:

16 Q I've handed you what has been marked as Exhibit  
17 2, Mr. McNulty. Can you tell me what this is?

18 A This is another facsimile transmittal cover  
19 sheet from the Florida Public Service Commission, and it  
20 is to Louis Hau from Bill McNulty, and it contains five  
21 pages. One page is the facsimile cover sheet, and the  
22 next four pages are staff's third set of interrogatories  
23 to Tampa Electric, the questions and the answers.

24 Q And is that dated August 1st or 8/1/03?

25 A Yes.

1 Q And was this in response to a call that you  
2 received from Mr. Hau?

3 A It's possible. I don't remember it.

4 Q Well, why would you have sent this to Mr. Hau  
5 if you had not spoken with Mr. Hau?

6 A The only explanation I could have for that is  
7 that these two facsimiles are fairly close together.  
8 One is dated July 31st, and the other is dated 8/1, and  
9 I am noticing that it's essentially the same material.  
10 It's staff's third set of interrogatories. I'm not  
11 certain that the first facsimile would have been a  
12 successful transmission. I'm not certain really what  
13 that's about.

14 Q Well, Exhibit 1 indicates that it was a fax of  
15 19 pages, and this is a fax of five pages, the August  
16 1st one, Exhibit 2.

17 A Right, right.

18 Q But you don't recall having any conversation,  
19 telephone conversations with Mr. Hau regarding any of  
20 this material? Is that your testimony?

21 A I don't recall it. That's not to say that it  
22 didn't happen. There's a lot that goes on in a business  
23 day. There could have been some discussion.

24 Q Did you advise the division that's responsible  
25 for dealing with the outside press of this contact and



1 of your sending these materials to Mr. Hau, a reporter?

2 A Did I advise the Office of Public Information?

3 Q Yes.

4 A I don't know.

5 Q Do you have a copy of Order No. 20298 issued on  
6 November 10, 1988, available to you?

7 A Yes.

8 Q Would you agree with me, Mr. McNulty, that  
9 that order, Order No. 20298, is the seminal order in  
10 this matter?

11 A It's certainly a significant order. I wouldn't  
12 call it necessarily the seminal order.

13 Q Well, doesn't this order set the parameters by  
14 which Tampa Electric can deal with its affiliated  
15 company with regard to the transportation of coal?

16 A Actually, this order was updated about five  
17 years hence by another order that reaffirmed it.

18 Q I understand that, but let's just talk about  
19 this. If it reaffirms something, then this is the  
20 first, and this is the seminal order. Would you agree  
21 with me?

22 A I agree that it's a significant order.

23 Q You don't agree, though, it's the seminal  
24 order?

25 A I am not certain of that.

1 Q Could you tell me what in your mind might be  
2 the seminal order?

3 A The seminal order might be -- it could very  
4 well be perceived, and perhaps I would give this equal  
5 weighting, Order No. PSC-03-1359-PCO-EI.

6 Q And what's the date of that order?

7 A December 1, 2003.

8 Q And what does that order do?

9 A It's the order that defers issues to a separate  
10 proceeding for Tampa Electric's waterborne coal  
11 transportation issues that were in the 030001 docket.

12 Q Has Order No. 20298 ever been set aside?

13 A What do you mean by set aside?

14 Q Has it ever been rejected by the Florida Public  
15 Service Commission in a later order?

16 A No.

17 Q So as far as the conduct of the parties is  
18 concerned with regard to waterborne transport with an  
19 affiliate, it's controlled by Order No. 20298?

20 MR. KEATING: John, I believe these questions  
21 to an extent are of a legal nature and call for a  
22 legal conclusion as to the effectiveness of orders.

23 MR. FONS: Well, he has already testified he  
24 thinks some other order has more significance than  
25 this. I'm just trying to pin down his thinking on

1           that.

2           A     I guess my concern is in terms of trying to  
3           rank the relative importance of previous Commission  
4           orders that -- there is certainly great importance  
5           concerning 20298. We have to look to that for guidance  
6           and what the Commission determined at that time, and I  
7           think we have to look very carefully at what the  
8           Commission has done in more recent orders as well.

9           Q     Would you agree that in 2003, the Florida  
10          Public Service Commission issued an order that indicated  
11          that Tampa Electric's dealings with TECO Transport and  
12          Trade was still governed by Order No. 20298 and approved  
13          the affiliate transactions?

14          A     I would agree that that applied for the  
15          specific allowance for cost recovery for that year in  
16          that order.

17          Q     And that was pursuant to the order that had  
18          previously been issued, Order No. 20298; is that  
19          correct?

20          A     Yes.

21          Q     Can you tell me -- you've reviewed this order,  
22          Order No. 20298?

23          A     Yes.

24          Q     And would you agree with me that it addressed  
25          two issues, the purchase of coal and the purchase of

1 services from Tampa Electric's affiliate, TECO Transport  
2 and Trade?

3 A Yes.

4 Q And would you also agree with me that there was  
5 a stipulation entered into by the parties in that  
6 proceeding that governed how affiliate transactions  
7 would be reviewed by the Commission?

8 A Yes.

9 Q And one of those agreed-to transactions as to  
10 how it would be handled was the waterborne transport of  
11 coal?

12 A Yes.

13 Q Okay. And was that stipulation approved by the  
14 Commission?

15 A Yes, it was.

16 Q And I believe you said that it was reaffirmed  
17 in a later order in 1994; is that correct? Or maybe it  
18 was '93.

19 A I believe it was '93.

20 Q And that would have been Order No.  
21 PSC-93-0443-FOF-EI?

22 A Yes.

23 Q And that was issued March 23, 1993?

24 A Yes.

25 Q Okay. Let's go back to the order of which we

1 were speaking, 20298. Do you have a copy of it in front  
2 of you?

3 A Yes, I do.

4 Q And would you turn to that page of the order  
5 which discusses the stipulation? It would be the second  
6 page of the proposed stipulation agreement.

7 MR. KEATING: Do you have a page number on the  
8 order?

9 MR. FONS: I've got the one out of the PSC --  
10 here. You can look at mine. I'll just give you  
11 that version. That's a couple of copies. You can  
12 give a copy to one of them. It would be 88 FPSC  
13 11:228.

14 MR. KEATING: 228?

15 MR. FONS: Yes.

16 THE WITNESS: Okay. I'm with you.

17 BY MR. FONS:

18 Q And if you'll look at the second sentence of  
19 that order at the top of the page that begins, "Pursuant  
20 to the stipulation," would you read into the record what  
21 that second sentence says, beginning with, "While TECO"?

22 A "While TECO stated that it will execute its new  
23 contracts with TECO Transport and Trade at approximately  
24 the currently existing rates, which are less than  
25 current rail rates between the same points, the

1       reasonableness of the actual transfer price for all of  
2       the transportation and transportation-related services  
3       from mine to generating plant would be compared to a  
4       coal transportation benchmark price."

5           Q     And if you'll read the second to last sentence  
6       of that paragraph, beginning with, "The actual."

7           A     "The actual transportation transfer price paid  
8       by TECO to TECO Transport and Trade pursuant to its  
9       contracts would be recoverable through the fuel  
10      adjustment clause as long as it is equal to or less than  
11      the benchmark price."

12          Q     And aren't those two provisions still governing  
13      today the relationship between Tampa Electric and Tampa  
14      Electric Transport and Trade as far as affiliate  
15      transactions and recovery of costs are concerned?

16          A     I believe that question is not settled before  
17      the Commission. I believe that could very well be  
18      something that needs to be determined in this case.

19          Q     But until that happens, until the Commission  
20      makes another determination, those particular provisions  
21      control; is that correct?

22                MR. KEATING: Again, I think this would call  
23      for Mr. McNulty to provide a legal conclusion as to  
24      the effect of that language given the current  
25      factual scenario, the state of the case.

1                   MR. FONS: You can answer.

2                   A     I have a lot of problems in answering that with  
3                   a yes or a no, and the reason I have that problem is  
4                   because we as staff, and operating in the best fashion  
5                   that we could in the jobs and roles that we had,  
6                   attempted to carry out the wishes of the Commission in  
7                   its December 2002 order in the fuel docket when it said  
8                   that the staff and parties would work to -- to quote  
9                   from Order PSC-02-1761-FOF-EI, "The parties stipulated  
10                  that a review" -- excuse me. Let me start over. "The  
11                  parties stipulated that this Commission should not open  
12                  a docket to evaluate whether the waterborne coal  
13                  transportation benchmark price for services provided to  
14                  TECO by TECO affiliates is still valid and reasonable.  
15                  Instead, the parties stipulated that such a review  
16                  should take place as part of our continuing fuel and  
17                  purchased power cost recovery clause proceedings. We  
18                  approve this stipulation as reasonable."

19                  That directive was directed not only to  
20                  parties, but also to staff. And that directive was for  
21                  the Commission -- to staff and parties, to look into and  
22                  wrestle with the question of is the benchmark price  
23                  still appropriate. At that point, the door was open on  
24                  what the appropriate policy is for Tampa Electric and  
25                  its relations with TECO Transport and Trade, in my

1 opinion.

2 Q And is that the only issue that is relevant to  
3 the proceeding that we're currently in?

4 A No, that's not.

5 Q What other issue is relevant, in your mind,  
6 Mr. Non-lawyer?

7 Let me ask you this. Is the cost of coal an  
8 issue in this proceeding?

9 A Definitely.

10 Q In what respect?

11 A The recoverability of coal transportation as it  
12 relates to the contract that was entered into on October  
13 6, 2003, between Tampa Electric and TECO Transport.

14 Q But not for the purchase price of coal?

15 A It hasn't been designated as an issue in this  
16 case at this time. I don't of my own volition exclude  
17 that from becoming an issue. As with all dockets,  
18 issues can be identified all the way up until the  
19 prehearing conference, if necessary.

20 Q Well, certainly Tampa Electric is not  
21 purchasing coal from an affiliate, is it?

22 A No, it is not.

23 Q It is purchasing coal in the free market on an  
24 arm's length basis, isn't it?

25 A Yes, it is. It's at an arm's length basis, but



1 I don't deny that there may be variables that would  
2 impact the utility's decision-making in contracting for  
3 the coal.

4 Q Is there anything in Order 20298 that requires  
5 Tampa Electric to request bids on transport costs?

6 A No.

7 Q Is there anything in Order 20298 that requires  
8 that Tampa Electric invoke any backhaul savings or  
9 setoff?

10 A No.

11 Q Is there anything in Order No. 20298 that gives  
12 staff a say in what TECO might include in an RFP or a  
13 bid request?

14 A Could you repeat that question for me, please?

15 Q Would you agree that there's nothing in the  
16 order that gives staff a say in what TECO includes in an  
17 RFP or a request for bid?

18 A No.

19 Q You agree or you don't agree?

20 A I agree.

21 Q Okay. And would you agree that Order 20298 has  
22 been affirmed on several occasions?

23 A It was affirmed on at least two occasions, and  
24 it has been affirmed somewhat passively on an annual  
25 basis with the approval of a benchmark figure.

1 Q And would you agree that TECO has acted in  
2 accordance with the order in all respects?

3 A I don't know specifically whether or not Tampa  
4 Electric has complied with this order in every respect  
5 every year. I've been involved with fuel cost recovery  
6 since, as was discussed earlier, May of 2000.

7 Q But you're not aware in your research of all  
8 these decisions going back to 1988 that you apparently  
9 have in front of you that there was ever a time that the  
10 Commission ever questioned or rejected the recovery of  
11 the waterborne coal transportation that was paid to TECO  
12 Transport and Trade?

13 A I'm not aware of it.

14 Q I'm sure if it had happened, you would have  
15 brought it to our attention.

16 A (No response.)

17 Q Yes?

18 A Yes.

19 Q In that order, there is what has been described  
20 as the transportation benchmark. Are you familiar with  
21 that?

22 A Yes.

23 Q Let's turn to your testimony, please, page 15.  
24 Oh, before we go there, let me ask you a few preliminary  
25 questions.

1                   This testimony dated October 23, 2003, did you  
2           prepare that testimony?

3           A     Yes, I did.

4           Q     Was it prepared by you alone?

5           A     Yes, it was.

6           Q     Nobody provided any input to your testimony?

7           A     Oh, well, I would say that there were many  
8           people that provided input to this testimony. That's  
9           how you get the information with which to create the  
10          testimony.

11          Q     But you wrote all the questions and gave all  
12          the answers?

13          A     Yes. This is wholly my own.

14          Q     But you circulated it for review, I'm sure?

15          A     Yes, I did.

16          Q     And who reviewed this testimony?

17          A     The review would have included Todd Bohrmann,  
18          who is lead on the docket, Roland Floyd, Joe Jenkins,  
19          and Tim Devlin. And there may have been other people  
20          who may have looked at it and gave me some comment as  
21          well, people who would have been on the docket.

22          Q     Is the version that was filed significantly the  
23          same as the version that you circulated for comments?

24          A     I don't believe that there is a lot of  
25          difference in what was circulated and what ended up. I

1 don't have a full recollection of the entire review  
2 history of it. If you'll give me a moment, I'll analyze  
3 this for a moment and see if there's anything that I can  
4 recall as being something that was given significant  
5 input, maybe possibly affecting my decision on anything.

6 As I recall, as I mentioned to you earlier, I  
7 had input from Joe Jenkins on this, and management  
8 staff, and I believe I also got some input from Cochran  
9 Keating, the attorney in the case, who provided input as  
10 well.

11 Q Okay. This testimony also had several -- had  
12 three exhibits attached to it, WBM-1, 2, and 3, which  
13 makes sense. Who prepared these exhibits?

14 A I prepared them.

15 Q Again, with input from your staff?

16 A These were prepared with very little input from  
17 anyone else, if any.

18 Q And this testimony was prepared by you using  
19 the documents that you showed me previously; is that  
20 correct?

21 A Yes.

22 Q This testimony was, as we've noted earlier,  
23 filed in another proceeding, Docket No. 030001-EI, and  
24 we're now in a new proceeding. Do you believe that this  
25 testimony still has relevance in the new proceeding?

1           A     That's a hard question to answer, because I  
2     believe staff's role in the subject of testifying is to  
3     complete a report where parties do not fully or  
4     adequately address all issues that in staff's view  
5     should be addressed.

6                     When you talk about the relevance of this  
7     testimony in this docket, there would be some relevance  
8     to this in the sense that there has been some intervenor  
9     testimony that has referenced my testimony from the last  
10    docket.

11                    I think that this certainly has a lot to say  
12    about the matters that may still be relevant, and it has  
13    some other portions of it that may no longer be relevant  
14    by the time the Commission completes the proceeding.

15           Q     Can you identify those sections?

16           A     Again, it's going to be hard to decide which is  
17    relevant and which is not, because that would require me  
18    to have a complete understanding of all the intervenor  
19    testimony that has been filed, which I do not. And it  
20    would also require that staff have completed its  
21    discovery process, which it has not.

22           Q     Well, let me ask it this way. If I were to ask  
23    you the same questions today as were posed to you in  
24    your prefiled direct testimony in that proceeding, that  
25    testimony that you filed on October 23, 2003, would your

1           answers be the same today?

2           A     No.

3           Q     Can you tell me -- do I need to ask you each  
4           one of these questions and ask you to answer them?

5           A     No, we don't have to go sequentially through  
6           each one of these items, but I will have to preface that  
7           whatever I say here is certainly a preliminary idea at  
8           this point. I really think it's very important to  
9           strongly emphasize that staff has not -- and I include  
10          myself as staff -- have not completed the review that  
11          would be necessary in this case to put forth testimony.  
12          The staff filing date is still ahead of us, and there's  
13          also staff analysis ahead of us.

14                 So I would say that what we're looking at here  
15          is impressions at a certain point in time by a single  
16          staff member. And with that understanding, I would say  
17          that there are certain things that I would change in  
18          this testimony. But at the same time, I'm not totally  
19          be comfortable, and perhaps my legal counsel can tell me  
20          whether or not I should be trying to characterize what  
21          would be potentially forthcoming in staff testimony.

22                 MR. KEATING: I think Mr. McNulty has given an  
23          important caveat in his response to your question.  
24          And I think, Mr. McNulty, you can respond to the  
25          question in going through the areas that that

1 testimony covered and indicating which give an  
2 understanding that this is sort of an impression at  
3 this point in time that you may draw back from or  
4 may still agree with.

5 THE WITNESS: Okay. Without going into too  
6 much specificity, but I do feel it is appropriate to  
7 address a singular change that was on page 9 of my  
8 testimony. The third paragraph on the page --

9 BY MR. FONS:

10 Q Do you have lines? Why don't you just tell us  
11 what lines?

12 A Certainly. Lines 15 and 16. There's a phrase  
13 there that is incorrect. The phrases is "and a stated  
14 preference for an integrated bid." That was an error in  
15 my testimony. Because we never went -- this testimony  
16 never made it to the hearing, so there was no need to  
17 make any redaction at that time, and so that redaction  
18 was not made. But in answer to your question of what  
19 changes would I make, that would be my first change.

20 Q And that change is only because it contains  
21 confidential information? I'm not sure why you're  
22 making that change.

23 A That's not confidential information. That's  
24 simply factually incorrect.

25 Q You would just end the sentence after the

1           parenthetical 1.4 million tons; is that correct?

2           A     Correct.

3           Q     And you're talking about the 1997 bid?

4           A     Correct, correct.

5                     The change that I would make with this is that  
6           while I believe that the analysis that was done here,  
7           specifically the analysis on Exhibit WBM-1, while I  
8           believe that that was a valid analysis to do with the  
9           information that was available to me at the time, I  
10          would not make this analysis today.

11          Q     Why?

12          A     I wouldn't make this analysis today because I  
13          have further information that would lead me to question  
14          whether or not the Commission should be looking at a  
15          cost basis for determining the rate to be charged in  
16          this proceeding as a possible way of proceeding in this  
17          proceeding.

18          Q     You're talking cost-plus versus market rate?

19          A     It would be either cost-plus or cost of  
20          service, two distinct methods of looking at costs, that  
21          would be a method for looking at the appropriate rate to  
22          set for the five-year period in the contract.

23          Q     All right. Any other changes?

24          A     Yes. Within the testimony, I made reference in  
25          several locations that I did not have sufficient



1 information at this time to fully analyze the Dibner  
2 model that was the basis for the rates that were in the  
3 contracts that were ultimately signed by Tampa Electric  
4 and TECO Transport.

5 Q Since that time, have you received that  
6 information?

7 A I've received some information. The  
8 information that is a cause of concern for me today is  
9 the fact that we have supposedly a model that's  
10 presented by witness Dibner that was understood by  
11 myself at the time that I wrote this testimony to be one  
12 that was based on costs, and I perceived those costs, as  
13 has been discussed in witness Dibner's testimony and in  
14 the deposition of witness Dibner, to reflect TECO  
15 Transport's costs, so I thought we were looking at  
16 costs.

17 And I had always -- in processing this case and  
18 looking at the facts in this case, I looked very  
19 carefully at what Mr. Dibner described as the market for  
20 ocean transport, and it appeared to me that the argument  
21 was being made that there was only one entity that could  
22 provide ocean transport with the economies that TECO  
23 Transport does, and it was TECO Transport itself. And  
24 so I became very concerned is there truly a market  
25 there, if the economies of scale and economies of scope

1 that are reflected in the RFP, in the provisions of the  
2 RFP, would prevent any outside entity from actually  
3 being able to engage in that significant leg of the  
4 market. Without another player, and without even a bid  
5 received in that market, it caused me a lot of concern  
6 that we may not be looking at a market.

7 And going back to 20298, Order 20298, it  
8 specifically states that market information should be  
9 the basis of rates as long as sufficient market  
10 information can be found. And in this case, I feel as  
11 though there has not credible evidence been put forth,  
12 given the provisions of the RFP, that a market has been  
13 found in that leg.

14 And because of the integrated nature of the  
15 RFP, requiring an integrated bid, or preferencing,  
16 excuse me, preferencing an integrated bid, I thought it  
17 sent a very strong signal to anyone who could  
18 participate in that process that they weren't really  
19 welcome. My concern was that staff attempted to address  
20 these kinds of issues, attempted to address the issue of  
21 the integration.

22 There's also the concern about a single entity  
23 providing all 5.5 million tons of shipment from Davant,  
24 Louisiana, to Big Bend in Tampa Bay. That entire 5.5  
25 million tons, by Mr. Dibner's own testimony, can only be

1 provided by a single entity at an economic rate.  
2 There's only one competitor there, which means there's  
3 no competition. So without there being competition in  
4 that leg, we have to analyze what 20298 would direct us  
5 to do.

6 Q Where in 20298 are you referring?

7 Thank you, Mr. Keating.

8 A "Considering the many" --

9 Q What page are you referring to?

10 A I'm sorry. It's page 12 of the order, using my  
11 copy. You gave me a copy. I should be able to find  
12 it. Hold on.

13 Okay. It would be page 88, is it?

14 Q No, that's 88 FPSC.

15 A 226.

16 Q All right.

17 A Okay. "Considering the many advantages offered  
18 by" --

19 Q Where are you?

20 A I'm sorry. At the bottom of the page, the very  
21 last paragraph.

22 "Considering the many advantages offered by a  
23 market pricing system, we as a policy matter shall  
24 require its adoption for all affiliated fuel  
25 transactions for which comparable market prices may be

1 found or constructed.

2 "In concluding, we note the following caveats:

3 "From the record in this case, we are convinced  
4 that market prices can be established for the affiliated  
5 coals. Number 2" -- I'm sorry. I didn't -- there  
6 should be a number 1 after "caveats."

7 "Number 2. Market prices for the  
8 transportation related services should be established if  
9 possible, but if not, methodologies for reasonably  
10 allocating costs should be suggested.

11 "Number 3. Cost of service methodologies  
12 should be avoided if possible."

13 Q Let me ask you, that particular discussion is  
14 talking about the coals, is it not?

15 A No. Number 2 clearly identifies transportation  
16 related services.

17 Q If possible, but if not, methodologies for  
18 reasonably allocating costs should be suggested. Are  
19 you suggesting an allocation of costs?

20 A I'm suggesting that the Commission looked very  
21 hard at that question in this case.

22 Q And then they concluded that the stipulation  
23 was the appropriate way to go, and that is to use a  
24 market rate; isn't that correct?

25 A Yes, they did, at that time.

1           Q     All right. Let me ask you, are you going to  
2 file testimony in this proceeding?

3           A     I don't know.

4           Q     If not you, is someone else on the staff going  
5 to file testimony?

6           A     I don't know.

7           Q     And I believe you testified earlier that there  
8 are other parties in this proceeding that are relying  
9 upon your October 23rd testimony; is that correct?

10          A     They reference it in their testimony, and to  
11 the extent they reference it, I would assume they rely  
12 on it.

13          Q     Have you reviewed those pieces of that  
14 testimony, your testimony that's referenced?

15          A     I've skimmed it. I really don't have a full  
16 appreciation for those testimonies at this time.

17          Q     So you haven't concluded whether or not they've  
18 either properly stated your testimony or are properly  
19 relying upon what you stated?

20          A     No.

21          Q     Now, let me just see if I understand what  
22 you've talked about previously. Cost of service  
23 analysis, is that cost of the service analysis limited  
24 solely to one portion of the transportation?

25          A     My concerns at this time --

1           Q     You can answer yes or no. Is it limited to  
2 just one segment of the transportation?

3           A     I would like to qualify it if I could.

4           Q     Well, first of all tell me yes or no, and then  
5 you can qualify it.

6           A     Yes, but I believe the case for establishing  
7 cost of service is most compelling in the ocean leg.  
8 And there may be reasons for looking at cost of service  
9 in the other two legs as well, and it would be something  
10 that would require some careful study to determine  
11 whether or not the benefit of studying those other two  
12 legs, which is the terminal leg and the river transport  
13 leg, would be the most beneficial way to go in this  
14 case.

15          Q     Didn't Tampa Electric receive bids for the  
16 terminal costs?

17          A     It did receive a bid, yes.

18          Q     And it did receive a bid also for the inland  
19 barge as well; isn't that correct?

20          A     Yes, it did.

21          Q     And are you contending that those were not bona  
22 fide bids?

23          A     I am not contending that.

24          Q     And if you have a bona fide bid, then you have  
25 a market price for those elements, those components,

1 don't you?

2 A It's hard to say that a single bid is going to  
3 be sufficient for determining a market price. You want  
4 as much market information as you can get. And in the  
5 absence of any other information than single bid, you  
6 look closely at that bid, but it also raises a question  
7 about whether the bid was sufficient or not. You would  
8 have to look at it carefully, and I think you would have  
9 to take it on a case-by-case basis.

10 Q On what authority do you draw that conclusion  
11 that you have to have more than one bid to have relevant  
12 information?

13 A On the general understanding of -- my general  
14 understanding of what constitutes a competitive market.

15 Q What is your understanding of what constitutes  
16 a competitive market?

17 A A competitive market is truly competitive if  
18 you have many players.

19 Q Can you give me one market that is truly  
20 competitive under that definition?

21 A Certainly. The price of gasoline at the pump.

22 Q You think that's a competitive market?

23 A It's a competitive market. You can have an  
24 intersection, and you can have four gas stations on each  
25 corner, and they're very competitive. They're watching

1 the tenth of a cent very carefully trying to make sure  
2 they can beat their competition.

3 Q Do you think there's competition in the gas  
4 market today, the gasoline market today?

5 A I think in the retail sector, there is  
6 competition on any street corner.

7 Q Even if they're all charging the same price?

8 A That's an even better indication of  
9 competition.

10 Q So a differential price if one competitor is  
11 charging one price and the other competitor is charging  
12 a different price, you don't think that's an indication  
13 of competition?

14 A Certainly you're going to have changes in  
15 price. But if we're talking about a homogeneous product  
16 that's being sold in the same geographic area, you're  
17 going to expect in a competitive market for those prices  
18 to be quite similar.

19 Q Are you an economist?

20 A I have a master's in business administration  
21 degree, and within that is a fair amount of economic  
22 study.

23 Q Are you holding yourself out as an economist,  
24 Mr. McNulty?

25 A Not strictly as an economist, but as someone



1 with economic training.

2 MR. FONS: Why don't we break for lunch for the  
3 court reporter. I think she's been at it for a  
4 couple of hours here.

5 (Deposition recessed from 12:06 to 1:20 p.m.)

6 BY MR. FONS:

7 Q Do you have your testimony in front of you?

8 A Yes.

9 Q Okay. Would you go to page 14, please.

10 A Okay.

11 Q You have page 14 of your October testimony?

12 A Yes.

13 Q At line 16, you indicate that the proper market  
14 rate to consider is the rail rate offered by the rail  
15 company. Do you see that?

16 A Yes.

17 Q And this is the same type of rate the  
18 Commission has used to determine cost prudence for WCTS  
19 for TECO. Do you agree with that?

20 A I agree that's what it says.

21 Q Do you still agree with your statement in your  
22 testimony that the proper market rate to consider is the  
23 rail rate offered by the rail company?

24 A No, I'm not certain that that is necessarily  
25 the right rate. Again, let me preface my remarks with

1 the concern that anything that I say about the  
2 appropriate -- a recommendation to the Commission at  
3 this point is very preliminary. With that caveat, I  
4 would say that the new information that we discussed  
5 earlier relating to the nature of the Dibner model  
6 causes me to want to look at a broader scope of  
7 information.

8 Q A broader scope of information other than the  
9 type of transportation benchmark that has been used  
10 since 1988?

11 A Yes.

12 Q And for the reasons you had stated previously?

13 A Yes.

14 Q Yet in October of 2003, less than six months  
15 ago, you were of the opinion that the market rate to  
16 consider is the rail rate offered by the rail company.

17 A Yes.

18 Q And has something -- what have you learned  
19 since then that causes you to change that opinion?

20 A Well, everyone was introduced to the Dibner  
21 model and how it operates in a meeting in January in  
22 which Mr. Dibner presented his model at the Commission  
23 on a computer screen so that everyone could see how it  
24 operated and explained how the model operated, and a  
25 couple of things came to light at that meeting that I

1 previously was not aware of.

2 One was that there seemed to be no recognition  
3 in the model for allocations of cost or revenue  
4 associated with the backhaul of goods from Tampa Bay to  
5 Davant, Louisiana. And that was a concern of mine in  
6 the sense that it appeared as though there was a  
7 noncompetitive nature to that omission.

8 And I was also concerned about some of the  
9 limitations that exist with the model relating to the  
10 operation of the model and its output as regards to  
11 preference trade activity.

12 Finally, I was concerned that the model as  
13 constructed seemed to identify each of the TECO  
14 transport ships or barges that -- ocean tug-barge units  
15 that were least cost in providing the services to Tampa  
16 Electric, and I was concerned that that calculation of  
17 the cost was based on 5.5 million tons, yet 5.5 million  
18 tons is not necessarily the amount that will be  
19 delivered in all five years of the contract, thereby  
20 inflating the contract in the last two years.

21 Q Let me ask you about this. Backhaul, would you  
22 agree with me that backhaul is irrelevant to a market  
23 rate?

24 A No, I wouldn't agree with that.

25 Q Well, when you have a market rate, you have a

1 price offered by a supplier, don't you?

2 A Yes.

3 Q And the supplier in making that offer has put  
4 into that price calculation all of its costs and all of  
5 its benefits and is given a price, so that if you have a  
6 market price, backhaul would be irrelevant, wouldn't it?

7 A I don't think so.

8 Q Tell me how it would be relevant to a market  
9 price.

10 A It would be relevant to a market price because  
11 of the fact that in a competitive market, the services  
12 would have to match the costs that are being provided.

13 In this instance, we're talking about a  
14 round-trip operation, an ocean tug-barge unit or a ship  
15 traversing the Gulf of Mexico in a round-trip fashion.  
16 To presume that an entire round trip of a tug-barge unit  
17 or ship is a single operation rather than two operations  
18 is fallacious. It's two operations. The return trip  
19 denotes more revenue and denotes a need for some  
20 allocation of those costs. The reason those costs have  
21 to be allocated is that if it's a truly competitive  
22 market, a competitor would gain an advantage on that  
23 return trip by having revenues generated without having  
24 to incur any costs, and that is the situation that  
25 appears to be the case with this most recent contract

1 and previous contracts with TECO Transport.

2 Q The rate offering by CSX to Tampa Electric to  
3 haul the coal, the price that they offered, is that a  
4 market price?

5 A I can't say with any certainty whether or not  
6 that is an optimal market price. I can say that in  
7 comparison, the comparison that I did with the market  
8 price that is reflected in the TECO/TECO Transport  
9 contract, it is more competitive.

10 Q Is it a market price? Is the CSX bid offered  
11 to Tampa Electric a market price?

12 A It's hard to say whether or not it's a market  
13 price, and the reason I say that is because there is  
14 intermodal and intramodal competitive forces that have  
15 to be adjudged in this instance. And we don't know yet  
16 until we have a full review of all the testimony that  
17 has been filed whether or not a truly competitive nature  
18 exists between those two modes.

19 Q The rail prices that CSX charges to the five  
20 municipal electrics that are used in the benchmark, the  
21 prices that CSX charges to those municipal electrics,  
22 are those market prices?

23 A I haven't evaluated all the options available  
24 to each one of those entities, so I would presume there  
25 would be an element of market in there, that the market

1 would be operating. But you would have to know whether  
2 or not there could be restrictions in the way that the  
3 market is operated. You would have to analyze each one  
4 of those individually.

5 Q So you think since 1988 the Commission was  
6 wrong in using the transportation benchmark as a market  
7 proxy?

8 A I think that I cannot characterize whether or  
9 not the Commission was right or wrong at that time.  
10 They made their decision based upon the information that  
11 was available to them at that time, and it may have been  
12 completely accurate, what they determined at that time.  
13 The concern I have, of course, is with the change in  
14 conditions that may have occurred over time.

15 Q You say may have occurred. Do you have any  
16 information that conditions have in fact changed over  
17 time?

18 A Certainly there's information in the record  
19 about changes in market conditions.

20 Q In market conditions for the transport of coal?

21 A Excuse me. I would like to correct something I  
22 said, that there is information in the record. No  
23 record has been officially established in this case.

24 But when it comes to the transportation of  
25 coal, certain market changes have certainly developed

1 since 1988.

2 Q The CSX rates, both in the bid to Tampa  
3 Electric and in the rates it charges to the five  
4 municipal utilities, is there a backhaul component in  
5 that rate?

6 A There could very well be reflected a backhaul  
7 component in that rate.

8 Q Just like a backhaul component could be  
9 reflected in the rate that CSX has offered to haul coal  
10 for Tampa Electric; isn't that correct?

11 A Yes.

12 Q And if it does have a backhaul component, there  
13 would be nothing -- CSX wouldn't have to refund money to  
14 Tampa Electric for every load that it brought here that  
15 had a backhaul in it, would it?

16 A We have to go back to the intermodal level of  
17 competition. A fundamental question in my mind is, is  
18 the rail mode competitive with the barge mode, and if it  
19 is competitive, on what routes and under what  
20 circumstances is it competitive?

21 Q So you would have to look on a route-by-route  
22 basis?

23 A You would have to certainly look at the best  
24 strategy that the company could have for securing the  
25 types of coal that it needs from the regions that it is

1 available to it, with a total combination of not only  
2 the commodity cost, but also the transportation cost, in  
3 order to be able to know what's the best combination.

4 Q And who would make this ultimate decision as to  
5 what is the best strategy? Would it be you?

6 A It would be the company's determination as to  
7 what is the best strategy. However, the company would  
8 have to support its determination for that strategy  
9 before the Commission if the Commission were to  
10 determine that the benchmark that has been established  
11 since 1988 is no longer valid.

12 Q How would the company go about satisfying the  
13 Commission on this intermodal route-by-route basis that  
14 it has picked the proper strategy?

15 MR. KEATING: I would suggest that calls for  
16 some speculation on the witness's part. Are you  
17 asking his opinion on what would satisfy him?

18 MR. FONS: Yes, I'm asking his opinion.

19 BY MR. FONS:

20 Q I assume you're speaking for staff.

21 A I'm speaking for myself.

22 Q You're not speaking for staff?

23 A No. I'm here as someone who provided testimony  
24 in this case, and so I don't necessarily maintain that  
25 what I'm saying here is agreed to by all the staff. I'm



1 an individual member of the staff.

2 Q Did Mr. Devlin agree to your testimony?

3 A Yes, he did.

4 Q Okay. He's the boss of your particular staff,  
5 isn't he?

6 A Yes, he is.

7 Q When Mr. Devlin speaks, does he speak for  
8 staff?

9 A Yes. But I would maintain that anything I say  
10 now is not being monitored and reviewed by Mr. Devlin.

11 Q Are you preparing testimony at the moment,  
12 Mr. McNulty?

13 A I haven't prepared any testimony to date.

14 Q Do you have any drafts of testimony to date?

15 A No drafts.

16 Q Have you seen any drafts of testimony to date?

17 A I haven't seen any drafts of testimony.

18 Q I believe you said you've not reviewed the  
19 testimony that has been filed by the other parties.

20 A I have read parts of it. Some of it I've  
21 scanned. I haven't read all of it.

22 Q Have you read the CSX testimony?

23 A I've read some of that.

24 Q Whose testimony did you read?

25 A I read Sansom's testimony.

1           Q     Can we agree that in the benchmark, the  
2           transportation benchmark, the five municipal electrics,  
3           JEA, St. Johns River Power Park, Orlando Utilities,  
4           Lakeland, and Gainesville, that they are all receiving  
5           their coal deliveries by rail?

6           A     I believe they're all receiving at least a  
7           portion of their coal deliveries by rail, and some may  
8           be being delivered by barge.

9           Q     Does any rail line that delivers coal serve  
10          Florida other than CSX?

11          A     I don't know.

12          Q     And in calculating the benchmark, are the rates  
13          that are used, the rail rates that are used, are those  
14          the rates just for the delivery of coal and do not  
15          include a coal component?

16          A     That's correct.

17          Q     And the rail proxy or the benchmark is the  
18          average of the two lowest rates charged to the  
19          municipalities?

20          A     Yes.

21          Q     And doesn't that by definition mean that for  
22          the other three, the rate is higher than the rates for  
23          the two lowest, the average of the two lowest?

24          A     Yes.

25          Q     And isn't the rate charged to the

1 municipalities higher than the rate that CSX has offered  
2 to Tampa Electric in their bid response?

3 A Could you repeat the question?

4 Q Isn't the rate that's charged to the  
5 municipalities, the two lowest, the average, isn't that  
6 higher than the rate that CSX has offered to provide the  
7 delivery of coal to Tampa Electric at the Big Bend Power  
8 Plant?

9 A Yes.

10 Q Substantially higher?

11 A Yes.

12 Q Have you made any analysis as to why CSX would  
13 offer Tampa Electric a rate that is substantially lower  
14 than the rate it's charging to the five municipals in  
15 the State of Florida?

16 A I have an opinion as to why they may be  
17 offering that.

18 Q Why is that?

19 A The Staggers Rail Act of 1980 deregulated a lot  
20 of aspects of the rail industry in the United States.  
21 It deregulated abandonment issues, and it also  
22 deregulated pricing to a very large extent.

23 There is differential pricing that's practiced  
24 today in the rail industry, and essentially what that  
25 means is, there are significant advantages to some

1 geographic locations and to certain customers. And how  
2 that would apply in this case is that the geography of  
3 Tampa Electric, being on a port, gives it intermodal  
4 competitive options.

5 In addition, Tampa Electric represents a very  
6 large amount of coal, and so they are an attractive  
7 customer from the standpoint that they represent larger  
8 amounts of coal than the municipalities.

9 Those are two reasons why you would not expect  
10 CSX to be offering the same price to different entities  
11 in this case.

12 Q And so in your opinion, the CSX price is a  
13 competitive price because they're competing with the  
14 intermodal opportunities that Tampa Electric has, which  
15 is waterborne; isn't that correct?

16 A Again, it's hard to determine whether or not  
17 it's competitive, because we're looking at intermodal  
18 competition, and we are about the process of determining  
19 whether or not it's competitive, and if it's competitive  
20 in the whole or in the part.

21 Q I thought in your answer you said that one of  
22 the reasons why CSX probably offered a lower price to  
23 Tampa Electric than they're offering to the other  
24 municipal electrics in Florida is because Tampa Electric  
25 has the ability to get waterborne transport.

1           A     Yes.

2           Q     And that is competition, isn't it?

3           A     That denotes a level of competition, but it  
4     doesn't mean that it's truly competitive figures. It's  
5     a matter of degree.

6           Q     I understand that, but do you know what the  
7     economic definition of truly competitive is?

8           A     I have a good understanding of that, I think.

9           Q     Please tell us for the record what you think  
10    truly competitive means from an economic standpoint, an  
11    economist's standpoint.

12          A     That participants in a market are not able to  
13    charge more than the incremental cost of the service, or  
14    much above the incremental cost of the service, without  
15    losing some level of demand to the other parties in that  
16    market.

17          Q     Thank you.

18                 Turn to page 16 of your testimony. There at  
19    the bottom of the page, the rhetorical question is  
20    asked, "If the Commission elects to address 17H at this  
21    time, should the Commission eliminate TECO's WCTS  
22    benchmark?" Do you see that?

23          A     Yes.

24          Q     And I believe it's safe to say that you go on  
25    to suggest that the Commission should establish a WCTS

1 market price proxy for TECO for the duration of the  
2 contract period by adjusting the initial recoverable  
3 costs for the escalation methodology included in the  
4 TECO/TECO Transport contract. Do you see that?

5 A Yes.

6 Q What do you mean by that?

7 A What I'm suggesting here is that at the time I  
8 wrote this testimony, I thought the initial recoverable  
9 costs would be calculated per my Exhibit WBM-1. That  
10 specifies a methodology for calculating the average rail  
11 rate, which I found to be more competitive than the  
12 contract rate in this instance. And what I'm suggesting  
13 here is that that initial recoverable costs be escalated  
14 in two ways. It would be escalated according to the  
15 variable cost component, given the pricing escalation  
16 methodology in the contract that TECO and TECO Transport  
17 now have in effect, and it would also be escalated  
18 according to the fuel adjustment surcharge that is  
19 discussed in that same contract.

20 Q So you would abandon the benchmark altogether?

21 A Oh, yes.

22 Q Even in your testimony back in October of 2003,  
23 you were recommending abandonment of the benchmark?

24 A Yes.

25 Q And you were using instead a base number plus

1 an escalator?

2 A Yes.

3 Q And how do you describe that in economic terms?

4 A Describe what?

5 Q What that particular device is for establishing  
6 the market price.

7 A It's a market escalation methodology. I'm not  
8 sure what you mean.

9 Q Well, that's fine.

10 Who made the decision that's reflected in your  
11 testimony here?

12 A Which decision?

13 Q The decision to abandon the benchmark and to  
14 use this escalator.

15 A This is not a decision. This is a  
16 recommendation via testimony to the Commission.

17 Q I'm sorry. Who within the staff decided that  
18 this would be the recommendation that would be made to  
19 the Commission?

20 A It was me.

21 Q You alone?

22 A Naturally, as we discussed earlier, there's a  
23 review process involved, and so I received feedback on  
24 various portions of this testimony, but I believe that  
25 idea was my own.

1           Q     And you convinced Mr. Devlin that it was the  
2 right thing to do?

3           A     Mr. Devlin did not disagree with my testimony.

4           Q     Did you ever have a direct discussion with  
5 Mr. Devlin about the use of this escalator in lieu of  
6 the traditional benchmark that has been in effect since  
7 1989?

8           A     I don't recall such a discussion.

9           Q     What analyses did you perform in coming up with  
10 this escalation methodology?

11          A     The primary component of the analysis is, once  
12 again, Exhibit WBM-1. I felt that it was important to  
13 find what I believed at that time to be a reasonable  
14 starting point for what a market rate would be for this  
15 service, and I didn't disagree with the escalation  
16 methodology as was described in the TECO/TECO Transport  
17 contract.

18                 I was also operating under the assumption that,  
19 this being a five-year contract, it was a limited period  
20 of time. And as I had testified in the Progress Energy  
21 waterborne coal transportation issues in 030001, I  
22 believe that there has to be an end point to an approved  
23 market price proxy, and a five-year period such as what  
24 was described in the contract appeared to me to be a  
25 reasonable period of time before the Commission would be



1 expected to go back and review that methodology.

2 Q And you were going to use the CSX bid rate as  
3 the baseline, is that correct, in this escalator  
4 methodology?

5 A Yes.

6 Q Do you still believe that that's an appropriate  
7 methodology?

8 A I'm not certain what the correct methodology is  
9 at this time. I think that's under review, and we have  
10 discovery to do and to review to decide what that  
11 methodology should be. As I stated earlier, I have  
12 concerns about whether or not -- because TECO pursued  
13 this case as one that would indicate a monopoly  
14 operation, whether or not cost information should be  
15 introduced to be the determinant of the ultimate market  
16 rate.

17 Q Do you know what the methodology was for  
18 determining the cost of coal transportation prior to  
19 Order 20298 for Tampa Electric?

20 A I believe it was based on a cost of service  
21 methodology.

22 Q And didn't the Commission -- in that Order  
23 20298, didn't the Commission find in that order that a  
24 cost of service study was hard to do, difficult to do,  
25 and was contentious?

1           A     The Commission did find that it was  
2           contentious. But I would think that the Commission may  
3           in this instance believe that a market pricing  
4           methodology is perhaps equally contentious.

5           Q     Has it been contentious for the last 14 years?

6           A     No.

7           Q     Is it contentious now only because staff wants  
8           to bring a new issue into the mix?

9           A     I hardly think that staff is the only driving  
10          force behind the concerns that are before the Commission  
11          today in this docket. I would very much think that  
12          there are a number of indicators out there of activities  
13          that happened in 2003 that would have said if staff had  
14          done nothing, that this issue would have come to the  
15          fore.

16          Q     And are you talking about various vendors being  
17          interested in getting into the coal delivery business,  
18          and more importantly, the coal sale business to Tampa  
19          Electric is what's driving this?

20          A     There would be certainly the vendors. There  
21          would be various others involved as well. There would  
22          be, for instance, financial analysts looking at the  
23          financial status of TECO Energy who would be very  
24          interested in knowing what was going on with an  
25          affiliate whose contract is up for renewal at the same

1 time that there was consideration being made for the  
2 sale of that same unit. There would be interest on the  
3 part of the media if they were aware of and  
4 knowledgeable of that. There may be interest in any  
5 number of consumer groups that are aware of and  
6 concerned about the prices that are paid for coal  
7 transportation by Tampa Electric.

8 Q Are the things that you recommended in your  
9 October 23rd testimony driven -- were they driven by  
10 outside influences?

11 A Could you be more specific?

12 Q Yes. Your whole -- wasn't your approach in  
13 your October 23rd testimony, on page 14 where you say  
14 the proper market rate to consider is the rate offered  
15 by the rail company -- and I assume the rail company  
16 there is CSX.

17 A Yes.

18 Q Was that decision by you or that recommendation  
19 by you driven by outside influences, such as CSX?

20 A It is driven only to the extent that they  
21 provided bids that gave me an opportunity to see what  
22 options existed for the company.

23 Q And having made that recommendation in October  
24 of 2003, I believe you told me earlier this afternoon  
25 that you're prepared to abandon that recommendation now.

1           A     I'm prepared to certainly make some  
2           modifications. I'm not prepared to totally abandon  
3           every aspect of this testimony. Again, it's not known  
4           that I would be providing testimony.

5           Q     But you know that other people are looking to  
6           the testimony that you provided back in October as a  
7           foundation for their testimony in this proceeding, don't  
8           you?

9           A     They may be looking to this testimony for some  
10          aspects of what they're testifying to. I don't know  
11          that there's anybody that's looking at this as a sole  
12          source or even a primary source of the testimony that  
13          they have proffered.

14          Q     But you can't tell me whether anybody that has  
15          filed testimony in this docket has relied upon your  
16          proposal on page 14, line 16, that the proper market  
17          rate to consider is the rate offered by the rail  
18          company?

19          A     I'm not familiar enough with the testimony to  
20          be able to characterize what's driving their testimony.

21          Q     Turn to page 6 of your testimony, please.

22                     There you talk about evaluating the TECO RFP  
23                     for purposes of determining whether it was sufficient to  
24                     determine the current market price for waterborne coal  
25                     transportation. Am I correct that at that point in

1 time, you were still trying to determine the current  
2 market price for waterborne coal transportation?

3 A Yes, I was interested in trying to find out  
4 what that market price was.

5 Q Are you still interested in determining what  
6 the market price is?

7 A Yes.

8 Q And if you found a market price, you would  
9 recommend that to the Commission as being the  
10 appropriate benchmark to measure what Tampa Electric  
11 should be paying for waterborne transportation of coal?

12 A If a market existed. And again, this gets back  
13 to the way that the RFP was fashioned. The RFP was  
14 fashioned in such a way that it made the third leg, the  
15 ocean transport leg, appear to be a monopolistic  
16 operation. So the Commission may very well want to  
17 decide that they should go to cost, and that's an option  
18 that exists for the Commission.

19 Q And would that be applicable just to the  
20 waterborne, the Gulf transportation?

21 A Again, I believe that that is the primary  
22 element that should be considered. But the Commission  
23 may choose to exercise that same option for the other  
24 two legs. And again, these sentiments that I have at  
25 this moment are preliminary based upon further

1 information.

2 Q Can't you develop a proxy, a market rate  
3 proxy?

4 A Certainly a market rate proxy could be  
5 determined by the Commission based upon the information  
6 that will be available to the Commission and has been  
7 made available to the Commission.

8 Q And isn't that what they did in 1988 when they  
9 approved the stipulation, that instead of going through  
10 all of this, they came up with a market rate proxy, and  
11 that was the rail rates to the municipals in Florida for  
12 the delivery of coal?

13 A That's an interesting question, because the  
14 ocean transport leg is characterized by witness Dibner  
15 as one that has economies of scale. And witness Dibner  
16 has made a very strong argument that there is only one  
17 entity that can provide this at the lowest cost. So the  
18 question here really is, and something I think the  
19 Commission needs to address is, is the fact that no one  
20 can provide the capacity of coal transport as cheaply as  
21 TECO Transport the basis for determining that we have to  
22 go back to cost? That's the fundamental question, I  
23 believe, in this case.

24 Q Isn't the fundamental question whether  
25 Mr. Dibner is correct?

1 A That's a preliminary basis.

2 Q Preliminary, or the only question that need be  
3 asked?

4 A The Commission decided in 1988 that --

5 Q If you can answer my question yes or no.

6 A Yes, yes.

7 Q Okay. Thank you.

8 When you did your review of the RFP, you  
9 compared the 2003 RFP to TECO's 1997 RFP; is that  
10 correct?

11 A Yes.

12 Q You didn't participate in the review of the  
13 1997 RFP at the time that it was made, did you?

14 A No.

15 Q So whatever you know about that, you're basing  
16 that upon looking at the documents; is that correct?

17 A That's correct.

18 Q And you've read those documents?

19 A Yes.

20 Q One of the things that you -- let's turn to  
21 your Exhibit WBM-2. And one of the things that you are  
22 critical of in 2003 RFP throughout your analysis is that  
23 the 2003 RFP stated a preference for integration, and  
24 therefore the 2003 RFP was not as good as the 1997 RFP,  
25 which you contend in your Exhibit WBM-2 was silent

1 regarding integration. Do you see that?

2 A Yes, I see that. But as I discussed earlier,  
3 that correction I made at the beginning of my deposition  
4 today would extend to the "Silent regarding integration"  
5 comment under the column 1997 RFP for Integrated  
6 Proposal Requirement.

7 Q As a matter of fact, the 1997 RFP was not  
8 silent with regard to integration, was it?

9 A No, it wasn't, and that's consistent with my  
10 earlier correction.

11 Q Right, but I want to explore that further.  
12 What did the 1997 RFP state with regard to integration  
13 or segmentation?

14 A It said that it must be integrated.

15 Q Okay. Now, does the 2003 RFP say that it must  
16 be integrated?

17 A No, it does not.

18 Q So to that extent, the 2003 RFP is better than  
19 the 1997 RFP; is that correct?

20 A One is worse than another.

21 Q Which one is --

22 A The 1997 would be worse.

23 Q All right. That's what I --

24 A But neither one is favorable.

25 Q Now, tell me, how many responses did Tampa



1 Electric get to the RFP in 1997?

2 A I think there was discussion about that in the  
3 depositions of Dibner and Wehle in the 030001 docket,  
4 and I think that Joann Wehle had indicated -- excuse me.  
5 I'm not sure which witness it was, but I believe that  
6 the comment was that they got more response, but not  
7 much more.

8 Q They got more response to an RFP that you now  
9 contend was significantly worse than the 2003 RFP; is  
10 that correct?

11 A I don't agree with your characterization of one  
12 RFP being significantly worse than another RFP. It was  
13 significantly worse in this specific item.

14 Q And don't you throughout your testimony point  
15 to the integration versus segmentation piece as being  
16 the element that created disincentives for people to  
17 bid?

18 A That was certainly one of the primary ones, but  
19 another one that is probably equally important is the  
20 fact that in the ocean leg, full requirements must be  
21 delivered by the winning bidder.

22 Q Full requirements by whom?

23 A Full requirements of each leg have to be  
24 provided by a single supplier of transport according to  
25 the RFP. I can point you to the location in the RFP if

1       you like.

2           Q     Where in your testimony do you discuss this?

3           A     One moment.

4                   On page 9, the second paragraph, I quote, "One  
5       other important limiting statement in the RFP, also  
6       placed prominently in the first paragraph of the first  
7       page, involved TECO's requirement that proposals should  
8       represent the entire volume of coal transport service  
9       stated in the RFP. By discouraging transport companies  
10      which could have provided a portion of the transport  
11      needs in any one segment, for instance, river transport,  
12      TECO further restricted the opportunity for receiving a  
13      greater number of bids and more market price  
14      information."

15          Q     Isn't it true, Mr. McNulty, that despite this,  
16      that Tampa Electric did get segment bids from vendors.  
17      Didn't they get a bid for the river transport, the barge  
18      traffic?

19          A     Yes, they did get a bid, but they didn't get  
20      very many bids.

21          Q     But they got a bid?

22          A     Yes.

23          Q     And how many carriers on the Mississippi River  
24      and Ohio River could handle the volume that Tampa  
25      Electric needs?

1           A     I believe there were five or six.

2           Q     And how many of them chose not to bid?

3           A     Four or five.

4           Q     And were the reasons because of the requirement  
5           that they had to carry all of the volume, or was it for  
6           other reasons that they declined to bid?

7           A     We know from -- we know that at least one  
8           declined to bid because they didn't believe in the  
9           process because of their experience in the 1997 RFP  
10          process conducted by Tampa Electric.

11                     The full requirements aspect of this would be  
12          one element that would have been a disincentive to bid.  
13          There are others that are described in my testimony.

14          Q     And that's your opinion; isn't that correct?

15          A     What part of that statement are you asking is  
16          my opinion, because part of it is actually --

17          Q     Your opinion that the volume demand is what  
18          prevented people from bidding. You've given me one, the  
19          name of one.

20          A     If you'll give me a moment, I want to look  
21          something up. (Examining documents.)

22                     MR. FONTS: Why don't we do this. Why don't I  
23          have this marked as Exhibit Number 3.

24                     (Deposition Exhibit 3 was marked for  
25          identification.)

1 THE WITNESS: I think I'm in a position to  
2 answer your question.

3 BY MR. FONS:

4 Q Yes, sir. Go ahead.

5 A If we're restricting our discussion to the  
6 river element only, then I would say that there would be  
7 another entity, and I can identify the entity if you  
8 like, who may have -- it's uncertain from their letter,  
9 but they may have made the same decision based upon the  
10 inability to carry the full requirement.

11 Q We're not interested in speculation. That  
12 would be speculation, wouldn't it, Mr. McNulty? Which  
13 letter are you referring to?

14 A I'm referring to \_\_\_\_\_, in which  
15 they stated, "Unfortunately \_\_\_\_\_ is not in a position  
16 to quote on your movements of coal to your facility at  
17 this time."

18 Q Why don't we just work from the exhibit,  
19 Exhibit Number 3.

20 A Oh, okay.

21 Q Do you have that in front of you?

22 A Yes.

23 Q And this is a response to the RFP, is it not?

24 A Yes, it is.

25 Q And what it says is, "Thank you for your

1 interest. Unfortunately is not in a position to  
2 quote on your movement of coal to your facilities at  
3 this time. Please continue to keep us on your bid list,  
4 as our operating patterns and business mix change  
5 frequently." Is that what it says?

6 A Uh-huh.

7 (Deposition Exhibit 4 was marked for  
8 identification.)

9 BY MR. FONS:

10 Q Let me hand you what had been marked as Exhibit  
11 4, please. Do you recognize this?

12 A Yes. I was just looking at this.

13 Q Okay. Is this a response to the Request for  
14 Waterborne Transportation Services Proposal WB-2004?

15 A Yes.

16 Q And does this response indicate that they  
17 weren't interested because they didn't want to carry the  
18 volume?

19 A No, it does not.

20 Q It says, "At this time, our availability only  
21 exists for spot receipt, at , of fuel  
22 arriving in rail cars, barges or vessels for transfer to  
23 oceangoing barges at "; is that correct?

24 A Yes.

25 MR. FONS: Would you mark this as the next

1 exhibit, please.

2 (Deposition Exhibit 5 was marked for  
3 identification.)

4 THE WITNESS: I would caveat that Mr. Dibner  
5 himself talked about excess capacity on the river.

6 BY MR. FONS:

7 Q Does that letter talk about what you just said,  
8 excess capacity on the river?

9 A No, it does not.

10 Q What does that letter say? Could you please  
11 read it?

12 A Oh, this new letter?

13 Q Yes, the one from , what I just handed,  
14 which is Exhibit Number 5. Is that

15 ?

16 A Yes. Would you like me to read the entire  
17 letter?

18 Q Yes. It's fairly short.

19 A Okay. "Dear Mr. Duff: The above referenced  
20 requests for proposals addressed separately to

21 and have been received.

22 is an offshore operating division of the

23 , which is primarily involved with

24 transportation of liquid cargoes on the inland river

25 system. Both and



1 Tampa."

2 Q Is that New Orleans, Louisiana?

3 A Yes.

4 Q Okay.

5 A "Thank you for the opportunity to bid on this  
6 movement."

7 MR. FONS: Would you mark this as the next  
8 exhibit?

9 (Deposition Exhibit 7 was marked for  
10 identification.)

11 BY MR. FONS:

12 Q Have you seen this document before?

13 A Yes.

14 Q And what is it?

15 A It is a letter from .

16 Q And what does it reference?

17 A It states, "We are in receipt of your Request  
18 for Waterborne Transportation Services Proposals WB-2004  
19 and thank you for this invitation. We regret we must  
20 forgo this opportunity to submit a response, but we ask  
21 that you please keep us on your list as future  
22 opportunities arise."

23 MR. FONS: This is Number 8.

24 (Deposition Exhibit 8 was marked for  
25 identification.)



1 BY MR. FONS:

2 Q I hand you what has been marked Exhibit Number  
3 8. Do you recognize that document?

4 A (Examining document.)

5 Q Do you recognize that document?

6 A I believe I do. I could check. I believe I  
7 remember this.

8 Q Is this a letter from ?

9 A .

10 Q ? And is it in response to the TECO  
11 request for waterborne transportation services proposal?

12 A Yes.

13 Q And what do they say in response to the bid?

14 A They say they have only limited service on the  
15 lower Mississippi and therefore decline to bid.

16 Q They did not decline to bid because they didn't  
17 like the bidding specifications?

18 A Not according to this letter.

19 MR. FONS: Would you mark this as Number 9?

20 (Deposition Exhibit 9 was marked for  
21 identification.)

22 BY MR. FONS:

23 Q I'm handing you what has been marked as Exhibit  
24 Number 9. Have you ever seen this document before?

25 A Yes.

1 Q And what is this document?

2 A This document is a letter from

3 .

4 Q And what does this letter say?

5 A This letter says, "I can assure you that if  
6 TECO had proceeded to divest itself of the barge line,  
7 our response would be different. However, our  
8 impression from bidding on this business in the past is  
9 that our response, along with others, does nothing more  
10 than establish the rate structure at which your in-house  
11 carrier will continue to move your tonnage."

12 Q Read the first sentence.

13 A "After serious consideration and deliberation,  
14 has elected not to provide rates in  
15 response to your Request for Waterborne Transportation  
16 Services Proposals WB-2004."

17 Q Does anything in this letter say that they did  
18 not give a bid because they did not like the  
19 specifications in the bid?

20 A There's nothing in here that directly says  
21 that.

22 Q Okay. Thank you.

23 And I believe we discussed earlier and you  
24 agreed that Tampa Electric did receive a bid for its  
25 terminal services at the mouth of the Mississippi; isn't

1           that correct?

2           A     Yes.

3           Q     And they got a bid from whom?

4           A     They got a bid from IMT.

5           Q     And IMT is not an affiliate of Tampa Electric  
6           or TECO?

7           A     No.

8           Q     It's an arm's length vendor; is that correct?

9           A     Yes.

10          Q     And wouldn't you agree that having received a  
11          bid from another terminal, that that would constitute a  
12          competitive bid and therefore be a market price for the  
13          terminal services?

14          A     Again, I'm going to have to say that more  
15          market information is better, and the more market  
16          information you get, the more likely you are to find and  
17          know the true market price.  It's very easy for any one  
18          individual bidder to not bid the market price for any  
19          number of reasons.  But it becomes more and more likely  
20          with the more bidders that participate that you will  
21          find that market price.

22          Q     How many terminals do you think there are at  
23          the mouth of the Mississippi River?

24          A     There are at least two with the capacity to do  
25          the work.

1 Q And who are those two?

2 A Those two are IMT and TECO Bulk Terminal. But  
3 significantly, only one of those was required to bid.  
4 And not required to bid, given that both of them could  
5 have bid, but only one of them had a true motivation to  
6 bid. The other one didn't have to bid, and that, of  
7 course, was TECO Bulk Terminal, since they had a right  
8 of first refusal.

9 Q CSX provided a response to the RFP, did they  
10 not?

11 A Yes, they did. They actually provided two  
12 responses.

13 Q And do you remember the date on which they  
14 provided the response?

15 A I believe they provided the response on a date  
16 in -- I can check this to be certain if you like, but I  
17 believe it was sometime in August, the first half in  
18 August, based upon the fact that they didn't receive the  
19 RFP until the latter part of July, maybe July 21st comes  
20 to mind. And I can check these dates. I'm not swearing  
21 to them. This is just my recollection.

22 Q Would you agree subject to check that the date  
23 on which CSX submitted its bid was July 30, 2003?

24 A I would agree with that subject to check.

25 Q And isn't that the same date that others, like



1           A     Are you talking about the time period in which  
2 the RFP was pending?

3           Q     Yes, sir.

4           A     I had become aware of TECO's concerns about  
5 staff having contacted the --

6           Q     My question was, did you or anyone on your  
7 staff contact CSX prior to the time that they submitted  
8 their bid in response to the bid proposal?

9           A     In that window of time that we're talking  
10 about, I do not believe that anyone did make such a  
11 contact.

12          Q     Could someone have made a contact before that  
13 window of time opened?

14          A     That's possible.

15          Q     You don't know one way or the other?

16          A     I'm not certain.

17          Q     But it is possible?

18          A     It is possible.

19          Q     And who would that have been that would have  
20 had such a contact with CSX?

21          A     Again, I don't know whether or not this  
22 individual that I have in mind did make such a contact,  
23 but Bernie Windham is someone who's on the docket who  
24 was looking into the competitive nature of waterborne  
25 coal transportation within this docket and may have made

1 a contact at some time prior to the bid being issued.  
2 Of course, we didn't know that the RFP was even going to  
3 be released until after the fact. So if we were going  
4 to be cognizant of and aware of a distributed bid, we  
5 would certainly have taken that into account.

6 Q Did you instruct Bernie Windham to contact CSX  
7 prior to the bid window opening?

8 A I don't believe I did. I don't recall having  
9 done that.

10 Q Did he ever report to you that he had contacted  
11 CSX prior to the bid window opening?

12 A He may have. I don't recall.

13 Q So you wouldn't recall what he said as to the  
14 outcome of a contact he may have had with CSX in that  
15 time period prior to the opening of the bid window?

16 A I don't recall.

17 Q After the bid window was open, did Mr. Windham  
18 or anyone else on your staff have contact with CSX about  
19 submitting a bid?

20 A After it was opened and prior to it closing?

21 Q Yes.

22 A I don't believe anyone did.

23 Q Let's take the reverse. Did CSX call you or  
24 anyone on your staff concerning a potential bid?

25 A I don't know the answer to that question.

1 Q You were not called?

2 A I don't recall receiving a call from CSX.

3 Q Did you receive a call from any of the other  
4 people whose letters we just reviewed?

5 , did you ever get a call from

6 ?

7 A I don't recall getting a call from

8 .

9 Q How about anyone on your staff?

10 A I don't know the time frame in which it  
11 happened, but I believe the president of  
12 called and talked with Tim Devlin and expressed his  
13 disappointment in the process and essentially was trying  
14 to find out is the Commission going to be pursuing this,  
15 and is this process going to be conducted in a fashion  
16 different than it was in 1997.

17 Q Did anyone on your staff -- did you or anyone  
18 on your staff engage in any phone conversations with any  
19 of the bidders during the time the window was open?

20 A I'm not aware of any such discussions.

21 Q Do you recall whether or not anyone on your  
22 staff spoke to anybody with concerning  
23 the bid prior to the bid process?

24 A Prior to the bid process?

25 Q Yes.



1           A    I think that it's possible that Bernie may  
2    have.

3           Q    Do you know who Bernie talked to and when?

4           A    I don't know the specifics of who he contacted.

5           Q    Do you know what he talked about with  
6                ?

7           A    I think if he were to have had a discussion  
8    with                    , the likely discussion would have  
9    been -- I'm not certain. I'm sorry. I'm not certain.  
10   That would be speculating on my part, and I just don't  
11   feel comfortable doing that.

12                   MR. FONTS: Let me have this marked as the next  
13                   exhibit, please.

14                           (Deposition Exhibit 10 was marked for  
15                   identification.)

16   BY MR. FONTS:

17           Q    Mr. McNulty, I've handed you what has been  
18    marked as Exhibit 10. Can you identify what that is,  
19    please?

20           A    Yes. Exhibit 10 is an e-mail from myself to  
21    Roland Floyd, Joe Jenkins, Bernie Windham, Todd  
22    Bohrmann, Cochran Keating, Tim Devlin, Jennifer Rodan,  
23    and Sid Matlock.

24           Q    Concerning what?

25           A    Concerning a contact that I had received from

1 Mark Laux of Tampa Electric on April 29th, 2003. And  
2 that e-mail is responded to by Cochran Keating back to  
3 me with a comment.

4 Q All right. In the e-mail from you to Roland  
5 Floyd, et al., you say the barge line told -- and this  
6 is . Mr. Ramil at Tampa Electric had gotten a call  
7 from that they had been contacted by  
8 Bernie Windham with questions regarding waterborne coal  
9 and commodity transportation operations and costs  
10 specific to the Tampa area.

11 Now, the call that Mr. Windham made to  
12 , was that at your insistence?

13 A As I stated earlier, I wasn't 100% aware that  
14 Bernie had done this, had made this call. I didn't  
15 recall it. And in looking at this, I don't recall  
16 either telling Bernie Windham to make this call. But I  
17 would say that we understood that we were in the process  
18 of trying to determine and educate ourselves about the  
19 market for waterborne coal transportation. Bernie was  
20 assigned to that issue. And this was prior to the time  
21 that an RFP was to be issued, and we were attempting at  
22 that time to talk with quite a few people. So he didn't  
23 get specific instruction, I don't believe, to make this  
24 call, but it wouldn't have been out of the ordinary for  
25 him to do so.

1 Q Do you expect that Mr. Windham also called  
2 other waterborne coal transporters?

3 A I suspect he may have.

4 Q Would you expect that Mr. Windham would have  
5 done this without your instruction?

6 A It's possible that he would have made such a  
7 call without specific instruction.

8 Q And what was the purpose of Mr. Windham's call?

9 A According to this e-mail, Bernie was addressing  
10 with questions regarding waterborne  
11 coal and commodity transportation operations and costs  
12 specific to the Tampa area.

13 Q Why would Mr. Windham or your organization be  
14 interested in such information back in April of 2003?

15 A Well, by that time, April of 2003, we had  
16 already had a meeting with the company. We had already  
17 issued some discovery to Tampa Electric relating to the  
18 continued validity of the benchmark.

19 And as we were examining TECO's benchmark for  
20 waterborne coal transportation, we were looking at a  
21 broader aspect of the issue, which is, you know, are  
22 they paying a competitive price. And naturally, to know  
23 about that, we had to go beyond the confines of our  
24 offices in order to be able to know that.

25 And I say that because it's pretty well known

1 that rate information regarding river traffic on the  
2 Ohio-Mississippi River system is not generally publicly  
3 available. So to educate ourselves, we would have to  
4 actually talk to people and find out something about  
5 what's going on in the market.

6 Q Based upon the fact that the person from  
7 called the president of TECO, would you  
8 expect that Mr. Windham had talked to  
9 with regard to Tampa Electric?

10 A It's possible that he could have done so.

11 Q Well, why would the person  
12 have called Mr. Ramil otherwise?

13 A He could have made a supposition that the  
14 largest operation in the area was Tampa Electric. It's  
15 possible. I'm not sure what the reasons were?

16 Q is located in the -- they're  
17 over in Louisiana serving the Mississippi River, aren't  
18 they?

19 A Yes.

20 MR. FONTS: Do you need a break? We'll take a  
21 break.

22 (Short recess.)

23 BY MR. FONTS:

24 Q Mr. McNulty, we were talking before the break  
25 about discussions with CSX prior to, subsequent to, or

1 while the window was open for the bid. Did you or  
2 anyone on your staff have any discussions with CSX after  
3 the bid was submitted by CSX and prior to the time that  
4 you prepared your testimony in October of 2003?

5 A Yes.

6 Q When did you -- did you have contacts with CSX?

7 A Yes, I did.

8 Q When did you have your first contact with CSX?

9 A My testimony was filed October 23rd, and I  
10 believe I called Mike Bullock of CSX on or about October  
11 20th.

12 Q For what purpose?

13 A I wanted Mr. Bullock to clarify some aspects of  
14 the rates that were being charged according to the bid  
15 that he had provided. I wanted him to give me an  
16 affirmative that my understanding of that CSX Tariff  
17 8200 and its companion, the supplement, were correct. I  
18 had a general conversation with him about the rates that  
19 were there and wanted to clarify my understanding of  
20 what they were.

21 Q You're talking about the rates that they  
22 offered in Attachment A to their bid?

23 A Yes.

24 Q And you're talking about the rates for the rail  
25 options for tons?

1 A That's right.

2 Q And what clarification were you seeking  
3 concerning those rates?

4 A [REDACTED]  
5 [REDACTED]  
6 that are listed in Attachment A.

7 Q And what were you told?

8 A I was told that those were effective, that  
9 [REDACTED]  
10 [REDACTED]

11 Q [REDACTED]

12 A [REDACTED]

13 Q [REDACTED]

14 A [REDACTED]

15 Q [REDACTED]

16 A [REDACTED]  
17 [REDACTED]

18 Q Other than fuel, what is a variable cost?

19 A The variable cost for rail would likely include  
20 many of the elements that are not considered capital,  
21 the other aspects of things that are not considered  
22 capital. For instance, labor rates may be considered to  
23 be something that are variable.

24 Q But the rates that he quoted, since we're on a  
25 confidential record, for example, the rate from the

1 Galatia Mine for , I assume that's per ton?

2 A Yes, that's a per ton amount.

3 Q [REDACTED]

4 A [REDACTED]

5 [REDACTED]

6 applicable to a January 1 period. It would not be

7 applied until April 1.

8 Q And for what time period would it run? For a

9 quarter until July the 1st?

10 A Yes. As stated, it says quarterly, so I

11 presume that would be the quarter following April.

12 Q And this variable, would that likely increase

13 rather than decrease the rate?

14 A It depends upon how the indices would move

15 according to its operation.

16 Q Did you inquire of him what the trend had been

17 [REDACTED]

18 A No, I hadn't inquired, because I actually had

19 [REDACTED]

20 extent in the Progress Energy Florida case, and so I was

21 somewhat familiar with it.

22 Q And from your familiarity, was the trend up or

23 down?

24 A It was generally up.

25 Q So that that on April the 1st, 2004,

1 would go up?

2 A Yes, similar to the way the CPI and PPI -- it's  
3 a escalator of costs over time, and costs tend to  
4 increase over time.

5 Q And so again on July the 1st of 2004, it would  
6 also go up; is that correct?

7 A It's possible it would go up, depending upon  
8 the items that are included in the indices.

9 Q But you said the trend is up.


10 A The trend is generally up. You don't know in  
11 any one period if it's going to be up or down.

12 Q But on October 1st, you would be faced with the  
13 same question of whether the rate was going to go up?

14 A Yes.

15 Q So it's possible that within a year's time, you  
16 could see the rate that's quoted here go up three times?

17 A Yes.

18 Q Was that the only question you asked him about  
19 

20 A No. I had several questions for him, and I  
21 don't have perfect recall of all of what I talked with  
22 him about on that. But I was, I'm sure, asking other  
23 questions about the information shown on this page to  
24 make sure I understood it.

25 Q And did you ask him about the fuel surcharge



1 per Tariff CSXT 8200?

2 A I believe I did.

3 Q And did you ask him whether or not the  
4 rate included the fuel surcharge?

5 A I believe I talked with him about that, and I  
6 believe that the rate does not include a fuel  
7 surcharge.

8 Q And is that fuel surcharge variable from time  
9 to time, or is it a set fuel surcharge?

10 A The fuel surcharge is variable, depending upon  
11 the West Texas intermediate crude oil price.

12 Q Per barrel?

13 A I believe that that is -- I believe that is per  
14 barrel, yes.

15 Q So to that , you would have to add  
16 whatever fuel surcharge there is to figure out what the  
17 real price per ton would be for the transport of coal  
18 from the Galatia Mine to Tampa Big Bend?

19 A That's correct.

20 Q Did you ask him about any of the items that are  
21 shown above where it says shuttle train from Big Bend to  
22 Polk? Did you ask him about the rates for synfuel?

23 A I don't think I asked about that. I don't  
24 recall specifically, but I think that was kind of clear  
25 to me.

1 Q It was clear to you that there would have to be

2

3 A Yes. That was clear from the description on  
4 the face.

5 Q All right. Did you ask him about the Big Bend  
6 plant, the shuttle train from Big Bend to Polk?

7 A I don't recall.

8 Q Do you know what the TECO Transport and Trade  
9 rate is for shipments from Big Bend plant to the Polk  
10 Power Plant, or Power Station, I should say?

11 A According to this bid?

12 Q No, just from your knowledge, not from -- this  
13 says , but what is the contract that Tampa Electric  
14 has with TECO Transport and Trade for shuttling it from  
15 Big Bend Power Station to Polk Power Station?

16 A I can check that number. It's a little more  
17 than , is my recollection.

18 Q But it's less than ?

19 A Uh-huh, yes.

20 Q Did you talk to him at all about the demurrage  
21' charge or demurrage rate?

22 A I would be speculating. I may have asked him  
23 about that, asked him whether or not that was a typical  
24 sort of charge and how often it happened, but I don't  
25 recall at this time.

1 Q Tell me what your understanding of a demurrage  
2 rate is.

3 A A demurrage rate is a rate that the buyer pays  
4 the -- let me specify buyer and supplier here.

5 Q How about carrier?

6 A Okay. That might work.

7 Q Shipper and carrier? Does that work?

8 A Uh-huh.

9 Q Okay.

10 A The demurrage rate is the rate that in this  
11 instance --

12 Q Well, just in general, what is a demurrage  
13 rate?

14 A It's a fee for an excessive period of time for  
15 unloading. You have a specified period of time in which  
16 there would be no additional charge for unloading, and  
17 if it exceeds that period of time, then a charge would  
18 be placed.

19 Q How about for loading? Is there such a thing  
20 as a demurrage charge for loading?

21 A There is in some instances.

22 Q And is it your understanding that under this  
23 bid that there's no demurrage rate for loading, only  
24 unloading?

25 A Yes, that would appear to be the case.

1 Q And it says it will be classified as a  
2 unload facility. Is there a rate associated  
3 with that? Is that set forth in the CSXT Tariff 8200?

4 A (Examining documents.)

5 Q Maybe what we can do to shorten this, if you'll  
6 give us a late-filed exhibit --

7 A I'll be happy to do that.

8 Q And provide us what the CSXT 8200 demurrage  
9 rate would be for both the tons and also  
10 for the tons, because as I see that, that  
11 says Big Bend will be classified as a unload  
12 facility.

13 A Right.

14 Q Okay. If you'll give me your understanding of  
15 what that amount is?

16 A Sure.

17 (Late-filed Deposition Exhibit 11 identified.)

18 BY MR. FONS:

19 Q Now, that unload, is that kind of a  
20 standard credit, that if you get it done in ,  
21 there's no charge, but if it takes longer than  
22 , there is a charge?

23 A That's a proper characterization.

24 Q And this is just assuming in one case it's a  
25 , and in the other, it's a unload

1 facility; is that correct?

2 A That's correct.

3 Q But if it should go longer than that, then it's  
4 going to cost Tampa Electric money. They've got to pay  
5 CSX additional money for the unloading?

6 A Yes.

7 MR. FONS: Okay. Would you mark this as the  
8 next exhibit, please.

9 (Deposition Exhibit 12 was marked for  
10 identification.)

11 BY MR. FONS:

12 Q Mr. McNulty, I'm handing you what has been  
13 marked Exhibit 12 and asking if you have ever seen this  
14 document before.

15 A Yes, I have.

16 Q And is this document titled "Comparison of  
17 Adjusted Rail Bid Rates and Waterborne Transportation  
18 Contract Rates"?

19 A Yes.

20 Q And does this particular exhibit supplement and  
21 link up to your exhibit to your testimony, Exhibit  
22 WBM-1?

23 A It is related to my exhibit, but this is an  
24 exhibit by Joann Wehle of Tampa Electric to her  
25 testimony.

1 Q And what does this Exhibit 12 attempt to do?

2 A It attempts to do two things. It attempts to  
3 first indicate what adjustments Ms. Wehle would make to  
4 the rail rate that I had determined based upon her view  
5 of several factors that she thought were not included in  
6 my testimony, to then basically show that the comparison  
7 between TECO Transport's average rate for all docks  
8 common to TECO Transport and the rail bid would have  
9 actually been much closer to each other than I had  
10 indicated in my testimony.

11 Q As a matter of fact, 10 cents would be the  
12 differential between the two?

13 A That's correct.

14 Q Now, have you examined her revisions or her  
15 changes to your exhibit?

16 A Yes, I've looked at these.

17 Q And do you have -- for example, the bidder's  
18 fuel surcharge, do you have any reason to disagree to  
19 her adding to the rail bidder rate?

20 A Yes. I disagree with that adjustment.

21 Q And on what basis?

22 A On the basis that fuel surcharges apply to both  
23 the TECO/TECO Transport contract, which there is a  
24 surcharge in that contract that's based on the  
25 and the adjustments and the

1 inflation that would occur based upon that index, and  
2 the suggested -- or the bid by CSX, which included an  
3 escalator on West Texas intermediate crude on the rates  
4 that were included in those bids.

5           And I disagree with that adjustment because,  
6 while there was an adjustment necessary in both of these  
7 arrangements, the fuel adjustment surcharge, in essence,  
8 cancels each other out. These are adjustments to the  
9 base expectation, and a base is set in both of these  
10 indices. And Ms. Wehle's attempt here is to say that a  
11 fuel index surcharge should be applied to one bidder's  
12 bid, but not another bidder's bid, and I don't think  
13 that is a fair and accurate representation of costs. I  
14 think those two surcharges cancel each other out and  
15 should not be included in an economic analysis of what  
16 the rates should be.

17           Q     But if the cost of the surcharge is included in  
18 the           , then your reason for challenging that  
19 adjustment is wrong; is that correct?

20           A     The           is the rail bidder rate.

21           Q     No, that's the TT total, column B. I'm sorry.  
22 There are two           . I'm talking about -- just look at  
23 the top line, Cook.

24           A     Oh, I see. Okay.

25           Q     If the surcharge is already included in that

1 rate, then your challenge to Ms. Wehle's adjustment is  
2 incorrect; isn't that right?

3 A That would be correct in part, if we are  
4 talking about January 1, 2004. But my reading of the  
5 TECO Transport/TECO contract is that an adjustment takes  
6 place on April 1. And if an adjustment takes place on  
7 April 1 for the TECO/TECO Transport contract and it  
8 doesn't take place in the first quarter, then it's not  
9 fair to compare them on the basis of that one quarter.  
10 I would argue that you have to maybe go to the second  
11 quarter and look at what the CSX fuel surcharge is  
12 versus the TECO Transport surcharge, and if those two  
13 are operating as an add-on at that point, then you have  
14 to make your adjustment.

15 Q And the calculation is based upon a percentage.

16 A For which entity?

17 Q For the fuel surcharge. That's a percentage,  
18 isn't it?

19 A For which entity are we talking about?

20 Q Certainly for the rail bidder, it's a percent  
21 charge of the cost of a barrel of fuel.

22 A Yes, it's essentially a percent surcharge.

23 Q And to your knowledge, how is the TECO  
24 Transport and Trade fuel surcharge calculated?

25 A It is applied to the fuel component of the



1 three-part rate that is charged per the TECO  
2 Transport/TECO contract.

3 Q But if that already includes the  
4 surcharge as of January the 1st, you would not expect  
5 that charge to go up on April the 1st, would  
6 you, on a per ton basis?

7 A Actually, I looked at a comparison that would  
8 show that the two fuel surcharges operate at  
9 approximately the same magnitude, and a document that  
10 was provided per the public records request provides an  
11 indication of this. And specifically I'm looking to the  
12 September 26, 2003 , and that  
13 price report shows on page 5 that the fuel  
14 price for Tampa, Florida, at that time was \$75.65 to  
15 76.55. And it shows that the New Orleans area had a  
16 fuel rate of \$73.70 to \$75.05, which  
17 mirrors in many regards what you would expect to see in  
18 the --

19 Q But this is not .

20 A It's not , but it's a reflection of  
21 because it's Gulf Coast.

22 Q But it's not .

23 A It's not specifically .

24 Q Why don't we have this document marked as the  
25 next exhibit, please. And I see you've stolen that.



1 BY MR. FONS:

2 Q Let's look at column E of Exhibit 12, the  
3 demurrage rate. Do you have any problems with that  
4 adjustment?

5 A That demurrage rate I think was based upon a  
6 study that was conducted on Tampa Electric's behalf, and  
7 it suggested that the train unloading couldn't take  
8 place in the designated time frame that was suggested by  
9 the included in the CSX bid for  
10 tons.

11 And I didn't presume that demurrage was going  
12 to happen to any degree. I had no information that that  
13 demurrage would have to be assessed. And I think my  
14 memory is, I asked about -- I may have -- well, allow me  
15 not to speculate. I'm not sure if I asked about that or  
16 not in talking with Mike Bullock, but I did not include  
17 that, because I did not know whether the study was  
18 correct or not.

19 And subsequently, I have been reading discovery  
20 responses by CSX which would indicate that for their  
21 direct rail carrier origins, that they have not been  
22 experiencing rail demurrage charges. So in hindsight, I  
23 think that I probably made a good decision in not  
24 including that adjustment.

25 Q How many of the connections needed to supply

1 Tampa Electric are direct CSX connections?

2 A Are you asking about the commonality of --

3 Q Yes.

4 A Okay.

5 Q Well, let me ask you this. What has direct  
6 connection got to do with it? Are you suggesting that  
7 CSX will have to unload all the cars when they do a  
8 connection with Illinois Central or Union Pacific?

9 A Yes.

10 Q So they'll have to unload all the cars, and  
11 there will be demurrage associated with that?

12 A Right.

13 Q You're not talking about unloading at the  
14 shipper's place, the Big Bend Power Plant?

15 A That's correct.

16 Q So the only time you'll have demurrage is when  
17 CSX picks up coal that is originating on Illinois  
18 Central?

19 A I believe that's the case.

20 Q How about F? That's not a biggie, but would

21

22

23 the CSX bid.

24 Q Where is it included? It says rates for

25

1 rate shown above.

2 A Oh, it's not included in the rate. It's an  
3 adder to the rate, yes.

4 Q Right.

5 A And I didn't incorporate that. And as we can  
6 see from Ms. Wehle's incorporation, she included it in  
7 only a single dock. And I think one of the reasons why

8

9

10 Q How about column G, increased cost to Polk  
11 Station?

12 A I didn't agree with that adjustment either.  
13 The reason I didn't agree with it is that CSX offers two  
14 options for how to complete the shipment to Polk  
15 Station, and one of those is a direct rail train direct  
16 to Polk Station. And that option can be seen in the  
17 verbiage on the same Attachment A rate page, where it  
18 says, "If elected for Tampa Electric's options on Polk,  
19 rail direct deliveries to the Polk Plant will be per  
20 net ton in addition to the rates outlined above." And  
21 is certainly superior to the that is now being  
22 charged for trucking for that purpose.

23 So not knowing which option would be selected,  
24 but looking as though one was clearly superior, if there  
25 were any adjustment, it would go in the other direction,

1 it would appear to me.

2 Q Did you have any discussions with Mr. Bullock  
3 or anybody else at CSX after you filed your testimony on  
4 October 23rd?

5 A No.

6 Q Do you know whether anyone on your staff had  
7 any discussions with anyone at CSX after the bids were  
8 made and before your testimony?

9 A I don't know of any contacts. I would say that  
10 I did hear from -- after talking with Mr. Bullock, I did  
11 hear from Mr. Schef Wright, who called just to inform me  
12 that they were intending to intervene in the case.

13 Q He called you rather than your attorney?

14 A Yes, he did.

15 Q Did he have --

16 A Or I should say he called me. He may have in  
17 addition called the attorney. I don't know.

18 Q Do you as a custom talk to the attorneys for  
19 parties?

20 A I typically don't unless it's in a group  
21 setting like this, and then I talk with them a lot.

22 Q More than you care to.

23 A I didn't say that.

24 MR. FONS: Let me get this marked as an  
25 exhibit.

1                   (Deposition Exhibit 14 was marked for  
2                   identification.)

3                   MR. FONS:   And go ahead and mark this as the  
4                   next one.

5                   (Deposition Exhibit 15 was marked for  
6                   identification.)

7                   BY MR. FONS:

8                   Q     I'm handing you what have been marked as  
9                   Exhibits 14 and 15 and ask you if you know what these  
10                  are.   That's 14, and this is 15.

11                  MR. KEATING:  Could I ask which one is 14 and  
12                  which one is 15?

13                  MR. FONS:  It should be --

14                  MR. KEATING:  Thank you.  I've got it.

15                  THE WITNESS:  I'm sorry.  The question is?

16                  BY MR. FONS:

17                  Q     Are you --

18                  A     I'm familiar with these documents.

19                  Q     Were these documents prepared by you or at your  
20                  direction and supervision?

21                  A     I believe I prepared this.

22                  Q     And on the first one, on 14, there are  
23                  handwritten notes that say, "In docket file?  See MAH,"  
24                  and it's marked "Draft."  Who is MAH?

25                  A     I believe that would be Mary Anne Helton.

1           Q    Is she the one that prepared it or was  
2 reviewing it?

3           A    She may have been involved in the review  
4 process. I'm not sure. I don't believe we ever went  
5 anywhere with this.

6           Q    Okay. That was going to be my next question.  
7 Were these letters ever sent?

8           A    No. We certainly debated it, but staff was  
9 very sensitive to the fact that we didn't want to --  
10 once the RFP process was underway and the RFP was  
11 issued, we were sensitive about the question of  
12 contacting potential shippers, even after the closing  
13 period of July 31st, knowing that negotiations might  
14 still be going on. And the staff took great care, I  
15 think even in late September, to check with TECO counsel  
16 to see if they thought it was acceptable for us to talk  
17 to shippers, wanting to not become involved in the  
18 process of disturbing the bid process until the  
19 selection was made.

20          Q    Prior to August 12th, did the staff post  
21 information about Tampa Electric's RFP on its website?

22          A    I believe we did.

23          Q    And what kind of information were you posting  
24 on your website?

25          A    I believe we posted the time line for the



1 selection process, for the distribution and evaluation  
2 and selection process of the RFP that was provided to us  
3 in a public meeting.

4 Q And was one of the things that was posted on  
5 the website information that Tampa Electric indicated  
6 should not be on the website, such as the right of first  
7 refusal?

8 A I believe that that document simply stated that  
9 it should be clarified whether the right of first  
10 refusal was operating -- excuse me. Let me reference  
11 that page so I can get it exactly right.

12 Could you assist me by clarifying exactly which  
13 page it is you were concerned about that was on our  
14 website?

15 Q We believe the whole thing was on the website,  
16 both pages, and the letter.

17 A Okay. There is a minimum clarifications, TECO  
18 RFP minimum clarifications sheet that staff had  
19 developed and placed in the docket file which, because  
20 it was in the docket file, would be posted to the  
21 website. And item number 7 on that sheet states, "TECO  
22 Transport: TECO Transport can/cannot (circle one) match  
23 the lowest bid with all non-price factors considered."  
24 I don't think that that in any way declares whether a  
25 right of first refusal exists or not.

1           Q     Did you believe that putting materials on the  
2 website was a way of communicating with shippers?

3           A     No.

4           Q     Was it staff's intention to put matters such as  
5 this on the website in order to communicate with  
6 shippers?

7           A     I don't believe that that was the intention. I  
8 think that that was placed in the docket file by our  
9 legal staff, or at least there was some recognition  
10 between the two divisions, the Division of Economic  
11 Regulation and the Division of Legal Services or General  
12 Counsel that -- there was some discussion about whether  
13 or not it should be put in the docket file. But I don't  
14 think it was a tacit way to signal to the shippers that,  
15 hey, look here, we're going to get the information out  
16 to you this way rather than an up-front method. I don't  
17 think there was any intent to do that.

18          Q     But at the time that the RFP was being issued,  
19 staff and Tampa Electric were in a controversy over what  
20 should be included in the RFP; is that correct?

21          A     Yes, that's correct. And I guess the issue  
22 here is whether or not an item like this, which  
23 represents communications and is something that is  
24 certainly quite integral to the case, whether it would  
25 be appropriate to leave it out of the docket file.

1           Something like that was I think also perhaps considered.

2           Q     Just so we're clear on this, there's no  
3           requirement in Order No. 20298 that Tampa Electric  
4           solicit bids or put out RFPs; is that correct?

5           A     I agreed with that earlier, and I continue to  
6           agree with that.

7           Q     And therefore, there is nothing in that order  
8           that provides staff with any authority to tell Tampa  
9           Electric what to include in the bid, is there?

10          A     No, there's not.

11          Q     Is there anything in any Commission order or  
12          rule that directs staff to tell a utility what to put in  
13          an RFP of this kind?

14          A     I think we do have a rule regarding need  
15          determination that would indicate that there is a  
16          meeting process that takes place where there is  
17          interplay between the parties and staff as to what  
18          constitutes an acceptable RFP.

19          Q     But that's for need determination; isn't that  
20          correct?

21          A     That's correct, that's for need determinations,  
22          but --

23          Q     Prior to the RFP being issued, did you or  
24          anyone on your staff have any discussions with Drummond  
25          coal?

1           A     If there was someone from the staff that would  
2     have contacted Drummond Coal or been contacted by them,  
3     it likely would have been Bernie Windham.

4           Q     But you've not had any -- or have you had any  
5     discussions with Bernie Windham concerning any contacts  
6     he may have had with Drummond Coal prior to the issuance  
7     of the RFP?

8           A     You know, my recollection of these many  
9     contacts is admittedly somewhat hazy, but I believe he  
10    did contact them and try to find out information about  
11    Drummond Coal in terms of, you know, what the operation  
12    of the facility was and --

13          Q     Operation of what facility?

14          A     A prospective new coal terminal in the Tampa  
15    Bay area.

16          Q     And why would a prospective new coal terminal  
17    in the Tampa Bay area be of interest to the staff in  
18    connection with the bid, the RFP that Tampa Electric was  
19    preparing to issue?

20          A     Well, I believe this was an issue that was  
21    discussed at our July 1 meeting, where we were  
22    discussing our clarifications. We were concerned that  
23    it appeared as though this was a bid for domestic  
24    waterborne coal, and we were concerned at the time that  
25    it may be cheaper to ship coal directly from foreign

1 locations directly to Tampa Bay, and we wanted to  
2 understand more about that process and whether or not  
3 there were options for receiving coal in the Tampa Bay  
4 area that could be used for the Polk facility.

5 There was I think a good bid of information  
6 that staff had received from Tampa Electric at that time  
7 which would have indicated that there was limited  
8 capability for storage and blending at Big Bend, so that  
9 there was a natural question about what are the economic  
10 benefits of receiving coal in different ways and in  
11 different locations in the immediate Tampa area in order  
12 to be able to preclude having to pay both the  
13 terminaling fee in Davant as well as the Gulf transit  
14 fee.

15 Q The article that you're reading from, what's  
16 the date of that article?

17 A November 17, 2003.

18 Q So that was well before the bid process began,  
19 or after the bid process. It was after it was  
20 completed, wasn't it?

21 A Yes.

22 Q I thought indicated that the contacts with  
23 Drummond were before the RFP was issued and that the  
24 contacts were to find out about --

25 A They were. I believe that there were some

1 contacts before the RFP was issued.

2 Q Right, but that information didn't come out  
3 until after the RFP had been completed.

4 A Well, I don't know that. This is information  
5 that is new to this publication.

6 Q But how did you know about it before July 1st?

7 A I'm only trying to put into context what you  
8 were saying with the Drummond Coal location. You wanted  
9 to --

10 Q Well, I wanted to know why you would have been  
11 interested in a new terminal by Drummond, because that  
12 was the reason you expressed for why you had contacted  
13 Drummond, and that article didn't come out until well  
14 after the time that you would have had such contacts;  
15 isn't that correct?

16 A That's correct, to the extent that a contact  
17 was made. And I'm not 100% certain a contact was made.  
18 But this is just referencing the fact that there would  
19 be a new Drummond Coal facility available late this  
20 year. And it doesn't mean that this was the first time  
21 this was introduced. This information could have been  
22 provided in any number of ways, and Bernie could have  
23 discovered it in any number of ways.

24 Q Did you have any contacts with Drummond Coal  
25 during the time that the bid window was open? Did you

1 or anyone on your staff have any such contacts?

2 A I think a similar question was asked earlier,  
3 whether or not we had engaged in the behavior of  
4 contacting potential bidders. And as far as I know,  
5 there was no contact during that bid window.

6 Q Was Drummond Coal a potential bidder?

7 A Drummond Coal would be considered a potential  
8 bidder if you were to construe the RFP very broadly.

9 Q Is Drummond Coal a waterborne coal  
10 transportation company?

11 A It's a terminaling facility, and I believe they  
12 also have a -- some coal provisioning. I believe that  
13 Drummond Coal responded to the -- could have responded  
14 to the RFP.

15 Q But they did not, did they?

16 A Within the window that was established?

17 Q Yes.

18 A I don't believe they did.

19 Q Did they submit a bid after the window was  
20 closed?

21 A I'm not certain.

22 Q Did staff ever urge Drummond to submit a bid?

23 A Not to my knowledge.

24 Q But it could have? Someone on your staff could  
25 have urged them to submit a bid?





1 shippers during the time the window was open.

2 A To be more complete, I gave him instructions  
3 not to talk to anyone who could bid.

4 Q And who is the shipper? Wouldn't Tampa  
5 Electric be the shipper? Aren't they the one that is  
6 shipping coal from the mine to the power plant?

7 A Yes.

8 Q Now, Drummond Coal is a coal producer, are they  
9 not?

10 A I believe so.

11 Q And they produce coal both domestically and  
12 foreign; is that correct?

13 A I believe so.

14 Q But they're not a waterborne coal  
15 transportation company, are they?

16 A I think they contract for that service, and  
17 they established a terminal in Tampa. But they are a  
18 provider of coal, and they contract for the shipping.

19 Q They're in the same boat that Tampa Electric is  
20 as far as getting coal from one point to another. They  
21 are dependent upon some carrier to do that; is that  
22 correct?

23 A Yes, I believe so.

24 Q And do you know whether or not the carriers  
25 that Drummond uses are affiliates of Drummond?

1           A     I don't know.

2           Q     Do you know what kind of vessels Drummond uses  
3 to transport its domestic coal to points in Florida?

4           A     No.

5           Q     Do you know what kind of vessels Drummond uses  
6 to transport coal from foreign locations into Florida?

7           A     No.

8           Q     Do you know whether Drummond is transporting  
9 any foreign coal into Florida at this time?

10          A     I'm not certain.

11          Q     What are the limitations of delivering coal  
12 into the Tampa Port Authority?

13          A     I'm not certain about all locations for the  
14 Tampa Port Authority, but according to the Tampa Port  
15 Authority, Tampa Port Authority Berth 30 at Port Sutton,  
16 Pendola Point, has a draft of 43 feet, but it's limited  
17 by the approach channel to 39 feet plus tide to a max of  
18 41 feet.

19          Q     So that would limit the availability of a  
20 Panamax vessel. Panamax vessels, would you agree, have  
21 a draft of up to 43 feet?

22                 MR. FONS: Let's just -- why don't you mark  
23 this as the next exhibit.

24          A     That's a good question. I'm not certain that  
25 I can necessarily agree with that, because there is the

1 possibility of loading Panamax vessels --

2 MR. FONS: Whoa, whoa, whoa. She's got to mark  
3 it.

4 (Deposition Exhibit 16 was marked for  
5 identification.)

6 BY MR. FONS:

7 Q You have in front of you what has been marked  
8 Exhibit Number 16, which is a -- can you tell me what  
9 that is?

10 A Yes. Exhibit Number 16 is a response from Lisa  
11 Hall of Tampa Port Authority to Todd Bohrmann on March  
12 11, 2004, responding to certain queries that were  
13 relayed to her by Mr. Bohner.

14 (Discussion off the record.)

15 BY MR. FONS:

16 Q Look at Item 1 under, "Pursuant to Mr. Bohner's  
17 direction, following are responses to your queries of  
18 February 10." Would you just read that?

19 A "Panamax vessels can have a draft of up to 43  
20 feet. Big Bend Channel has a 34 foot draft.  
21 Bayside/Gannon has an approach channel that has an  
22 operational draft of 39 feet plus two foot of tide to a  
23 max of 41 feet, but the berthing area is only 34 feet.

24 Q So that would make it difficult for a Panamax  
25 vessel to enter the Big Bend Channel; is that correct?

1           A     That's probably what it would indicate, but --  
2     yes, that's probably what it would indicate.

3           Q     And likewise, under point number 2, Tampa Port  
4     Authority Berth 30 at Port Sutton, Pendola Point, has a  
5     draft of 43 feet but is limited by the approach channel  
6     to 39 feet plus tide to a max of 41 feet; is that  
7     correct?

8           A     Is it correct that a Panamax vessel would have  
9     a hard time --

10          Q     Yes.

11          A     -- in approaching the dock?

12          Q     Yes.

13          A     It's possible, yes. I mean, it's self-evident  
14     from this.

15          Q     And doesn't this e-mail from Lisa Hall indicate  
16     that there are not only draft problems, but also  
17     permitting problems for the offloading and storage and  
18     handling of coal in the Tampa Port Authority?

19          A     Well, when you say a problem, I think what it's  
20     saying here is that they're limited because of  
21     permitting. I don't know if permits were --

22          Q     But you would agree a permit is not currently  
23     in effect, and a permit must be obtained from the FDEP  
24     to store, process, or blend coal, whether it is for an  
25     open storage pile system or a silo storage system?

1           Isn't that what this e-mail says?

2           A     Yes.

3           MR. FONS:   Can we go off the record?

4           (Discussion off the record.)

5           (Deposition recessed at 4:22 p.m.)

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CERTIFICATE OF OATH

STATE OF FLORIDA)  
COUNTY OF LEON )

I, MARY ALLEN NEEL, Notary Public in and for  
the State of Florida at Large:

DO HEREBY CERTIFY that on the date and place  
indicated on the title page of the foregoing transcript,  
an oath was duly administered by me to the designated  
witness before testimony was taken.

WITNESS my hand and official seal this 5th day  
of April, 2004.

\_\_\_\_\_  
MARY ALLEN NEEL, RPR  
2894-A Remington Green Lane  
Tallahassee, Florida 32308

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)  
COUNTY OF LEON )

I, MARY ALLEN NEEL, do hereby certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter transcribed under my supervision; and that the foregoing pages numbered 1 through 133 are a true and correct transcription of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, or relative or employee of such attorney or counsel, or financially interested in the action.

DATED THIS 5th day of April, 2004.

---

MARY ALLEN NEEL, RPR  
2894-A Remington Green Lane  
Tallahassee, Florida 32308  
(850) 878-2221

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 030133-EI

In re: Review of Tampa Electric Company's  
waterborne transportation contract with  
TECO Transport and associated benchmark.

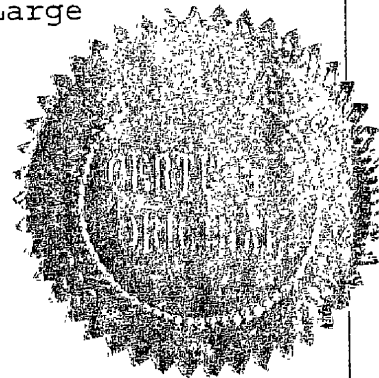
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[REDACTED]

DEPOSITION OF: WILLIAM B. McNULTY  
TAKEN AT THE INSTANCE OF: Tampa Electric Company  
DATE: Monday, April 5, 2004  
TIME: Recommended at 10:35 a.m.  
Concluded at 12:09 p.m.  
LOCATION: 227 South Calhoun Street  
Tallahassee, Florida  
REPORTED BY: MARY ALLEN NEEL, RPR  
Notary Public, State  
of Florida at Large

VOLUME 2  
Pages 136 - 186

[REDACTED]



ACCURATE STENOGRAPHY REPORTERS, INC.  
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## ALSO PRESENT:

CARLOS ALDAZABAL  
DEIDRE A. BROWN  
EARL POUCHER

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1 Thereupon,

2

WILLIAM B. McNULTY

3

continued his direct testimony under oath from Volume 1  
4 as follows:

5

CONTINUED DIRECT EXAMINATION

6

7

BY MR. FONTS:

8

Q Good morning, Mr. McNulty.

9

A Good morning, Mr. Fons.

10

Q You're still under oath, you realize?

11

A I understand that.

12

Q It didn't wear off over the weekend.

13

A No, it didn't.

14

If I could actually start by saying there's a  
15 couple of items that I would like to correct or amend  
16 from Friday's deposition. A few things I said were not  
17 correct or were incomplete, and I would like to go ahead  
18 and make them complete or correct them at this time.

19

Q You will certainly have an opportunity,

20

Mr. McNulty. After I finish cross-examining you, your  
21 attorney may redirect any questions to you. I think

22

that would be more appropriate, since I don't have an

23

idea where you're going with this, and I think it would

24

be more appropriate if questions were asked and answers  
25 were given.

25

A That's fine. I only offered that to offer you

1 the opportunity to say something and follow up on those  
2 things.

3 Q Well, do want to tell me what the areas are  
4 before --

5 A Certainly. I guess I can basically tell you  
6 that one was, there was a line of questioning on Friday  
7 that asked me the time frames during which staff  
8 contacted shippers.

9 Q Yes.

10 A I should say carriers, the time they contacted  
11 carriers. That's one area.

12 And then the other area is, you asked me what  
13 the definition of competition was, and I believe I gave  
14 you a somewhat incomplete definition on that.

15 Q All right. Let me just begin by asking you,  
16 over the weekend have you had an opportunity to review  
17 the testimony filed by the intervenors in this  
18 proceeding?

19 A No, I have not.

20 Q So anything that you will testify today was not  
21 colored by anything that you learned over the weekend  
22 from testimony from other witnesses in this proceeding?

23 A No.

24 MR. FONS: Let's go back to Exhibit 12, if we  
25 may. Cochran, I've given you a set of documents

1           there.

2           MR. KEATING: Do these include the exhibits  
3           from Friday?

4           MR. FONNS: Yes, that's the packet from Friday.

5 BY MR. FONNS:

6           Q     We talked on Friday about Exhibit 12, and what  
7           I want to know is, on column C, the rail bidder rate,  
8           the amount shown in each one of those lines, Cook,  
9           Hamilton, et cetera, is the rail bid from CSX; is that  
10          correct?

11          A     Yes, that's the CSX bid, their -- I believe it  
12          was their Attachment A.

13          Q     Now, that rate is the rate from wherever they  
14          would pick up the coal; is that correct?

15          A     Yes.

16          Q     And would they be picking up -- and I believe  
17          that the locations indicated are river docks.

18          A     Yes.

19          Q     Like the first line is Cook. That's a river  
20          dock; is that correct?

21          A     That's correct.

22          Q     To your knowledge, would CSX be picking up the  
23          coal at Cook?

24          A     The way that I determined how these rates would  
25          apply was to see for each river dock -- the short answer

1 to the question is that the locations that were listed  
2 in the RFP are river docks, but the locations that are  
3 listed in CSX's -- the bidder's rates are not associated  
4 with river docks, but are associated with what is in  
5 their tariff, and they don't base their tariff upon  
6 river docks. So what I attempted to do was to match up  
7 the location of where the river docks were with the  
8 locations that are in the CSX tariff.

9 Q And have you looked at -- again, you might want  
10 to look at -- do you have a copy of the CSX bid?

11 A Yes.

12 Q Why don't you turn to page 41?

13 A Is this the page you're referring to?

14 Q Yes, Attachment A. Yours has got a little  
15 different number. It's got an extra 1 on there.

16 It shows the mine and rate district, and it  
17 says on the first line the Galatia Mine, and there's a  
18 rate for [REDACTED]. Is that the same as the Cook river  
19 dock on Exhibit 12?

20 A It could be -- according to information I have  
21 in front of me, it could be the Cook river dock, or  
22 Mound City is also listed. I guess it could be either  
23 one of those. I would have to actually look this  
24 information up on a map in order to be able to determine  
25 how I originally determined that these were equivalent

1 areas.

2 Q And this Exhibit 12 is, of course, built upon  
3 your Exhibit Number 1, is it not?

4 A Right.

5 Q And in your Exhibit 1, you used -- you did not  
6 use what's set forth -- I'm sorry. You're not --

7 A I'm trying to retrieve my testimony, since you  
8 were referencing it.

9 Okay. I have it now.

10 Q And you didn't use Attachment A -- well, how  
11 did you use Attachment A in the development of your  
12 Exhibit WBM-1?

13 A I used Attachment A to determine the mine and  
14 rate district that was listed, and it included Galatia  
15 Mine, and Galatia Mine has a specific geographic  
16 location which I determined on maps. From that, I  
17 determined if that particular mine was essentially  
18 between the pool areas that were listed by Tampa  
19 Electric in its RFP. The RFP had a two-page addendum  
20 that showed the various docks that were being included  
21 in soliciting a bid for those locations. So I was able  
22 to determine for each of the locations that were listed  
23 on Attachment A of the CSX bid where they existed in  
24 relation to the pool areas described on the RFP. And  
25 from that, I could determine whether or not they were in

1 the approximate location of, say, in this instance, or  
2 in any one of these designated pool areas, whether or  
3 not the specific mine was proximate to it.

4 Q Now, to your knowledge, coal coming from the  
5 Galatia Mine, how would it be delivered for purposes of  
6 waterborne transport from the Galatia Mine to the dock,  
7 the Cook dock?

8 A I don't know specifically how that transport  
9 happened or happens for TECO Transport and for Tampa  
10 Electric in the delivery of those goods. It could be by  
11 truck. It could be by rail. I'm not certain of those  
12 specific delivery mechanisms.

13 Q Are you familiar with how the coal gets from  
14 Galatia Mine to the railhead under the CSX proposal?

15 A I would presume it would be by truck, but it  
16 could also be by rail. Those methods for moving the  
17 coal from the mine to the river or the mine to the  
18 railhead I'm not certain about.

19 Q Okay. Is there any charge in the CSX proposal  
20 for the transport from the mine to the railhead?

21 A No, there's not.

22 Q Is the coal generally delivered to the dock  
23 under a term called FOB or free on board?

24 A Yes, it is.

25 Q And what does that mean?



1           A     Free on board means that the commodity price  
2 will include not only the price of the coal, but also  
3 the transport of the coal to the river dock.

4           Q     Now, do you know whether the railhead and the  
5 river dock are collocated?

6           A     I would say in most instances they are not  
7 collocated.

8           Q     And if the railhead was a longer distance from  
9 the mine, then the transportation cost would be -- if  
10 the railhead is further from the mine than the dock is  
11 from the mine, then the cost of that transportation to  
12 the railhead would be more than the transportation to  
13 the dock; isn't that correct?

14          A     In most cases that would be correct. It would  
15 depend upon the individual arrangements having been  
16 made.

17          Q     And in that case, then the cost of the coal,  
18 the commodity, would be higher if it was being shipped  
19 by rail rather than waterborne?

20          A     Yes.

21          Q     And ultimately, Tampa Electric, if they were  
22 the purchaser of the coal, would have to pay more for  
23 the coal in that situation if it were shipped by rail  
24 than it would pay for the coal if it were shipped by  
25 waterborne?

1 A Yes.

2 Q I believe that the CSX bid also presumes some  
3 additional capital costs that will have to be incurred  
4 by Tampa Electric in the event it were to take coal by  
5 rail; isn't that correct?

6 A Yes.

7 Q And does your analysis in WBM-1 take into  
8 account the additional capital costs that Tampa Electric  
9 would have to incur in order to take coal from CSX?

10 A No, it doesn't specifically make any account  
11 for capital costs. However, I should tell you that in  
12 the CSX bid, there was an offer for capital improvements  
13 and capital to be -- capital improvements were included  
14 in each of the bids that were proffered by CSX for the  
15 purpose of preparing Tampa Electric's generating  
16 stations for the receipt of coal.

17 Q And do you have a copy of the CSX bid there?

18 A Yes, I do.

19 Q Would you turn to page 47? That's my 47.

20 That's probably not -- there's no other page numbers on  
21 this bid that I'm aware of, but it's right behind  
22 Exhibit 2. It's the first page behind Exhibit 2.

23 A (Exhibiting document.)

24 Q Yes. And at the bottom of this page, it's  
25 indicated that these capital improvements at Big Bend

1 are anticipated not to exceed [REDACTED] Do you see  
2 that?

3 A It actually says [REDACTED]. I think there was a  
4 later adjustment to include a million based upon a  
5 discussion.

6 Q An interlineation?

7 A Yes.

8 Q Okay. Do you have that page?

9 A I have that one.

10 Q All right. I was assuming it was [REDACTED]. And  
11 then it goes on to say that a system to load a 35  
12 shuttle train to the northeast end of the property is  
13 anticipated not to exceed [REDACTED], which I assume stands  
14 for million; is that correct?

15 A Yes.

16 Q Have you done any analysis to determine whether  
17 or not the proposed capital improvements that would be  
18 required at Big Bend would in fact cost only [REDACTED]  
19 [REDACTED]?

20 A No, I have not.

21 Q And if it cost more than the [REDACTED] that  
22 CSX has indicated that they would fund, then Tampa  
23 Electric it would have bear that expense; isn't that  
24 correct?

25 A Well, there's two things I don't agree with

1 your statement on. The first is the [REDACTED] being  
2 the number to look at, because they talk about a  
3 location in the northeast end of the property for the  
4 [REDACTED], so you would have to add those two to get the  
5 total. And then that's not the ultimate total, because  
6 two paragraphs later, the discussion appears, "We are  
7 confident in our estimates" -- this is a quote. "We are  
8 confident in our estimates and would be willing to  
9 invest up to [REDACTED] of these estimates for each scenario  
10 described above." So I perceive them as actually being  
11 willing to invest at the Big Bend location [REDACTED] plus [REDACTED]  
12 times [REDACTED], whatever that number is, in order to  
13 determine what they would be investing at the Big Bend  
14 location.

15 Q Have you made any determination of whether the  
16 amounts proffered by CSX for the capital improvements  
17 can indeed be performed at [REDACTED] plus [REDACTED] times [REDACTED]?

18 A No, I haven't.

19 Q So you have no opinion as to whether or not  
20 Tampa Electric would in fact have to incur additional  
21 capital costs in order to make the improvements  
22 necessary to accept coal by rail at their Big Bend Power  
23 Station?

24 A I have no opinion on that at this time. Again,  
25 my -- excuse me, at the time that I prepared this. And

1 at this time, I am still not with an opinion on that  
2 matter, as testimony has been filed that would address  
3 this issue.

4 Q Testimony by whom?

5 A CSX.

6 Q Are you aware that there is testimony filed by  
7 CSX that addresses this issue?

8 A I am aware of that, yes.

9 Q Whose testimony?

10 A I believe that is addressed -- I'm not certain.

11 Q Have you reviewed the testimony filed by Tampa  
12 Electric which addresses the issue of the capital costs?

13 A Yes.

14 Q And does Tampa Electric agree that the  
15 improvements that would have to be made at the Big Bend  
16 Power Station could be performed for --

17 A No, they don't agree that it could be performed  
18 at that amount.

19 Q Did they say it could be less or more?

20 A More.

21 Q Substantially more?

22 A Yes.

23 Q Who is likely to have better information  
24 concerning what Tampa Electric needs at its Big Bend  
25 Power Station for purposes of excepting coal deliveries,

1 Tampa Electric or CSX?

2 A I'm not certain.

3 Q You don't think that Tampa Electric, who  
4 operates the power station, has better information about  
5 what its needs are and what its requirements would be  
6 than CSX?

7 A The trouble I have in making a determination as  
8 to who is the better determinant for what that would  
9 cost is, on the one hand, you have CSX, which is a  
10 railroad company, and they deal with railroad  
11 installations. They're the largest shipper of coal east  
12 of the Mississippi. They deal with installations  
13 everywhere. The one thing they may be lacking to some  
14 extent is site-specific information, but they know the  
15 business of transporting coal by rail, and so they would  
16 know a lot about the subject.

17 On the other hand, there's TECO that has all  
18 the site-specific information. I understand that TECO  
19 hired Sargent & Lundy to review this, and I understand  
20 that that's a consulting firm. I can't speak to the  
21 abilities of the consulting firm nor the people who are  
22 engineers on the staff of Tampa Electric who reviewed  
23 the Sargent & Lundy study.

24 So I really am not in a position at this time  
25 to be able to say who is the better entity to determine

1 a realistic level of capital expenditures for the  
2 receipt of coal at Big Bend or Polk Station.

3 Q Isn't this more than just the receipt and  
4 delivery? Isn't this also involved in the storage and  
5 blending of coal?

6 A Yes, it also involves those aspects as well.

7 Q And does CSX as a practical matter involve  
8 itself in the blending of coal?

9 A I don't know.

10 Q And hasn't CSX even in its bid admitted that it  
11 has developed these costs with very limited access to  
12 these plants?

13 A Yes, it did.

14 Q If the capital costs exceed the amount that CSX  
15 thinks it will cost, then, of course, Tampa Electric has  
16 to bear that expense or those costs; isn't that correct?

17 A That's correct.

18 Q And those additional capital requirements,  
19 doesn't that impact any decision that a prudent utility  
20 would make, decisions it would make regarding the  
21 acceptance of coal by one means or another?

22 A Yes.

23 Q Is it your opinion that Tampa Electric should  
24 make these improvements in order to accept coal by rail?

25 A I don't have an opinion on that.

1 Q In your testimony that you filed back in  
2 October, you did have an opinion on that, didn't you?

3 A No.

4 Q Wasn't it your opinion that Tampa Electric --  
5 that the proper market rate to consider is the rail rate  
6 offered by the rail company?

7 A I did say that that was the proper rate to  
8 consider.

9 Q And do you still believe it's the proper rate  
10 to consider for the market rate?

11 A No. As I said, I no longer believe that this  
12 may necessarily be the best analysis, given the new  
13 information that's provided in Docket 031033-EI.

14 Q And you don't think rail is a viable market  
15 rate any longer?

16 A I said I was uncertain as to whether it was,  
17 and I think I said that it may be on some routes. I  
18 have not made a firm decision or opinion on that.

19 Q So are we now in the situation where a market  
20 rate is going to be determined on a route-by-route  
21 basis?

22 A I don't know.

23 Q What further information do you need to have to  
24 know?

25 A I would have to fully evaluate and review the



1 testimonies that have been filed.

2 Q And do you believe that the testimonies will  
3 give you a route-by-route specific market rate?

4 A I don't know.

5 Q I believe you testified the other day on  
6 deposition that there are three approaches to  
7 determining the appropriate rate that Tampa Electric  
8 should be paying its affiliate for waterborne transport;  
9 is that correct?

10 A Yes.

11 Q And those three are cost of service, cost  
12 allocation, and market rate; is that correct?

13 A Yes.

14 Q And you're familiar enough with the  
15 Commission's order back in 1988, Order No. 20298, to  
16 know that the Commission has discussed each one of these  
17 approaches?

18 A Yes.

19 Q Okay. Can you tell me what your definition of  
20 cost of service is and what it includes?

21 A Cost of service is a method of determining the  
22 total cost of providing a specified service, and in  
23 regulated utilities, that normally includes a process  
24 whereby costs are functionalized into different areas,  
25 and those costs are then allocated. And it's a process

1 of determining costs on an account-by-account basis,  
2 adding up those specific accounts into their functional  
3 areas, and then allocating them to rate classes. And I  
4 believe it as well includes analysis of the cost of  
5 capital. And it's a fairly extensive process. It's  
6 what the Commission does to determine rates in a rate  
7 proceeding.

8 Q It's tantamount to a rate case, is it not?

9 A Yes.

10 Q And what did the Commission think of cost of  
11 service studies in its decision back in 1988?

12 A Excuse me just a moment while I get that  
13 information.

14 The Commission determined in Order No. 20298  
15 that cost of service methodologies should be avoided if  
16 possible.

17 Q Didn't they also find that irrespective of  
18 whether any imprudence or unreasonable expenses are  
19 found and disallowances made, we agree with the parties  
20 to this case that a change from cost plus pricing is  
21 warranted?

22 MR. KEATING: If it speeds things up, I think  
23 we could agree to what's in the order.

24 MR. FONS: All right.

25 BY MR. FONS:

1           Q     We're probably working from different  
2 versions. The paragraph that I was quoting from begins  
3 with "Irrespective." It's the page right before the  
4 proposed stipulation agreement. Do you see that?

5           A     I see it. I see the language.

6           Q     And would you also agree with me that two  
7 paragraphs down, cost of service regulation for public  
8 utilities is necessitated by their monopoly status?

9           A     Yes.

10          Q     And wouldn't you also agree with me that if  
11 there's any competition, that cost of service is not  
12 necessitated?

13          A     No. I mean, I'm just reading from the order  
14 here. It says, "Cost of service regulation for public  
15 utilities is necessitated by their monopoly status and  
16 the attendant lack of significant competition." And the  
17 way you stated it, it sounded like you said any  
18 competition, and I think there's an important  
19 distinction to be drawn there.

20          Q     Well, you have to read on. It says "if any  
21 further end product." We're not talking about an end  
22 product, are we? We're talking about the waterborne  
23 transportation of coal.

24          A     Well, that's true.

25          Q     Would you also agree that the Commission found

1 at the end of that paragraph, "Cost of service  
2 regulation of some type is essential when there is no  
3 competitive market for the product or service being  
4 purchased. It is superfluous when such a competitive  
5 market exists"?

6 A I agree that that was what this order said at  
7 that time.

8 Q Has the Commission issued any order since that  
9 time that takes a different position?

10 A Nothing that specifically rebuts this except  
11 for the order that we discussed the other day that said  
12 that the Commission directs the parties and staff to  
13 review Tampa Electric's waterborne coal benchmark.

14 Q That's to review the benchmark; is that  
15 correct?

16 A That's right.

17 Q Not whether or not the waterborne  
18 transportation is competitive; isn't that correct?

19 A I think these areas are highly related.

20 Q Is it your position, Mr. McNulty, that there is  
21 no competition for waterborne coal transportation on the  
22 inland waters?

23 A No, I believe there is competition in the  
24 inland waters.

25 Q So a cost of service study is not required?

1           A     Typically you would try to avoid a cost of  
2 service study in an instance where there is significant  
3 competition, so I would think it would be appropriate to  
4 avoid a cost of service study for that location.

5           Q     And that would be in keeping with the  
6 Commission's determination that it is superfluous to do  
7 a cost of service study when such a competitive market  
8 exists?

9           A     Yes.

10          Q     How about on the terminal aspect? Isn't there  
11 competition there?

12          A     There is a degree of competition there. It's  
13 less than what occurs on the river.

14          Q     You cannot say there is no competitive market;  
15 isn't that correct?

16          A     That's correct.

17          Q     How about on the Gulf portion?

18          A     I think it's in question as to whether or not  
19 there exists competition in the Gulf. There appears to  
20 be economies of scale, and there also appears to be  
21 economies of scope in the instance of TECO Transport,  
22 that would indicate that there may be a lack of  
23 competition for large scale transport of dry bulk goods  
24 in the Gulf.

25          Q     Can you say categorically that there is no

1 competition for waterborne transportation in the Gulf?

2 A No. But I would add that Tampa Electric's  
3 witness Dibner in this proceeding has indicated that  
4 there's no one with the ability to compete with TECO  
5 Transport at the capacity level that Tampa Electric  
6 requires for dry bulk goods at Tampa Bay.

7 Q Is that a good thing or a bad thing?

8 A For our purposes, as individuals involved in  
9 the regulation of electric utilities, we would prefer  
10 there to be a competitive market, because that makes the  
11 job of determining the rate that much simpler. So, in  
12 essence, if it is a monopoly that is being operated by  
13 TECO Transport, then that's unfortunate, because that  
14 would indicate that there would be more regulatory  
15 costs.

16 Q Who says it's a monopoly?

17 A I suspect that it's a monopoly.

18 Q And on what basis do you suspect that it's a  
19 monopoly?

20 A I suspect that it's a monopoly based upon a  
21 combination of the RFP that was issued in this case and  
22 Tampa Electric's supplemental testimony filed by witness  
23 Dibner.

24 In the RFP, there is a stated requirement that  
25 5.5 million tons be available for shipment by a single

1 carrier from Davant, Louisiana, to Tampa Bay. That is  
2 an amount that can only be transported by a single  
3 entity, as is shown on page 59 of 78 of witness Dibner's  
4 testimony, attachment to his testimony. A simple  
5 addition of the tonnages that are available from all  
6 other entities that he has been able to identify in this  
7 case cannot singly provide that level of transportation.

8 Q Can CSX provide that level of transportation?

9 A CSX could provide that level of transportation.

10 Q And they have issued a bid?

11 A And they have issued a bid.

12 Q So they could deliver that amount of coal?

13 A They could deliver that amount of coal.

14 Q And isn't therefore CSX a competitor of TECO

15 Transport and Trade on the waterborne portion?

16 A Not necessarily.

17 Q Well, they are a competitor, aren't they?

18 A Not necessarily, because of the fact that what  
19 we're talking about is intermodal competition, and it's  
20 not clear that rail can compete with waterborne out of  
21 Tampa Bay.

22 Q Can't compete pricewise?

23 A Exactly.

24 Q So therefore, waterborne is cheaper than rail?

25 A It's possible. It has not been determined in

1 this case whether or not rail and water are competitive  
2 alternatives to each other.

3 Q They're competitive, aren't they? Isn't it  
4 just a question of price?

5 A It's a question of price, and you have to base  
6 it on a specific geographic location as well as the  
7 tonnages that are required and other factors.

8 Q But you've already indicated that CSX could  
9 transport that amount of coal.

10 A They can provide that amount of coal.

11 Q So all we're talking about now is the price,  
12 not the fact that CSX is a competitor of TECO Transport  
13 and Trade?

14 A It could be a competitor. We won't know if  
15 it's a true competitor or not until we complete an  
16 analysis of what the ultimate rates are for coal  
17 transportation for one potential competitor, CSX, to the  
18 incumbent provider.

19 Q Are you saying that the rates that CSX has bid  
20 are not the rates that Tampa Electric will ultimately  
21 pay for the delivery of coal by CSX?

22 A I'm saying that we looked at a series of rates  
23 that were offered by the railroad company in this case,  
24 and those rates, in my estimation, compared favorably to  
25 those that were produced by the results of the Dibner



1 study.

2 Q I only see one set of rates. Where is the  
3 series of rates that come from CSX?

4 A Those are the CSX rates.

5 Q I know, but you said there was a series of CSX  
6 rates?

7 A I'm sorry. I consider that a series because  
8 those are different locations. That's the rate.

9 Q Those are the rates for those locations?

10 A For those locations.

11 Q But there's not a series of --

12 A No, no.

13 Q There's just one bid.

14 A Yes. And I guess what I'm saying is that there  
15 was a result from the Dibner study that compares the --  
16 well, they're just study results. Those rates are just  
17 study results that were accepted by TECO Transport. And  
18 for procuring coal for Tampa Electric, I'm not convinced  
19 that that is the lowest rate or represents what would be  
20 a -- I'm not prepared to say that that's the lowest rate  
21 that TECO Transport would be willing to accept to make  
22 the delivery of that quantity of coal.

23 Q Are you saying that the prices that TECO  
24 Transport and Trade is charging for the service from  
25 Davant, Louisiana, to Tampa, Florida, is so low that

1 nobody can compete with it?

2 A I'm saying that's possible.

3 MR. FONS: Could we have a few minutes,  
4 please?

5 (Short recess.)

6 MR. FONS: Thank you, Mr. McNulty. That's all  
7 the questions I have.

8 THE WITNESS: Thank you.

9 MR. FONS: Do you have any redirect?

10 MR. KEATING: I do have some, but you can go  
11 ahead.

12 MR. VANDIVER: I have just a couple.

13 CROSS-EXAMINATION

14 BY MR. VANDIVER:

15 Q Good morning, Mr. McNulty.

16 A Good morning.

17 Q Mr. McNulty, you were asked some questions  
18 about the benchmark. Do you recall those questions?

19 A Can you refresh my memory?

20 Q Yes. You were asked some questions about the  
21 Commission benchmark, and the benchmark I believe is an  
22 average of publicly available rail rates; is that  
23 correct?

24 A Right.

25 Q Do you have an opinion as to whether or not

1 publicly available rail rates might be lower or higher  
2 than other rail rates? And by that I mean the CSX rail  
3 rates which have been bid here, as I understand, have  
4 been requested to be confidential; is that correct?

5 A Yes.

6 Q And the publicly available rail rates that the  
7 benchmark is based on, I think they're to  
8 municipalities.

9 A Yes.

10 Q And those are publicly available, are they not?

11 A I think in most instances they are. I've heard  
12 of some difficulty with people getting that information  
13 at different times, but for the most part, that's  
14 publicly available information.

15 Q And do you have an opinion as to whether or not  
16 the publicly available rail rates might be lower or  
17 higher than those rates that might not be disclosed to  
18 the public? In other words, I'm --

19 MR. FONS: I object to the form of the  
20 question. Which question are you asking?

21 BY MR. VANDIVER:

22 Q Do you have an opinion whether the publicly  
23 available rail rates are higher?

24 MR. FONS: Object to the form, but you can  
25 answer.

1           A     The publicly available rail rates as compared  
2 to the rates that have been filed, the rails rates in  
3 this case, that's the comparison?

4           Q     Yes.

5           A     The publicly available rail rates are higher  
6 than what we see filed in this case by the rail company.

7           Q     So in that sense, the benchmark might be higher  
8 than those nondisclosed rail rates; is that correct?

9           A     As I stated earlier, the publicly available  
10 rail rates are higher than the rates that have been  
11 proffered by the rail company in this instance.  
12 However, there is a bit of a disjoinder in time, in the  
13 sense that the rail rates that appear in this case are  
14 rail rates that are projected through -- that are being  
15 offered for 2004 with escalation adjustments to be added  
16 to them.

17                     On the other hand, the publicly available rail  
18 rates that we have looked at are historical figures that  
19 are about a year old, so they're not directly comparable  
20 in time. However, they are significantly different.

21           Q     Mr. Fons asked you about the rail cost  
22 adjustment factor, I believe. And the rail cost  
23 adjustment factor, as I understand it, is kind of an  
24 inflation factor adjustment; is that correct?

25           A     Yes.

1 Q Okay. And Mr. Fons asked the question that  
2 this was an inflation adjustment, and he posed the  
3 question to you that this factor could go up with  
4 inflation; is that correct?

5 A Yes.

6 Q Could that factor go down as well?

7 A Yes, it's possible.

8 Q So it's not just going up, but it could go down  
9 as well?

10 A It could go in either direction, depending upon  
11 the items that are included in that factor.

12 Q And it wasn't clear from Mr. Fons's questions,  
13 and I'm sure it was unintentional, but is there a  
14 similar adjustment factor for the barge rates?

15 A Yes, there's a variable escalator in the barge  
16 rates.

17 MR. FONTS: You must have been asleep when we  
18 had that discussion.

19 MR. VANDIVER: I must have been.

20 BY MR. VANDIVER:

21 Q And that barge rate factor, would that track  
22 the rail rates in the real world if we were -- let me  
23 ask you a hypothetical question. If the rail rates or  
24 the barge rates were in effect for consumers, would they  
25 both track up with inflation more or less? I mean, with

1 the barge rates or the rail rates in effect, would they  
2 both track the inflation factors when they were in  
3 effect?

4 A They're both inflation factors. They may not  
5 represent the same goods and services. PPI and CPI  
6 aren't going to be exactly the same thing as the rail  
7 cost adjustment factor, but in general they are indices  
8 that are trackers of inflation.

9 Q And so those would be comparable, in essence,  
10 that would go up with -- I appreciate they're different  
11 inflation numbers, but they're basically designed to do  
12 the same thing, track the inflation that's represented  
13 by both industries, and they would go up in both cases  
14 for the bottom line for consumers, and they would go up  
15 with inflation in both cases, for the barge and rail  
16 costs, wouldn't they?

17 MR. FONS: I'm going to object to the form of  
18 the question. The attorney is testifying.

19 BY MR. VANDIVER:

20 Q Okay. What would happen to each of the prices,  
21 Mr. McNulty?

22 A The rail rate adjustment factor, as I  
23 understand it, is developed based more upon the costs  
24 that impact the rail industry, and so it may be an  
25 indices that is more closely tied to a specific industry

1 than the variable cost adjuster that is being used by  
2 the incumbent provider in this case. The incumbent  
3 provider seems to be using an escalator that is more  
4 indicative of a combination of that which takes place  
5 both within the general economy, which would be the CPI  
6 in terms of the household impact, as well as the PPI,  
7 which is a producer indices. So they're a little bit  
8 different, and their tracking may be -- there may be a  
9 little bit of difference in the indices and the way they  
10 operate.

11 Q What's the barge indices designed to do?

12 A The barge indices is designed to allow the base  
13 price that is reflected in the tariff to be adjusted,  
14 the variable component to be adjusted for the inflation  
15 effects in the economy.

16 Q Okay. Mr. Fons asked you some questions I  
17 think about the staff placing things on the website for  
18 the RFP and so forth. What was the staff's motive in  
19 doing those things?

20 A Which specific document are you referring to?

21 Q I have it right here. I think it's an  
22 exhibit. If you'll give me just a minute, I think  
23 Mr. Fons placed it into evidence.

24 Yes. Exhibit -- well, what was staff's motive  
25 in questioning the RFP and requesting that Tampa

1 Electric make changes to the RFP?

2 A Our motive in questioning the RFP and  
3 suggesting changes to it when we saw the RFP was simply  
4 to make sure that bid process would be conducted in a  
5 way that would generate the best market information.

6 MR. VANDIVER: That's all the questions I  
7 have. Thank you.

8 CROSS-EXAMINATION

9 BY MR. TWOMEY:

10 Q I have a couple. Good morning.

11 A Good morning.

12 Q Staff was apparently concerned about the level  
13 of waterborne transportation rates paid to TECO  
14 Transport and passed through to the customers for a  
15 period of years; is that correct? That is your concern,  
16 and you had the concern for some period of time;  
17 correct?

18 A Can you specify what period of time?

19 Q Well, I'm asking you. Let me ask you first,  
20 was the staff concerned about the level of waterborne  
21 rates TECO was paying for the transportation and passing  
22 on to its customers?

23 A We were concerned about the rate. On or around  
24 January of 2003, we were really starting to focus some  
25 analysis in that area.



1 Q And was that in anticipation of the existing  
2 contract expiring?

3 A We were knowledgeable of the contract expiring  
4 around that time frame, yes.

5 Q Were there other reasons that caused you  
6 concern at that time aside from the contract expiration?

7 A In the spring of 2003, we had some knowledge of  
8 the fact that TECO Transport may be sold by Tampa  
9 Electric, and with that information, we were concerned  
10 about what price may result from the sale of the unit.  
11 Excuse me. By price, I'm talking about contract prices  
12 for the delivery of coal that would be reflected in the  
13 new contract.

14 Q Did the staff at that point have an opinion on  
15 whether TECO Transport would bring a higher sales price  
16 if it had a five-year contract with the utility?

17 A Yes, we had wondered about that, and we were  
18 concerned that we involve ourselves as carefully as  
19 possible in the RFP process to address a host of issues,  
20 and that was one of them.

21 Q And was it the staff's opinion that TECO  
22 Transport would have a higher value for sale if it had a  
23 five-year contract in hand?

24 A We didn't have a definitive opinion on it. It  
25 was discussed in different ways by staff, but it was

1 certainly conjectured as a possibility that if the unit  
2 is going to be sold, that it may be sold at a higher  
3 price.

4 Q Now, it's true, isn't it, Mr. McNulty, that the  
5 staff through various communications encouraged Tampa  
6 Electric to issue the RFP?

7 A Yes, that's true.

8 Q And again, why did the staff undertake to  
9 encourage Tampa Electric Company to issue an RFP for its  
10 waterborne or coal transportation services?

11 A The reasons that we encouraged them to pursue  
12 issuing an RFP is because we thought that that was the  
13 source of the best market information available.

14 Q Okay. Isn't it true that Tampa Electric  
15 expressed some reluctance initially to issue an RFP?

16 A They didn't really express reluctance as much  
17 as, "We're studying this issue and trying to determine  
18 whether or not to issue an RFP. We are studying it."  
19 And basically the people that I was talking to with the  
20 company, and I think others on the staff were talking  
21 to, were not the decision-makers. And so the people  
22 that I was talking to and others were talking to were  
23 getting secondhand information from the company  
24 representatives saying, "We don't know yet. We're  
25 waiting for management to make a decision on that

1 subject."

2 Q And when the RFP was finally let or issued, did  
3 the staff or you personally have an opinion on whether  
4 it was relatively late in time vis-a-vis the expiration  
5 of the contract?

6 A I had the opinion that it was late in time, and  
7 I expressed that in my testimony.

8 Q Okay. I want to ask about your staff's  
9 procedures. Did you say you have four or five  
10 subordinates that answer to you?

11 A Five.

12 Q And do they typically, or do all of them have  
13 broad experience in terms of years in this area?

14 A What is this area?

15 Q Fuel, fuel procurement, fuel pricing.

16 A Of the five individuals that work in the Cost  
17 Recovery Section under my direction, I would say that  
18 there's significant experience with four of the five.  
19 Four of the five have significant experience in the area  
20 of fuel procurement.

21 Q And who are they?

22 A It would be Todd Bohrmann, Bernie Windham, Sid  
23 Matlock, and Jim Breman.

24 Q Okay. Now, did either the staff or you  
25 personally see this docket and this issue potentially

1 involving more than just the prudence of the coal  
2 transportation costs? That is to say, did you also see  
3 a potential that the transportation methodology could  
4 possibly drive imprudent coal prices as well?

5 A We understood that those two areas were linked.  
6 We were trying to focus mostly on the transportation  
7 issue. It's very difficult to do that without also  
8 thinking about the sources as well.

9 Q Was that due in part to the fact that if they  
10 were going to utilize the affiliate transportation, that  
11 the coal, perhaps of necessity, would have to be  
12 accessible by the water?

13 A I wouldn't say it was just by water. I think  
14 it's by specific route, and that would seem to be  
15 restrictive in that arrangement.

16 Q Okay. Now, Mr. Fons asked you yesterday if you  
17 thought of yourself as a -- I think he said a hands-on  
18 leader or hands-on supervisor. Do you recall those  
19 questions?

20 A Yes.

21 Q Okay. Do you think of yourself as a supervisor  
22 of somebody that has to micromanage every aspect of the  
23 performance of your subordinates?

24 A No.

25 Q Would you think that micromanagement, to

1 include approving each and every phone call by a  
2 subordinate to an outside agency, would be efficient or  
3 inefficient?

4 A It would probably be inefficient to supervise  
5 every phone call by a subordinate. However, I would  
6 think it would be important for me to have clear  
7 direction given to my staff to let them know what is  
8 acceptable and not acceptable.

9 Q Okay. I believe I took from the questioning  
10 yesterday in your previous testimony that staff and  
11 yourself recognized that there were three legs or  
12 components of the waterborne transportation methodology  
13 currently undertaken by TECO; correct?

14 A Yes.

15 Q That is, the river aspect, the terminaling, and  
16 the coastal or Gulf leg; correct?

17 A Yes, on Friday.

18 Q Now, was it staff's concern to find out  
19 independent of the company submission whether or not  
20 there were alternative means of obtaining those services  
21 or competition? Is that one of your goals?

22 A Could you restate the question?

23 Q Yes. Did staff decide to undertake its own  
24 analysis, for whatever reason, of whether there were  
25 competitors, competitive offerings for each one of those

1 components independent of the information you might  
2 receive from third parties, like from the Public Counsel  
3 or from the utility itself?

4 A Yes.

5 Q And you considered that to be reasonable, I  
6 assume.

7 A Yes.

8 Q And did you direct your staff to that end?

9 A Yes.

10 Q And did you give them some latitude in terms of  
11 contacting purchase purveyors or vendors in those fields  
12 to make inquiries?

13 A Yes.

14 MR. TWOMEY: That's all I have. Thank.

15 CROSS-EXAMINATION

16 BY MR. KEATING:

17 Q I think those last few questions would be a  
18 good segue into my first question on redirect.

19 Mr. McNulty, you were asked yesterday by  
20 Mr. Fons some questions about staff contacts with  
21 participants in the market, shippers or carriers,  
22 whatever term you want to use.

23 I'm sorry. I said yesterday. On Friday.  
24 Since Friday, have you recalled any additional contacts  
25 that you may not have discussed or may not have brought

1 up on Friday?

2 A Yes. I think that there were contacts that  
3 staff made to carriers, and that may be river barges on  
4 the Mississippi-Ohio system, terminal operators, and the  
5 like, and Gulf transit companies, both prior to -- or I  
6 should say prior to the RFP being issued, during the  
7 time that the RFP was issued, and after the close of the  
8 time that the RFP was due to be -- RFP responses were  
9 due to be received to the Commission. And the point in  
10 time when staff definitively did not make any further  
11 contacts with shippers was sometime in early September,  
12 based upon a specific directive by management to cease  
13 any such contacts.

14 And I think there was a point later at which,  
15 as I discussed on Friday, there was a contact made by --  
16 there were discussions that were taking place by the  
17 attorneys in this case, both for the Commission and for  
18 the utility, in which it was agreed that it was no  
19 longer necessary for staff to cease its contacts with  
20 carriers and the like, and that communication took place  
21 either sometime in late September or early October.

22 Q Now, which contacts of those that you discussed  
23 generally today are additional to the contacts that you  
24 addressed on Friday?

25 A I think on Friday I stated that there weren't

1 any -- to my knowledge, I didn't believe there were any  
2 contacts that were taking place at the time that the RFP  
3 had been issued.

4 Q Do you know the extent to which staff contacted  
5 any shippers or carriers after the RFP was issued?

6 A I believe any contacts that took place after --  
7 the time frame for this would be August 1. I believe  
8 the time frame when likely staff contacts would have  
9 taken place would have been in the first week of August,  
10 during that period.

11 Q When did the RFP require bids to be submitted?

12 A Bids had to be submitted no later than 12 p.m.  
13 on August 1, 2003.

14 Q I believe you stated in your previous response  
15 that you were aware of contacts between staff and  
16 shippers or carriers in the time frame of the first week  
17 of August, roughly. Do you know what the purpose of  
18 those contacts was? And let me step back. Do you know  
19 who would have made those contacts?

20 A Yes. Any contacts made during that period  
21 would have been by Bernie Windham.

22 Q And do you know what the purpose of those  
23 contacts would have been?

24 A The purpose of those contacts would have been  
25 to ask the carriers in that instance whether or not they



1 had responded to the RFP that was issued by TECO, Tampa  
2 Electric, related to waterborne coal transportation.

3 Q Do you know if there was any other purpose for  
4 those contacts?

5 A Yes. I believe Mr. Windham was continuing to  
6 solicit information about the competitive nature of the  
7 waterborne coal transportation industry.

8 Q Let me ask you also, moving on to a different  
9 topic, you were asked for a definition of competition on  
10 Friday. Do you recall that?

11 A Yes.

12 Q Given the opportunity, would you like to  
13 clarify your definition of competition that was provided  
14 on Friday?

15 A Certainly. And I guess I would just clarify  
16 that to say that there are different levels of  
17 competition, and it's important to know which level is  
18 being discussed, and so I perhaps should have asked for  
19 some clarification on that.

20 But I would say that most people when they talk  
21 about competition are talking about either pure  
22 competition or monopolistic competition. Generally  
23 things that are purely competitive are those types of  
24 goods and services for which many buyers and sellers  
25 participate within a market and for which there are --

1 it is considered to be a homogeneous product or service,  
2 that are essentially -- there are large barriers to  
3 entry and exit into -- excuse me, there are no barriers  
4 to entry or exit into that market, and there is perfect  
5 information that's shared between participants in the  
6 market, especially on the subject of price. And that's  
7 perhaps a definition of pure competition that would have  
8 sufficed for the answer.

9 Also, I think I responded to the question that  
10 competition can be identified by when there is a  
11 reduction in price -- excuse me, when there's an  
12 increase in price, there will be a reduction in demand.  
13 And that's really the demand side part of the equation.  
14 The supply side needs to be looked at as well.

15 Essentially, in a purely competitive market,  
16 you would have a price that would be flat across all  
17 levels of output, and the long run average cost would --  
18 the low points on that curve would essentially equal the  
19 marginal cost of the service, and that would be the  
20 market efficient price and the price by which every  
21 participant in that market would have to operate. And  
22 in that sense, they are price takers rather than price  
23 makers. By that I mean that they accept what the price  
24 is for that good or service. They cannot adjust that  
25 price. They can't have any influence over that price.

1           That's a fairly long answer to that question,  
2 but I wasn't sure exactly -- I think I tried to answer  
3 the question without fully understanding the nature of  
4 the question.

5           Q     I don't think it was marked as an exhibit, and  
6 I don't have access to it. I believe it's in one of  
7 your binders, Mr. McNulty. But Friday there was  
8 reference to a letter from Tim Devlin to, I believe,  
9 Joann Wehle dated sometime in July of 2003.

10          A     Yes, I have it.

11          Q     I believe that letter references a meeting held  
12 July 1, 2003.

13          A     Yes.

14          Q     Who was that meeting with?

15          A     That meeting involved staff, Tampa Electric  
16 Company, and intervenors, I believe the Office of Public  
17 Counsel and perhaps Florida Industrial Power Users  
18 Group.

19          Q     It was a meeting conducted in a particular  
20 docket?

21          A     Yes.

22          Q     And that was the fuel docket?

23          A     That's right.

24          Q     Now, why did staff want to conduct a meeting  
25 with Tampa Electric Company at that time?

1           A     Staff wanted to -- originally why they wanted  
2 to conduct that meeting?

3           Q     Yes.

4           A     They originally wanted to conduct that meeting  
5 in order to be able to discuss what should be in an RFP  
6 or request for proposal to be submitted by the utility,  
7 or to be distributed by the utility.

8           Q     What was discussed at the July 1st meeting, to  
9 the extent that you can recall that?

10          A     What was discussed during the July 1st meeting  
11 was clarifications to an RFP that had already been  
12 issued, and it was staff's clarification, things that we  
13 would like to see changed in the RFP.

14          Q     At that meeting, was there any suggestion made  
15 that staff put its concerns in writing and allow Tampa  
16 Electric to respond?

17          A     Yes. Specifically, the company requested that  
18 we put in writing whatever our clarifications would be,  
19 to specify those in writing and submit them to them.

20          Q     Was that what the July 11th letter was intended  
21 to do?

22          A     Yes.

23          Q     And what was the intent of the clarifications  
24 that staff included with that letter?

25          A     The intent of the clarifications was for Tampa

1 Electric Company to distribute these clarifications to  
2 all potential bidders and to also notify trade  
3 publications and newspapers that they had previously  
4 contacted for the purpose of making these clarifications  
5 known.

6 Q I want to refer you to what were marked as  
7 Exhibits 14 and 15 on Friday. I believe they're right  
8 here. Those are two draft letters?

9 A Yes.

10 Q And you indicated on Friday that those letters  
11 were not sent to shippers; is that correct?

12 A That's correct.

13 Q Why did staff not send those letters?

14 A Staff didn't send these letters because there  
15 was at some level some feedback from Tampa Electric  
16 Company that staff's dialogue that it may be having with  
17 carriers, both those who had bid and those who had not  
18 bid, was disruptive of their RFP process. And in an  
19 abundance of caution, because the company had stated  
20 that, we determined to cease -- determined to not  
21 distribute this letter.

22 Q Now, that letter is dated August 12th, and you  
23 stated earlier that the closing date for the bids was --  
24 was it July 31st or August 1st?

25 A August 1st at 12 p.m.

1           Q     You had also stated earlier, I believe, that  
2     there was some directive in the time frame of late  
3     August or early September to staff to not make any  
4     contacts with shipper or carriers pending the completion  
5     of any negotiations; is that correct?

6           A     That's correct.

7           Q     Now, this letter was dated August 12th, at  
8     least three weeks before late August. Did staff make  
9     any contacts with shippers or carriers in the time frame  
10    that this letter was drafted until late August?

11          A     I don't believe that they did.

12          Q     If I could get you to look at just a few more  
13    of the exhibits that were marked yesterday. They were  
14    Exhibits 3 through 9. I believe a full set is there.

15                If you could take just a minute and look  
16    through each of those letters. They're not very  
17    lengthy.

18          A     Okay.

19          Q     What's the -- if you could put it in general  
20    terms, what's the gist of each of those letters? What  
21    does each of those letters tell Tampa Electric Company?

22                MR. FONS: Object to the form of the question.  
23    Calls for speculation.

24                MR. KEATING: I'm only asking him -- I can go  
25    letter by letter what the letter says.

1 MR. FONTS: The letter speaks for itself.

2 MR. KEATING: Okay. Fair enough.

3 MR. TWOMEY: He can still answer the question.

4 A I believe these answers basically say that the  
5 carrier involved has determined not to bid for the  
6 Waterborne Transportation Services Proposals WB-2004,  
7 and they're basically declining to bid. I think that's  
8 the one common idea in each one of these letters.

9 Q And I won't ask you any more questions on those  
10 letters, because I do agree that the letters speak for  
11 themselves.

12 Does your staff always agree with your opinion?

13 A No.

14 Q Do your supervisors always agree with your  
15 opinion?

16 A No.

17 Q As a manager, do you discourage any of your  
18 staff from disagreeing with your opinion or questioning  
19 your opinion?

20 A No.

21 MR. KEATING: Thank you. That's all the  
22 questions I have.

23 MR. FONTS: Thank you, Mr. McNulty.

24 Based on the stipulation, we'll get the  
25 transcript, and we'll identify that which we'll be

1 claiming confidentiality about, and we'll forward  
2 on.

3 I assume you want the witness to read.

4 MR. KEATING: Yes.

5 One thing I wanted to mention to you, there  
6 were some characterizations as to CSX rates in  
7 comparison to public rates, and I think that may be  
8 something we need to watch out for in terms of  
9 ensuring that it's redacted.

10 Another thing, I'm going to check on -- I  
11 haven't been able to get it answered since Friday  
12 as I had hoped to -- is to determine whether any  
13 employee disciplinary matters that were discussed on  
14 Friday are confidential in any way. I don't know  
15 the answer to that.

16 MR. FONS: Okay.

17 (Deposition concluded at 12:09 p.m.)

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CERTIFICATE OF OATH

STATE OF FLORIDA)  
COUNTY OF LEON )

I, MARY ALLEN NEEL, Notary Public in and for  
the State of Florida at Large:

DO HEREBY CERTIFY that on the date and place  
indicated on the title page of the foregoing transcript,  
an oath was duly administered by me to the designated  
witness before testimony was taken.

WITNESS my hand and official seal this 7th day  
of April, 2004.

*Mary Allen Neel*  
MARY ALLEN NEEL, RPR  
2894-A Remington Green Lane  
Tallahassee, Florida 32308



## CERTIFICATE OF REPORTER


STATE OF FLORIDA)

COUNTY OF LEON )

I, MARY ALLEN NEEL, do hereby certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter transcribed under my supervision; and that the foregoing pages numbered 136 through 184 are a true and correct transcription of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, or relative or employee of such attorney or counsel, or financially interested in the action.

DATED THIS 7th day of April, 2004.

  
MARY ALLEN NEEL, RPR  
2894-A Remington Green Lane  
Tallahassee, Florida 32308  
(850) 878-2221

STATE OF FLORIDA

COMMISSIONERS  
BRAULIO L. BAEZ, CHAIRMAN  
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RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON



OFFICE OF THE GENERAL COUNSEL  
RICHARD D. MELSON  
GENERAL COUNSEL  
(850) 413-6199

## Public Service Commission

May 4, 2004

James Beasley, Esquire  
Ausley & McMullen  
P.O. Box 391  
Tallahassee, Florida 32302

Re: Docket No. 031033-EI - Review of Tampa Electric Company's 2004-2008 waterborne transportation contract with TECO Transport and associated benchmark.

Dear Mr. Beasley:

Please find enclosed an original signed errata sheet and supplement to Late-filed Exhibit No. 11 to the deposition of William B. McNulty, taken April 2 and 5, 2004, in the above-referenced docket.

Sincerely,

A handwritten signature in cursive script, appearing to read "Wm. Cochran Keating, IV".

Wm. Cochran Keating, IV  
Senior Attorney

WCK/dm

Enclosure

cc: All parties of record (with enclosures)

ERRATA SHEET

DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES HERE

IN RE: DOCKET NO. 031033-EI  
NAME: WILLIAM B. McNulty  
DATE: APRIL 2 AND 5, 2004

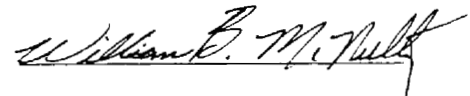
PAGE	LINE	CHANGE
43	25	Add "in my testimony" after "what ended up"
48	13	Replace "question" with "consider"
48	15-17	Replace "rate to be charged in this proceeding as a possible way of proceeding in this proceeding" with "recoverable rate for TECO's waterborne coal transportation service in this proceeding."
48	22	Replace "in the contract" with "referenced in the RFP"
49	3	Replace "contracts that were" with "contract that was"
69	4	Replace "truly competitive figures" with " a truly competitive price"
80	5,6	Place quotations around "1997 RFP" and "Integrated Proposal Requirement"
101	17	Replace "were" with "was"
103	11	Replace "following" with "beginning with"
106	4	Replace "face" with "page"
116	15	Replace "That's correct." with "Yes, I am talking about the Big Bend Power Plant."
116	19	Replace sentence with "The demurrage provisions of Tariff CSXT 8200, as referenced in CSXT's Bid A, would apply to all tonnage received at Big Bend Power Station, regardless of where the coal originates or the identity of railroads involved, assuming CSXT ultimately delivers the coal to the plant."

- 1 | 147 | 25 | Replace "things I don't agree with" with "aspects of your statement"
- 2 | 148 | 1 | Replace "your statement on" with "that I believe are incorrect"
- 3 | 149 | 1 | Replace "am still not with" with "have not formed"
- 4 | 150 | 8 | Replace "determinant" with "judge"
- 5 | 155 | 21 | Replace "further" with ". for their"
- 6 | 155 | 24 | Replace sentence with "I believe the order may be broadly interpreted to apply
- 7 | | | to not only commodity but also transportation of that commodity."
- 8 | 156 | 6,7 | Replace "said at that time" with "says"
- 9 | 160 | 17 | Insert "compared" after "CSX,"
- 10 | 161 | 23 | Replace "prices" with "costs"\*
- 11 | 161 | 24 | Replace "is charging" with "incurs"\*

12 | | | \*I understood the question to ask about costs rather than price, and answered in  
 13 | | | that context.

14 | Under penalties of perjury, I declare that I have read my deposition and that it is true and  
 15 | correct subject to any changes in form or substance entered here.

16 | 5/3/04



17 | DATE

WILLIAM B. McNULTY

18  
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**Late Filed Exhibit No. 11 Supplement**  
**Docket No. 031033-EI**  
**Deposition of William B. McNulty, April 2 and 5, 2004**

Upon review of the deposition transcript, it became clear that the original response to the requested exhibit may be considered to be incomplete in that the response does not affirmatively identify the rates in the tariff, but rather provides the tariff pages which contains the rates. Thus, the following statements identifies the applicable rates.

The rate for the 2 .0 to 5.5 MM tons bid is the four-hour free time demurrage rate, which is \$300 for each chargeable hour, or fraction thereof, in excess of four hours free time, per trainload/unit train until all cars in the train consignment are released. However, see the terms and conditions included in Pages 9 and 10 of the tariff for possible impacts to this price.

The rate for the 1.0 to 2.0 MM tons bid is the twenty-four hour free time demurrage rate, which is \$20 per car per day, or fraction thereof, until empty cars are released to the carrier. However, see the terms and conditions included in Page 10 and 11 of the tariff for possible impacts to this price.

Page 11 of the CSXT Transportation Tariff 8200-G (Supplement 6) was also omitted from the original response and is thus attached to this supplemental response. While it does not identify the specific rates requested in the deposition, it does contain some of the terms and conditions which can impact the ultimate rate paid for demurrage for the 1.0 to 2.0 MM tons bid.



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SECTION 5 - TRAINLOAD/UNIT TRAIN SERVICE

---

[2] (ITEM 5190A) - TRAINLOAD/UNIT TRAIN DETENTION AT DESTINATION (Concluded)

Note 5 - The consignee must certify in writing, within a period of five (5) days from date of disability, to the destination carrier, when he is unable to unload and release cars of a consignment due to any disability listed in Note 1, including the nature of the disability and the actual time said disability commenced and terminated.

Note 6 - When at the time of actual or constructive placement lading is frozen so as to require heating, thawing or loosening to unload, and a freeze conditioning agent has been properly applied, the twenty-four (24) hours free time for unloading will be extended an additional twenty-four (24) hours, provided the consignee shall, prior to the expiration of five (5) days after the date on which car or cars were released, send or give the railroad's agent a written statement certifying by car initial and number, the day or days during which any time was expended in heating, thawing or loosening the lading to unload the car, or cars.

Note 7 - Four (4) hour unloading facilities follow:

- |  |  |
|--|--|
| Gaston, AL (Gaston Plant)                    | Abee, IN (Brown Plant)                   |
| West Jefferson, AL (Miller Plant)            | Merom, IN (Merom Plant)                  |
| Bostwick, FL (Palatka Plant)                 | Wilson Station, KY (D. B. Wilson Plant)  |
| Gay, FL (FL Crushed Stone Facility)          | Terrell, NC (Marshall Plant)             |
| Hague, FL (Deerhaven Plant)                  | (AA) Shippingport, PA (Mansfield Plant)  |
| Indiantown, FL (U. S. Generating Plant)      | Cross, SC (Cross Plant)                  |
| Park, FL (McIntosh Plant)                    | Middleton, SC (Williams Plant)           |
| Power Park, FL (St. Johns River Power Plant) | North Wateree, SC (Wateree Plant)        |
| Red Level Junction, FL (Crystal River Plant) | Pennyroyal, SC (Winyah Plant)            |
| Harlee, GA (Harlee Branch Plant)             | Pinopolis Junction, SC (Jefferies Plant) |
| Jacmac, GA (McDonough Plant)                 | Edgemoor, TN (Bullrun Plant)             |
| Rincon, GA (McIntosh Plant)                  | Harriman, TN (Kingston Steam Plant)      |
| Stilesboro, GA (Bowen Plant)                 |  |

STATE OF FLORIDA



PUBLIC SERVICE COMMISSION

2540 Shumard Oak Boulevard  
CAPITAL CIRCLE OFFICE CENTER  
TALLAHASSEE, FLORIDA 32399-0850

FACSIMILE TRANSMITTAL COVER SHEET

DATE: 7/31/2003 TIME SUBMITTED: 4:00 P.m.

TO: Louis Han TITLE: \_\_\_\_\_

OFFICE/BUSINESS: The St. Petersburg Times

TELEPHONE NO: (813) 226-3404 FAX NO: <sup>813</sup>~~(813)~~ 226-3381

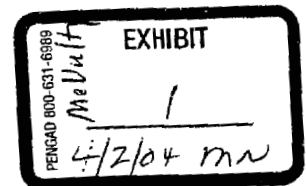
FROM: Bill McNulty

OFFICE/DIVISION: Electric Reliability and Cost Recovery / Economic Regulation

TELEPHONE NO: (850) 413-6443 FAX NO: (850) 413-6444

COMMENTS: Tim Devlin directed that this 3<sup>rd</sup> set of staff interrogatories be sent via FAX to you.

NUMBER OF PAGES, INCLUDING THIS COVER SHEET: 19





STATE OF FLORIDA



PUBLIC SERVICE COMMISSION

2540 Shumard Oak Boulevard  
CAPITAL CIRCLE OFFICE CENTER  
TALLAHASSEE, FLORIDA 32399-0850

FACSIMILE TRANSMITTAL COVER SHEET

DATE: 8/1/03

TIME SUBMITTED: \_\_\_:\_\_\_:\_\_\_m.

TO: Louis Abu

TITLE: \_\_\_\_\_

OFFICE/BUSINESS: St. Pete Times

TELEPHONE NO: (813) 226-3404

FAX NO: (813) 226-3381

FROM: Bill McNulty

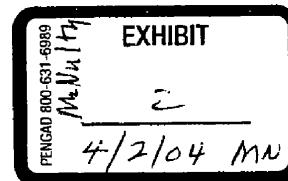
OFFICE/DIVISION: Electric Reliability & Cost Recovery / Economic Reg.

TELEPHONE NO: (850) 413-6443

FAX NO: (850) 413-6444

COMMENTS: \_\_\_\_\_

NUMBER OF PAGES, INCLUDING THIS COVER SHEET: 5



52. Please explain why "offshore coal" has been received at Electro-Coal rather than Tampa Electric's Big Bend facility.

A. Offshore coal is used at Gannon and Polk generating stations after being blended with other coal. TECO Bulk Terminal (TBT), formerly called Electro-Coal, unloads, blends and then stores the coal for shipment to Tampa. The coal is not received at Big Bend Station because that station does not use offshore coal. In addition, large, efficiently sized vessels used for transporting offshore coal are often too large to be received at Big Bend Station since the station can only receive vessels with a 34-foot or smaller draft. Finally, Big Bend does not have facilities to blend coal that will be stored and shipped to another station.

TAMPA ELECTRIC COMPANY  
DOCKET NO. 020001-EI  
STAFF'S 3<sup>RD</sup> SET OF INTERROGATORIES  
INTERROGATORY NO. 53  
PAGE 1 OF 1  
FILED: OCTOBER 21, 2002

53. How is the formula for the transportation benchmark calculated when applying it to "offshore coal"? If the formula for the transportation benchmark does not address offshore coal, should it be modified to address "offshore coal"? Please explain your response.
- A. The transportation benchmark is applied to offshore coal purchases. It is calculated from the point of purchase, i.e. TECO Bulk Terminal.

TAMPA ELECTRIC COMPANY  
DOCKET NO. 020001-EI  
STAFF'S 3<sup>RD</sup> SET OF INTERROGATORIES  
INTERROGATORY NO. 57  
PAGE 1 OF 1  
FILED: OCTOBER 21, 2002

57. Please explain how coal transportation for the Polk power plant is handled and how it is accounted for, including whether it is provided under the TECO Transit contract.
- A. Transportation for coal delivered to Polk Power Station is provided under the TECO Transport contract. The contract includes river transit, bulk transfer at TECO Bulk Terminal and ocean shipping. When the fuel arrives in Tampa it is stored at Big Bend Station until transfer to Polk Power Station. CTL Distribution provides coal transportation from Big Bend Station to Polk Power Station via truck. CTL Distribution is not affiliated with TECO Energy.

TAMPA ELECTRIC COMPANY  
DOCKET NO. 020001-EI  
STAFF'S 3<sup>RD</sup> SET OF INTERROGATORIES  
INTERROGATORY NO. 51  
PAGE 1 OF 1  
FILED: OCTOBER 21, 2002

51. For "offshore coal" purchased by Tampa Electric, is the transportation cost to the receiving port treated as if it were part of the commodity cost? In your response, please explain how the transportation cost for such coal is derived.
- A. Yes, for Tampa Electric's purchases of offshore coal the transportation cost is bundled with the commodity cost. Since all offshore coal is purchased on a delivered basis that includes the cost of transportation, the transportation component is not identified.

**EXHIBITS 3 THROUGH 10 AND 12  
ARE OMITTED AS THEY ARE CONFIDENTIAL**

**Late Filed Exhibit 11**

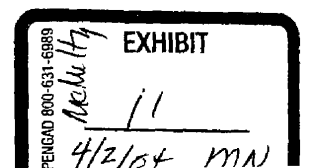
**Docket No. 031033-EI**

Deposition of William B. McNulty, April 2 and 5, 2004

Exhibit 11

CSX Tariff Reference for Train Demurrage

Applicable CSXT Train demurrage rates and charges can be found in CSX Transportation Tariff CSXT 8200-G (Supplement 6) issued April 30, 2003 and effective May 1, 2003, in Section 5 (Pages 9-10). This includes the paragraph on Page 9 which describes the charges for four (4) hour free time, and the "exception" paragraph following it, and Notes 1, 2, and 3 on Page 10. See attached.





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**SECTION 5 – TRAINLOAD/UNIT TRAIN SERVICE**

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**[2] (ITEM 5190A) – TRAINLOAD/UNIT TRAIN DETENTION AT DESTINATION**

1. Applicable only at Destination shown in Note 7 and only in connection with prices applying on trainload or unit train shipments (which are subject to a minimum of not less than 6500 net tons or more) or multiple car shipments (which are subject to a minimum of not less than 4500 net tons or more), which shipments are hereinafter referred to as "trainload".

Four (4) hours free time will be allowed at destination for unloading (see Notes 1, 2 and 3) and releasing or returning empty cars of the trainload/unit train consignment to the carrier. When carrier crews are utilized during the unloading process, time is to be computed from the time of actual or constructive placement of the first loaded car in position of unloading, at the unloading facility, until the release of empty cars to carrier. When carrier crews are not utilized during the unloading process, time is to be computed from the time of actual or constructive placement on consignee's tracks or other designated tracks. Constructive placement occurs when actual placement is prevented due to a cause attributable to consignee. Cars held in excess of four (4) hours will be charged \$300.00 for each chargeable hour, or fraction thereof, per trainload/unit train until all cars in the train consignment are released.

**EXCEPTION:**

In the event unloading of a minimum 8100-ton train requires more than one (1) separation of the train, free time will be computed from arrival of the first loaded car at the first switch to the unloading facility, until all empty cars are reassembled and released to the carrier. Cars in this disposition held in excess of four (4) hours will be charged \$400.00 for each chargeable hour or fraction thereof per trainload shipment until all cars in the trainload shipment are released to the carrier.

(Continued on Next Page)





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**SECTION 5 – TRAINLOAD/UNIT TRAIN SERVICE**

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**[2] (ITEM 5190A) – TRAINLOAD/UNIT TRAIN DETENTION AT DESTINATION (Continued)**

2. Applicable only at Destinations that are not shown in Note 7, and only in connection with prices applying on trainload or unit train shipments (which are subject to minimum of not less than 6500 net tons or more) or multiple car shipments (which are subject to a minimum of not less than 4500 net tons or more), which shipments are hereinafter referred to as "trainload".

Twenty-four (24) hours free time will be allowed for unloading (see Notes 1 and 6), and releasing or returning cars included in the trainload consignment. Time will be computed from time of actual placement until release of empty cars to carrier. Actual placement is made when cars are placed in an accessible area for unloading, on consignee's tracks or other designated tracks. If the carrier is prevented from placing cars due to any cause attributable to the consignee, cars will be considered constructively placed. Each car held in excess of twenty-four (24) hours will be charged twenty dollars (\$20.00) per car per day or fraction thereof until empty cars are released to carrier.

**EXPLANATION OF NOTES**

Note 1 – (a) If by reason of an act of God consignee cannot unload and release within the free time allowed in this item all cars of consignment, no detention charges will be assessed (Note 5).

or (b) If by reason of (1) strikes, lockouts, labor disputes or work stoppages in the consignee's receiving facilities (2) a mechanical breakdown (Note 4) or fire (Note 4) in consignee's receiving facilities, consignee cannot release all cars of a consignment, detention will be charged for all cars at ten dollars (\$10.00) per car per day or fraction thereof without free time allowance (Note 5).

Note 2 – When at the time of actual or constructive placement lading is frozen so as to require heating, thawing or loosening to unload, and a freeze agent has been properly applied, the four (4) hours free time for unloading will be extended an additional twelve (12) hours, provided the consignee shall, prior to the expiration of five (5) days after the date on which car or cars were released, send or give the railroad's agent a written statement certifying by car initial and number, the day or days during which any time was expended in heating, thawing or loosening the lading to unload the car or cars.

Note 3 – On car(s) not arriving with trainload/unit train consignment, due to any cause attributable to carrier, twenty-four (24) hours will be allowed, with time to be computed from the time of actual or constructive placement. Car(s) held in excess of twenty-four (24) hours will be subject to a detention charge of \$20.00 per car for each twenty-four (24) hour period or fraction thereof, until car(s) are released to carrier

Note 4 – Breakdown in facilities of consignee will include only the mechanical breakdown in equipment vital to the coal unloading operation. Fire in facilities of consignee will include only fire incapacitating the equipment vital to the unloading operation.

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**For Explanation of Reference Marks See The Last Page of This Supplement**

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**Turner, Mason & Company**  
CONSULTING ENGINEERS

**Feeder Crudes: Sep 19 - 25, 2003**

Winter	Cracking		Cracking				Cusiana	33.68	34.16	1.91	31.77	32.25	27.05
	Yield	Coking Yield	Freight	Netback	Coking Netback	Spot							
<b>US Gulf</b>													
Arab Berri	29.07	29.06	2.65	26.42	26.41	23.89	Forcados	32.76	N.A.	2.81	29.95	N.A.	26.63
Arab Heavy	26.70	27.40	2.84	23.86	24.56	21.34	LLS	32.94	33.61	0.78	32.16	32.83	27.71
Arab Light	28.06	28.25	2.71	25.35	25.54	22.99	Maya	N.A.	30.58	1.64	N.A.	28.94	21.45
Arab Medium	27.18	27.77	2.77	24.41	25.00	22.04	Mesa	31.35	32.81	2.07	29.28	30.74	24.64
BCF 17	25.32	26.51	1.17	24.15	25.34	N.A.	Mixed Lt Sr	31.59	32.77	1.84	29.75	30.93	23.23
BCF 22	26.70	27.79	1.12	25.58	26.66	N.A.	Olmeca	32.86	33.40	1.65	31.21	31.75	25.97
BCF 24	27.10	28.19	1.12	25.98	27.08	N.A.	Mixed Lt Swt	33.29	33.91	1.66	31.63	32.25	26.56
Basrah Light	27.96	28.39	1.46	26.50	26.93	24.18	WTI	33.27	33.60	0.43	32.84	33.17	27.39
Bonny Light	30.23	N.A.	1.58	28.65	N.A.	26.72	WTS	31.94	33.30	0.65	31.29	32.65	24.46
Brass River	29.74	N.A.	1.42	28.32	N.A.	26.70	<b>Caribbean</b>						
Brent	29.44	29.60	1.23	28.21	28.37	26.26	BCF 17	26.45	27.68	0.31	26.14	27.37	N.A.
Cabinda	28.80	29.61	1.85	26.95	27.75	25.75	BCF 22	28.01	28.88	0.29	27.72	28.59	N.A.
Cano Limon	28.97	29.48	0.88	28.09	28.60	25.13	BCF 24	28.54	29.33	0.29	28.25	29.04	N.A.
Cusiana	29.96	30.04	0.84	29.12	29.20	27.05	Basrah Light	29.42	29.37	1.19	28.23	28.18	24.18
Escalante	27.08	28.71	2.23	24.85	26.48	21.58	Bonny Light	31.50	N.A.	1.13	30.37	N.A.	26.72
Forcados	30.05	N.A.	1.52	28.53	N.A.	26.63	Brass River	30.91	N.A.	1.44	29.47	N.A.	26.70
Isthmus	28.77	28.95	0.52	28.25	28.43	25.02	Brent	30.99	30.21	0.90	30.09	29.31	26.26
Kuwait	27.44	27.98	2.82	24.62	25.16	24.71	Cabinda	30.93	31.19	1.15	29.78	30.04	25.75
LLS	29.78	29.96	0.65	29.13	29.31	27.71	Cano Limon	30.17	30.78	0.33	29.84	30.45	25.13
Mars	27.54	28.52	0.63	26.91	27.89	24.19	Cusiana	31.33	31.16	0.31	31.02	30.85	27.05
Maya	25.95	26.30	0.55	25.40	25.75	21.45	Escalante	28.56	30.20	1.84	26.72	28.36	21.58
Mesa	28.48	29.04	1.07	27.41	27.96	24.64	Forcados	27.46	N.A.	1.65	25.81	N.A.	26.63
Meray	25.50	26.76	1.17	24.33	25.59	N.A.	Isthmus	30.23	29.90	0.45	29.78	29.45	25.02
Olmeca	29.36	29.32	0.53	28.83	28.79	25.97	Kuwait	28.65	29.23	2.35	26.30	26.88	24.71
Rabi	29.68	30.07	1.57	28.11	28.50	26.30	Maya	26.49	27.36	0.47	26.02	26.89	21.45
Soyo/Palanca	29.90	29.94	1.56	28.34	28.39	26.41	Meray	26.46	27.92	0.31	26.15	27.61	N.A.
Statfjord	29.75	29.91	1.23	28.52	28.68	26.43	Mesa	30.17	29.77	0.28	29.89	29.49	24.64
Troll	30.05	30.48	1.31	28.74	29.17	26.34	Olmeca	30.58	29.99	0.46	30.12	29.53	25.97
WTI	29.67	29.81	0.94	28.73	28.87	27.39	Rabi	31.40	32.22	1.12	30.28	31.10	26.30
<b>US Atlantic Coast</b>													
Arab Heavy	28.81	30.17	2.70	26.11	27.47	21.34	Soyo/Palanca	30.88	31.28	1.15	29.73	30.13	26.41
Arab Light	30.27	31.06	2.58	27.69	28.48	22.99	Statfjord	31.13	30.69	0.90	30.23	29.79	26.43
Arab Medium	29.29	30.49	2.63	26.66	27.86	22.04	Troll	31.40	31.76	1.01	30.39	30.75	26.34
BCF 22	28.71	29.72	1.08	27.63	29.72	N.A.	<b>Cracking Visbrk</b>						
Bonny Light	32.90	N.A.	1.61	31.29	N.A.	26.72	Yield	Yield	Freight	Netback	Netback	Spot	
Brass River	33.26	N.A.	1.44	31.82	N.A.	26.70	<b>Singapore</b>						
Brent	32.08	32.71	0.92	31.16	31.79	26.26	Arab Heavy	25.91	25.10	1.22	24.69	23.89	24.61
Cabinda	31.78	32.91	1.65	30.13	31.27	25.75	Arab Light	26.71	25.65	1.16	25.55	24.49	25.46
Cusiana	33.03	33.34	0.94	32.09	32.40	27.05	Arab Medium	26.14	25.14	1.18	24.96	23.96	24.91
Ekofisk	32.20	32.72	0.96	31.24	31.76	26.44	Attaka	27.92	27.50	1.05	26.87	26.45	27.67
Forcados	32.36	N.A.	1.54	30.82	N.A.	26.63	Dubai	27.03	25.72	1.11	25.92	24.60	24.56
Gulfaks	32.87	33.62	0.96	31.91	32.66	26.49	Dun	26.13	24.65	0.64	25.49	24.01	23.76
Hibernia	31.81	32.84	0.76	31.05	32.08	26.40	Kuwait	26.28	25.20	1.26	25.02	23.94	24.71
Mesa	30.53	31.60	1.03	29.50	30.57	24.64	Minas	26.87	25.21	0.59	26.28	24.62	25.68
Oriente	29.48	31.05	1.66	27.82	29.39	21.90	Murban	27.30	26.03	1.11	26.19	24.92	25.75
Rabi	32.74	33.83	1.60	31.14	32.24	26.30	Oman	26.95	26.02	1.05	25.90	24.97	25.16
Soyo/Palanca	32.81	33.15	1.59	31.22	31.56	26.41	Qatar Dukhan	27.19	26.11	1.19	26.00	24.92	26.01
Statfjord	32.64	33.26	1.04	31.60	32.23	26.43	Qatar Marine	27.21	25.90	1.18	26.03	24.72	25.41
Troll	32.26	33.57	0.99	31.27	32.58	26.34	Tapis	27.82	26.81	0.54	27.28	26.27	28.51
<b>US West Coast</b>													
ANS	28.94	30.40	N.A.	28.94	30.40	26.28	Umm Shaif	26.91	25.66	1.11	25.80	24.54	25.50
Basrah Light	28.03	29.89	2.59	25.44	27.30	24.18	Zakum (Lower)	26.96	26.21	1.11	25.85	25.09	25.75
Escalante	28.47	29.96	1.57	26.90	28.39	21.58	<b>Italy</b>						
Kern River	27.46	29.14	1.65	25.81	27.49	22.48	Arab Light	26.10	25.24	2.44	23.66	22.80	23.89
Line 63	28.62	30.54	0.11	28.51	30.43	25.66	Arab Heavy	25.16	23.89	2.56	22.60	21.34	22.89
Maya	24.00	27.28	1.25	22.75	26.03	21.45	Azeri Light	28.11	26.14	0.74	27.37	25.40	27.03
Oriente	27.88	29.11	2.95	24.93	26.17	21.90	Es Sider	27.59	25.99	0.46	27.13	25.53	25.79
Mixed Lt Swt	31.05	31.71	1.89	29.16	29.82	26.56	Iran Heavy	26.18	24.89	0.55	25.63	24.35	25.22
THUMS	28.18	29.09	N.A.	28.18	29.09	22.75	Iran Light	26.64	25.33	0.53	26.11	24.80	25.72
<b>US Midcontinent</b>													
BCF 24	N.A.	31.72	2.10	N.A.	29.62	N.A.	Kirkuk	26.14	25.24	0.69	25.45	24.56	24.60
Basrah Light	30.86	32.75	2.56	28.30	30.19	24.18	Saharan Blend	27.03	26.06	0.46	26.57	25.60	26.32
Bonny Light	33.10	N.A.	3.01	30.09	N.A.	26.72	Suez Blend	26.00	24.62	0.46	25.54	24.16	24.01
Bow River	N.A.	31.23	1.84	N.A.	29.39	19.08	Urals	26.48	25.03	N.A.	25.58	24.13	25.05
Cabinda	31.07	33.55	2.93	28.14	30.63	25.75	Zuetuna	27.64	26.27	0.53	27.11	25.74	25.91
Cano Limon	31.85	33.07	1.94	29.91	31.13	25.13	<b>Amsterdam-Rotterdam-Antwerp</b>						
<b>Weekly Crude Assessments</b>													
Amna	25.61	Gippsland*	28.13	Suez Blend*	24.01		Arab Heavy	26.44	24.67	2.54	23.90	22.14	22.89
Brega	26.21	Kole	25.34	Zarzaifine	26.47		Arab Light	27.60	25.93	2.42	25.18	23.51	23.89
Cinta*	25.33	Sarir	25.51	Tia Juana Lt	25.13		Arab Medium	26.94	25.16	2.47	24.47	22.69	23.34
Daqing*	25.95	Surtica	25.76	Nemba	26.37		Azeri Light	29.38	27.27	1.03	28.35	26.23	27.03
				Girassol	25.86		Basrah Light	27.68	25.78	0.93	26.75	24.85	24.18
							Brass River	29.50	N.A.	1.25	28.25	N.A.	26.70
							Brent	28.80	27.11	0.45	28.35	26.67	26.26
							Ekofisk	28.86	27.01	0.38	28.48	26.64	26.44
							Flotta	28.16	26.11	0.45	27.71	25.65	25.09
							Forties	29.07	27.25	0.45	28.62	26.80	26.47
							Gulfaks	29.29	27.44	0.42	28.87	27.02	26.49
							Iran Heavy	27.55	25.64	0.96	26.59	24.68	25.22
							Iran Light	28.14	26.00	0.96	27.18	25.05	25.72
							Kuwait	27.07	25.15	2.53	24.54	22.62	24.71
							Murban	28.68	N.A.	2.33	26.35	N.A.	25.75
							Statfjord	29.14	27.42	0.53	28.61	26.89	26.43
							Urals	27.85	25.77	N.A.	27.22	25.15	25.05

This table provides weekly \$/bbl assessments for those crudes in the previous version of the Feeder Crudes table that are not in the current version. Crudes with (\*) represent the five-day average of grades assessed daily. Other crudes are set a differentials to five-day averages of key benchmarks.

Crude	Yield	Coking Yield	Freight	Netback	Coking Netback	Spot
Amna	25.61	Gippsland*	28.13	Suez Blend*	24.01	
Brega	26.21	Kole	25.34	Zarzaifine	26.47	
Cinta*	25.33	Sarir	25.51	Tia Juana Lt	25.13	
Daqing*	25.95	Surtica	25.76	Nemba	2	

## Product Price Assessments

		C&F Japan	Singapore	C+F Australia	Asia Product Premium/Discount Assessments			
\$/Bbl	Mogas Unl	+33.90-33.95+				MOP	MOP	MOP
	Mogas 92 Unl		+31.95-32.05+	+34.40-34.50+	Jet	Singapore	Arab Gulf	Japan
	Mogas 95 Unl		+32.90-33.00+	+35.35-35.45+	Gasoil 0.25%S	-0.00-0.20	0.90-1.00	
	Mogas 97 Unl		+33.90-34.00+		Gasoil Reg 0.5%	-0.90-1.05-	1.55-1.70	
\$/MT	<b>MTBE</b>	<b>+340.00-350.00</b>			<b>380 CST</b>	<b>2.00-3.00</b>	<b>-3.50-2.50</b>	
	Naphtha	<b>-265.75-267.25-</b>	<b>27.90-28.00</b>		Naphtha	0.20-0.40		-0.50-0.50
\$/Bbl	Jet Kerosene	-32.95-33.00-	-31.35-31.40-	-34.00-34.05-	LSWR	+1.20-1.30+		
	Gasoil "Cracked"	-31.15-31.20-			<b>South China FOB South China,C&amp;F Hong Kong</b>			
	Gasoil "Pure"	-31.65-31.70-			\$/MT			
	Gasoil 0.05%S	-31.60-31.70-		-34.40-34.50-	Unl 90 RON	+255.00-259.00+		
	Gasoil 0.5% C&F	-31.15-31.20-			Unl 93 RON	+263.50-267.50+		
	Gasoil 0.25%S	-30.90-31.00-		-33.70-33.80-	Jet Kerosene		-255.25-259.25-	
	Gasoil 0.5%S	-30.40-30.50-		-33.20-33.30-	Gasoil 0.2%		-231.70-235.70-	
	Gasoil 1.0%S	-30.30-30.40-			Gasoil L/P 0.5%S		-230.20-234.20-	
	Gasoil LoPr	-30.40-30.50-			Fuel Oil 180 cst		<b>-166.75-167.00+</b>	<b>172.00-174.00+</b>
	LSWR Mixed/Cracked	-23.90-24.10-			Fuel Oil 380 cst		<b>-163.25-163.75-</b>	<b>169.00-171.00</b>
	Naphtha Pap.(OCT)	-27.40-27.50-			Marine Diesel			<b>233.00-235.00</b>
	Naphtha Pap.(NOV)	-27.15-27.20-			<b>Gas Liquids (c/Gal) Mont Belvieu Conway Other Hubs</b>			
	Kerosene Pap.(OCT)	-31.25-31.35-			Ethane/Propane	-35.000-35.750+	33.000-33.250	
	Kerosene Pap.(NOV)	-30.90-31.00-			Ethane Purity	-34.750-35.250-		
	Gasoil Pap.(OCT)	-30.00-30.05-			Propane	-50.500-51.000-	58.750-59.000	
Gasoil Pap.(NOV)	-29.40-29.45-			Propane TET	-50.750-51.000-			
FO 180 cst 2%	<b>-166.00-166.75-</b>			Normal Butane	61.750-62.250	60.500-61.000		
HSFO 180cst	-169.25-169.50-	-157.75-158.75-		Butane TET	61.750-62.250			
180cst Disc/Premium	-0.25-1.00			Isobutane	<b>-63.250-63.750</b>	66.500-67.500		
HSFO 380cst	-154.75-155.00-			Isobutane TET	64.000-64.500			
HSFO 180cst Pap.(OCT)			-158.00-158.25-	Natural Gasoline		70.750-71.250		
HSFO 180cst Pap.(NOV)			-155.75-156.25-	Natural Gasoline TET	-65.000-65.500-			
<b>Arab Gulf, FOB</b>					Natural Non-Dyneyg	-65.000-65.500-		
\$/MT	Naphtha	+235.35-236.85+			Natural Dyneyg	-65.000-65.500-		
	Naphtha LR2	+239.50-241.00+			Bushton Propane		59.250-59.500	
	HSFO 180 cst	-146.50-146.75-			Hattiesburg Propane		-53.750-54.250-	
	HSFO 380 cst	-143.00-143.50-			River Natural Gasoline		-65.000-65.500-	
	95 RON Unleaded	+30.80-30.90+			<b>Latin America, FOB \$/Bbl</b>			
					Argentina		Ecuador	
\$/Bbl	Kerosene	-29.20-29.25-			Gasoline 84	+27.25-27.45+	FO 1.5%S	-19.80-19.90-
	Kerosene LR2	-29.55-29.60-			Gasoil	+30.75-30.85+	FO 1.7%S	-19.40-19.60-
	Gasoil 0.05%S	-29.35-29.40-			FO 0.6%S	-21.90-22.40-	Peru	
	Gasoil 0.25%S	-28.65-28.70-			<b>Brazil</b>		Naphtha	+26.65-26.75+
	Gasoil	-28.15-28.20-			FO 0.4%S	-24.90-25.40-	FO 0.9%S	-21.50-21.55-
	Gasoil LR2	-28.50-28.60-			<b>Colombia</b>		FO 1.4%S	-21.45-21.50-
				FO 1.5%S	-20.90-20.95-			

## Crude Price Assessments

International \$/Bbl				* Swaps			
Brent(OCT)-27.02-27.06-	Dubai(NOV) -25.27-25.29-	Dubai(OCT)* -25.06-25.10-	MOG Diff(SEP)* 0.78-0.82				
Brent(NOV)-26.73-26.75-	Dubai(DEC) -25.06-25.10-	Dubai(NOV)* -24.78-24.82-	MOG Diff(OCT)* 0.93-0.97	MOG(OCT)*	-26.01-26.05-		
Brent(DEC)-26.40-26.44-	Dubai(JAN) -24.78-24.82-	Dubai(DEC)* -24.50-24.54-	MOG Diff(NOV)* 0.96-1.00	MOG(NOV)*	-25.76-25.80-		
Brent(DTD)-27.07-27.12-	Brent EFP(OCT) NA-NA	BRENT/WTI 1st NA-NA	MOG Diff(DEC)* -1.01-1.05-	MOG(DEC)*	-25.53-25.57-		
NS Basket-27.18-27.23-	Brent EFP(NOV) 0.11-0.12	BRENT/WTI 2nd-1.47-1.43-	Oman(NOV)	-25.88-25.92-	Oman MOG(NOV)+0.10-0.14+		
	Brent EFP(DEC) 0.09-0.11	BRENT/WTI 3rd-1.46-1.42-	Oman(DEC)	-25.76-25.80-	Oman MOG(DEC)+0.20-0.26+		
			Oman(JAN)	-25.37-25.40-	Oman MOG(JAN) 0.09-0.13		
	<b>Spread vs DTD Brent</b>		<b>Spread vs DTD Brent</b>		<b>Spread vs DTD</b>		
<b>Brent</b>							
NS DTD Strip	-26.94-26.96-	WAF DTD Strip-26.77-26.78-		MED DTD Strip-26.94-26.95-			
Forties	-27.23-27.28-	0.29-0.32	Brass River -27.06-27.12-	0.29-0.34	Ural (Rdam)	-25.72-25.80-	-1.22-1.15
Ekofisk	-27.20-27.26-	0.26-0.30	Forcados -26.99-27.05-	0.22-0.27	Ural (Med)	-25.84-25.90-	-1.10-1.05
Stafjord	-27.21-27.25-	0.27-0.29	Escravos -26.98-27.04-	0.21-0.26	UralFOB Ven	-24.92-24.98-	-2.02-1.97-
Osberg	-27.24-27.30-	0.30-0.34	Qua Ibo -27.08-27.14-	0.31-0.36	Ural FOB Novo-25.07-25.13-		-1.87-1.82-
Flotta	-25.74-25.81-	-1.20-1.15	Bonny Light -27.08-27.14-	0.31-0.36	Urals (RCMB)-25.97-26.07-		
			Cabinda -26.32-26.39-	-0.48-0.43	Iran Lt(Sidi)	-26.45-26.50-	-0.49-0.45
					Iran Hvy(Sidi)	-25.95-26.00-	-0.99-0.95
London	Brent CFD	Dated Swap	Angola DTD Strip-26.80-26.82-		Es Sider	-26.42-26.47-	-0.52-0.48
1wk(NOV)	0.27-0.29	27.00-27.04			Siberian Lt	-26.92-26.98-	-0.02-0.03-
2wk(NOV)	0.27-0.29+	27.00-27.04	Can DTD Strip-26.74-26.76-		Saharan Bld	-26.98-27.04-	0.04-0.09
3wk(NOV)	0.16-0.20+	26.89-26.95	Terra Nova -26.76-26.84-	0.02-0.08	Azeri Lt	-27.68-27.74-	0.74-0.79
4wk(NOV)	0.05-0.10-	26.78-26.85	Hibernia -26.96-27.04-	+0.22-0.28+	Azeri Lt FOB	-27.03-27.09-	+0.09-0.14+
5wk(NOV)	-0.02-0.02-	26.71-26.77			Suez Blend	-24.69-24.75-	-2.25-2.20
6wk(NOV)	-0.08-0.04-	26.65-26.71			Kirkuk	-25.28-25.34-	-1.66-1.61
7wk(NOV)	-0.17-0.12	26.56-26.63			Kumkol	-26.91-26.97-	-0.03-0.02
8wk(NOV)	-0.25-0.20	26.48-26.55			Zarzitaine	-27.13-27.19-	0.19-0.24
					Syrian Hvy	-23.94-24.00-	-3.00-2.95-
Asia \$/Bbl					Syrian Lt	-26.24-26.30-	-0.70-0.65-
Brent(OCT)	-27.07-27.10-	WTI(NOV)	-28.14-28.18-		CPC Blend CIF-26.59-26.65-		-0.35-0.30
Brent(NOV)	-26.77-26.80-	WTI(DEC)	-27.93-27.97-		CPC Blend FOB-26.01-26.07-		+0.93-0.88+
Brent(DEC)	-26.49-26.52-	WTI(JAN)	-27.58-27.62-				
Brent/Dubai	-1.50-1.51-						

### Five-Day Rolling Averages\*

\*Five Days ending Sep 26

Naphtha	\$/Bbl	c/Gal
Singapore	27.28—27.35	64.95**65.12
	\$/MT	c/Gal
Japan C/F	260.35—261.95	68.88**69.30
Arab Gulf	228.94—230.54	60.57**60.99
CIF NWE Physical	245.00—246.00	64.81**66.49
Rotterdam Barge	241.00—242.00	63.76**65.41
FOB Med	228.00—229.00	60.32**61.89
CIF Genoa	240.50—241.50	63.62**65.27
US Gulf W	243.07**245.55	68.47—69.17
Carib Cargo	241.29—243.83	66.47**67.17
Jet Kerosene	\$/MT	c/Gal
CIF NWE Cargo	255.40—256.20	77.39**77.17
Rotterdam Barge	253.90—254.70	76.94**76.72
FOB Med	243.15—244.15	73.68**73.54
US Gulf Water	242.19**242.99	72.95—73.19
US Gulf Pipe	242.19**242.99	72.95—73.19
Carib Cargo	237.41—238.19	73.50**73.74
NY Cargo	245.95**246.94	74.53—74.83
LA Pipeline	248.02**249.30	77.75—78.15
Group 3	249.50**250.83	75.15—75.55
Chicago	250.76**251.66	75.53—75.80
Low Sulfur Resid Fuel Oil	\$/Bbl	\$/Mt
Singapore LSWR Mixed/Cracked	23.94—24.08	160.40**161.34
CIF ARA 1%	24.69**24.88	160.50—161.70
Rot Bar 1%	24.13**23.94	154.40—155.60
NWE FOB 1%	23.83**23.65	152.50—153.70
Med FOB 1%	23.56**23.38	150.80—152.00
NY Cargo .3% HP	27.65—27.90	185.26**186.93
NY Cargo .3% LP	28.38—28.63	190.15**191.82
NY Cargo .7% Max	24.54—24.79	159.51**161.14
NY Cargo 1% Max	23.99—24.30	155.94**157.95
US Gulf 1%	23.44—23.85	148.14**150.73
Hi Sulfur Resid Fuel Oil	\$/Bbl	\$/Mt
Singapore 180	23.91**24.02	155.40—156.10
Singapore 380	23.86**23.97	152.70—153.40
Arab Gulf 180	22.59**22.65	144.60—144.95
CIF ARA 3.5%	22.27**22.28	140.30—141.50
NWE FOB 3.5%	21.00**21.02	132.30—133.50
Med FOB 3.5%	21.37**21.37	134.60—135.70
CIF Med 3.5%	22.65**22.65	142.70—143.80
NY Cargo 2.2%	22.21—22.46	142.14**143.74
NY Cargo 3.0%	22.06—22.31	141.18**142.78
US Gulf 3%	22.17—22.52	141.89**144.13
Carib 2.0%	20.66—20.91	132.22**133.82

Carib 2.8%	20.51—20.76	131.26**132.86
Crude Oil, FOB Source	\$/Bbl	
West Texas Int	27.63—27.65	
NYMEX Crude	27.53	
Mars	24.54—24.59	
Brent (DTD)	26.60—26.65	
Brent (First Month)	26.65—26.68	
Dubai (First Month)	24.73—24.75	
Oman (First Month)	25.31—25.35	
Urals CIF Med	25.49—25.55	
WTI Posting Plus	3.25—3.27	
Gasoil/Heating Oil	\$/Bbl	c/Gal
Singapore	30.16—30.25	71.81**72.02
Arab Gulf	27.83—27.89	66.26**66.40
L.A. LS Diesel	32.11**32.34	76.45—77.00
S.F. LS Diesel	32.61**32.84	77.65—78.20
	\$/MT	c/Gal
0.2 CIF ARA	230.30—231.30	73.58**73.90
EN590 CIF ARA	239.50—240.50	76.52**76.84
0.2 Rotterdam Barge	221.40—222.75	70.73**71.17
0.2 FOB NWE	221.00—222.00	70.61**70.93
0.2 CIF MED	234.00—235.00	74.76**75.08
EN590 CIF MED	246.30—247.50	78.69**79.07
NY Cargo	224.66**225.35	71.32—71.54
NY Barge	227.02**227.71	72.07—72.29
US Gulf Water	217.23**217.88	70.53—70.74
US Gulf Pipe	215.69**216.34	70.03—70.24
Group 3	232.79**233.71	75.58—75.88
Carib Cargo	219.58—220.23	70.60**70.81
NYMEX NO. 2	226.51	71.91
Gasoline, Intl. Market	c/Gal	Prem \$/Mt
CIF ARA Prem Unl	74.84**75.41	262.70—264.70
R'dam Barge Prem Unl	76.01**76.30	266.80—267.80
FOB NWE Prem Unl	72.59**73.16	254.80—256.80
FOB Med 0.15	74.36**74.64	261.00—262.00
Gasoline, U.S. Market	Unleaded	Premium
NY Cargo	88.57—90.72	104.17—105.32
NY Barge	89.07—91.22	104.67—105.82
US Gulf Water	74.52—75.22	82.07—82.87
US Gulf Pipe	74.02—74.72	81.57—82.37
Group 3	81.42—82.22	87.27—88.12
LA Pipeline	75.85—76.55	83.85—84.55
SF Pipeline	77.70—78.40	85.70—86.40
Chicago	82.80—83.26	89.80—90.26
NYMEX Unl	82.76	

### Product Price Assessments

European Bulk	Cargoes FOB Med	Cargoes CIF Med Basis	Cargoes CIF NWE	Barges FOB	Cargoes FOB
\$/MT	Basis Italy	Genoa/Lavera	Basis ARA	Rotterdam	NWE
Prem 0.15 G/L	-268.50-269.50				
98 RON Unl				-299.00-300.00	
Prem Unl	-262.50-263.50	-274.00-275.00	266.50-268.50	-269.00-270.00	259.00-261.00
Reg Unl			264.50-266.50	-269.00-270.00	256.00-258.00
Barge diff 10ppm/50ppm				-2.50—2.00	
MTBE				362.00-366.00	
Naphtha Physical	+230.50-231.50+	+243.00-244.00+	+247.50-248.50+	+243.50-244.50+	
Naphtha Swaps				-245.00-246.50-	
Jet Kerosene			-260.25-260.75-	-257.25-258.25-	-249.25-249.75-
Jet Av. Fuel	-248.00-249.00-				
Gasoil EN590	-243.25-244.25-	-251.25-252.25-	+246.25-247.25+		+237.25-238.25+
ULSD			+248.25-249.25+	-249.25-249.75-	+239.25-240.25+
Gasoil 10ppm			+250.25-251.25+	-250.25-250.75-	+241.25-242.25+
Gasoil 0.2	-227.50-228.50-	-239.25-240.25-	-234.25-235.25-	-224.50-226.25-	-225.25-226.25-
1% Fuel Oil	-153.00-154.00-	-161.00-162.00-	-163.50-164.50-	-158.50-159.50-	-155.50-156.50-
3.5% Fuel Oil	-138.00-139.00-	-146.00-147.00-	-140.50-141.50-	-143.50-144.00-	-132.50-133.50-
380 CST				-146.00-148.00-	
0.5%-0.7% Straight Run					-167.00-169.00-

0.2 PCT Gasoil does not include -5 -15 spec. IPE Average (OCT) -226.25. IPE Average (NOV) 226.75-

## Gas liquids: Anomaly

An anomaly in Gulf Coast ethane pricing was witnessed at the end of the week. Trade was done this morning for E/P mix at 35.375 cts and then 37 cts/gal FOB Mt Belvieu. That high price was reportedly done on the back of news that an LPG pipeline that carries a y-grade had ruptured and had been shut in.

By late day E/P mix was bid/offered at 35-35.75 cts/gal FOB Mt Belvieu as purity ethane finished the day in and out of 35 cts. Purity ethane typically trades at a premium to E/P mix. Gulf Coast propane traded at 50.75 cts/gal late day for Sep or Oct TET. Midwest propane traded at 58.75-59 cts/gal FOB Conway. Bushon propane continued to be pegged about 0.50 ct above Conway as Hattiesburg was called 3 cts higher.

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## Oilgram Price Report

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## Subscriber notes:

—Effective September 26, 2003, the existing Mars assessments have been supplemented by the inclusion of flat price trade that occurs over the course of the day. In addition, Platts now publishes a daily 3rd month forward Mars crude oil spot price assessment, next to its 1st and 2nd month Mars spot price assessments. Effective September 26, 2003, Platts has launched a separate set of three months forward Mars spot price assessments, which reflect a market-on-close value at 3:15 PM local New York time. The relevant market-on-close assessment parameters are identical to the existing Platts cash WTI assessment methodology (also see www.platts.com for Platts crude oil assessment specifications). A comprehensive Q & A document on the Mars market-on-close assessment methodology is available at <http://platts.com/oil/guidetospec/marsqa.pdf>. For additional questions or comments contact Gerald\_Bueshel@platts.com, Sheela\_Ponnusamy@platts.com or Jorge\_Montepeque@platts.com.

—Effective October 13th, 2003, Platts is planning to publish daily Urals CFD crude oil swap price assessments for two monthly balances. Urals CFD assessments will be quoted on an outright basis and as a delta versus Dated Brent. The relevant assessments will be rolled over from the current month on the 1st business day after the 10th of every calendar month. For example: On November 10th, November Urals CFDs and December Urals CFDs will be assessed. On November 11th, December Urals CFDs and January Urals CFDs will be assessed. Platts Urals CFD assessments will be published in Platts Crude Oil Marketwire, in Platts Oilgram Price Report (OPR), in Platts Neft Trader, and on Platts Global Alert (PGA) page PGA864. For questions or comments contact Hanne\_Ovesen@platts.com or Gerald\_Bueshel@platts.com.

—Platts is proposing to launch an assessment for Napo crude, a new grade being produced in Ecuador. Platts proposes to launch the assessment Nov 1, and is inviting market feedback from interested parties by Oct 10. In keeping with Platts' other Latin American crude assessments, the assessment would reflect cargoes loading 15-45 days ahead of publication date. Napo crude will be assessed FOB Ecuador as a differential against Platts' second month cash WTI. The crude assessed will have a typical API of 19 degrees and 2.01% sulfur. Platts will publish both the differential assessed, and the outright value, in Latin American Wire, Oilgram Price Report and on Platts Global Alert, page 280. For questions or comments, contact Jasmina Kelemen at 713-658-3208 or [jasmina\\_kelemen@platts.com](mailto:jasmina_kelemen@platts.com).

## Corrections:

- In the Sep 16, 2003 Oilgram Price Report, No.178 (Prices eff Sep 15 2003) under the heading US Wholesale Posted Prices, Pad5. Spokane:unleaded should have read 102.95-110, Midgrade should have read 108.45-114.80, Premium Unleaded should have read 113.95-121.50, Kero should have read 113.25-113.25, No.2 should have read 93.25-93.25,LS Diesel should have read 92.95-93.25.
- In the Sep 17, 2003 Oilgram Price Report, No.179 (Prices eff Sep 16 2003) under the heading US Wholesale Posted Prices, Pad5. Spokane:unleaded should have read 102.95-105, Midgrade should have read 108.45-109.80, Premium Unleaded should have read 113.95-116.50, Kero should have read 113.25-113.25, No.2 should have read 93.25-93.25,LS Diesel should have read 90.95-93.00.
- In the Sep 18, 2003 Oilgram Price Report, No.180 (Prices eff Sep 17,2003)under the heading US Wholesale Posted Prices, Pad5.Spokane:unleaded should have read 101.45-102, Midgrade should have read 106.80-106.95, Premium Unleaded should have read 112.45-113.50,Kero should have read 113.25-113.25, No.2 should have read 89.25-89.25,LS Diesel should have read 87.95-89.00.
- In the Sep 19, 2003 Oilgram Price Report, No.181 (Prices eff Sep 18,2003)under the heading US Wholesale Posted Prices, Pad5.Spokane:unleaded should have read 100.00-101.45, Midgrade should have read 104.80-106.95, Premium Unleaded should have read 111.50-112.45,Kero should have read 109.25-109.25, No.2 should have read 89.25-89.25,LS Diesel should have read 87.95-89.00.
- In the Sep 22, 2003 Oilgram Price Report, No.182 (Prices eff Sep 19,2003)under the heading US Wholesale Posted Prices, Pad5.Spokane:unleaded should have read 99.45-100.00, Midgrade should have read 104.80-104.95, Premium Unleaded should have read 110.45-111.50,Kero should have read 109.25-109.25, No.2 should have read 89.25-89.25,LS Diesel should have read 87.95-89.00.



## Market by Market

### International crude: Physical crude market bullish

The physical market settled out on a bullish note following a week which has seen values rebound sharply following reports of forthcoming OPEC quota cuts, increased European demand and reduced cargo availability. "It continues to be a strong market for remaining barrels in October," said a trading source. "There are still some major systems that need crude for 2H October and healthy demand in Europe still," he added. Cargo premiums against the Dated Brent/BFO market rallied with Statoil picking up an Oct 18-20 Forties cargo from Chev-Tex at Dated + 35 cts. Reports also emerged prior to the BFO window of Conoco selling an Oct 20-22 Ekofisk cargo to Glencore at Dtd + 28 cts. TOTSA re-surfaced to bid for any grade BFO cargo loading on Oct 11-17 dates at up to Nov +25 cts while Statoil also bid an Oct 12-19 wet Brent cargo at Nov +30 cts. Vitol offered an Oct 15-17 wet Brent at Nov +45 cts. Some softening was noted to IPE Brent futures Friday with the November contract slipping to re-trade below \$27/bbl in part on profit taking.

The bullish sentiment prevailing in the Med sour market Wednesday after the OPEC production cut may have materialized only for a blip, as a more relaxed sentiment set in Thursday and seemed fairly pronounced Friday, sources said. In hindsight, the initial bullish sentiment reflected in an Oct Urals CFDs deal concluded at Dated -96/-95cts (Cargill-Total) Wednesday may have reflected a certain panic amongst buyers following the OPEC announcement, sources suggested. However, the OPEC cut will be effective November 1 only and could not be expected to have an impact on the Med market before 2H Nov or even Dec, sources said. By Friday, buyers were still tip-toeing between sweet and sour, after margins had shifted in favor of sweet, but the sentiment on sour material was slightly softer. It looked like Urals Med could be setting out for a correction, expected to take Urals Med down some 20cts/bbl next week, sources said. An Oct Urals CFD was heard bid at Dated -1.15 by Glencore, while a value for Nov remained underground. On the physical side, an Oct 6-10 80kt ex- Novo was heard placed with ERG at around Dated -1.10 CIF Augusta. While the information remained unconfirmed, it was believed that the cargo in question was the Oct 8-9 Novo cargo. Initially, the seller was heard to have fixed the 1980-blt single-hull Armata, but had supposedly taken on a modern Minerva unit due to vessel restrictions at most Mediterranean discharge points, sources said. With the Armata, the cargo was discounted, even if only slightly in a bullish aframax market, sources said. With the Minerva unit, the

deal was seen to fully represent the market rate for 80kt Novo cargoes. A deal filtered through from Thursday as an Italian-enduser was heard to have bought another late 1st decade October Novo 80kt at around Dated -1 CIF Augusta. The vessel was believed to be the double-double 1995-blt Four Bay.

In North Western Europe, an arbitrage window expected to open up for Urals NWE moving into the Med was shut after Urals Med was seen softer Friday. Also, Urals looked pretty stable around Dated -1.20 CIF Rdam, or possibly slightly stronger for first decade October, narrowing the spread between Urals Med and Urals NWE, sources said. Despite a firmer tone on North Sea sweet grades, these had not firmed up sufficiently to have an impact on Urals. Sempra had bought a substantial amount of Urals for their VLCC shipment on the Stena Constellation into Asia. According to some sources more than 2.5-mil bbl.

No more Brass River news was heard to arrive, frustrating those market players with cargoes set to load. A number of Nembas have moved already off the November program. So far the Nov 3-4 has gone from ChevronTexaco to Nov 7-8 cargo is understood to have gone from Koch to Sun, the Nov 14-15 from Agip to Sinopec. The latter cargo was thought to be co-loading with a Nov 15-16 Kuito, also sold by Agip according to sources. Nigerian decades were still expected to come out early in the week commencing 29 Sep. There was news of more potential union.

Vietnam's Petechim has awarded its inaugural sell tender for one 250-350kb cargo of Su Tu Den to ChevronTexaco at Minas OSP+\$1.60/bbl (equivalent to Bach Ho OSP+54cts). Woodside's end-Nov Legendre and Petronas' early Nov Tapis have been sold at around Tapis+\$1.60/bbl. Cinta and Widuri premia were heard running due to winter middle distillate demand, with cargoes sold into Japan at above ICP+1.00/bbl.

### Europe: Barge prices fall

Barge prices fell after overnight falls in the NYMEX and amid thin buying interest in NWE as supply continues to outstrip demand after three weeks without a clear arbitrage opening for exports from NWE to the US.

Intraday, 800mt of prem unl 10ppm summer grade traded at 269 AR for prompt loading as Preem sold to Statoil, with Preem giving a discount to sell prompt. At 1700 BST the prem unl 10ppm bid-offer for winter grade stood at 268-273.5 AR.

Cargill offered down to 270.5 AR at 1725 BST, before selling to Statoil at 269 AR just before the close. Just after the close, Cargill sold at 270.5 AR to BP. Crack levels rose, with Oct pegged at \$5.57/bbl up from \$5.4/bbl Thursday.

### NNPC... from p. 1

the House of Representatives on Sep 30 to give details on the amount of money spent on crude produced and sold by the NNPC," an Abuja-based source said.

The House Committee chairman on petroleum resources, Cairo Ojiugbor and other House representatives said there were allegations of "improper and inadequate declaration of the crude oil produced and sold by the NNPC on behalf of the country."

"We want them to come and tell us what we are getting from the sale of oil," Ojiugbor was quoted as saying in ThisDay newspaper.

Obasanjo left out the oil ministry in the composition of his first and second cabinet and instead appointed Rilwanu Lukman, a former OPEC secretary-general, as special advisor on petroleum.

"Oil is our most critical resource. We think the sector should be separated from the presidency. There ought to be a minister as in previous governments who oversees the industry. We don't understand the rationale behind the president's decision to not appoint a minister," said the NLC's Odah.—*Jacinta Moran*

### USAC: Unleaded differentials fall

New York Harbor RFG unleaded 87 cash differentials fell 2.50 cts/gal Friday as the wide spread between the October and November NYMEX gasoline contracts slowed buying, sources said. Trade was reported at 5.75 cts over the October NYMEX screen for prompt delivery. Any-month talk was at 5.00-5.25 cts over. With October NYMEX gasoline trading some 9 cts/gal higher than the November contract, sources said buyers who do not need to cover prompt positions ahead of the weekend were putting off buying. RFG premium unleaded 93 cash was last heard valued at 20-23 cts over the NYMEX contract. Conventional unleaded 87 cash differentials were down 4 cts/gal Friday with talk last heard at 3.00-3.50 cts over the NYMEX. Conventional premium unleaded 93 was valued at 18.50-20.25 cts over the NYMEX screen.

Thin trade continued in the No.2 oil and jet fuel spot markets Friday with very little change reported in cash differentials. Prompt No.2 oil cash talk was last heard at 0.70-0.45 ct under the October NYMEX print. LS diesel cash was last valued at 0.75-1 ct over the NYMEX screen. Jet 54 was valued at 2.50-2.75 cts over the NYMEX. Jet/kero 55 was talked at 4.00-4.25 cts over the October NYMEX.

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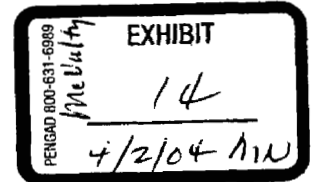
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August 12, 2003

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Mr. Shipper

*in docket file?  
see MAH*



Dear ...:

In connection with Docket No. 030001-EI, the staff of the Florida Public Service Commission is attempting to assess the market price for waterborne coal transportation service purchased by Tampa Electric Company (TECO). This is needed for the evaluation of TECO's costs subject to cost recovery in the Commission's annual fuel adjustment proceeding. Recently, TECO issued a Request for Proposal (RFP) for its coal transportation needs. In order to make an assessment of such costs, we are asking for your evaluation of TECO's RFP, including whether the conditions of the RFP were reasonable and what your price would be to provide service ~~under two different conditions~~. Assuming you received this RFP, please answer the following by August 29, 2003:

- 1) Do you believe TECO's RFP offers a fair opportunity for competitive bids? If not, please explain, and identify any unnecessary competitive impediments. Also, provide any suggested changes in the language of the RFP that, in your opinion, would be necessary to make the RFP fair and reasonable.
- 2) What is your company's estimated price (\$/ton or \$/ton-mile) or range of prices it would consider offering for providing coal transportation service for each segment (river, terminal, ocean) or combination of segments described in the RFP, in response to the two following proposals:
  - A) TECO's RFP (as written) and
  - B) TECO's RFP with your suggested modifications stated in response to Item No. 1 above.

*Submitted in 15 A*

Please list any assumptions that may be necessary to understand the prices you identify.

- 3) If you have the ability to provide international coal shipments to <sup>Tampa</sup>TECO, what constraints would you modify, if any, in the TECO RFP in order to bid for that portion of waterborne coal transportation service? What would be examples of your prices or ranges of prices to ship foreign coal from various major coal-producing locations in South America, what would be your shipping routes, and what types of

Mr. Shipper  
Page 2  
August 12, 2003

ships would you use?

- 4) Please identify any information, not otherwise indicated in your responses to Questions 1 through 3, that would be relevant to assessing the market price for waterborne coal transportation to TECO.

If you did not receive an RFP, please e-mail Bill McNulty at [bmcnulty@psc.state.fl.us](mailto:bmcnulty@psc.state.fl.us). He will fax you a copy. Upon request, your response to this request for information may be considered confidential under FS...Please indicate whether you would be willing to testify with respect to the above in the form of a deposition or affidavit. Thank you for your cooperation in this matter.

*will? - Jennifer will check.*  
*check - new wording for Bill*  
*if we use the info at hearing, TECO needs to know*  
*protective agreement?*

Tim Devlin

Director of Economic Regulation



STATE OF FLORIDA

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BRAULIO L. BAEZ  
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TIMOTHY DEVLIN, DIRECTOR  
DIVISION OF ECONOMIC REGULATION  
(850) 413-6900

Public Service Commission

August 12, 2003

*This revised  
8/13 - See Election 10  
Version 102*

*DRAFT  
(For Docket File?)*

Mr. Shipper

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B) TECO's RFP with your suggested modifications stated in response to Item No. 1 above.

Please list any assumptions that may be necessary to understand the prices you identify.

- 3) If you have the ability to provide international coal shipments to TECO, what constraints would you modify, if any, in the TECO RFP in order to bid ~~for that~~ *for* portion of waterborne coal transportation service? What would be examples of your prices or ranges of prices to ship foreign coal from various major coal-producing locations in South America, what would be your shipping routes, and what types of

EXHIBIT  
15  
4/2/04 MN  
PERCADA 800-631-6989  
McNulty

Mr. Shipper  
Page 2  
August 12, 2003

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Tim Devlin

Director of Economic Regulation

**Bill McNulty**

---

**From :** Todd Bohrmann  
**Sent:** Thursday, March 11, 2004 1:44 PM  
**To:** Andrew Maurey; Bernie Windham; Bill McNulty; Cochran Keating; Jennifer Rodan; Sid Matlock; Todd Bohrmann  
**Subject:** FW: Request for Information About Port of Tampa

fyi

-----Original Message-----

**From :** Lisa Hall [mailto:Lhall@tampaport.com]  
**Sent :** Thursday, March 11, 2004 2:07 PM  
**To:** tbohrman@psc.state.fl.us  
**Subject:** Request for Information About Port of Tampa

Mr. Bohrman,

Pursuant to Mr. Bohner's direction, following are responses to your queries of February 10, 2004:

1. Panamax vessels can have a draft of up to 43 feet. Big Bend Channel has a 34 foot draft. Bayside/Gannon has an approach channel that has an operational draft of 39 feet plus 2 foot of tide to a max of 41 feet, but the berthing area is only 34 feet.
2. Tampa Port Authority Berth 30 at Port Sutton, Pendola Point, has a draft of 43 feet but is limited by the approach channel to 39 feet plus tide to a max of 41 feet. Drummond Coal has an open storage area to store, process and deliver coal by truck or rail.

Responses to supplemental questions from Commission staff:

1. There are some locations in the Port of Tampa that can handle Handy-sized coal vessels. All the channels can accommodate these ships. However, sites to handle coal are limited because of permitting. Tampa Port Authority Berth 219 has handled coal in the past under special permit but is no longer accepting it at this site. Kinder Morgan has a facility at Port Sutton that has the potential for handling coal shipments.
2. Coal storage facilities are regulated and permitted by the Florida Department of Environmental Protection (FDEP). A permit must be obtained from the FDEP to store, process or blend coal whether it is for an open storage pile system or a silo storage system. In Hillsborough County, FL, some of the FDEP permitting, i.e., coal silo air discharge, has been delegated to the Environmental Protection Commission of Hillsborough County.

Lana McLaurin  
Legal Assistant to Dale Bohner  
Phone: (813) 905-5141  
Fax: (813) 905-5144  
Tampa Port Authority Legal Department  
1101 Channelside Drive, Tampa, FL 33602

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