

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Review of Tampa Electric Company's  
2004-2008 waterborne transportation contract  
with TECO Transport and associated  
benchmark.

DOCKET NO. 031033-EI  
ORDER NO. PSC-04-0535-PHO-EI  
ISSUED: May 25, 2004

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on May 17, 2004, in Tallahassee, Florida, before Commissioner Braulio L. Baez, as Prehearing Officer.

APPEARANCES:

LEE L. WILLIS, ESQUIRE, JAMES D. BEASLEY, ESQUIRE, and JOHN P. FONS, ESQUIRE, Ausley & McMullen, P.O. Box 391, Tallahassee, Florida 32302

On behalf of Tampa Electric Company ("TECO").

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On behalf of the Office of Public Counsel ("OPC").

VICKI GORDON KAUFMAN, ESQUIRE, and TIMOTHY J. PERRY, ESQUIRE, McWhirter, Reeves, McGlothlin, Davidson, Kaufman, & Arnold, P.A., 117 S. Gadsden Street, Tallahassee, Florida 32301

On behalf of Florida Industrial Power Users Group ("FIPUG").

ROBERT SCHEFFEL WRIGHT, ESQUIRE, and JOHN T. LAVIA, III, ESQUIRE, Landers and Parsons, P.A., 310 West College Avenue, (32301), P.O. Box 271, Tallahassee, Florida 32302

On behalf of CSX Transportation ("CSXT").

MICHAEL B. TWOMEY, ESQUIRE, P.O. Box 5256, Tallahassee, Florida 32314-5256

On behalf of Catherine L. Claypool, Helen Fisher, William Page, Edward A. Wilson, Sue E. Strohm, Mary Jane Williamson, Betty J. Wise, Carlos Lissabet, and Lesly A. Diaz ("RES. CUST.").

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MARY ANNE HELTON, ESQUIRE, and JENNIFER A. RODAN, ESQUIRE,  
Florida Public Service Commission, Gerald L. Gunter Building, 2540 Shumard  
Oak Boulevard, Tallahassee, Florida 32399-0850  
On behalf of the Florida Public Service Commission.

### **PREHEARING ORDER**

#### **I. CONDUCT OF PROCEEDINGS**

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

#### **II. CASE BACKGROUND**

At its November 3, 2003, Agenda Conference, the Commission voted in Docket No. 030001-EI to defer consideration of issues related to Tampa Electric Company's coal transportation arrangements to a separate proceeding to be held within six months. Accordingly, this matter has been set for an administrative hearing on May 27-28, 2004, to address those issues.

#### **III. JURISDICTION**

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 366, Florida Statutes. This hearing will be governed by said Chapter and Chapters 25-6, 25-17, 25-22, and 28-106, Florida Administrative Code.

#### **IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION**

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 366.093, Florida Statutes.

**B.** It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any parties intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- b) Failure of any party to comply with a) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Commission Clerk and Administrative Service's confidential files.

V. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 50 pages, and shall be filed at the same time.

VI. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VII. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
Brent Dibner (Direct and Rebuttal)	TECO	1, 2, 3
Joann T. Wehle (Direct and Rebuttal)	TECO	1, 2, 3
H.G. (Pat) Wells (Direct)	OPC/FIPUG	1, 2
Michael J. Majoros (Direct)	OPC/FIPUG	1, 2, 3
Robert F. White (Direct)	CSXT	1, 2, 3
Robert L. Sansom (Direct)	CSXT	1, 2, 3
John B. Stamberg (Direct)	CSXT	1, 2, 3
Anatoly Hochstein (Direct)	RES. CUST.	1, 2, 3
Frederick J. Murrell (Rebuttal)	TECO	1, 2, 3
Paula Guletsky (Rebuttal)	TECO	1, 2

VIII. BASIC POSITIONS

TECO: Preface

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

Existing Commission Policy

This Commission's existing policies with respect to the determination of reasonableness of prices paid by Tampa Electric to its affiliate TECO Transport are set out in Order No. 20298 issued on

November 10, 1988 and reaffirmed in Order No. PSC-93-0443-FOF-EI on March 3, 1993. The Commission's current policy provides in pertinent part:

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

\* \* \*

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

\* \* \*

The Stipulation approved Order No. 20298 stated as follows:

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

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

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

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

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

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

#### Background

TECO's waterborne coal transportation system was created in the 1950's dramatically altered the market for both fuel and fuel transportation by electric utilities in Florida. This transportation system has benefited not only Tampa Electric's customers but all customers within the state by

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

#### The Intervenors

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

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

The remedies sought in this proceeding by various Intervenors are not available to the Commission. The Commission has no authority to abrogate an existing valid contract between Tampa Electric and TECO Transport. The Commission does not have authority to require Tampa Electric to rebid the RFP which under the Commission's existing policies at the time the RFP was issued did not require any RFP to be issued at all.



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

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

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

Tampa Electric Company's Statement of Basic Position:

Each of the three issues deferred from the November 2003 fuel adjustment proceeding should be resolved in Tampa Electric's favor. Tampa Electric's June 27, 2003 RFP for coal transportation services was very carefully and properly structured and issued, and the resulting

proposals were evaluated in a manner designed to produce the best reflection of market prices for the needed waterborne coal transportation services. That information and the market pricing recommendations of Tampa Electric's expert consultant provide compelling evidence as to the appropriate market price for coal transportation services TECO Transport is providing to Tampa Electric. The market prices generated by the RFP process and Mr. Dibner's conclusions and recommendations are corroborated by Intervenor's own witnesses. The transportation rates included in the October 6, 2003 contract between Tampa Electric and TECO Transport are at or below market; are lower than the rates under the contract that expired at the end of 2003; and have enabled Tampa Electric to lock into lower rates in advance of significant increases in market rates for available coal transportation services. Consequently, prices paid by Tampa Electric under its new contract with TECO Transport are beneficial to Tampa Electric's ratepayers and are reasonable for cost recovery purposes.

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

**OPC/FIPUG:**

The rates which TECO has committed to pay to its sister company for the next five years to provide TECO with waterborne transportation service, and which it seeks to recover from ratepayers, are excessive and unreasonable. Such rates should be rejected.

As a preliminary matter, the Request for Proposals (RFP) which TECO issued was flawed. Therefore, it failed to elicit representative bids from the marketplace. In fact, potential bidders said they would not bid because it was clear that TECO's sister company was the preordained winner of the bid. This perception of bias was exacerbated because the affiliate did not even have to bid but rather simply was able to sit back, await the bids, and then just meet them, rather than having to provide its own bid. Such a

process cannot result in a competitive response. Among other flaws, the RFP stated a preference for integrated service and provided an unreasonably short period for response. When a few bids were received (one from a railroad carrier was unsolicited), TECO inappropriately evaluated the bids and predictably chose its affiliate. This process cannot be said to have really tested the market.

TECO then turned to an expert it retained to derive the rates it would pay its affiliate. However, Mr. Dibner's rates are flawed and should be rejected. The rates identified in Mr. Majoros' testimony should be the rates used instead

Mr. Majoros makes two significant adjustments to the rates TECO proposes, both of which must be recognized to arrive at reasonable rates. First, Mr. Majoros adjusts the rates TECO proposes to account for the substantial backhaul traffic TECO Transport carries on its return trips. TECO's proposed rates ignore all backhaul traffic and exclude it from the proposed rates.

Second, Mr. Majoros eliminates the "premium" by which TECO increases the rates it pays TECO Transport to account for preference trade traffic. TECO claims TECO Transport forgoes these "opportunities" to serve TECO. As Mr. Majoros testifies, neither of these items is appropriate to consider when setting a competitive market price. Mr. Majoros makes the appropriate adjustments which the Commission should adopt.

**CSXT:**

Tampa Electric's practices regarding the procurement of coal transportation services and also regarding procurement of coal supply have been and continue to be imprudent, resulting in costs far in excess of reasonable and prudent levels. If the PSC were to allow TECO to recover such costs through TECO's fuel and purchased power cost recovery charges, those charges (rates) would be unjust and unreasonable. In particular, TECO's self-dealing with its affiliate, TECO Transport, has resulted in excessive costs. As compared to the costs that TECO could have incurred, based on what TECO knew or reasonably should have known at all relevant times in its coal transportation procurement and coal supply procurement decision-making processes, TECO's costs for obtaining exclusively water-borne coal, exclusively by hiring the services of its affiliate, TECO Transport, exceed reasonable and prudent amounts by millions of dollars per year.

Moreover, TECO's refusals and failures (a) to seriously consider CSX Transportation's specific offers, beginning in October 2002, to provide coal-by-rail transportation service for TECO's Big Bend and Polk Stations, including CSXT's offers to pay for necessary coal-by-rail delivery and handling infrastructure, and (b) to negotiate in good faith with CSXT for such services in the best interests of TECO's customers, were imprudent and have resulted in TECO's incurring costs far in excess of reasonable and prudent levels. Further, TECO's request for proposals for coal transportation services, issued in 2003, was inadequate to accurately assess the market for coal transportation services.

The Commission should disallow all costs incurred by TECO in excess of the delivered costs that TECO could, based on what it knew or reasonably should have known when it was making relevant decisions, have incurred to obtain needed coal supply and coal transportation. The Commission should further require TECO to employ a fair, open bidding process for the procurement of all future coal supply and coal transportation services, and should further implement measures (including such rules promulgated pursuant to Chapter 120 as the Commission may deem necessary and appropriate) to ensure that TECO obtains the most cost-effective total delivered cost of coal supply and coal transportation services, for the benefit of TECO's customers. Finally, the Commission should review TECO's management practices surrounding its self-dealing with its affiliate and take whatever further actions the Commission deems appropriate, including, without limitation, penalizing TECO's management and shareholders for the imprudence associated with that self-dealing.

**RES. CUST.:**

The rates which Tampa Electric has committed to pay to its sister company, TECO Transport, for the next five years to provide Tampa Electric with waterborne transportation service, and which it seeks to recover from ratepayers, are excessive and unreasonable. Such rates should be rejected and substantially reduced.

Tampa Electric's Request for Proposals (RFP) issued in 2003 was fatally flawed primarily because it contained numerous industry non-standard requirements that either discouraged vendors from responding, or, if they did respond, would have necessarily increased the bids. These requirements clearly limited the number of responsive bids. Additionally, it is clear that some potential bidders declined to respond because of the perception that the contract would be awarded to TECO Transport no

matter the level of unaffiliated bids. Although it was not publicly disclosed, the fact was that TECO Transport had a “meet or beat” provision in the prior contract that allowed it to “win” the new contract merely by meeting the price offering of any unaffiliated vendors. Furthermore, the RFP also stated a preference for integrated service and provided an unreasonably short period for responses. The integrated service preference necessarily limited the number of potential respondents who might have been capable of, and interested in, bidding on one or more legs of the service, but not the entire transportation route.

It is Dr. Hochstein’s testimony, and the Residential Electric Customers’ position, that Tampa Electric should be required to reissue the RFP without the burdensome non-industry standards and with a public statement that the TECO Transport will have to compete as well and that the contract will be awarded to the respondent submitting the lowest, qualified bid. The Commission should announce that it will referee the bid openings to ensure the fairness of the process. By reissuing the RFP, the Residential Electric Customers believe the Commission can ascertain for which of the three legs or components of the transportation route there are true “markets.”

For those legs for which there is an actual “market,” as represented by one or more RFP responses (the Residential Electric Customers believe that there are clearly markets for the river and transloading segments), the Residential Electric Customers believe the allowed cost recovery from Tampa Electric’s customers should be limited by the lowest-cost bid for those segments. If there is not a market, as indicated by a lack of responsive bids, which may be the case for the Gulf leg, then the Residential Electric Customers believe the Commission should establish the allowable ceiling for that leg by a return to cost plus regulation as measured by the actual reasonable and necessary costs of providing the Gulf transportation leg, plus a return on investment at the same level as currently being earned by Tampa Electric.

The Residential Electric Customers believe that any leg that does not have demonstrable markets should have rates established by the cost, plus, or cost of service, methodology, as opposed to any method, like Tampa Electric witness Dibner's, that relies upon “black box” modeling methods. Mr. Dibner’s modeled rates are flawed for the reasons demonstrated in Dr. Hochstein’s testimony and the use of his rates should be rejected out of hand.

**STAFF:** Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

**IX. ISSUES AND POSITIONS**

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

**POSITIONS**

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

**OPC/FIPUG:** No. The RFP was flawed in numerous respects as was the evaluation of the few bids received. Thus, it cannot be used to determine the current market price for coal transportation. (Majoros, Wells)

**CSXT:** No. (White, Sansom, Stamberg)

**RES. CUST.:** No. The RFP was flawed in numerous respects as was the evaluation of the few bids received. Thus, it cannot be used to determine the current market price for coal transportation. (Hochstein)

**STAFF:** No. By its restrictive terms and conditions, Tampa Electric's June 27, 2003, request for proposals does not appear to be sufficient to determine the market price, as of October 6, 2003, for coal transportation.

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

**POSITIONS**

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

**OPC/FIPUG:** No. TECO's proposed charges are excessive and inflated. They fail to consider backhaul revenue and provide an unwarranted premium for opportunity costs. The Commission should adopt the rates set forth in Mr. Majoros' testimony. (Wells, Majoros)

**CSXT:** No. (White, Sansom, Stamberg)

**RES. CUST.:** No. Tampa Electric's proposed charges are excessive and inflated for the reasons stated in the basic position above. Additionally, especially for cost of service purposes, Tampa Electric gives no credit to customers for the backhaul revenues TECO Transport receives on any of the transportation route legs. (Hochstein)

**STAFF:** No. The rates reflected in the contract between Tampa Electric Company and TECO Transport for waterborne coal transportation services, dated

October 6, 2003, appear to overstate the market prices at that time for such services.

Order No. 20298, in Docket No. 870001-EI-A, issued November 10, 1988, indicates to the extent that a competitive market exists, the Commission will rely upon a market-based mechanism to determine whether the costs that Tampa Electric incurs for waterborne coal transportation services from TECO Transport are reasonable. Order No. 20298 goes on to state that if a competitive market does not exist, the Commission will rely upon a cost-based mechanism to determine whether the costs for such services are reasonable.

Competitive markets appear to exist for solid fuel transportation by inland river barge on the Ohio and Mississippi Rivers downstream to New Orleans and for terminal services at facilities accessible to the Mississippi River and capable of receiving and discharging inland river barges from domestic suppliers and Panamax-sized vessels for offshore coal. However, the rates for these two services as reflected in the contract between Tampa Electric Company and TECO Transport for waterborne coal transportation services, dated October 6, 2003, appear to overstate the market prices at that time for such services. Staff has no further position at this time regarding the appropriate rate for cost recovery purposes for these two segments pending receipt and review of further discovery and evidence adduced at the hearing.

A competitive market, comprised of rail transportation or a combination of rail transportation, U.S.-flag vessels for domestic coal, and foreign flag vessels for offshore coal, also appears to exist to transport Tampa Electric's solid fuel requirements to Tampa, Florida. However, Tampa Electric's June 27, 2003 request for proposals contained restrictive terms and conditions which limited the number and type of bids. Also, Tampa Electric did not adequately evaluate and consider the two competitive rail bids it received. Hence, Tampa Electric has failed to reflect the effects of this competitive market in its market price, as of October 6, 2003, for coal transportation. Staff has no position at this time regarding the appropriate rate for cost recovery purposes for the ocean shipping segment pending receipt and review of further discovery and evidence adduced at the hearing.



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

**POSITIONS**

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

**OPC/FIPUG:** Yes. The benchmark is out of date and highly overstated. This was illustrated by Mr. McNulty's testimony in Docket No. 030001-EI. The benchmark should be eliminated. (Majoros)

**CSXT:** Yes. The Commission should eliminate the benchmark and instead use the costs of obtaining needed coal transportation service offered by competing suppliers of such service as the measure of what TECO may be allowed to recover. In this case, the maximum amount that TECO should be allowed to recover is defined by CSXT's offer to provide rail transportation of coal to Big Bend and Polk Stations. (White, Sansom, Stamberg)

**RES. CUST.:** Yes. The benchmark is out of date and highly overstated. This was illustrated by Mr. McNulty's testimony in Docket No. 030001-EI. The benchmark should be eliminated. (Hochstein)

**STAFF:** Yes. The benchmark that the Commission established for Tampa Electric Company by Order No. PSC-93-0443-FOF-EI, issued March 23, 1993, in Docket No. 930001-EI is no longer relevant. The Commission should eliminate the benchmark. The Commission should evaluate Tampa Electric's requests for recovery of costs associated with future contracts for waterborne coal transportation service based upon the results of a fairly constructed and implemented competitive bid process. Staff takes no further position pending receipt and review of further discovery and evidence adduced at hearing.

X. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Brent Dibner	TECO	<u>BD-1</u>	Exhibit to the Direct Testimony of Brent Dibner
Brent Dibner	TECO	<u>BD-2</u>	Exhibit to the Rebuttal Testimony of Brent Dibner (Rebuttal)
Joann T. Wehle	TECO	<u>JTW-1</u>	Exhibit to the Direct Testimony of Joann T. Wehle
Joann T. Wehle	TECO	<u>JTW-2</u>	Exhibit to the Rebuttal Testimony of Joann T. Wehle (Rebuttal)
H.G. Wells	OPC/FIPUG	<u>HGW-1</u>	Resume of H.G. Wells
H.G. Wells	OPC/FIPUG	<u>HGW-2</u>	Letter from Staff to TECO regarding RFP
H.G. Wells	OPC/FIPUG	<u>HGW-3</u>	Platts' article regarding TECO RFP

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
H.G. Wells	OPC/FIPUG	<u>HGW-4</u>	Letter from barge company to TECO (as redacted)
H.G. Wells	OPC/FIPUG	<u>HGW-5</u>	Letter from barge company to TECO
M. Majoros	OPC/FIPUG	<u>Appdx A</u>	Majoros Resume
M. Majoros	OPC/FIPUG	<u>MJM-1</u>	Commission fuel procurement policy
M. Majoros	OPC/FIPUG	<u>MJM-2</u>	Backhaul information
M. Majoros	OPC/FIPUG	<u>MJM-3</u>	Backhaul calculation
M. Majoros	OPC/FIPUG	<u>MJM-4</u>	JEA data
M. Majoros	OPC/FIPUG	<u>MJM-5</u>	Rate Matrix
Robert F. White	CSXT	<u>RFW-1</u>	Resume of Robert F. White
Robert F. White	CSXT	<u>RFW-2</u>	CSXT's March 12, 2003 Presentation to TECO
Robert F. White	CSXT	<u>RFW-3</u>	CSXT's May 9, 2002 Proposal Presentation to TECO
Robert F. White	CSXT	<u>RFW-4</u>	CSXT's October 23, 2002 Proposal to TECO
Robert F. White	CSXT	<u>RFW-5</u>	Diagram of Facilities for Big Bend 1 to 2 MMTPY Rail Delivery Option

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Robert F. White	CSXT	<u>RFW-6</u>	Diagram of Facilities for Big Bend 2 to 5.5 MMTPY Rail Delivery Option
Robert F. White	CSXT	<u>RFW-7</u>	Diagram of Facilities for Polk Station Direct Rail Delivery Option
Robert F. White	CSXT	<u>RFW-8</u>	Diagram of Facilities for Polk Shuttle Rail Delivery Option
Robert F. White	CSXT	<u>RFW-9</u>	CSXT Letters to Joann T. Wehle
Robert F. White	CSXT	<u>RFW-10</u>	CSXT's July 30, 2003 Proposal to TECO
Robert L. Sansom, Ph.D.	CSXT	<u>RLS-1</u>	Experience of Dr. Robert L. Sansom, including Expert Testimony
Robert L. Sansom, Ph.D.	CSXT	<u>RLS-2</u>	Map Showing Pittsburgh 8 Mines Northern Appalachian Coal
Robert L. Sansom, Ph.D.	CSXT	<u>RLS-3</u>	CSXT's October 23, 2002 Proposal to TECO
Robert L. Sansom, Ph.D.	CSXT	<u>RLS-4</u>	Screening Analysis, Water vs. Rail Coal, October 2002
Robert L. Sansom, Ph.D.	CSXT	<u>RLS-5</u>	Project Timelines for TECO Actions vs. TECO's Inaction
Robert L. Sansom, Ph.D.	CSXT	<u>RLS-6a</u>	Evaluation of Rail vs. Water Delivery Economics for Western Kentucky Coal in 2004
Robert L. Sansom, Ph.D.	CSXT	<u>RLS-6b</u>	Evaluation of Rail vs. Water Delivery Economics for Pitt 8 Coal in 2004

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Robert L. Sansom, Ph.D.	CSXT	<u>RLS-6c</u>	Evaluation of Rail vs. Water Delivery in 2004 for Indiana Coal (Summerville Mine)
Robert L. Sansom, Ph.D.	CSXT	<u>RLS-7</u>	Water Losses and Higher Inventory Costs for Water-Transported Coal
Robert L. Sansom, Ph.D.	CSXT	<u>RLS-8</u>	Eastern U.S. Utility Stockpiles, Days of Burn, November 2003
Robert L. Sansom, Ph.D.	CSXT	<u>RLS-9a</u>	Summary of TECO Overpayments in 2004
Robert L. Sansom, Ph.D.	CSXT	<u>RLS-9b</u>	TECO Overpayments in 2004 - Pitt 8 Coal from Northern Appalachia
Robert L. Sansom, Ph.D.	CSXT	<u>RLS-9c</u>	TECO Overpayments on Illinois Basin Coal, 2004
John B.Stamberg, P.E.	CSXT	<u>JBS-1</u>	Resume of John B. Stamberg, P.E.
John B.Stamberg, P.E.	CSXT	<u>JBS-2</u>	Excerpts from <u>RS Means Heavy Construction Cost Data, 13th Edition, 1999</u> , and <u>RS Means Square Foot Costs, 24th Annual Edition</u> , and <u>Dodge Unit Cost Book, 1999</u>
John B.Stamberg, P.E.	CSXT	<u>JBS-3</u>	Conveyor Estimate Based on Cubic Storage Systems Budget Quote
John B.Stamberg, P.E.	CSXT	<u>JBS-4</u>	Conveyor Estimate Based on FMC Budget Quote
John B.Stamberg, P.E.	CSXT	<u>JBS-5</u>	Conveyor Estimate Based on Continental Conveyors Budget Quote

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
John B.Stamberg, P.E.	CSXT	<u>JBS-6</u>	Rapid Discharge Pit and Conveyor – EVA Estimate
John B.Stamberg, P.E.	CSXT	<u>JBS-7</u>	Conceptual Diagram – Cooperative Rail Delivery System
John B.Stamberg, P.E.	CSXT	<u>JBS-8</u>	Overview of Rail Delivery Options to Big Bend
John B.Stamberg, P.E.	CSXT	<u>JBS-9</u>	<u>Sargent &amp; Lundy LLC, Tampa Electric Company Big Bend and Polk Generating Stations, CSX Transportation Alternate Method of Coal Delivery, SL-008160, September 18, 2003</u>
John B.Stamberg, P.E.	CSXT	<u>JBS-10</u>	<u>Sargent &amp; Lundy LLC, Tampa Electric Company Big Bend and Polk Generating Stations, CSX Transportation Alternate Method of Coal Delivery, SL-008160, DRAFT September 4, 2003</u>
A. Hochstein	RES. CUST.	<u>AH-1</u>	Davant – Tampa Required Freight Rates for U.S. Flag Vessels
A. Hochstein	RES. CUST.	<u>AH-2</u>	TECOT Schedule in Tampa, FL (September 2003)
A. Hochstein	RES. CUST.	<u>AH-3</u>	Daily Time Charter Rates based on Preference Trades and U.S. Army Corps of Engineers
A. Hochstein	RES. CUST.	<u>AH-4</u>	Texas – Jacksonville, FL Required Freight Rates for U.S. Flag Vessels

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
A. Hochstein	RES. CUST.	<u>AH-5</u>	Davant – Tampa Required Freight Rates for U.S. and Foreign Ships
A. Hochstein	RES. CUST.	<u>AH-6</u>	Present and Future Transport Options
A. Hochstein	RES. CUST.	<u>AH-7</u>	Columbia – Tampa and New Orleans Required Freight Rates for Foreign Ships
A. Hochstein	RES. CUST.	<u>AH-8</u>	Big Bend Channel Improvement Analysis
A. Hochstein	RES. CUST.	<u>AH-9</u>	Florida Utilities Coal Shipments for 2003
Paula M. Guletsky	TECO	<u>PMG-1</u>	Exhibit to the Rebuttal Testimony of Paula M. Guletsky (Rebuttal)
Frederick J. Murrell	TECO	<u>FJM-1</u>	Exhibit to the Rebuttal Testimony of Frederick J. Murrell (Rebuttal)

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

XI. PROPOSED STIPULATIONS

There are no stipulations proposed at this time.

XII. PENDING MOTIONS

The following motions are pending as of the issuance date of this Prehearing Order but will be addressed by order of the Prehearing Officer prior to the start of the hearing:

1. TECO's April 19, 2004, Motion to Compel Residential Customers; and
2. Consumer Federation of the Southeast, Inc. and Walter Dartland's May 21, 2004, Motion for Protective Order.

XIII. PENDING CONFIDENTIALITY MATTERS

All pending confidentiality matters in this docket will be resolved by order of the Prehearing Officer prior to the start of the hearing.

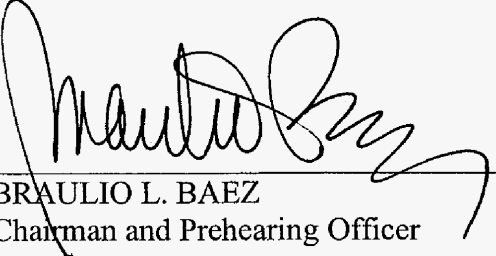
XIV. RULINGS

TECO's opening statement, if any, shall not exceed 20 minutes. CSXT's, Residential Customers', and OPC/FIPUG's opening statements, if any, shall not exceed 10 minutes each.

It is therefore,

ORDERED by Chairman Braulio L. Baez, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Chairman Braulio L. Baez, as Prehearing Officer, this 25<sup>th</sup> day of May, 2004.



BRAULIO L. BAEZ  
Chairman and Prehearing Officer

(SEAL)

WCK/JAR



NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.