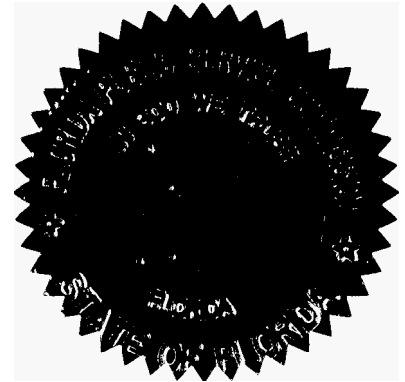


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 031033-EI

In the Matter of

REVIEW OF TAMPA ELECTRIC
COMPANY'S 2004-2008 WATERBORNE
TRANSPORTATION CONTRACT WITH
TECO TRANSPORT AND ASSOCIATED
BENCHMARK.



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VOLUME 1

Pages 1 through 179

PROCEEDINGS: HEARING

BEFORE: CHAIRMAN BRAULIO L. BAEZ
COMMISSIONER J. TERRY DEASON
COMMISSIONER LILA A. JABER
COMMISSIONER RUDOLPH "RUDY" BRADLEY
COMMISSIONER CHARLES M. DAVIDSON

DATE: Thursday, May 27, 2004

TIME: Commenced at 9:35 a.m.

PLACE: Betty Easley Conference Center
Hearing Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR
Official FPSC Reporter
(850) 413-6734

DOCUMENT NUMBER DA

FLORIDA PUBLIC SERVICE COMMISSION

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FPSC-COMMISSION CLE

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2 CHAIRMAN BAEZ: We'll call this hearing to order
3 Counsel, can you read the notice, please?

4 MS. RODAN: Pursuant to notice published May 7th,
5 2004, this time and place has been set for a hearing in Docket
6 Number 031033-EI.

7 CHAIRMAN BAEZ: We'll take appearances.

8 MR. WILLIS: I am Lee L. Willis appearing with
9 James D. Beasley and John P. Fons of the firm of Ausley &
McMullen, P.O. Box 391, Tallahassee, Florida 32302, appearing
on behalf of Tampa Electric Company.

CHAIRMAN BAEZ: Mr. Vandiver.

14 MR. VANDIVER: Robert Vandiver, 111 West Madison
15 Street, appearing on behalf of the citizens of the state of
Florida.

16 MS. KAUFMAN: Vicki Gordon Kaufman and Timothy J.
17 Perry of the McWhirter Reeves Law Firm. We are appearing on
18 behalf of the Florida Industrial Power Users Group.

19 MR. WRIGHT: Robert Scheffel Wright and John T.
20 Lavia, III, the law firm of Landers & Parsons, 310 West College
21 Avenue, Tallahassee, appearing on behalf of CSX Transportation.

22 MR. TWOMEY: Good morning, Mr. Chairman,
23 Commissioners. Mike Twomey appearing on behalf of Catherine
24 Claypool and the other residential customers of Tampa Electric
25 Company.

1 CHAIRMAN BAEZ: Thank you, Mr. Twomey. Staff.

2 MS. RODAN: Jennifer Rodan and Cochran Keating on
3 behalf of the Florida Public Service Commission.

4 CHAIRMAN BAEZ: All right. Mr. Keating or Ms. Rodan,
5 do we have any preliminary matters?

6 MR. KEATING: The only thing that I would point out
7 is where the prehearing order indicates that all of the pending
8 confidentiality matters have been resolved, that was a true
9 statement at the time the prehearing order was issued, but we
10 have gotten a few additional requests in this week that we
11 intend to take up as quickly as possible after this hearing.

12 CHAIRMAN BAEZ: Okay. And can you clarify for all
13 the parties exactly how we're going to be treating those
14 requests throughout the hearing?

15 MR. KEATING: Well, for purposes of, of how we handle
16 the information subject to those requests in this hearing, we
17 would continue to protect those as confidential until a
18 confidentiality ruling can be issued.

19 CHAIRMAN BAEZ: Very well. Thank you. Anything else
20 that we need to deal with before we get started?

21 MR. BEASLEY: One brief thing.

22 CHAIRMAN BAEZ: Mr. Beasley.

23 MR. BEASLEY: We had requested and have conferred
24 with the parties and they have agreed for us to switch the
25 order of our rebuttal witnesses so that Ms. Guletsky would go

1 ahead of Mr. Murrell. And that's been approved by the parties,
2 if that's --

3 CHAIRMAN BAEZ: I'm sorry, Mr. Beasley. And that
4 wasn't -- was that something that we hadn't addressed at the --
5 okay. I see what you're saying.

6 MR. BEASLEY: Just putting Ms. Guletsky ahead of
7 Mr. Murrell.

8 CHAIRMAN BAEZ: Very well. I'll make that notation.
9 Thank you.

10 MR. BEASLEY: Thank you.

11 CHAIRMAN BAEZ: Anything else from the parties at
12 this point?

13 All right. Seeing nothing, we'll get started with,
14 with some exhibits. Before that I want to thank, I want to
15 thank everyone for being here and welcome you all to, to the
16 hearing. Parties, as we had discussed at length at the
17 prehearing conference, we have only two days allotted to this.
18 We have, by my count, roughly ten witnesses that are slated to
19 give testimony. I urge you, as I urged you before, to get to
20 the, get to the crux of the matter. And, and we've -- you
21 know, the Commissioners are well familiar with the issues here.
22 I'm certain that they've all gone over the testimony, and we've
23 had plenty -- this issue has gotten plenty of exposure. So if
24 we can keep the editorializing to a minimum so that we can get
25 the hearing moving in a very lean fashion, I would appreciate

1 it. As you know, we're running up against a late Friday, and I
2 know that the witnesses that are here from out of town would
3 hate to get stuck in Tallahassee over the weekend; not a
4 notoriously fun place to be over the weekend for people that
5 don't actually live here. So I would appreciate your brevity.
6 I don't want to hamstring anyone. Y'all do your jobs. That's
7 the most important thing of all. But if you can keep that in
8 mind, I would appreciate it.

9 We'll move on to exhibits, Mr. Keating. I'm showing
10 some stipulated exhibits that we can take up first.

11 MS. RODAN: Yes. Staff has compiled a list of
12 exhibits that we believe can be entered into the record by
13 stipulation. In an effort to facilitate the entry of those
14 exhibits, we've compiled a chart that we have provided to the
15 parties, the Commissioners and the court reporter. In lieu of
16 reading off and marking each exhibit for the record, I suggest
17 this list itself be marked as the first hearing exhibit and
18 that the other exhibits be marked thereafter in sequential
19 order as set forth in the chart. I'd also like to note that
20 staff has included in this chart the prefiled exhibits attached
21 to the witnesses' testimony in this case. To further
22 facilitate entry of these exhibits in the record, I'd suggest
23 that these exhibits also be marked as set forth in the exhibit
24 chart.

25 CHAIRMAN BAEZ: Any objection or comments from the

1 parties as to proceeding this way?

2 Mr. Willis, you were poised to speak?

3 MR. WILLIS: No objection.

4 CHAIRMAN BAEZ: No? Thank you. Okay. Ms. Rodan,
5 then walk us through -- we have the first, the first, if I
6 heard you correctly, the first exhibit that you'd like to
7 introduce is the actual list of stipulated exhibits.

8 MS. RODAN: That's correct.

9 CHAIRMAN BAEZ: Okay. And show that marked Exhibit
10 Number 1 for the record.

11 (Exhibit 1 marked for identification.)

12 CHAIRMAN BAEZ: And you can go ahead and walk us
13 through with what else we have.

14 MS. RODAN: Staff would move Exhibits 1 through
15 62 into the record, noting for clarification that Exhibits
16 4 through 7 and 61 through 62 are sponsored by Tampa Electric
17 witnesses; 8 through 18 are sponsored by joint OPC/FIPUG
18 witnesses; 19 through 51 by CSX; and 52 through 60 by the
19 residential customers.

20 CHAIRMAN BAEZ: Without objection, show exhibits
21 2 through 62 identified accordingly to the list that's been
22 identified as Exhibit 1.

23 Anything else, Ms. Rodan?

24 MR. KEATING: I don't believe so.

25 (Exhibits 1 through 62 marked for identification and

1 admitted into the record.)

2 CHAIRMAN BAEZ: Okay.

3 MR. KEATING: I believe at the prehearing there was a
4 discussion on time for opening statements from the parties.

5 CHAIRMAN BAEZ: That's correct. As the parties have
6 agreed, Tampa Electric will have 20 minutes for opening
7 statements. I believe, Mr. Vandiver and Ms. Kaufman, FIPUG and
8 OPC are combining theirs into a 10-minute slot. Mr. Wright and
9 Mr. Twomey will each have ten minutes. All right. Without
10 objection, we'll show that. And I think at this point we can
11 swear in witnesses. Are all your witnesses in the room at this
12 point?

13 Okay. All those that are going to testify before the
14 Commission, can you stand up and raise your right hand, please.

15 (Witnesses collectively sworn.)

16 CHAIRMAN BAEZ: Mr. Willis.

17 MR. WILLIS: Commissioners, we very much appreciate
18 the opportunity to give you a short summary of the case that
19 will be presented to you today.

20 Tampa Electric will present to you compelling
21 evidence showing that the prices paid to its affiliate are
22 reasonable because, among other things, the prices paid under
23 its new transportation contract are 4 percent lower than the
24 prices paid under the previous contract which expired last
25 December, they're lower than the CSX rail bid, they're lower

1 than the market rate for maritime bulk commodity transportation
2 as confirmed by an extensive and conservative market study
3 presented by Mr. Dibner, and it is significantly lower than the
4 rail-based benchmark calculated under your current policy.

5 As you review the evidence presented to you today,
6 it's critical for you to keep in mind this Commission's
7 well-thought-out policies that exist today. It's important to
8 know where we are now and how we got there before you consider
9 a change in policy. This Commission on two prior occasions, in
10 1978 and again in 1988, has undertaken exhaustive
11 investigations into the method of review of the prices Tampa
12 Electric pays to its waterborne coal transportation system for
13 the delivery of coal to Tampa. On both occasions this
14 Commission came away very impressed with Tampa Electric's
15 ingenuity in creating this system and was completely satisfied
16 with the prices paid by Tampa Electric to TECO Transport, that
17 they were not only fair and reasonable, but they had saved
18 ratepayers hundreds of millions of dollars.

19 The evidence before you today will prove once again
20 what this Commission has found time and time again, that TECO
21 Transport is the largest, fastest and most efficient fuel
22 delivery system available to meet the specific needs of Tampa
23 Electric Company.

24 For the sake of Tampa Electric's ratepayers, this
25 Commission should carefully avoid taking any action which

1 undermines in any way this truly remarkable transportation
2 system.

3 Let's turn now to the specifics of your existing
4 policies which are directly applicable to this case. The
5 Commission's existing policies were adopted in 1988
6 specifically for Tampa Electric to govern its relationship with
7 TECO Transport, and they're set out in Order Number 20298 that
8 you'll hear a lot about today.

9 I urge you to read and study this order, if you
10 haven't already done so. The Commission in that order
11 established a market pricing system that should be used to
12 determine the reasonableness of prices paid under the TECO
13 Transport contract because you found that a market pricing
14 system is far superior to cost-based pricing for affiliated
15 transactions and that a market exists for the transportation of
16 coal from the mine to the generating plant. This Commission
17 determined that the best, fairest and most effective method of
18 implementing the market pricing policy is a hands-off approach
19 with respect to how Tampa Electric chooses to negotiate its
20 contract with its affiliate, and then, thereafter, to review
21 the prices agreed to by comparing those prices to a rail-based
22 benchmark which averages the two lowest publicly available rail
23 rates to determine a cap under which the prices paid by Tampa
24 Electric to its affiliate would be deemed reasonable and over
25 which would be disallowed for cost recovery unless justified by

1 Tampa Electric.

2 Looking again to a couple of the brief highlights of
3 Order Number 20298, that order stated that affiliate contracts
4 are not expected to be bid, that the relevant market is the
5 movement of coal from the mine to the generating plant, and
6 that rail service and the total waterborne system are not only
7 comparable but competitive to a large degree.

8 I think it's important here to pause and to recognize
9 the fundamental difference in how Tampa Electric's benchmark
10 operates compared to the benchmark that has been used by
11 Progress Energy to determine the reasonableness of waterborne
12 coal transportation costs.

13 Tampa Electric's rail-based benchmark operates as a
14 cap. By contrast, since its inception, Progress Energy's index
15 benchmark is not a cap, but instead operates to determine the
16 amount of recovery allowed without regard to the actual
17 underlying contract prices paid to the carriers actually moving
18 the coal for Progress Energy. Moreover, that benchmark --
19 Progress Energy's benchmark historically has been well above
20 Tampa Electric's benchmark.

21 Now let's look again at the Commission's policies and
22 how we believe they should be recognized here. Commissioners,
23 the case before you is fundamentally about respect for the
24 Commission's orders and settlement agreements. Staff and all
25 the parties are required to comply with the company -- this

1 Commission's policies until they're changed. And Tampa
2 Electric, likewise, is entitled to rely on those policies until
3 they're changed. Neither staff or any party has the authority
4 to unilaterally change the Commission's policies. That can
5 only be accomplished after a notice and a hearing and must be
6 applied retroactively. Moreover, we believe that the parties
7 seeking to change these policies has the burden of proof that
8 has clearly not been met in this case.

9 This case is also about respect for settlements
10 approved in a valid Commission order. Parties to a stipulation
11 approved by the Commission are bound by that order and
12 stipulation until the Commission finds that that policy should
13 be changed due to changed circumstances based on record
14 evidence after due process is afforded to all affected persons.
15 A duly established policy simply cannot be ignored for the sake
16 of convenience.

17 Now, Commissioners, the record before you clearly
18 shows that a market continues to exist for the transportation
19 of coal from the mine to the generating plant. And keep in
20 mind that that was the relevant market that you determined in
21 1988 should be the key. Both CSX and TECO Transport have the
22 ability to provide this service. Other waterborne carriers
23 also have the ability to provide this service if they choose to
24 pursue that business in place of transportation business
25 they're currently engaged in now.

1 Staff in its prehearing statement agrees that a
2 competitive market exists for Tampa Electric from the mine to
3 Tampa. CSX by its interest in this proceeding certainly
4 indicates that there is a market for transportation of coal
5 from the mine to Tampa. And we would assert that OPC and FIPUG
6 have admitted that there's a market for this service by
7 agreeing to a market proxy and a settlement filed with you
8 before the Commission with respect to Progress Energy on April
9 the 29th of this year.

10 We believe that it's also clear that a competitive
11 market also exists for each of the three segments of the
12 waterborne transportation from the mine to the generating
13 plant. First of all, I want to reiterate that I believe that
14 you are eminently correct in determining that the relevant
15 market is the total service of getting the coal from the mine
16 to the plant, and that's what's most important. But,
17 nevertheless, a market exists for each of the other three
18 segments, which is the river, terminal and ocean legs.

19 Again, staff readily agrees that a competitive market
20 appears to exist for inland river barge down the Ohio and
21 Mississippi Rivers downstream and for terminal services at
22 facilities accessible to the Mississippi River. We believe
23 that when you listen to all the evidence here, that you will
24 also be convinced that there's -- a competitive market exists
25 for the ocean leg as well.

1 It's obvious that there's no competitive barrier for
2 waterborne carriers. Unlike rail, there's no fixed rail line
3 over which the right-of-way must be exercised exclusively by
4 one railroad. There's no fixed or restrictive use of the
5 waterways. Competitive carriers capable of providing the Gulf
6 transportation will redirect their fleets if the price is high
7 enough.

8 Much will be made of the fact here that no bids were
9 received for the ocean leg. That certainly is understandable.
10 The efficiency and low rates of TECO Transport's waterborne
11 transportation system for coal to Tampa Electric is even
12 acknowledged by intervenor witness Dr. Hochstein, whose
13 testimony concludes that no carrier could reasonably offer
14 equal or lower rates than TECO Transport.

15 Commissioners, we will brief, and I won't go into it
16 today because of time, but we believe that Florida law requires
17 you to use market pricing where the record before you shows
18 that a market exists, but we'll go into that in our brief.

19 Commissioners, TECO Transport undoubtedly is the best
20 coal transportation alternative for Tampa Electric, and that
21 Tampa Electric's procedures used to enter into its contract
22 with TECO Transport are not only in compliance with this
23 Commission's policies, but clearly result in reliable,
24 reasonably priced coal transportation for service between 2004
25 and 2008.

1 To illustrate this, let's first look at service and
2 reliability. The service provided by TECO Transport has simply
3 been superb in every way. Its creation, its operation and
4 refinement over the years is truly remarkable. TECO created
5 its coal transportation system in the 1950s when it decided to
6 burn coal instead of oil at Gannon Station. At the time,
7 electric utilities were captive customers of the big oil
8 companies and railroads and no water transportation existed at
9 all that could deliver coal by water to Tampa. Undaunted,
10 TECO's chairman, William MacInnes, by his ingenuity and his
11 sheer determination, converted oil barges into coal barges and
12 created this system which has been refined so well over the
13 years. This benefit has not only -- this business has not only
14 benefited Tampa Electric's customers in every year since its
15 inception, but it's benefited customers all over Florida by
16 introducing competition.

17 Over the years TECO Transport has continually
18 upgraded its fleet and terminal to improve the system uniquely
19 designed to meet the needs of Tampa Electric, which include
20 reliable coal transportation service at competitive prices,
21 cost-effective blending, storage and trans-loading of coal to
22 enable Tampa Electric to burn fuels that meet its unique
23 requirements of its boilers and to reduce emissions to
24 appropriate levels, and by introducing effective competition
25 with railroads and other waterborne carriers.

1 TECO Transport's vessels are optimally sized and its
2 transportation system is specially designed for coal transport
3 to Tampa Electric, resulting in increased reliability and
4 decreased cost to Tampa Electric.

5 Let's turn now to the outstanding results of the
6 pricing under the TECO Transport contract today. For each year
7 since 1988 the actual costs incurred under the TECO Transport
8 contract have been well below the rail-based benchmark. Tampa
9 Electric's actual costs of its contract with TECO Transport
10 were below the benchmark by approximately the same percentage
11 in 1988 as it was in 2002, the last year for which you have
12 looked at this, which was in November of last year in the fuel
13 hearing. If Tampa Electric had paid the average of the two
14 lowest actual rail rates, ratepayers would have had
15 significantly higher costs.

16 Now let's look at the rail option for a minute.
17 Railroads compete with the waterborne transportation but offer
18 prices at the high end of the market. Tampa Electric over the
19 years has used rail transportation when that transportation
20 mode was the most cost-effective alternative; however, it's
21 abundantly clear that rail transportation offered by CSX for
22 coal to be used in Big Bend and Polk Station is more expensive
23 than waterborne transportation.

24 As this case unfolds, it will be quite clear that
25 CSX's motive is an attempt to undermine its most cost-effective

1 competitor and to attempt to implement a very strange marketing
2 approach of attempted coercion and retribution for Tampa
3 Electric's firm refusal to enter into a contract which would be
4 extremely detrimental to its ratepayers.

5 CSX's actions are especially curious because CSX is
6 struggling to provide service to its existing coal
7 transportation customers who are raising cane about its service
8 all over the east. This is a well-known industry problem that
9 will become apparent to you before this hearing is over.

10 Let's look at the process by which the agreement was
11 reached with TECO Transport. Now the RFP developed and
12 implemented by Tampa Electric was reasonable to test the market
13 for other suppliers of coal transportation and to develop the
14 rates for waterborne transportation. As explained by Ms. Wehle
15 and confirmed by Messrs. Dibner and Murrell, Tampa Electric's
16 RFP was designed, structured and distributed in a manner most
17 likely to achieve responses from a broad range of suppliers
18 capable of meeting Tampa Electric's needs.

19 The RFP was issued on June the 27th and resulted in
20 relevant information, which confirms to you the reasonableness
21 of the rates incorporated in the current contract.

22 Ms. Wehle will also show you that the CSX price that
23 was offered in its bid is high relative to TECO Transport. As
24 her testimony will show, it will show you how to place these
25 prices on a comparable basis. In some preliminary analysis

1 that you may have seen, staff excluded the fuel costs and other
2 adders which were separately stated from the base price by CSX
3 and must be added back to its price proposal to get a proper
4 comparison to TECO Transport's price. When all the relevant
5 costs are considered, the TECO Transport waterborne alternative
6 is clearly the best deal for Tampa Electric's customers.
7 Moreover, as Mr. Murrell points out, the escalation factors in
8 the CSX bid increased at a faster rate than the escalators in
9 the TECO Transport contract. So even if the initial contracts
10 bid and TECO Transport were the same, the escalation factors
11 would cause the CSX bid to be higher over time.

12 Now let's look at a subplot in this proceeding, which
13 is the capital requirements to put rail facilities at Big Bend
14 Station. There are sharp differences in the estimates between
15 CSX, Mr. Stamberg and Sargent & Lundy and Ms. Guletsky over
16 what is the cost of the facilities that would be required. I
17 want to pause here though to say that the conclusion that the
18 rail bid is higher than the TECO Transport price is not
19 dependent on capital costs. But, nevertheless, Sargent &
20 Lundy, a well-respected engineering firm, assembled power
21 industry experts with over 120 years of collected experience in
22 planning/designing fossil power plants and retrofits to such
23 plants to conduct an analysis of capital costs for Tampa
24 Electric.

25 Ms. Guletsky, Sargent & Lundy's lead engineer, found

1 that CSX and Mr. Stamberg's estimate of costs failed to
2 consider basic infrastructure and the quality of equipment
3 necessary to reliably operate a power plant. In short, it
4 would be reckless to rely on Mr. Stamberg's estimates, which
5 leaves out large hunks of the necessary cost. Ms. Guletsky
6 will demonstrate to you that Mr. Stamberg's estimate covers
7 only about 21 percent of the necessary cost. You would be
8 well-advised to rely on Ms. Guletsky's opinion based on her
9 extensive experience and the experience of Sargent & Lundy over
the opinion offered by the relatively inexperienced
Mr. Stamberg.

A quick word about backhaul. Backhaul will be an
issue before you. We believe that it's improper to consider
14 backhaul revenues in determining the reasonableness of the
15 prices paid by Tampa Electric for coal transportation because
16 it's simply irrelevant. Mr. Majoros, testifying on behalf of
17 OPC and FIPUG, contends that backhaul revenues should be
18 deducted from market rates calculated by Mr. Dibner.
19 Mr. Dibner points out that backhaul revenues are not relevant
20 when calculating a market base rate. Moreover, the likely --
21 the likelihood of backhaul is too speculative with respect to
22 opportunity and price paid for such backhaul to be factored in
23 the front-line rates. In any event, if cost-plus pricing is
24 adopted and backhaul revenues are included in the calculation,
25 backhaul costs must also be considered, which significantly

1 offset backhaul revenues. Mr. Majoros did not do that.

2 Mr. Majoros overstates and simplifies the actual
3 opportunity for backhaul. His ratios are overstated and
4 oversimplified. His ratios are incorrect and misleading, as
5 Mr. Dibner will point out to you, and are, therefore,
6 arbitrary. The backhaul ratios he uses in some cases are just
7 unsupported conjecture.

8 A quick word about blending and storage. A very
9 important feature TECO Transport provides is that TECO
10 Transport provides a strategically located terminal at Davant,
11 Louisiana, near the mouth of the Mississippi River. This
12 terminal is used to assemble, trans-load, blend and separately
13 store coal and pet coke to achieve the appropriate fuel
14 characteristics that will work in Tampa Electric's boilers
15 consistent with its environmental regulation.

16 Commissioners, when all this is said and done, I
17 think it will be easy for you on the basis of the record before
18 you to find that, consistent with this Commission's existing
19 policies, market pricing remains superior to cost-plus pricing,
20 that there is a market for the delivery of coal to Tampa
21 Electric, that TECO Transport is the fastest and most reliable
22 and cost-effective carrier to provide service to Tampa
23 Electric, and that TECO's bulk terminal at Davant is necessary
24 for assembling, storing, blending and trans-loading coal that
25 can be burned in Tampa Electric's boilers.

1 The existing rail-based benchmark remains viable and,
2 at the prices paid by Tampa Electric, have been below the
3 benchmark; that the reasonableness of TECO Transport contract
4 rates are further confirmed and ratified by Mr. Dibner's market
5 study and a comparison with the CSX bid; and that the
6 consideration of backhaul is irrelevant; and that the contract
7 that TECO -- Tampa Electric entered into with TECO Transport is
8 substantially the same as its prior contract with one
9 exception, the new contract is 4 percent less costly. And that
10 the Commission should soundly reject the intervenor's veiled
11 attempt to abrogate the TECO Transport contract to require a
12 rebid of Tampa Electric's coal transportation requirements for
13 2004 through 2008 and inject this Commission into the detail
14 management of Tampa Electric by dictating the terms of an RFP.

15 In conclusion, Commissioners, you should affirm your
16 well-founded policies which adopted market pricing in 1988 and
17 implementing that policy by the use of a rail-based market
18 benchmark and conclude that the prices paid by Tampa Electric
19 to TECO Transport are lower than the prices paid under the
20 previous contract and are at or below market.

21 Commissioners, I misspoke a minute ago, as
22 Mr. Beasley pointed out. Policy changes, of course, must be
23 applied prospectively and not retroactively.

24 CHAIRMAN BAEZ: We, we had filled that one in. Thank
25 you, Mr. Willis.

1 MR. WILLIS: Good. It's kind of like a spell check;
2 you need to come back and correct misstatements.

3 Commissioners, I would have loved to have spent more
4 time reading and pointing out some things to you with respect
5 to the old order, Order 20298. Instead of doing that, I have
6 copies of it which I just highlighted parts that I think that
7 are relevant here. And we've also got -- in order to orient
8 you to some things that we have been talking about, we have
9 created three charts which I'm going to put up here, all the
10 parties received those last Friday, and it would just be there
11 for your reference to, to look at as the evidence is presented
12 to you today.

13 CHAIRMAN BAEZ: Mr. Willis, that concludes your
14 argument?

15 MR. WILLIS: It does. Thank you very much.

16 CHAIRMAN BAEZ: Thank you, Mr. Willis.

17 Mr. Vandiver.

18 MR. VANDIVER: Ms. Kaufman is going to present
19 argument on behalf of both the citizens and the industrial
20 power users.

21 CHAIRMAN BAEZ: I'm sorry. Thank you. Ms. Kaufman,
22 good morning.

23 MS. KAUFMAN: Thank you. Good morning, Mr. Chairman
24 and Commissioners. Before I begin my argument, I just want to
25 mention that many orders were issued late yesterday dealing

1 with some of the confidentiality matters. And one of them,
2 Order Number PSC 04-0544, denied confidential treatment for
3 several pieces of information in Mr. Majoros' testimony. And
4 I'm going to be referring to those numbers for which
5 confidentiality was denied, and I just wanted to alert you
6 because in your copies, I'm sure you'll see, that some of these
7 figures are highlighted still. But it's my understanding the
8 Commission has ruled that they are not confidential.

9 MR. BEASLEY: If I could just briefly, we have not
10 really reviewed all of the orders in depth, and we would like
11 to maintain the confidentiality of information for which a
12 request has been made at least until the time --

13 CHAIRMAN BAEZ: Well, Mr. Beasley, you got a little
14 bit ahead of me and Ms. Kaufman. To the extent -- I think, I
15 think we tried to clarify earlier, to the extent that those
16 orders are still in sort of a bubble for purposes of the
17 hearing, the confidentiality will be maintained.

18 MR. KEATING: Yeah. I think my understanding of what
19 we had discussed earlier, and maybe we miscommunicated, is how
20 we were going to handle the documents for which confidentiality
21 orders had not been issued yet because we recently received the
22 confidentiality requests.

23 But I, I would suggest, I think it's fair that even
24 where we have issued an order just yesterday that might deny
25 confidential treatment to, to something that Tampa Electric has

1 claimed is confidential, that they be provided the time that
2 they would usually have to, to look through that, see if they
3 want to ask for reconsideration, and we can take it up in due
4 course. I think, you know, until yesterday afternoon that
5 information had been treated by all the parties as
6 confidential, and it would seem that it wouldn't prejudice any
7 party in the preparation of their case today to continue to
8 treat it as confidential.

9 CHAIRMAN BAEZ: Ms. Kaufman --

10 MS. KAUFMAN: Mr. Chairman, that, that is fine. I
11 came prepared to distribute and direct you to the information,
12 you know, if that's your pleasure. I was, I was assuming that
13 since the order had been issued, that would be how we would
14 proceed. But I can do it that way as well.

15 CHAIRMAN BAEZ: Well, and I, and I think Mr. Keating
16 and I did discuss this, because, because the confidentiality
17 orders were so late issued, it's not a prejudice to anyone
18 involved at this point to have to implement those orders on the
19 run during, during hearing. And we also want to preserve
20 everyone's right to, to, on reconsideration, if they should
21 choose to do so. So for purposes of the hearing, whatever,
22 whatever has been treated confidentially can continue to be
23 treated confidentially --

24 MS. KAUFMAN: I understand, Mr. Chairman.

25 CHAIRMAN BAEZ: -- pending implementation of those

orders, and try and keep it a little bit simpler that way.

MR. KEATING: Chairman Baez, I would just add, it was just pointed out to me, I didn't realize this before, that that is what our rule on confidentiality provides for is that we will maintain confidential treatment. When we have denied a request for confidential classification, it will be kept confidential until the time for filing an appeal has expired

CHAIRMAN BAEZ: Okay.

MS. KAUFMAN: That's fine, Mr. Chairman. What I'm going to ask Mr. Perry to do then is distribute those pages from Mr. Majoros' testimony that I'm going to ask you to look at. It'll be a little awkward, but I think we can deal with it.

CHAIRMAN BAEZ: Fair enough.

MS. KAUFMAN: Mr. Chairman and Commissioners, I'm Vicki Gordon Kaufman of the McWhirter Reeves Law Firm. As you know, I represent the Florida Industrial Power Users Group, and I'm going to make the opening statement on behalf of FIPUG and also on behalf of the Office of Public Counsel.

I want to take you back to what this case is about. This case concerns Tampa Electric's request to you that you permit it to recover from ratepayers dollar for dollar through the fuel adjustment clause the costs of a five-year contract for waterborne coal transportation that it has entered into with its sister company, TECO Transport. It's our view that

1 the costs TECO seeks are excessive, they're not representative
2 of competitive market prices, and we have several suggested
3 adjustments to those prices that I'm going to discuss in a
4 moment. But before I discuss the evidence that you're going to
5 hear, I want to talk to you a moment about this Commission's
6 rate setting obligations and policy. Mr. Willis directed you
7 to Order 20298 and handed you a highlighted copy, and I think I
8 heard him say that either you cannot or you should not change
9 the provisions of that order which first approved the
10 benchmark.

11 Now in response to that claim, I want to direct you
12 to Order Number PSC 92-1048. Unlike Mr. Willis, I did not have
13 the foresight to bring you highlighted copies, and I'll be glad
14 to provide those to you. And I want to take a moment and
15 apologize in advance for reading you what's a little bit of a
16 lengthy quote from that order which I think -- where you have
17 described your obligations in regard to what we're doing in
18 this case.

19 It's ironic that in that order Tampa Electric came to
20 you and asked you to make some adjustments to the waterborne
21 market proxy. You didn't agree with them, but here's what you
22 said, and this is a quote. "We will not approve Tampa
23 Electric's proposed calculation of the market-based index, and
24 we will not modify the manner in which the market-based index
25 is calculated." But then you went on to say, "We are not

1 precluded by any legal doctrine from considering Tampa
2 Electric's petition, from reviewing the correctness and
3 effectiveness of its market-based pricing method, or from
4 modifying that method if we determine it is in the public
5 interest to do so. To the contrary, we are required to review
6 and modify our rate decisions on a prospective basis by virtue
7 of our continuing duty to regulate the rates and service of
8 electric utilities. If we determine that the rates charged by
9 a utility are not fair, just and reasonable, we have the
10 obligation to fix them. This continuing obligation applies to
11 rates for fuel cost recovery as well as to other forms of
12 rates. Where a demonstration of the public interest has been
13 made, we not only have the authority to make the appropriate
14 modifications, we have the obligation to make them." Close
15 quote.

16 It seems to me that, that that's what we're about in
17 this case

18 COMMISSIONER JABER: Ms. Kaufman, can you just give
19 me some page numbers in that order where --

20 MS. KAUFMAN: I would be glad to do that at the end,
21 if you -- I didn't put the page number. And we will provide
22 you with the entire order, if you would like that.

23 COMMISSIONER JABER: Okay. That would be great.

24 MS. KAUFMAN: So I think that, that pretty clearly
25 sets out what we're about in this case, and that you do have

1 the authority and the obligation to make adjustments where you
2 see rates are not fair, just and reasonable.

3 I was very surprised to hear Mr. Willis tell you that
4 the intervenors have the burden of proof in this case, and I
5 would remind you that this is spun out from the fuel
6 adjustment. These are dollars that are going to go through the
7 fuel adjustment clause, and it's always been my understanding,
8 and I think you've reiterated in numerous orders, that the
9 utility seeking to recover costs always has the burden of
10 proof. That's our view of the policy in this case, and I'm
11 going to turn to the evidence now.

12 Our case essentially has three parts which, not
13 surprisingly, track the three issues that you're going to have
14 to vote on at the end of the day.

15 The first part of the case concerns the RFP that
16 Tampa Electric issued. You'll hear testimony that the RFP
17 which TECO issued was fatally flawed. It contained terms and
18 conditions such as a preference for an integrated carrier, but
19 no clue as to the value of such preference which no company
20 other than TECO Transport could meet. I think you can see from
21 one of these maps that Mr. Willis put up there that the
22 movement they were talking about has three segments. The coal
23 comes down the Mississippi River, we've kind of shorthandedly
24 referred to that as the barge or the river portion; there is a
25 terminaling portion; and then the coal comes across the Gulf,

1 which we've called the Gulf or ocean portion.

2 Tampa Electric put its bid out. It got one bid on
3 the river leg, which it rejected; it got one bid on the
4 terminal leg; it got no bids on the ocean leg. I think you'll
5 hear CSX tell you later they had to beg Tampa Electric to even
6 give them the RFP, and then their bids were rejected out of
7 hand. And, in fact, you're going to hear evidence and see
8 correspondence where bidders essentially said we're not going
9 to waste our time bidding on this project. Now why is that? I
10 think it's because the industry knew and Tampa Electric knew
11 who the winner would be before the process even got started.

12 In addition, your own staff has expressed concerns to
13 Tampa Electric about the RFP. You can see their letter
14 attached to our witness's testimony, Mr. Wells. TECO ignored
15 these concerns, told your staff that the RFP was great, and
16 said that it expected to see significant interest from the
17 marketplace. Well, such interest never materialized.

18 To add insult to injury, TECO Transport, the sister
19 company, didn't even have to bid on the business. It had a
20 right of first refusal, which TECO's own witness will tell you
21 gives it a tremendous advantage over the other bidders. It got
22 to sit back, it got to wait to see what the bids were, or in
23 this case it got to sit back and wait for its sister company to
24 present it with, quote, market-based, close quote, rates which
25 it could accept. It didn't need to bid, didn't need to sharpen

1 its pencil. It just got to sit back and wait. So it's not
2 very surprising that when the rates were presented, there
3 weren't any negotiations to try to get a lower rate for the
4 ratepayers. TECO Transport simply accepted the rates. So
5 despite what Mr. Willis has told you, the RFP doesn't tell you
6 very much about the marketplace.

7 The second part of the case deals with the rates
8 Tampa Electric has proposed to pass through to ratepayers.
9 Because of the, what I'll call the paucity of bids, Tampa
10 Electric retained Mr. Dibner to figure out what a, quote, I
11 always put it in quotes, quote, market-based, close quote, rate
12 would be for this transportation movement you see on the map.

13 Now when we refer to market rates, we mean rates that
14 can be found in a competitive market, and we think that that's
15 what you meant in Order 20298 and your other orders on the
16 topic. I think you're going to find Mr. Dibner means something
17 very different when he uses that term, and he actually means a
18 rate a monopoly carrier can extract from its captive customers.
19 To arrive at his rates, Mr. Dibner used his own proprietary
20 models, most of the inputs of which cannot be verified, many of
21 which cannot be changed, and to our knowledge these models have
22 never been used in a rate setting proceeding. These are the
23 rates that were presented to TECO Transport.

24 You'll hear Mr. Majoros explain to you why the rates
25 are excessive and inflated and shouldn't be approved, and

1 Mr. Majoros essentially has two concerns with Mr. Dibner's
2 work.

3 First, Mr. Dibner charges ratepayers with the entire
4 cost of the round trip that the TECO Transport vessels make
5 from the Mississippi through Louisiana, across the Gulf to
6 Tampa and all the way back again. Ratepayers get to pay for
7 the whole round trip. Now he does this despite the fact that
8 such vessels, and there's really no disagreement about this,
9 return from Tampa carrying cargo for others the majority of the
10 time. Despite this, Mr. Dibner allocates the full cost of the
11 voyage to captive ratepayers. We don't think this is a market
12 price. In the market, bidders are going to take into account
13 what other business is out there when they're framing a bid.
14 Mr. Dibner believes that TECO Transport is entitled to retain
15 this gravy, and he is not shy about saying so.

16 Second, Mr. Dibner provides TECO Transport with an
17 adder on top of the rates he's calculated. Essentially it's a
18 premium and, as I understand it, it's supposed to reflect the
19 lost opportunity that TECO Transport has foregone to carry
20 other traffic so that it can carry coal for Tampa Electric.
21 The other business is more lucrative; one would expect to see
22 an independent company go after such business. One would not
23 expect a market-based rate to include a premium for business
24 that you're not doing.

25 These two adjustments are explained in more detail in

1 Mr. Majoros' testimony. And if you'll look in the red folder,
2 you can see Mr. Majoros' MJM-5. That is a rate comparison
3 between Mr. Majoros' rates and Mr. Dibner's. It should be the
4 second sheet in there. And if you also look at the actual text
5 of the testimony on Page 2 at Line 7, you'll see the percentage
6 disallowance Mr. Majoros recommends, and at Line 12 you will
7 see his calculation of the annual overcharge that is reflected
8 in the rates Tampa Electric wants you to pass through to the
9 ratepayers. So we would urge you to look at those charts and
10 to incorporate Mr. Majoros' recommendations.

11 The last part of the case deals with the benchmark.
12 Their waterborne market proxy benchmark should be eliminated.
13 It results in inflated rates and it is no longer relevant, and
14 your own staff has told you that in the fuel adjustment. It
15 bears no relationship to the market. You've already eliminated
16 it for Florida Progress, and you should do the same for Tampa
17 Electric.

18 To sum up, Commissioners, the RFP was flawed and you
19 can't use it for anything. Mr. Dibner's analysis results in
20 excessive rates which you should not adopt, and Mr. Majoros
21 makes two adjustments to bring those rates back to reality.
22 Finally, you should eliminate the market benchmark. Thank you.

23 CHAIRMAN BAEZ: Thank you, Ms. Kaufman.

24 Mr. Wright.

25 MR. WRIGHT: Thank you, Mr. Chairman. First off, I

1 want to make the clear statement that Ms. Kaufman's reading to
2 you of the passage from your order states the law correctly as
3 opposed to what Tampa Electric tried to characterize it as.
4 All ratemaking is prospective. You know that.

5 The prehearing officer, Commissioners, has authorized
6 three issues to be addressed in this case: Was TECO's RFP
7 adequate, are TECO's proposed costs for coal transportation
8 reasonable for cost recovery, and should the benchmark be
9 eliminated? I will address these in that order.

10 The overwhelming weight of the evidence presented in
11 this case will demonstrate to you that Tampa Electric's --
12 Tampa Electric Company's RFP was inadequate and that Tampa
13 Electric Company's evaluation of the bids, particularly the
14 bids and earlier proposals made to Tampa Electric by CSX
15 Transportation, were inadequate, and that TECO's sum total of
16 its activities surrounding its procurement of coal
17 transportation services were deficient and imprudent.

18 In short, Tampa Electric failed in its RFP and in all
19 of its coal transportation procurement practices to take
20 advantage of real coal transportation markets. TECO didn't
21 even send the RFP to CSX Transportation when it was issued.
22 CSX found out about it in the trade press and had to ask for a
23 copy.

24 A key fallout of the deficiencies here is that by
25 failing to avail itself of the benefits of competition in the

1 transportation markets is that Tampa Electric Company also
2 failed to take advantage of competition in coal supply markets.
3 By restricting itself to water-origin coals, they restricted
4 themselves by eliminating a whole -- a vast set of mines and
5 suppliers that can supply coals that will work just fine in
6 both Big Bend and Polk Power Stations.

7 Regarding Tampa Electric's proposed costs for coal
8 transportation, they are unreasonable, they are grossly
9 imprudent. CSX Transportation is a million-dollar-a-year
10 customer of Tampa Electric Company. The intervenors in this
11 case, all of us down at this end of the table, will present
12 evidence that the amount at issue regarding TECO's coal
13 transportation decisions is in the tens of millions of dollars
14 per year. In addition to being a substantial customer of Tampa
15 Electric, CSX Transportation is also in the position of being
16 capable of supplying needed coal transportation services to
17 Tampa Electric at substantial savings to TECO, with those
18 savings redounding to the benefits of all of TECO's captive
19 customers including CSX, just like CSXT provides cost-effective
20 transportation to every other utility in Florida and both of
21 the cogens that burn coal, including at least two that have
22 bi-modal or intermodal delivery.

23 Tampa Electric had available to it serious proposals
24 from CSX Transportation to provide coal transportation services
25 at very favorable rates that would have saved TECO's captive

1 customers tens of millions of dollars a year as early as
2 October of 2002.

3 TECO never even analyzed the October proposals
4 because it claims it was too busy with one thing and another.
5 TECO's late-in-the-day, August and September of 2003, analyses
6 are flawed in numerous respects. Their claimed costs for
7 waterborne transportations -- and, remember, y'all's order said
8 the key thing is the cost to get the coal from the mine to the
9 plant. The analyses that Tampa Electric has prepared, unless
10 they've come up with some new ones today, don't include the
11 cost to get from the mine to the barge. This is a significant
12 number. And when you add that in properly, you will see that
13 the cost for waterborne transportation is greater than,
14 significantly greater than the cost for rail transportation.

15 Mr. Willis also claimed that you should take account
16 of escalation factors. We don't have any problem with that.
17 Data will show and the contracts will show that, in fact, the
18 waterborne contract has escalation factors that apply to the
19 variable component and escalation factors that apply to the
20 data component. In fact, the data will show that it takes less
21 fuel to get coal, comparable coal by rail to the plant than it
22 does to get by, get by barge.

23 Tampa Electric's own witness admitted in deposition
24 that rail -- that he's not aware of any contract in which rail
25 customers pay the full escalation factor that's applied to rail

1 rates. It's called the RCAF-unadjusted.

2 The last Tampa Electric CSX Transportation contract
3 by which Tampa Electric -- CSX provided transportation services
4 of coal to TECO's Gannon Station at prices that were less than
5 TECO's then current waterborne costs, and, in fact, the prices
6 that we tendered to CSX in October of 2002 and in July of 2003
7 were comparable to the rates that we were charging them to
8 deliver to Gannon, which is ten or 12 miles up the road from
9 Big Bend.

10 Regarding the escalation factor, it's key to point
11 out that those contracts contain no escalation factors. The
12 real key is that Tampa Electric never even tried to negotiate
13 with CSXT to obtain the benefits because it was too busy.

14 I'm inclined to agree, we're inclined to agree with
15 the assertion made by the citizens and FIPUG that they didn't
16 evaluate it because they knew what the outcome of the RFP was
17 supposed to be; that is, the deal with their sister company.

18 Tampa Electric's coal procurement strategies are
19 intentionally limited to water-origin deliveries such that it
20 limits TECO's choices to a fairly -- significantly. It's a
21 willful decision to deny TECO's customers of the benefits of
22 coal markets. CSXT offered to pay for the necessary
23 infrastructure to accommodate rail delivery of coal to Big Bend
24 for Big Bend and for trans-shipment to Polk. Tampa Electric
25 didn't have to take the Polk option. If there was a better

1 way, that, that would be okay.

2 The evidence will show -- Mr. Stamberg's testimony
3 will show that his estimates of these costs are slightly higher
4 than what CSXT originally presented but within the range of
5 what CSXT was specifically willing to pay, and that these are
6 backed up by real quotes from real-world vendors of the
7 equipment, including the vendors of the equipment who provided
8 much of the equipment that's already at Big Bend, and realistic
9 equipment needs. Tampa Electric's estimates were based on a
10 model that's not been furnished and on estimates that are --
11 that have no documentation that's been furnished to us besides
12 our -- despite our requests.

13 If you ask Mr. Stamberg, he will tell you in
14 excruciating detail as to what is included in his bids, in his
15 vendor quotes, and his estimates. This is real-world stuff,
16 not a model.

17 Tampa Electric has raised for the first time ever in
18 its rebuttal testimony issues relating to CSX Transportation's
19 quality of service. Tampa Electric never raised this issue in
20 2002 when CSX approached them with the idea of providing
21 transportation to Big Bend, they never raised it in 2003 when
22 we submitted our bid. The evidence will show -- I think this
23 is a red herring to start with, but the evidence will show that
24 what has happened is that CSXT's customers are demanding far
25 more coal today than they told CSX in the fourth quarter of

1 last year, you know, six or eight months ago, that they
2 expected CSX to deliver. The evidence will show that year to
3 date CSX is delivering significantly more coal into Florida
4 than it was in the same period last year, and it will show that
5 it's delivering significantly more coal to Florida utilities
6 and to other utilities that it serves in the CSX south region
7 than, significantly more coal than its customers told CSX it
8 wanted.

9 Tampa Electric asserts basically a bait and switch
10 theory that somehow CSX is going to come in and offer -- that
11 CSX has offered these aggressive rates as their witnesses have
12 described them. They're going to -- they'll offer these rates,
13 get the deal, somehow put the barge company out of business,
14 and then, and then somehow come back and raise the rates. When
15 asked, their witnesses can't come up with a single example
16 where this has happened. It doesn't happen at the other
17 plants. Seminole Electric Co-op used to have a substantial
18 distance of its coal transportation by waterborne mode. They
19 don't anymore. They're on rail. CSX has not raised their
20 rates.

21 Even TECO -- and this, what this all -- and by the
22 way, CSX has never advocated -- CSX has never advocated that
23 all of TECO's coal be transported by rail. You won't find it
24 in our testimony; we haven't advocated it. We bid the full
25 amount because their bid required us to. What we have

1 advocated is that for an electric utility that burns coal,
2 intermodal delivery is nirvana. It provides cost savings. It
3 provides cost-competitive discipline of each mode by the other.
4 The utility can use the rail option to beat down barge prices
5 and it can use the barge option to beat down rail prices. It
6 provides enhanced reliability and it provides reduced inventory
7 costs because, if you have two modes, you don't have to worry
8 as much about the risk of an interruption.

9 Benchmark. The benchmark, in short, is worthless.
10 Publicly available rates don't have anything to do with what
11 the real rates are. They don't account for volume discounts
12 and they don't account for the costs that would be available to
13 Tampa Electric Company in its particular circumstances. Tampa
14 Electric's claims of alleged savings compared to the benchmark
15 are similarly worthless because they don't bear any relation to
16 what the real rail rates were. They bear rates that were
17 available to Tampa Electric Company. And the data will show
18 that real rail rates have declined both for captive shippers
19 and noncaptive shippers over the last 20 years, not only in
20 real terms but in nominal terms as well.

21 In summary, the only way to ensure that Tampa
22 Electric's captive ratepayers, of whom CSX is a substantial
23 member, gets the benefits of intermodal competition is to have
24 intermodal competition with all sources of coal available by
25 all feasible modes of transportation. It was imprudent of

1 Tampa Electric Company not to negotiate in good faith with CSXT
2 toward the installation of rail delivery facilities so that
3 there could be real competition for coal supply and coal
4 transportation, just like there is at Crystal River, just like
5 there is at St. John's River Power Park.

6 The resultant coal transportation costs that Tampa
7 Electric is asking to recover here are thus imprudent. If they
8 dealt with CSX, their cost could be much less. Failing the
9 existence of real, honest intermodal competition like that at
10 Crystal River and like that at Power Park, the only way to
11 protect Tampa Electric's ratepayers and to ensure that they
12 only pay the reasonable and prudent costs of coal
13 transportation is to use the costs that TECO would have
14 incurred to procure the needed services of -- needed
15 transportation services for appropriate coals by rail.

16 Finally with regard to Mr. Willis' assertion that CSX
17 is somehow attempting a strategy of coercion here, we're
18 exercising our rights -- first, we're exercising our rights to
19 be here to petition you to make sure that what they recover is
20 reasonable. I'd submit to you that the only real coercion
21 that's going on here is Tampa Electric Company's coercion of
22 its customers to pay unreasonable imprudent costs in the rates
23 that it pays to its sister company TECO Transport. Thank you.

24 CHAIRMAN BAEZ: Thank you, Mr. Wright.

25 Mr. Twomey.

1 MR. TWOMEY: Yes, sir, Mr. Chairman. I've got a
2 handout and I want to put up a poster.

3 Mr. Chairman, Commissioners, good morning. I'm Mike
4 Twomey on behalf of nine residential customers of Tampa
5 Electric Company.

6 My clients, like the other customers here, believe
7 they're being substantially overcharged now as a result of
8 TECO's self-dealing in coal transportation. They also believe
9 their rates are too high because of TECO's desire to use its
10 sister corporation's transportation services, which causes it,
11 we believe, to purchase more expensive coal than is otherwise
12 available to it. The responsibility for seeing that TECO's
13 rates are fair and reasonable is solely this Commission's, and
14 it is the statutory responsibility.

15 I'd like to adopt the comments earlier of Public
16 Counsel, FIPUG and CSX on the point of who's got the burden of
17 proof here. The burden of proof is TECO's and TECO's alone.

18 I believe you have a duty to approve only, quote,
19 unquote, fair and reasonable rates, even if there were no
20 customer parties to this hearing. It is inherently your
21 responsibility. You're not just judges here.

22 I think you will find compelling evidence the next
23 two days that TECO's rates are too high and that they have been
24 too high for many years.

25 I'd like to refer to the poster I put up as well as

1 the first page of the handout that everybody has received;
2 almost prima facie evidence that the benchmark approved for
3 TECO by Order 20298, which I drafted, much has been made of
4 that apparently, the fact that that benchmark was ineffective
5 and resulted in excessive rates is represented by your
6 comparison of the electric utilities you regulate for
7 residential customers taking 1000-kilowatt hours per month.

8 Electricity is a completely generic interchangeable
9 product evidenced by the fact that our electric utilities in
10 Florida buy and sell it to each other every hour of the day.
11 Aside from reliability, which is uniformly good in this state,
12 the only way to value this generic product is by examining its
13 price. In the end, all the various cost inputs for the
14 generation and distribution of electricity are consolidated on
15 the customers' meters and on their monthly bills. Comparing
16 the rates of the five investor-owned electric utilities
17 regulated by this Commission should raise an immediate red flag
18 now with respect to TECO's rates, and arguably should have for
19 many years.

20 TECO, if you'll refer to the chart, the poster, is
21 the highest by far at \$99.01 a month. As reflected by the
22 comparison, my clients must pay 11 percent more than the next
23 highest utility you regulate, which is Progress Energy;
24 15 percent more than Florida Power & Light; 25 percent more
25 than Gulf Power; 49 percent more than the Marianna division of

1 Florida Public Utilities; and 79 percent more than the
2 customers of Florida Public Utilities Company's Fernandina
3 Beach division.

4 As reflected on the second page of the handout, these
5 differences are not insignificant. On an annual basis, my
6 clients, if they use just 1000-kilowatt hours per month, will
7 pay \$227.16 more than if they were customers of Gulf Power.
8 They will pay \$524.16 more than if they were served by the
9 Fernandina Beach division. Think of the difference of those
10 amounts if applied to the over 500,000, I believe it is, to the
11 over 500,000 customers that TECO serves in its totality and you
12 start to see that there is a huge difference in these rates.
13 These are monies that could otherwise be spent on prescription
14 drugs, food, rents or for other personal purposes and needs.

15 Commissioners, I think that you have to ask
16 yourselves and we have to ask how we can justify that wide
17 variance for rates for the same amount of service for a generic
18 product. I think you should be capable of answering that.

19 Now what bearing, if any, does TECO's coal
20 transportation costs have to do, that is the rates paid to an
21 affiliated transportation company, have to do with it being the
22 highest cost electric provider in the state, at least as far as
23 the five that you regulate?

24 Here's what I think the evidence in this case will
25 show. The TECO benchmark using tariffed rail rates from

1 municipal electric utilities makes little sense when contrasted
2 to what TECO is actually paying to have coal shipped by rail to
3 its own Gannon generating station. The worth of TECO's
4 benchmark could have been and should have been, but apparently
5 was not, tested for reasonableness by constant comparison to
6 both rail and waterborne transportation rates of other Florida
7 electric utilities, especially Progress Energy's, which
8 operates a similar waterborne network. The benchmark is
9 outdated. Dr. Hochstein will tell you that in his testimony;
10 other experts will as well.

11 It's not a specific issue in this case,
12 Commissioners, but it appears that keeping confidential fuel
13 and fuel transportation costs results in higher customer rates,
14 not lower, as claimed by TECO. The fact that TECO, which keeps
15 its data confidential, has residential rates 24 percent higher
16 than Gulf Power, which keeps nothing from public view, speaks
17 volumes. Please keep this in mind. Likewise, to compare the
18 monthly rates should also be instructive on the issue of
19 affiliate self-dealing. TECO's transportation is almost all
20 affiliated. Progress has a history of it, while Gulf Power
21 does not. Again, look at the comparative rates for the five
22 utilities that you regulate. Keep it in the back of your mind,
23 please.

24 Dr. Hochstein will testify that TECO issued a
25 restrictive RFP that didn't elicit sufficient vendor responses.

1 This coupled with the meet or beat provision of the prior
2 contract and vendor suspicion that the affiliate would
3 automatically get the contract led to the markets not being
4 tested. We believe, and Dr. Hochstein testifies, that there is
5 clearly a competitive market for river transportation, likely
6 such a market for trans-loading facilities, and possibly such a
7 market for coastal transportation.

8 You'll see, I think, that some fuels like pet coke
9 and foreign coal can be delivered directly to Big Bend or the
10 Port of Tampa, thus avoiding the additional trans-loading and
11 coastal shipping expense now incurred, which expense, Dr.
12 Hochstein will tell you, costs customers tens of millions of
13 dollars a year in excess costs.

14 You'll hear testimony that if these markets exist,
15 they should be discovered by the reissuance of a fair and open
16 RFP and the contract should be awarded to the lowest qualified
17 bidders. TECO Transport must be required to compete with the
18 others. Rail transportation, which also would clearly take
19 business from TECO Transport, should be fairly considered in
20 the bidding process. The Commission should consider here on a
21 going-forward basis the coal suitable for each generating site
22 and determine whether the desire to use the services of an
23 affiliated transportation company can result in the avoidance
24 of domestic and foreign coal that might be less expensive.

25 The Commission should keep in mind TECO's parent

1 corporation's recent financial reversals and the revenues
2 provided to it by TECO's customers through TECO Transport.
3 Additionally, you should hear that TECO Transport's value, if
4 sold, is substantially better if it has a five-year contract in
5 hand. You should compel TECO to find and use the market price
6 for transportation where markets exist, and you should revert
7 to a cost of service pricing where they do not. You should
8 avoid using black box models of any kind.

9 Commissioners, you should make every effort to see
10 that TECO's coal transportation costs are, quote, unquote, fair
11 and reasonable so that their overall monthly rates can become
12 more fair and reasonable as well. Thank you.

13 CHAIRMAN BAEZ: Thank you, Mr. Twomey.

14 Commissioner Deason.

15 COMMISSIONER DEASON: If it's permissible, I have a
16 question for Mr. Twomey.

17 CHAIRMAN BAEZ: If you have a question, ask it.

18 COMMISSIONER DEASON: Okay. Mr. Twomey, I was just
19 taking notes as you were giving your opening statement. I just
20 want to make sure I understand something.

21 I believe you indicated that this Commission has an
22 ongoing obligation to set fair and reasonable rates and that we
23 have that obligation even if we didn't have intervenors in this
24 case. And I think you used the term that we're "more than just
25 judges here." Is that -- did I hear you correctly?

1 MR. TWOMEY: Yes, sir.

2 COMMISSIONER DEASON: Okay. Thank you.

3 CHAIRMAN BAEZ: Thank you, Commissioner. We'll take
4 a -- that concludes the opening statements. We'll take a
5 ten-minute break.

6 (Recess taken.)

7 CHAIRMAN BAEZ: Linda, we'll go back on the record,
8 and I think we're about to start with witnesses. They've all
9 been sworn. Mr. Willis or Mr. Beasley.

10 MR. BEASLEY: Yes. We'd call Mr. Brent Dibner, Mr.
11 Chairman.

12 CHAIRMAN BAEZ: Thank you. Good morning, Mr. Dibner.

13 THE WITNESS: Good morning.

14 BRENT DIBNER

15 was called as a witness on behalf of Tampa Electric Company
16 and, having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. BEASLEY:

19 Q Mr. Dibner, would you please state your name and your
20 business address.

21 A Yes. My name is Brent Dibner, D-I-B-N-E-R. The
22 first name is B-R-E-N-T. My address is 151 Laurel Road,
23 Chestnut Hill, Massachusetts.

24 Q By whom are you employed and in what capacity, sir?

25 A I'm the President of Dibner Maritime Associates.

1 Q Mr. Dibner, did you prepare and cause to be filed in
2 this proceeding a document entitled Prepared Direct Testimony
3 of Brent Dibner consisting of 51 pages?

4 A Yes.

5 Q If I were to ask you the questions set forth in that
6 testimony, would your answers be the same?

7 A Yes.

8 MR. BEASLEY: I would ask that Mr. Dibner's direct
9 testimony be inserted into the record as though read.

10 CHAIRMAN BAEZ: Without objection, show the testimony
11 of, direct testimony of Brent Dibner inserted into the record
12 as though read.

13 BY MR. BEASLEY:

14 Q Mr. Dibner, that testimony was accompanied by an
15 exhibit entitled BD-1 which has been marked as Exhibit 4 in
16 this proceeding. Was that document prepared under your
17 direction and supervision?

18 A Yes.

19 Q And did you prepare later and submit rebuttal
20 testimony consisting of 44 pages in this proceeding?

21 A Yes.

22 Q If I were to ask you the questions set forth in that
23 rebuttal testimony, would your answers be the same?

24 A Yes.

25 Q Was that accompanied by an exhibit identified

1 BD-2 and marked for identification as Exhibit 5 in this
2 proceeding?

3 A Yes.

4 Q Was that prepared by you or under your direction and
5 supervision?

6 A Yes.

7 Q Thank you.

8 MR. BEASLEY: I would ask that Mr. Dibner's rebuttal
9 testimony be inserted.

10 CHAIRMAN BAEZ: Without objection, show the rebuttal
11 testimony of Brent Dibner inserted into the record as though
12 read, and the accompanying exhibits to his direct and rebuttal
13 have been identified as Exhibits 4 and 5.

14 MR. BEASLEY: Thank you.

15

16

17

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25

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**2 **PREPARED DIRECT TESTIMONY**3 **OF**4 **BRENT DIBNER**5 **ON BEHALF OF**6 **TAMPA ELECTRIC COMPANY**

7

8 **Q.** Please state your name and business address.

9

10 **A.** My name is Brent Dibner. My business address is Dibner
11 Maritime Associates, LLC, 151 Laurel Road, Chestnut Hill,
12 Massachusetts 02467.

13

14 **Q.** By whom are you employed and in what capacity?

15

16 **A.** I am President of Dibner Maritime Associates, LLC,
17 ("DMA") a firm that I founded in 2002. I am responsible
18 for directing DMA as it provides management consulting
19 services to the maritime industry.

20

21 **Q.** Please describe your educational background and business
22 experience.

23

24 **A.** I earned a Bachelor of Science in Engineering degree in
25 Naval Architecture and Marine Engineering from the

1 University of Michigan in 1973. In 1977 I graduated from
2 the Harvard Graduate School of Business Administration
3 with a Master's of Business Administration degree.
4

5 My professional experience in the maritime industry began
6 during my undergraduate engineering studies. In 1971 I
7 served an apprenticeship in the Small Ship Division of
8 Swan Hunter Shipbuilders in England, and in 1972 I was
9 employed as a trainee engineer at John J. McMullen
10 Associates in New York City. After graduation I worked
11 between 1973 and 1975 as a naval architect and marine
12 engineer at John J. McMullen Associates in New York City
13 and at Israel Shipyards in Haifa, Israel. I was involved
14 in the design of commercial cargo ships and military
15 ships at both employers.
16

17 In 1975 I entered the Harvard Business School, and during
18 the summer of 1976 I was employed as a management
19 consultant in the Maritime Group of Temple, Barker &
20 Sloane ("TBS") of Wellesley, Massachusetts, working on
21 various maritime matters. Upon graduation, I joined TBS
22 as a consultant in its Maritime Group. Between 1977 and
23 2002, I advanced to the position of Vice President and
24 Senior Partner of TBS and its successor, Mercer
25 Management Consulting. Throughout this time, I was

1 responsible for a substantial portion of the management
2 consulting services that TBS or Mercer provided. I
3 directed the firms' services in the areas of maritime and
4 bulk logistics, with emphasis on bulk shipping and energy
5 production and processing. During the course of my
6 career, I was frequently involved in diverse aspects of
7 maritime transportation and bulk logistics including
8 ocean transportation, bulk port and terminal facility
9 development, inland river transportation, port operations
10 and vessel operations for many clients in the United
11 States and throughout the world.

12
13 In 2002, after 25 years at Mercer, I decided to leave the
14 company to continue my focus on the maritime industry. I
15 founded DMA with the support of Mercer and permission to
16 continue to serve past and current clients with the
17 intellectual capital developed during my career. DMA's
18 team of associates serves clients throughout the world.

19
20 Q. What is the purpose of your testimony?

21
22 A. The purpose of my testimony is to address the
23 reasonableness and appropriateness of Tampa Electric's
24 Request for Proposals ("RFP") and to present my
25 evaluation of the RFP process and the bids received. My

1 testimony also describes the current state of the
 2 waterborne transportation market and presents my findings
 3 and recommendations to Tampa Electric as to how to
 4 fulfill its needs for waterborne transportation services.
 5 My testimony lists the market rates for each segment of
 6 the waterborne transportation network. Finally, my
 7 testimony addresses the issue of whether Tampa Electric's
 8 benchmark for waterborne coal transportation costs is
 9 still useful and sufficient for evaluating the
 10 reasonableness of the company's transportation costs.

11
 12 2. Have you prepared an exhibit in support of your
 13 testimony?

14
 15 A. Yes, Exhibit No. ___ (BD-1), consists of two documents.
 16 Document No. 1 is my report to Tampa Electric, which is
 17 entitled, "Assessment of Market Transportation Rates and
 18 Costs for Tampa Electric Domestic Marine Coal Delivery."
 19 The report includes descriptions of the bid evaluations
 20 and my market models along with my recommendations to
 21 Tampa Electric. Document No. 2 contains revised pages of
 22 my report, which were corrected in December 2003.

23
 24 2. By what experience or knowledge are you qualified to
 25 assist Tampa Electric in developing its RFP, evaluating

1 solicitation responses and modeling the market for
2 waterborne coal transportation services?

3
4 **A.** In addition to the responsibilities and experience I
5 described above, in the course of my professional work I
6 have advised and supported shippers and consignees in
7 structuring a variety of transportation arrangements,
8 including coal transportation for electric utilities such
9 as Tampa Electric, Seminole Electric, Houston Power and
10 Light, New England Electric and Virginia Electric Power.
11 My work has included assisting electric utilities
12 estimate coal transportation costs, examine the
13 performance and marine operations of companies that
14 deliver coal to utilities, request and evaluate bid
15 responses, evaluate the potential costs of specific
16 inland barge routes and specific ocean routes, evaluate
17 the costs of specific oceangoing vessels and design
18 services to compete with railroad transportation
19 services. I have also helped carriers successfully bid
20 on long term business, including a bid for more than
21 three million tons per year of municipal solid waste
22 business for the City of New York.

23
24 I have prepared testimony and testified before various
25 state and federal bodies. On two prior occasions, my

1 reports pertaining to Tampa Electric's coal movements
2 have been provided to this Commission. I have appeared
3 before federal courts, the Federal Maritime Commission,
4 the Florida State Pilotage Board and the United States
5 Senate to present my findings on matters related to the
6 maritime industry, economic impacts, economics, antitrust
7 behavior, contract damages and other issues.

8
9 **Waterborne Transportation Market**

10 **Q.** What is the current status and economic health of the
11 waterborne coal and dry bulk transportation and terminal
12 industry?

13
14 **A.** I will structure my answer in three parts. First, I will
15 address the inland river industry with an emphasis on the
16 dry bulk sector in general and coal transportation in
17 particular. Secondly, I will address the dry bulk
18 terminal services activity on the lower Mississippi River
19 given the location of the company's sources of coal.
20 Finally, I will address the U.S. flag Jones Act dry bulk
21 transportation segment.

22
23 **Q.** What is the current status and economic health of the
24 inland river dry bulk or coal transportation segment?

25

1 . This inland river dry bulk or coal transportation
2 industry generally finds itself experiencing soft barge
3 demand utilization, which has been created by weaker than
4 expected demand and higher than desired supply.
5 Consequently barge rates and earnings have suffered. The
6 largest and presumably strongest and most stable inland
7 barge company, American Commercial Lines, entered into
8 Chapter 11 bankruptcy re-organization in late 2002, which
9 is indicative of the state of earnings for companies in
10 this industry.

11
12 While no solvent barge lines with barge and towboat
13 ownership and operations are currently filing public
14 financial statements with the Securities and Exchange
15 Commission, spot rate levels for grain and coal have
16 generally reflected difficult operating conditions. For
17 example, barge earnings tracked through 2001 for the
18 largest coal carrier do not indicate any upward movement
19 during the past eight years.

20
21 The overall situation for cargo transportation has been
22 very challenging for barge lines. United States grain
23 exports have been restrained this year by strong exports
24 from China. Low farm prices continue to reduce domestic
25 fertilizer demand, which affects northbound barge

1 traffic. United States industrial activity that supports
2 northbound activity has also been weaker than in past
3 years. High utility coal stocks have also reduced the
4 demand for some coal transportation.

5
6 These forces for weaker barge demand have been compounded
7 by continued growth of the size of covered and open
8 hopper barge fleets. As deliveries of new barges have
9 exceeded scrapping in recent years, the supply of inland
10 barges has increased relative to stagnant or declining
11 demand.

12
13 Finally, weak conditions in the industry have led to
14 continued consolidations of barge lines, as some owners
15 seek to exit the industry or avoid massive investments
16 that will be needed to replace aging equipment that was
17 delivered during building booms in the 1970's and early
18 1980's. Many barges are approaching the end of their
19 useful lives and must be replaced to avoid very high
20 maintenance costs and operating problems.

21
22 **Q.** What is the current status and economic health of the dry
23 bulk terminal services segment?

24
25 **A.** For the dry bulk terminals on the lower Mississippi

1 River, the conditions described above are affecting
2 export and import volumes. Coal exports have declined.
3 Imports of coal have remained stable but without
4 substantial growth.

5
6 **Q.** What is the Jones Act and the current status and economic
7 health of the U.S. flag Jones Act dry bulk ocean shipping
8 segment?

9
10 **A.** The Jones Act is a federal law that requires that all
11 domestic cargo be carried in vessels that are owned by
12 U.S. citizens, built and registered in the United States
13 and crewed by U.S. citizens. The U.S. flag Jones Act
14 transportation market consists of the demand to move dry
15 bulk cargoes within the country, and the market for those
16 movements has contracted. The larger ships and barges of
17 the types that are most efficient for the trade between
18 Florida and the U.S. Gulf coast were especially affected.
19 Most notably, the volumes of phosphate rock and related
20 fertilizers shipped from Florida to the Mississippi River
21 have dropped sharply. This has led to the liquidation of
22 one fleet of three large dry bulk tug-barge units. Some
23 bright spots for the industry have been increasing tons
24 of petroleum coke moving from several crude oil refining
25 centers to Tampa and Jacksonville and some increased

1 movements of scrap steel towards a new electric furnace
2 in North Carolina.

3
4 U.S. flag Jones Act vessels may also compete to provide
5 transportation for U.S. government-impelled grain export
6 programs (the cargo "preference trades") that donate
7 grain, expedite grain donations or finance grain
8 purchases to developing and less-developed nations.

9 Seventy-five percent of the grain is required to be
10 transported by U.S. flag vessels. In the past decade,
11 the emphasis of the preference trades has shifted toward
12 Asia and away from Central and South America. This has
13 tended to favor larger ships and barges with a cargo
14 capacity greater than 30,000 tons. As a consequence,
15 three new ships have been added--two 50,000 ton capacity
16 ships by Liberty Maritime and one 36,000 ton capacity
17 ship by TECO Transport, all built abroad and modified to
18 meet more rigorous U.S. safety standards. In addition,
19 TECO Transport and one other tug-barge operator modified
20 the connection systems between tugs and barges to permit
21 the tugs to continuously push the barges in all sea
22 states at higher speeds. These modifications have
23 markedly increased the efficiency and capacity of the
24 U.S. flag Jones Act fleet, while also improving the
ability of the largest tug-barge units to compete with

1 ships. The preference trade tonnages have been volatile
2 but have generally supported the existing fleet of barges
3 and ships that participate in that trade, with attractive
4 earnings being realized by vessels. **These returns**
5 supported the investments described above.

6
7 Because of the additional capacity of the previously
8 described new ships and the upgrading of more than
9 150,000 tons of cargo capacity of large tug-barge units,
10 no new dry bulk barges or ships over 20,000 tons have
11 been ordered from U.S. shipyards in more than 20 years.
12 In addition, there is no near-term prospect for new
13 construction. In 2001, the demand for the domestic
14 market transportation totaled approximately 800,000 tons
15 cargo capacity of ship and barge capacity. Supply of
16 dry bulk barges over 10,000 tons capacity and dry bulk
17 ships amounted to approximately 880,000 tons capacity,
18 and four barges totaling 80,000 tons capacity were
19 inactive. Consequently the market was in almost perfect
20 balance. Since then, the petroleum coke trade to
21 Jacksonville, Florida increased substantially, and the
22 fertilizer trades stabilized. Consequently, the Jones
23 Act fleet is in full employment.

24
25 The handful of the largest barges and ships of 30,000 to

1 40,000 tons capacity qualified for the Jones Act are
2 generally focused on the preference trades, while
3 participating opportunistically in the coastal trades.
4 In recent years, larger, faster and more efficient diesel
5 ships and large tug-barges have been added to the U.S.
6 flag Jones Act and U.S. flag foreign trading fleets,
7 improving efficiencies of the fleet. Older, less
8 efficient ships and barges have been scrapped, sold to
9 foreign owners or deactivated. Other than the Tampa
10 Electric, Progress Energy Florida and Jacksonville
11 Electric coal and petroleum coke trades, bulk movements
12 along the Atlantic Ocean and Gulf of Mexico coasts are
13 primarily composed of limestone, wheat, corn, animal
14 feeds, scrap iron and sugar. In the Pacific, rice and
15 sugar are the greatest bulk movements between Hawaii and
16 the Pacific Coast. Thus, the larger vessels that would
17 be the more efficient options for ocean coal shipping
18 from the Mississippi River to Florida and bulk commodity
19 shipping back to the Mississippi River area have
20 lucrative options to instead service the preference
21 trades described above.

- 22
23 2. Please provide an overall assessment of the waterborne
24 transportation market.
25

1 **A.** The inland market is recovering from a slowing economy
2 and increased supply. The largest carrier is in
3 bankruptcy and will either emerge or be liquidated.
4 Rates for this segment cannot fall further and be
5 maintained at lower levels for any sustained period of
6 time. The lower Mississippi River river-to-ocean barge
7 terminal services market is dominated by two major
8 companies that are adjusting to reduced demand, even as
9 many of their costs are fixed. Consequently they are
10 fighting aggressively for business. The ocean segment is
11 in balance, with full employment in the domestic sector
12 and additional demand created by the U.S. government's
13 preference trade programs.

14
15 **Bid Solicitation**

16 **B.** Please describe your activities in assisting Tampa
17 Electric with the preparation and issuance of its June
18 27, 2003 RFP for coal waterborne transportation services
19 commencing in January 2004.

20
21 **A.** My activities involved a review of the RFP and a review
22 of the list of companies that were to be directly invited
23 to bid. I provided Tampa Electric with the names of
24 several additional companies that I felt might be
25 interested in bidding.

1 Q. In your opinion, did Tampa Electric make the bid known to
2 a wide range of potential suppliers?

3

4 A. Yes, I believe so. In total, Tampa Electric directly
5 provided its RFP to 24 potential bidders. Tampa Electric
6 provided notice of the RFP to industry publications,
7 which served to notify other potentially interested
8 bidders who then received copies of the solicitation.

9

10 Q. Do you consider Tampa Electric's bid solicitation to be
11 fairly representative of bid solicitations commonly used
12 to secure waterborne coal transportation and terminal
13 services?

14

15 A. Yes, I do. The terminology, requirements, conditions,
16 rates of cargo handling, and other operating
17 specifications are ones that are common in the industry
18 and would be familiar and easily understood by
19 prospective bidders. The bid solicitation represents the
20 distinctive requirements of the necessary movements for
21 Tampa Electric's needs--inland barge, inland barge to
22 ocean vessel and U.S. flag Jones Act ocean bulk vessel.

23

24 Q. Please describe the three segments of waterborne
25 transportation for which Tampa Electric requested

1 proposals from service providers.

2

3 A. The three segments of waterborne coal transportation
4 requested by Tampa Electric are the inland river barging
5 segment, the inland river-to-ocean vessel terminal
6 segment and the ocean transportation segment. The inland
7 river barge movement takes place on one or more rivers in
8 the greater Mississippi River system. In each move, coal
9 is dumped at a coal-loading dock into a jumbo open hopper
10 barge designed to transit the rivers. A barge of this
11 type is 195 or 200 feet long by 35 feet wide and is
12 typically loaded to a minimum of eight feet of water
13 depth. Such barges have capacities of 1,450 tons at
14 eight-foot drafts and can be loaded with greater tonnages
15 and deeper drafts when river conditions and waterways
16 draft restrictions allow. The barge is pushed to an
17 unloading point on the lower Mississippi River by a
18 towboat. Typically a group of barges are assembled by
19 smaller pushboats into a "tow" of between four and 35
20 barges depending on the segment of the river being
21 transited. On small rivers with small locks, tows of
22 four barges are common. On the Ohio River, tows of 15
23 barges are common. On the middle Mississippi River,
24 between its confluence with the Ohio River and St. Louis,
25 tows of 20 barges are common. On the lower Mississippi

1 River, below the Ohio River, tows of up to 35 barges are
2 common. Obviously, larger and more powerful towboats
3 with larger crews and fuel consumption rates push larger
4 tows. River conditions such as high or low water, ice or
5 fog dictate changes in tow size and speed. Locks in some
6 waterways may impose delays due to congestion or the
7 locking process.

8
9 Immediately after the hopper barge is loaded with coal,
10 it is shifted away from the coal dock and tied up at a
11 fleeting area by a shifting tug. From there the barge
12 may be shifted again into a tow that is being assembled
13 at a fleeting site or shifted out into the river to join
14 a passing tow. The barge may remain at a fleeting site
15 for hours or days, awaiting a passing tow or the assembly
16 of a tow. At each junction point between rivers, the
17 barge or the tow may be shifted and re-arranged into a
18 larger or smaller tow.

19
20 When the barge is near its destination, it is delivered
21 with other barges to the unloading dock's fleeting area.
22 From there the barge is shifted to the unloading dock for
23 unloading. After unloading, the barge is shifted back to
24 a nearby fleeting site, where it begins the voyage back
25 toward the coal-loading region. If the barge is to be

1 loaded with a northbound backhaul cargo, the barge may be
2 shifted to a cleaning dock and prepared for that voyage.

3

4 Q. Please describe the terminal segment.

5

6 A. When the hopper barge is delivered to the ocean terminal,
7 it awaits its turn to be unloaded, as described above.
8 At TECO Terminal in Davant, Louisiana, a continuous
9 bucket unloader that can unload the barge in less than an
10 hour performs unloading. The unloaded coal is conveyed
11 by conveyor belts to one of two places, either directly
12 into a waiting ocean ship or barge that is docked at an
13 adjacent pier or to a storage site where it will be
14 deposited in a specific pile according to its
15 characteristics. After storage, the coal is reclaimed by
16 a reclaimer that rotates to dig up the coal and place it
17 on conveyors for delivery to the oceangoing ship. Custom
18 coal blending that creates a coal type tailored to meet
19 operational and environmental requirements of generating
20 units can then be accomplished by reclaiming coal from
21 more than one pile simultaneously.

22

23 Q. Please describe the ocean transportation segment.

24

25 A. The ocean transportation segment begins when the coal is

1 delivered to an oceangoing ship or tug-barge unit.
2 Their own engine propels ships while oceangoing barges
3 are pushed or towed by oceangoing tugs. The size of
4 these vessels may be as large as 45,000 short tons
5 capacity. The coal is dumped into one of several holds
6 in the vessel, and when full, the hold is covered with a
7 large steel hatch cover to prevent water from entering
8 the vessel. The vessel then sails down the Mississippi,
9 sets a course for Tampa Bay, arrives at Tampa Bay,
10 navigates the Tampa Bay channels and eventually docks at
11 Big Bend Station. The coal is used at Tampa Electric's
12 Big Bend and Polk Power Stations. Currently, coal is
13 also delivered by ocean vessel to Gannon Station for use
14 in the Gannon coal-fired units. However, the station is
15 undergoing a repowering to natural gas-fired generation
16 resulting in the complete elimination of coal-fired
17 generation.

18
19 Ships typically have crews of 25 persons and speeds of
20 about 14 or 15 knots (15 to 17 miles per hour). They
21 typically burn heavy fuel oil as their primary fuel.
22 Tug-barges have crews of between 7 and 10 persons, speeds
23 of 6 to 12 knots (7 to 12 miles per hour) and burn diesel
24 fuel. During the past decade, many large tugs and barges
25 have been equipped with connecting linkages to permit the

1 tug to push the barge at all times, increasing sea speed
2 and reliability.
3

4 Tampa Electric's bid solicitation states "Tampa Electric
5 prefers proposals for integrated waterborne
6 transportation services, however proposals for segmented
7 services will be considered." Do you consider this to be
8 a reasonable provision of the bid solicitation?
9

10 Yes. The Tampa Electric solicitation expresses a
11 preference for an integrated response because such a
12 response is more efficient, simplifies accountability and
13 avoids complex claims within each segment. The Tampa
14 Electric solicitation does, however, also indicate that
15 consideration will be given to proposals for the three
16 segments described above: inland river barging, inland
17 river-to-ocean vessel terminal services and ocean
18 transportation. Bidders also had the option to combine
19 its segment services with the services of one or more
20 other bidders to create an integrated services package
21 managed by a single supplier.
22

23 A single provider provides a multitude of attributes and
24 efficiencies. These include:

- 25 • Priority scheduling and access to loading and

1 unloading facilities to ensure an uninterrupted,
2 reliable supply of coal;

- 3 • A single responsible party, with absolute control and
4 responsibility and no basis to transfer blame or
5 responsibility, that can delay or even prevent
6 remedial action to resolve long-term or short-term
7 problems, crises, or disruptions;
- 8 • A single point of contact for contract administration
9 that eliminates the need to maintain relationships
10 with one or more providers in each of the three major
11 elements of the supply chain (inland river, terminal,
12 and ocean bulk transportation) and the associated
13 costs of doing so;
- 14 • A single point for payment; and
- 15 • The elimination of complex claims amongst and between
16 the supply chain providers for interference, delay,
17 damage to key facilities, demurrage (delay of barges
18 and ships), despatch (expediting of barges and ships),
19 slow payment of freight or claims, expediting of late
20 or time-critical shipments and other operational
21 factors.

22
23 These attributes allow for cost-effective efficiencies
24 and flexibility for Tampa Electric to manage its fuel
25 inventory while balancing costs when all three segments

1 are needed to transport coal.

2

3 Q. The bid solicitation also states "terminal facilities
4 should be accessible to Mississippi River barge traffic
5 and capable of receiving and discharging inland river
6 barges from domestic suppliers in Panamax sized vessels
7 for offshore coal." What purpose is served by such a
8 provision?

9

10 A. Tampa Electric relies primarily on domestic coal for its
11 coal-fired units. Consequently, the receiving and
12 discharging of inland river barges from domestic
13 suppliers is logical. In addition, Tampa Electric
14 imports foreign coal for blending with domestic coal and
15 petroleum coke to meet the exacting needs of its Polk
16 Power Station. The primary size of coal shipment from
17 foreign locations is in Panamax-sized ships. These are
18 ships of 60,000 to 75,000 long tons cargo capacity with
19 full load drafts of about 42 feet. The blending process
20 for Polk Power Station is exacting and requires delivery
21 of domestic coals and petroleum coke to the same site as
22 imported coal. The solicitation's requirement is
23 consistent with Tampa Electric's needs.

24

25 By co-locating the coal and petroleum coke supplies for

1 Big Bend and Polk Power Stations at a single location,
2 major efficiencies in inland barge and ocean barge
3 despatch are achieved in the following ways:

- 4 • Different types of domestic and imported coal and
5 petroleum coke can be delivered to a single site by
6 inland river and international bulk carriers in sizes
7 up to and including Panamax vessels;
- 8 • Domestic grades of coal and petroleum coke can be
9 placed directly into the holds of U.S. flag Jones Act
10 oceangoing ships for movement to Big Bend Station;
- 11 • Blended import and domestic coal and petroleum coke
12 can be loaded into multiple holds of a single vessel
13 at a single berth for onward movement to Polk Power
14 Station; and
- 15 • Grades of domestic and imported coal and petroleum
16 coke can be placed in a series of co-located coal
17 storage piles for direct loading or blending.

18
19 **Q.** Could the coal blending process for Polk Power Station be
20 performed at a location other than at the terminal
21 facility?

22
23 **A.** I don't believe so. Logically, there are two options for
24 the site for coal and petroleum coke blending: utilize an
25 existing Tampa Electric coal storage site or use a

1 terminal services facility. Tampa Electric currently has
2 one operating coal storage site at the Big Bend Station.
3 Due to space and configuration limitations, it is not
4 possible to blend the coal for Polk Power Station at the
5 Big Bend coal storage area. Also, at Big Bend Station it
6 is not possible to receive a Panamax vessel, which
7 delivers the imported coal for blending. The storage
8 capacity and flexibility of the existing terminal is much
9 greater than the storage capacity and flexibility at Big
10 Bend Station, and Tampa Electric will need similar
11 capacity and flexibility at any terminal that it may
12 utilize in the future.

13
14 Blending domestic coals, imported coals and petroleum
15 coke at a terminal that is accessible to both domestic
16 suppliers from the Mississippi River and foreign
17 suppliers from the Gulf of Mexico provides a single point
18 for all blending. It is a point along the path the
19 domestic coal, which represents the bulk of Tampa
20 Electric's coal use, must travel to reach Tampa
21 Electric's generating stations, with the attendant
22 efficiencies of scheduling, supervision, planning and
23 storage.

24
25 Q. In addition, the bid solicitation states "proposals

1 should represent the entire requirements stated in the
2 solicitation of Tampa Electric's domestic waterborne
3 solid fuel transportation services." Do you consider
4 this to be a reasonable criterion and, if so, why?

5
6 **A.** Yes, I do. Because of the decision that Tampa Electric
7 must make regarding Big Bend Station's future fuel use
8 under Tampa Electric's Consent Decree, there is the
9 potential for significant declines in the volume of Tampa
10 Electric's future demands for coal transportation and
11 terminal services as represented in this solicitation.
12 The previously discussed advantages of dealing with a
13 single supplier of integrated services also apply to a
14 single supplier for a particular segment; and in
15 addition, planning for these potentially smaller volumes
16 is made more complex if more than one vendor provides
17 services for Tampa Electric's requirements. In that
18 situation, a supplier's perspective is likely to be that
19 the business is more uncertain. Therefore, the supplier
20 would likely charge a premium to provide services. In
21 addition, smaller volumes are unlikely to qualify for the
22 efficiencies or economies of scale that result from a
23 supplier managing greater volumes. Thus, dividing
24 requirements among vendors is likely to result in a
25 greater cost to Tampa Electric as well as increased

1 challenges to scheduling and planning fuel deliveries.

2

3 Q. Based on your knowledge of the waterborne coal and dry
4 bulk transportation and terminal industry, do you believe
5 that any of the above-described requirements or criteria
6 as stated in the bid solicitation would have discouraged
7 waterborne transportation providers from submitting
8 creative and innovative bids for all or portions of Tampa
9 Electric's coal transportation and terminal needs
10 beginning in 2004?

11

12 A. No, I do not. The requirements are straightforward and
13 pertain to volumes and tonnage, rates of loading and
14 discharge, amounts and types of storage, scheduling,
15 demurrage, standards of cargo hold clean up, and other
16 customary requirements for coal transportation for
17 utilities.

18

19 Q. Did Tampa Electric's bid solicitation fairly and
20 adequately inform those in the waterborne coal and dry
21 bulk transportation and terminal industry as to the needs
22 of Tampa Electric beginning in January 2004?

23

24 A. I believe that the bid adequately informed industry
25 participants, consistent with the limitations of Tampa

1 Electric's own knowledge of future coal consumption
2 levels and the specific docks at which coal will be
3 loaded.

4

5 **Bid Evaluation Process**

6 **Q.** How did you evaluate the bids that Tampa Electric
7 received in response to its bid solicitation?

8

9 **A.** Tampa Electric received two waterborne transportation
10 services bids and two rail transportation bids. DMA
11 evaluated the two waterborne transportation bids.

12

13 **Q.** Please describe the bids that Tampa Electric received in
14 response to its request for proposals for waterborne coal
15 transportation services ("RFP")?

16

17 **A.** Tampa Electric received four bids--two bids for rail
18 transportation and two bids for waterborne transportation
19 services. The testimony of Tampa Electric witness J. T.
20 Wehle addresses the two rail transportation bids, while
21 my testimony addresses the two waterborne transportation
22 bids. Of the two waterborne transportation bids, one is
23 for inland river transportation and the other is for
24 terminal services. Neither bid proposed to provide an
25 integrated package of services, and only the bid for

1 terminal services proposed to accommodate the volume
2 Tampa Electric will require. Tampa Electric did not
3 receive any bids for the ocean transportation segment.
4

5 Q. Please describe how you evaluated the inland river
6 transportation bid.
7

8 A. I took into account several factors when evaluating this
9 bid. The inland river transportation bidder has been in
10 Chapter 11 bankruptcy status since late January 2003.
11 Although Tampa Electric requested financial and insurance
12 information, the bidder never provided the information
13 nor addressed the bankruptcy in its proposal. Therefore,
14 my evaluation included a review of limited publicly
15 available information that pertains to the bankruptcy. I
16 obtained information showing that the bidder may be
17 reorganized, broken up or liquidated. The bidder has
18 requested to restructure or terminate contracts. I also
19 learned that the bidder's fleet size has decreased
20 dramatically. These factors, along with the age of the
21 bidder's existing fleet, which raises an additional
22 concern regarding its fleet's performance, resulted in my
23 determination that there are unavoidable and significant
24 risks to engaging in a contractual relationship with this
25 bidder.

1 The bid for inland river transportation also offered to
2 provide transportation for only one million tons per
3 year, approximately 20 percent of Tampa Electric's stated
4 maximum annual requirements. Given the bidder's failure
5 to provide a proposal that meets Tampa Electric's full
6 requirements or to provide financial information, in
7 conjunction with the fact that the bidder is in Chapter
8 11 bankruptcy status, I recommended rejecting the inland
9 river transportation bid.

10

11 **Q.** Were you able to gain any market insight based upon this
12 one bid?

13

14 **A.** Yes. Since the bidder is a large company, and the
15 volumes it proposed to serve are substantial, I
16 considered it worthwhile to continue analyzing the terms
17 of the bid. While there may be differences from a true,
18 valid market bid due to the bidder's financial status and
19 contracted fleet size, I believe that the bid still
20 serves as a practical market indicator. Therefore, I
21 evaluated the bid to determine the reasonableness of its
22 rates for the one million tons per year that it offered
23 to transport.

24

25 I compared the bid to the current rates paid by Tampa

1 Electric for inland river transportation and to rates
2 that have been developed by DMA using proprietary models.
3 My evaluation of the bid, the models, and my
4 recommendations are described in greater detail below.

5
6 **Q.** Please describe the bid Tampa Electric received for
7 terminal services.

8
9 **A.** As I indicated, the bid for terminal services proposed to
10 accommodate the volume Tampa Electric will require. DMA
11 examined the bid with respect to its terms, conditions,
12 facility features, performance, conformance and capacity
13 to meet Tampa Electric's requirements.

14
15 In general, the terminal segment has very high fixed
16 costs because the cost to build and maintain a terminal
17 is substantial, as is the cost of maintaining staff to
18 operate a facility 365 days per year, 24 hours per day.
19 The only major variable costs are electricity to operate
20 the systems and operating and maintenance costs for the
21 machinery and equipment.

22
23 In a weakened terminal market like today's, I expect
24 rates to be restrained. This was reflected in the
25 terminal bid received. I took the terms and conditions

1 of the bid and compared them to the current terms and
2 conditions Tampa Electric pays to provide a complete
3 market perspective on terminal service rates and market
4 conditions. As a result of my analysis, I concluded that
5 the rates in the terminal bid are competitive and should
6 form the basis for my recommended rates. Because Tampa
7 Electric's annual volumes may vary several-fold over the
8 term of the contract, the ratio of coal that is directly
9 transferred from a river barge to an oceangoing vessel
10 versus coal that is stored prior to ocean transportation
11 will vary. Therefore, I adjusted the base rate for the
12 full range of annual tonnages. The rate for each
13 throughput level, my detailed evaluation of the bid and
14 my recommendations are described in greater detail in my
15 final report.

16
17 **Market Analyses**

18 **Q.** In addition to evaluating the bid responses, what
19 methodology did you use to establish the appropriate
20 market rates for waterborne coal transportation services?
21

22 **A.** I relied on two customized, proprietary market models for
23 this purpose, as well as various supporting analyses and
24 information. One model evaluated the costs and market
25 for the inland river barge movements from various coal

1 loading points. The other model evaluated ocean coal
2 transportation between loading points on the Gulf of
3 Mexico and Tampa Bay to establish market rates, while
4 considering the freight rates for available equipment
5 during the next five years.

6
7 **Q.** Please describe your model used to evaluate the market
8 for the inland river barge movements from various coal
9 loading points.

10
11 **A.** Notwithstanding the limited responses to Tampa Electric's
12 RFP, my methodology recognized that the inland barge
13 transportation market is a large and multi-faceted one.
14 Several major coal carriers operate nearly 6,000 open
15 hopper barges and have created a market with spot and
16 period market dynamics. These dynamics have shifted in
17 recent years as Ohio River Valley utilities have bought
18 larger amounts of transportation under more flexible
19 terms. These shorter contracts create more frequent
20 contract mobilization and de-mobilization costs that are
21 challenging for smaller carriers with limited options and
22 traffic patterns. In contrast, larger carriers are
23 better able to mobilize fleets of barges for new
24 contracts, encouraging consolidation that has left fewer,
25 larger carriers competing in the market.

1 While not all aspects of rates, utilization, contract
2 coverage and costs are transparent, my methodology
3 estimated the costs of every movement of coal from barge
4 loading origin to barge unloading destination with
5 reasonable accuracy and meaning. Since these rates were
6 consistent and similar to prevailing rates and barge
7 earnings, there was a basis to conclude that these costs
8 reflect market rates.

9
10 Utilizing this information, I developed market rates
11 based upon each origin point that Tampa Electric expects
12 to use for domestic purchases over the contract period.
13 I compared the bidder's rates to the market rates for
14 verification that they are reflective of the market for
15 inland river transportation. I concluded that indeed
16 they are similar to market rates.

17
18 **Q.** How did you establish appropriate market rates for inland
19 river barge transportation of coal?

20
21 **A.** To determine rates for inland river barge transportation
22 of coal to Davant, Louisiana from 25 locations on the
23 Ohio, Green, Tennessee and upper Mississippi rivers, I
24 utilized my model, which captures the physical
25 requirements for moving each barge load of coal, with

1 operating parameters typical of the barge industry. The
2 model tracks the time required for each activity in each
3 barge's voyage, the resources employed and the cost for
4 each activity and resource. The cost components of a
5 voyage include variable voyage costs (*i.e.*, making and
6 breaking tows, fleeting and shifting); fixed costs (*i.e.*,
7 barge hire and towboat capital cost recovery); and fuel
8 costs. Variable barge voyage costs are driven by the
9 number, type and duration of activities performed by or
10 for a barge along its route; how many times it is moved
11 for loading or to make or break a tow; and the amount of
12 time it spends waiting for a tow at the load dock,
13 integration points along the way and discharge dock.
14 Other non-voyage variable costs are determined by the
15 number of days required for a barge to complete a voyage,
16 the number of towboat days it employs, the size of the
17 towboats and the respective daily cash operating costs
18 for towboats and barges (*i.e.*, costs for towboat crews,
19 insurance, stores and supplies, maintenance and repair,
20 general and administration, and barge maintenance and
21 repair). Towboat costs are straightforward and
22 obtainable from U.S. Army Corps of Engineers guidelines
23 while barge hire costs are market-driven. To determine
24 the appropriate barge hire, I analyzed several years of
25 financial data as well as freight rate indicators,

1 employing proprietary models developed by DMA. The model
2 assumes a daily barge hire rate of [REDACTED] including capital
3 and fixed operating costs. Fuel costs are determined by
4 the number of towboat days, towboat horsepower and the
5 average percentage of capacity used by the towboat on
6 each river segment.

7
8 In order to determine the activity times and allocated
9 costs for each barge, it is necessary to understand the
10 patterns of river movements. The key variables that
11 affect these parameters are the number of barges moved by
12 a towboat on each river segment; whether the barges will
13 be part of a tow dedicated to a single movement, a tow
14 dedicated to Tampa Electric coal from a number of docks,
15 or a passing tow; and the frequency of tows available for
16 a given barge. The analysis is made more complex by the
17 fact that each barge is usually part of at least two tows
18 because the towboats employed and number of barges per
19 tow change from river to river.

20
21 To determine these inputs to the model, I used the bid
22 solicitation, data published by the U.S. Army Corps of
23 Engineers, barge line financial filings, information from
24 interviews with river service providers and industry
25 norms and rules of thumb. I evaluated how rates would

1 vary under a number of scenarios and determined that
2 Tampa Electric must be able to benefit from the
3 efficiencies of the inland system. If its barges were to
4 move only in dedicated tows, rates would be unreasonably
5 high, especially if tonnages decrease in the latter part
6 of the contract period. I concluded that the appropriate
7 scenario is the "partially dedicated tow", in which Tampa
8 Electric-specific barges move in dedicated tows as long
9 as justifiable by coal volumes. When volumes drop to
10 where costs and operating profiles are misaligned with
11 those of the larger river system, the model assumes that
12 Tampa Electric-specific barges will join passing tows and
13 incur costs in accordance with those tows. For each
14 loading dock, the model generates subtotals of fixed,
15 variable and fuel costs and total cost. The total cost
16 is divided by the number of tons that can be loaded in
17 the barge at each dock to determine a rate in dollars per
18 ton.

19
20 My recommended inland river transportation market rates
21 are very close to those of the bid and are based on an
22 analysis of each movement from origin to destination at
23 rates that will provide for reasonable returns expected
24 by a supplier. There are some differences between the
25 recommended rates and the bid, but these can be

1 attributed to differences between the bidder's strategy
2 and models and the model that DMA employed. As I
3 mentioned above, the bidder is in Chapter 11 bankruptcy
4 status, and their open hopper business is in a state of
5 apparent rapid contraction in terms of fleet size and
6 contracts. The company may also be broken up or
7 liquidated due to its financial condition. Therefore, the
8 forces and considerations behind this bidder's proposal
9 may reflect factors and forces that are not consistent
10 with an ongoing business strategy, so the proposal cannot
11 on its own determine the market for these services.

12
13 **Q.** What are your recommended inland river transportation
14 rates?

15
16 **A.** The market inland river transportation rates that I
17 recommended comprise a fixed and a variable component.
18 The fixed component covers the capital charges that
19 assure appropriate returns on the debt and equity
20 portions of capital investment. The variable component
21 includes charges to cover all other costs, including
22 charges for shifting barges to and from loading and
23 discharge docks, fleetling, cleaning, maintenance and
24 repairs, towboat crewing, general and administrative
25 expenses and fuel. The fuel charge is described

1 separately, and it is based on the estimated cost of fuel
2 to transport coal. The allocation of the rate into fixed
3 and variable components is appropriate because it places
4 the risk and responsibility on the operator for the
5 variable costs of which it is aware when the contract is
6 arranged or that it has some ability to control during
7 the contract period. The fixed component is the portion
8 of the rate that enables the operator to earn a profit on
9 the equipment, based on its ability to use barges and
10 towboats efficiently. The variable component consists
11 primarily of costs that are under the control of the
12 operator and which can be expected to change during the
13 duration of the contract. Other variable costs are
14 incurred by the use of outside service providers, for
15 example, costs for shifting or fleetings. These charges
16 tend to follow macroeconomic trends; hence they are
17 adjusted by the price indices.

18
19 Q. How did you establish appropriate market rates for
20 waterborne coal transportation terminal services?

21
22 A. I did not create or rely upon a market model of the
23 terminal segment because the company received a bona fide
24 bid for its full requirements of terminal services, and
25 the rates quoted can be viewed as representing the market

1 for those services. I determined that the bidder
2 possesses the facilities, capacity, and financial
3 strength to fully meet Tampa Electric's requirements, and
4 I regarded its bid as being valid and meaningful. The
5 rates were also generally consistent with prior rates
6 tendered by the bidder and market indications gleaned by
7 DMA for bulk terminal services. Consequently, its bid
8 can be deemed to reasonably represent the market.
9 Therefore, the rate structure of the terminal bid was
10 used with no modifications, as outlined later in my
11 testimony.

12
13 **Q.** Please describe your second model and how you established
14 appropriate market rates for the ocean segment of the
15 waterborne coal transportation services.

16
17 **A.** A critical factor in establishing market rates for the
18 ocean segment is a consideration of the opportunities to
19 transport other domestic dry bulk and U.S. export dry
20 bulk preference cargoes. As I explained in my direct
21 testimony, preference trades are U.S. government-impelled
22 grain export programs that donate grain, expedite grain
23 donations or finance grain purchases to developing and
24 less-developed nations. These types of hauls tend to be
25 more lucrative than coal hauls. It is imperative that

1 the earnings potential for ocean shipping vessels be
2 considered. This represents an opportunity cost of
3 deciding to serve Tampa Electric's needs. In fact, I
4 believe that because these alternative opportunities are
5 lucrative and in high demand, Tampa Electric did not
6 receive a bid to provide ocean transportation.
7 Therefore, my methodology considered market pricing for
8 the ocean transportation system as the rates that vendors
9 would require to transport all of the 5.5 million tons
10 that Tampa Electric established as its maximum annual
11 volume, taking into account the domestic and foreign-
12 trading marketplaces in which these vessels operate and
13 the amounts that they are capable of earning in those
14 trades.

15
16 I considered the earnings potential for ocean shipping
17 vessels. I defined earnings as the net funds that would
18 be expected or required to be earned by each vessel after
19 deducting voyage expenses for port, cargo handling,
20 canal, and fuel expenses. The net earnings (termed "time
21 charter equivalent" earnings) of vessels allowed me to
22 calculate the total amounts that vessels would require to
23 carry coal from the existing terminal in Davant,
24 Louisiana to Tampa Electric's Big Bend Station. This
25 provided a context in which to view and understand the

1 maximum ocean rate.

2

3 A maximum time charter rate was defined by the observed
4 patterns of earnings of vessels in the preference trades.
5 I analyzed more than 135 preference voyages of U.S. flag
6 Jones Act vessels between the years 2000 and 2003 to
7 estimate time charter earnings for the full range of
8 differently sized vessels. The pattern of time charter
9 earnings was used to establish a trend curve by which
10 each size vessel could have a preference time charter
11 rate assigned to it.

12

13 Next, I established the market rate of the core fleet of
14 TECO Transport barges currently used to serve Tampa
15 Electric's needs. It was defined as the average of the
16 minimum and maximum time charter rates for those vessels.
17 This rate represents the average rate needed to move the
18 maximum volume of coal. The large, efficient barges
19 currently dedicated to Tampa Electric's ocean
20 transportation needs keep rates low in comparison to the
21 spot rates that would prevail if Tampa Electric were
22 forced to go to the tight ocean transportation
23 marketplace, which would result in the use of smaller
24 vessels, if adequate capacity could be found.

25

1 DMA examined two key marketplaces for U.S. flag Jones Act
2 dry bulk vessels--the domestic dry bulk market and the
3 government-impelled dry cargo market. First, to assess
4 the general state of the dry bulk market, DMA evaluated
5 the transportation demand in 2001 for all dry bulk
6 commodities moving along the coasts. Because all of this
7 business is unregulated and privately negotiated, no
8 public disclosures of rates or earnings are available.
9 However, using total tonnage and distances, and the role
10 of ships versus barges, the demand for barges was found
11 to be approximately 806,000 capacity tons. The fleet of
12 ships and barges over 10,000 tons cargo capacity, which
13 is the size that are primarily engaged in these trades
14 and are most competitive, totaled about 880,000 capacity
15 tons, with only four barges that total 80,000 capacity
16 tons idled and one large barge with cargo capacity that
17 exceeds 35,000 tons without access to a push-linked tug.
18 Thus, the market is essentially in balance, while smaller
19 barges are providing some additional minimal capacity at
20 higher rates. Consequently, I was able to conclude that
21 barges certified for ocean service and married to
22 appropriately equipped tugs are generally busy in the
23 domestic market.

24
25 Second, DMA considered the U.S. government preference

1 cargo trades that reserve export shipments donated or
2 granted by governments for transportation by U.S. flag
3 ships. DMA analyzed more than 135 individual voyages by
4 ships and barges to estimate their net time charter
5 earnings to gain insight into the earnings of specific
6 vessels. Based on the overall trend, a preference cargo
7 earnings rate was assigned to each ship and tug-barge
8 unit presently serving Tampa Electric's needs, as well as
9 to a range of key vessels controlled by other carriers.

10
11 A minimum time charter rate was established by
12 considering the embedded costs and values of the vessels,
13 using depreciated replacement costs based upon remaining
14 lives and related reconstruction costs. The
15 reconstruction cost estimates were based on known recent
16 life extensions and capacity expansion programs costs.
17 These capital costs were combined with ship operating
18 costs for crew, stores and supplies, insurance, repairs
19 and maintenance and administration and management to
20 determine the minimum required time charter rate.

21
22 The recommended rate for ocean shipping includes a fixed
23 component and a variable component. The fixed component
24 recovers the capital cost of establishing and maintaining
25 a fleet of vessels dedicated to serving Tampa Electric's

1 transportation needs. The variable component covers
2 charges for all other costs, including fuel. The fuel
3 costs are described and escalated separately. The fuel
4 price assumption for the market rate I established is
5 based on a price of [REDACTED] per gallon for No. 2 fuel oil
6 The fuel component of the rate will vary as the index by
7 which it is determined, the Platts Gulf Coast Waterborne
8 No. 2 Oil - Low, varies.

9
10 To complete my market analysis, I examined and considered
11 the costs of new equipment. I found that the current
12 costs and risks associated with new equipment are
13 prohibitively high and are significantly higher than they
14 were a decade ago. This evaluation provided me with yet
15 another way to attempt to determine appropriate market
16 rates, with the resulting rate setting the boundary for
17 the higher range of potential market rates.

18
19 In the end, my methodology established a single overall
20 market rate for the ocean transportation segment, or an
21 average rate that leaves the decision about the
22 particular mix of vessels engaged in the trade to the
23 provider.

24
I calculated a separate market rate for the movement of

1 petroleum coke from refineries in east Texas. This was
2 necessary because Tampa Electric contracts for a
3 significant portion of its petroleum coke needs from this
4 region. DMA selected the current core fleet vessel that
5 has a time charter rate closest to the average rate of
6 the core fleet vessels because it is representative of
7 the market price for the size of the vessel used. I then
8 calculated the required rate for that vessel to transport
9 the product from Texas to Big Bend Station.

10

11 **Q.** What conclusion did you reach regarding the ocean
12 segment?

13

14 **A.** As a result of my analysis, I concluded that no existing
15 fleet or combination of Jones Act dry bulk barges or ships
16 other than the TECO Transport fleet is capable of
17 competitively serving Tampa Electric's needs from a
18 capacity and price standpoint. All of the other fleets
19 and combinations of vessels are committed to hauling other
20 products in the dry bulk market and the government-
21 impelled preference trades. Therefore, my analysis has
22 determined that the appropriate market rates for the ocean
23 segment are based upon the continued use of the TECO
24 Transport fleet and reflect the capital, operating and
25 opportunity costs of those vessels.

1 Q. How should the various components of the contract charges
2 be escalated during the contract period?

3
4 A. I recommended that the inland segment and the ocean
5 segment have similar contract price escalation methods.
6 Fixed charges must be included to assure the desired
7 level of capacity, plus the incremental rate per ton to
8 actually move cargo. An appropriate portion of the
9 incremental charge is for fuel, which should be indexed
10 to the Platts Gulf Coast Waterborne No. 2 Oil - Low
11 index. The balance of the incremental portion should be
12 linked to the Consumer Price Index and Producer Price
13 Index. The rates do not include escalation of the fixed
14 component.

15
16 Q. Please summarize the recommendations you made to Tampa
17 Electric regarding the fulfillment of its waterborne coal
18 transportation services needs as a result of your
19 evaluation of the bid responses and your market
20 simulations and analyses.

21
22 A. Regarding the bids, I considered the river segment bid to
23 be non-conforming. Given the bidder's failure to provide
24 a proposal that meets Tampa Electric's full requirements
25 or to provide financial information, in conjunction with

1 the fact that the bidder is in Chapter 11 bankruptcy
2 status, I recommended that Tampa Electric reject the
3 inland river transportation bid and utilize the market
4 rates established in DMA's inland river model.

5
6 For the marine terminal element, I utilized the rate
7 structure of the bid as an appropriate market rate.

8
9 In assessing the ocean transportation market, I evaluated
10 the core fleet that presently carries Tampa Electric's
11 coal from the terminal and delivers it to the plant. I
12 examined the costs per ton for the journey from Davant,
13 Louisiana to Big Bend Station. I calculated a market
14 rate, and then I evaluated that rate to assure that it
15 provides the supplier with acceptable returns given the
16 current market conditions and alternative hauls.

17
18 Overall, the combined market waterborne transportation
19 rate as of January 1, 2004 is [REDACTED] per ton. This is
20 [REDACTED] per ton less than the rates paid during the third
21 quarter of 2003 under the existing contract. The
22 individual segment market rates that I recommended are
23 described below

24
25 The average market rate for inland river transportation

1 is [REDACTED] per ton. This average rate was calculated using
2 the estimated rates of the river locations where Tampa
3 Electric has contracted for delivery of its 2004 coal
4 supply. The market rate for terminal services is [REDACTED]
5 per ton, which includes a [REDACTED] fleeting charge. The
6 market rate for ocean transportation of Tampa Electric's
7 maximum annual requirements of 5.5 million tons is [REDACTED]
8 per ton. These rates total to the [REDACTED] per ton market
9 rate listed above.

10
11 I recommended that Tampa Electric present the market
12 rates I established for each segment, as detailed in
13 Document No. 1 of my exhibit, to TECO Transport for its
14 decision to meet or beat the market price for services
15 beginning January 1, 2004, as was required by the terms
16 of the then existing contract. I recommended that if
17 TECO Transport opted to provide service under the
18 contractual "Right of First Refusal" clause, Tampa
19 Electric should utilize the market rates I established to
20 negotiate a contract with TECO Transport.

21
22 **Q.** Have you made any changes to your models or report since
23 submitting your recommendations to Tampa Electric?

24
25 **A.** Yes, pages 9 and 68 of my report were revised to reflect

1 the specific CPI and PPI indices used to escalate the
2 variable components. In addition, in December 2003, I
3 discovered offsetting calculation errors in the ocean
4 transportation model. The errors were corrected and I
5 provided Tampa Electric with the revised ocean segment
6 rate information along with revisions to my original
7 report. The revised are pages 62 through 66 and 68. All
8 revised pages are provided as Document No. 2 of my
9 exhibit. The errors raised the total ocean market rate
10 by \$0.03 per ton. The amounts of the fuel, fixed and
11 variable rate components were also revised, with
12 resulting greater percentages for the fixed and fuel
13 components and a reduced percentage for the variable
14 component. The errors also raised the separate market
15 rate that I calculated for the ocean transportation of
16 petroleum coke from refineries in east Texas by \$0.02 per
17 ton.

18
19 **Q.** Please describe the calculation errors that were
20 corrected.

21
22 **A.** There were a few items that, while properly reflected in
23 the assumptions and descriptions in my report, were
24 incorrectly modeled. These items included the
25 calculation of the average timecharter rate, the tons of

1 coal typically carried by the fleet that serves Tampa
2 Electric, sea speeds and free unloading time at Big Bend
3 Station and the associated delay time assumption. The
4 use of the median vessel as the basis of the rate for
5 shipments from east Texas was also incorrectly modeled.
6

7 **Q.** Did the methodologies you employed in determining the
8 ocean segment market rate change?
9

10 **A.** No, they did not.
11

12 **Q.** Please describe your final report.
13

14 **A.** I have summarized the results of my evaluation, analyses
15 and recommendations above. My final report is the
16 document that I provided to Tampa Electric, which is
17 attached as Document No. 1 of my exhibit. The report
18 provides the results of my analysis, detailed information
19 about my analyses and recommendations and descriptions of
20 my methodologies and supporting background information.
21 In addition, as previously stated, Document No. 2 of my
22 exhibit contains the pages of my report that were revised
23 in December 2003.
24
25

1 **Transportation Benchmark**

2 **Q.** In your opinion, should the Commission continue to rely
3 upon an averaging of rail rates paid by Florida municipal
4 utilities as a form of benchmark or market surrogate to
5 assess the reasonableness of the costs that Tampa
6 Electric pays for coal transportation and terminal
7 services?

8
9 **A.** Yes. I agree that the rail rates utilized and the
10 calculation established by the Commission to evaluate
11 Tampa Electric's waterborne transportation costs serve as
12 a valid benchmark and should be relied upon for that
13 purpose, as has been done by Tampa Electric in prior
14 years. Rail transportation is the only competitive
15 alternative to waterborne transportation for Tampa
16 Electric to transport the volume of coal it requires.
17 The methodology in place utilizes rail rates as the
18 company's and the Commission's best available
19 approximation of the next best alternative. I am not
20 aware of a better alternative for comparison for the
21 purpose of evaluating Tampa Electric's actual waterborne
22 transportation costs.

23
24 **Q.** Does this complete your testimony?
25

1 A. Yes, it does
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1 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

2 PREPARED REBUTTAL TESTIMONY

3 OF

4 BRENT DIBNER

5 ON BEHALF OF

6 TAMPA ELECTRIC COMPANY

7

8 Q. Please state your name, business address, occupation and
9 employer.

10

11 A. My name is Brent Dibner. My business address is Dibner
12 Maritime Associates, LLC, 151 Laurel Road, Chestnut Hill,
13 Massachusetts 02467.

14

15 Q. Are you the same Brent Dibner who submitted Prepared
16 Direct Testimony in this proceeding?

17

18 A. Yes, I am.

19

20 Q. What is the purpose of your rebuttal testimony?

21

22 A. The purpose of my rebuttal testimony is to address
23 certain inaccuracies and deficiencies in the assertions
24 and conclusions of the testimony of Dr. Anatoly
25 Hochstein, testifying on behalf of Ms. Catherine L.

1 Calypool, et. al and Mr. Michael J. Majoros, Jr.,
2 testifying on behalf of the Office of Public Counsel
3 ("OPC") and Florida Industrial Power Users Group
4 ("FIPUG").

5
6 **Q.** Please summarize your rebuttal testimony?

7
8 **A.** I firmly believe for the reasons detailed in my testimony
9 that the operating specifications contained in Tampa
10 Electric's request for proposal ("RFP") are common in the
11 industry and are familiar to and easily understood by
12 perspective bidders. This bid solicitation represents
13 the distinct requirements of the necessary coal movements
14 to meet Tampa Electric's needs and asks for responses
15 that will meet those stated needs and preferences. While
16 Dr. Hochstein offers certain criticisms of the request
17 RFP, he has admitted he has no experience in drafting or
18 evaluating RFPs while I have represented both carriers
19 and shippers in this process for many years. It is a
20 process with which I am thoroughly familiar.

21
22 More specifically, Dr. Hochstein's criticism of the total
23 volume requirement is particularly misplaced. Any
24 prudent shipper would prefer to rely on a single-focused

carrier wherever possible because such a carrier provides many distinct advantages including, but not limited, to economies of scale, flexibility, responsiveness, reliability and the ability to respond to the specific and particular needs of the shipper. The fragmentation of the movement of Tampa Electric's requirements would require a higher rate according to Dr. Hochstein's own admission. ". . . No carrier could reasonably operate equal to or lower than TECO Transport." I agree with Dr. Hochstein. Consequently, if the total volume requirement had been removed from the RFP the resulting market rates would be higher than the current TECO Transport rates.

I further agree with Dr. Hochstein that no other coastal or ocean carrier could match TECO Transport's rates. This is because from the inception of the integrated waterborne transportation system, TECO Energy has created a means by which Tampa Electric and its ratepayers have the economy of low cost fuel delivery in a highly reliable manner. TECO Transport has continued to improve and tailor its fleet to meet the specific needs of Tampa Electric and this has provided significant benefits to Tampa Electric's ratepayers. The rates

1 provided by TECO Transport are consistently lower than
2 rail rates and have ensured that a single railroad could
3 not win the business, drive away the marine option,
4 establish a captive customer and raise rates in the
5 future. TECO Transport's rates in the current contract
6 are substantially below those of other marine vessels and
7 are also below the CSXT railroad bid when adjusted to
8 reflect the full cost of the movement.

9
10 Dr. Hochstein has incorrectly asserted that certain
11 "structural problems" with Tampa Electric's RFP led to
12 few responses. This simply is incorrect. The RFP sets
13 forth a meaningful statement of the performance
14 requirements in terms that are appropriate for the
15 service required by Tampa Electric. It did not contain
16 operational limitations on prospective bidders. It is
17 essentially the same RFP structure that Tampa Electric
18 used in 1998 which attracted responses for terminal
19 service and inline transportation.

20
21 I find the consideration and analysis of backhaul by both
22 Dr. Hochstein and Mr. Majoros are totally inappropriate
23 in determining market rates. Backhaul is simply not

1 relevant to market rates for a dedicated one-way
2 transportation service for a single commodity as I will
3 explain in detail later in my testimony. A consideration
4 of backhaul is not for outside conjecture, interference,
5 confiscation, or reallocation in setting market rates.
6 Moreover, Mr. Majoros' analysis presumes that there are
7 backhaul revenues while failing to include incremental
8 backhaul costs which are significant. Both Dr. Hochstein
9 and Mr. Majoros overstate and oversimplify the actual
10 opportunity for northbound backhaul cargo. These
11 opportunities are extremely limited and are already taken
12 by other businesses and contracts. The backhaul ratios
13 used are incorrect and misleading and are arbitrary and
14 in some cases completely unsupported conjecture.
15 Backhaul rates represent incremental benefits to carriers
16 and the carrier in any market has no obligation to give
17 back or share these benefits with customers.
18 Consequently, any presumptions regarding a backhaul rate
19 are entirely speculative and inappropriate in setting
20 market rates.

21
22 The criticism of the models I used in my market rate
23 analysis for Tampa Electric is also unfounded. I based

5 my study of this market on a careful factual analysis of
6 the elements of the transportation system and I took
7 great care in my review of market conditions. I have
8 applied my more than 27 years of continuous direct
9 involvement in these markets and my results, unlike Dr.
10 Hochstein's, are not based on public port policy studies
11 and faulty U.S. Army Corps of Engineers ("Corps") data.
12 It is based on actual experience in moving millions of
13 tons of cargo. The models I use are clear, explicit,
14 detailed and above all realistic and fair. The testimony
15 describes the great lengths that I went to. I am sure
16 that my study was thorough and reflective of the market.
17 Contrary to the assertions of Mr. Majoros, my models have
18 been available to the Commission Staff and intervenors
19 for months for them to review and gain a complete
20 understanding of how and what the models considered. The
21 Commission Staff and intervenors have been free to make
22 changes to the assumptions to test results of the models
23 and their sensitivities. Further, the input values that
drove the calculations in the models were allowed to be
edited. Only the specific formulas that were in the
models were held constant to ensure the integrity of the
models. This fact, however, did not preclude intervenors

1 from establishing their own model of their own design.
2 Further, contrary to the assertions of Mr. Majoros, I
3 have described all the input that I relied on in my study
4 and other experts in waterborne transportation who have
5 derived their own experiences could have used their
6 knowledge to corroborate or reject the inputs in my
7 models. Consequently, Mr. Majoros has only put forth
8 generalized and unsupported criticisms of the models.
9 His adjustments are little more than speculation with no
10 basis in the bulk transportation marketplace. Further,
11 Dr. Hochstein made many errors in his analysis of both
12 the models and the marketplace which I discuss somewhat
13 later in my testimony.

14
15 With respect to cost-plus pricing, I think that all of
16 the elements presented make it very plain that there is a
17 market for the transportation of coal from its supply to
18 Tampa which should be the focus of the Commission in this
19 proceeding. Furthermore, there is a definite market for
20 each of the three legs of the waterborne transportation
21 system, contrary to the assertions of Dr. Hochstein.
TECO Transport simply is the most efficient and least
cost option for Tampa Electric Company in this market

3 because it has the largest, most efficient and fastest
4 fleet available to serve Tampa Electric's needs. For all
5 the reasons previously acknowledged by this Commission,
6 cost-of-service pricing should not be adopted. It is
7 clear that a market does exist for all three segments,
8 bids were received from the railroad and reasonable and
9 appropriate market rates have been determined based on
10 the bid responses and my comprehensive analysis. Again,
11 the reasonableness of my market rates is specifically
12 corroborated by the railroad bid. Moreover, the rate I
13 recommended is also lower than the previous contract rate
14 that expired year-end 2003.

15 Dr. Hochstein's assertions that TECO Transport barges are
16 inherently inferior to ships in the preference trade and
17 ships within the same capacity are particularly
18 uninformed as I detail later in my testimony. Dr.
19 Hochstein's analysis is simply incorrect because his data
20 is incomplete and inaccurate. Again, TECO Transport
21 barges are among the largest, fastest and most reliable
22 units due to their interconnection features and their
23 many opportunities to participate in the preference
trades. These barges are among the most competitive in

1 the U. S.-flag fleet and therefore, demand high rates in
2 the preference trade because they are well maintained and
3 extensively re-fitted to provide low cost transportation
4 for their owner and customers. These barges could be
5 competitive in several trades including coal, fertilizer,
6 phosphates, pet coke, grain, scrap metal and cement to
7 name a few.

8
9 I believe that Dr. Hochstein's alternative rate
10 methodology is invalid for numerous reasons detailed
11 later in my testimony. Dr. Hochstein's analysis is
12 extremely rudimentary and filled with errors that are a
13 reflection of the shortcomings and errors of the Corps
14 data upon which he relies as I explain further in greater
15 detail in my testimony. Likewise Dr. Hochstein's
16 calculation of TECO Transport's freight rates based on
17 barge earnings is replete with many errors such as short-
18 term operating costs, financing terms and the exclusion
19 of port costs. Additionally, his calculation of TECO
20 Transport's freight rates based on foreign competition
21 completely ignores the dramatic strong upward trend in
22 rates for Handymax and Panamax vessels which have more
23 than quadrupled from August 2002 through March of 2004.

1 The charter rates for Handymax and small older Panamax
 2 are two to three times the rates used in Dr. Hochstein's
 3 model. He also fundamentally failed to adjust for draft
 4 limitations that exist at present and will for years in
 5 the future. The transportation arrangements for Tampa
 6 Electric had to be available starting January 1, 2004,
 7 not at some future date years into the future.

8

9 Q. Have you prepared an exhibit in support of your
 10 testimony?

11

12 A. Yes, Exhibit No. (BD-2), consists of one two-page
 13 document, which is furnished to provide corrections to
 14 certain assumptions and omissions of Dr. Hochstein's
 15 calculation of freight rates based on barge earnings.

16

17 **TAMPA ELECTRIC'S REQUEST FOR PROPOSAL**

18 Q. On Page 5 of his testimony, Dr. Hochstein states Tampa
 19 Electric's 2003 RFP contains "so many industry non-
 20 standard and otherwise restrictive conditions." Do you
 21 agree?

22

23 A. No. The terminology, requirements, conditions, rates of
 24 cargo handling, and other operating specifications

1 contained in the Tampa Electric RFP are common in the
2 industry and would be familiar and easily understood by
3 prospective bidders. In addition, the bid solicitation
4 represents the distinctive requirements of the necessary
5 coal movements to meet Tampa Electric's needs. The
6 solicitation sets forth a meaningful definition of a
7 trade that exists, and asks for proposals that are
8 responsive to Tampa Electric's stated needs and
9 preferences. Dr. Hochstein's conclusion that Tampa
10 Electric's RFP contains "so many industry non-standard
11 and otherwise restrictive conditions" reflects his lack
12 of knowledge and actual experience regarding RFP
13 specifications as well as Tampa Electric's specific
14 needs. During Dr. Hochstein's deposition, he admitted
15 that he has no experience in drafting or evaluating RFPs.
16 [Hochstein Deposition Transcript, Volume I, pg 16-17]

17
18 **Q.** Which of Dr. Hochstein's assertions regarding Tampa
19 Electric's RFP requirements are you addressing?

20
21 **A.** I will address the assertions Dr. Hochstein makes
22 regarding: 1) demurrage, 2) total volume requirements and
23 3) RFP structure. Tampa Electric witnesses Joann T.
24 Wehle and Frederick Murrell will address the remainder of
25 Dr. Hochstein's assertions regarding Tampa Electric's RFP

1 requirements.

2

3 **DEMURRAGE RFP REQUIREMENT**

4 Q. On page 17 of Dr. Hochstein's testimony he concludes that
5 the demurrage requirement in the RFP was neither an
6 industry standard nor a reasonable requirement. How do
7 you respond?

8

9 A. I do not agree. Tampa Electric stated in its RFP that
10 "Tampa Electric will not be responsible for demurrage at
11 the terminal," referring to the Lower Mississippi loading
12 terminal. This means that the terminal and the ocean
13 carrier must internally absorb or settle any demurrage
14 claims that arise and that the outcome of any claims
15 cannot be passed on to Tampa Electric for payment. This
16 is entirely reasonable because Tampa Electric has no
17 control over the terminal or the barge operators'
18 performances. Therefore, this requirement protects both
19 Tampa Electric and its customers from additional
20 expenses.

21

22 **TOTAL VOLUME RFP REQUIREMENT**

23 Q. On page 26 of his testimony, Dr. Hochstein states that he
24 believes the "all or nothing" total volume RFP
25 requirement excluded smaller carriers that could handle a

portion of the total volume at a lower cost. Please respond.

- 4 **A.** It is a widely known fact that shippers prefer to rely
5 upon a single-focused carrier wherever possible because a
6 single carrier provides economies of scale, flexibility,
7 responsiveness, greater ability to customize services and
8 technology to meet particular needs, simplified
9 operational planning, scheduling and coordination,
10 minimal financial administration and a direct path for
11 establishing responsibility and avoiding cross-claims.
12 This is particularly the case when 1) a carrier is
13 capable of providing efficient and effective service
14 within a high activity region, like TECO Transport's
15 focus on the lower Ohio River and the trade to a single
16 discharge terminal in Davant, Louisiana; and 2) when a
17 carrier has a positive, long-standing relationship with
18 the customer. There are examples of this both inside and
19 outside the inland industry. For example, the US Gulf
20 and Atlantic-based asphalt shipping industry relies on a
21 single carrier, Penn Maritime, as the specialist in
22 coastwise asphalt transportation. Also, three utilities
23 in Connecticut, Massachusetts, New Hampshire, and
24 industrial consumers in Maine individually chose a single
25 carrier to meet their domestic coal transportation needs.

1

2 Q. Dr. Hochstein advocates that the "all or nothing" total
3 volume requirement was not reasonable and that bids for
4 transporting partial volumes should have been allowed.
5 Given his assertion, what would be the impact on rates?

6

7 A. The rates would be higher according to Dr. Hochstein's
8 own testimony:

9

10

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13

- "Even if they had the technical capacity,
due to the smaller size of their barges, no
carrier could reasonably offer rates equal
to or lower than TECO Transport." (Hochstein
pg 26, lines 2-4)

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Q. Dr. Hochstein concludes on page 24 of his testimony that

1 there were no other coastal or ocean carriers that could
2 match TECO Transport's rates. How do you respond?
3

4 **A.** I agree. From the inception of the integrated waterborne
5 transportation system, TECO sought to create a means by
6 which Tampa Electric and its ratepayers would have the
7 economy of low cost fuel delivered in a highly reliable
8 manner. The movement of coal to Tampa is a unique
9 movement because it is the largest single movement of
10 coal or any other commodity movement for a single
11 customer in the US coastwise trade. Throughout the more
12 than 50 years of this movement, Tampa Electric and its
13 ratepayers have benefited from delivery costs that were
14 consistently lower than rail rates and ensured that a
15 single railroad could not win the business, drive away
16 the marine option, establish a captive customer and then
17 raise rates in future contract periods as is the norm.

18
19 Dr. Hochstein is also correct that no single vessel or
20 group of vessels in the market are in a position to offer
21 rates that would be lower than TECO Transport's rates or
22 the rates I recommended in my report. Tampa Electric's
23 contract rates with TECO Transport provide savings to
24 ratepayers because the rates are substantially below
25 those of other marine vessels and are also below the CSXT

1 railroad bid, when the proper adjustments are made as
2 discussed in witness Wehle's direct testimony.

3
4 **RFP STRUCTURE**

5 Q. Dr. Hochstein asserts on page 22 of his testimony that
6 there were structural problems with Tampa Electric's RFP
7 that led to few responses. How do you respond?

8
9 A. I do not agree. The RFP sets forth a meaningful
10 statement of the salient performance requirements in
11 terms that are appropriate for the service required by
12 Tampa Electric. It did not limit the sizes of the
13 vessels or impose specific technologies. It did not
14 require unloading or specify speeds. It did not require
15 bidders to have personnel, fleeting sites, switch boats,
16 or other activities. It is essentially the same RFP
17 structure that was used in Tampa Electric's last bid
18 solicitation in 1998. Both the 1998 and 2003
19 solicitation attracted responses for terminal service and
20 inland transportation, even as the industry consolidated
21 and was experiencing very difficult market conditions.

22
23 **BACKHAUL**

24 Q. Should backhaul opportunities be considered in
25 calculating Tampa Electric's approved transportation

1 service rate as Dr. Hochstein and Mr. Majoros contend?

2

3 **A.** No, backhaul should not be considered when determining
4 market rates for providing Tampa Electric's coal
5 transportation services for several reasons. First,
6 backhaul is irrelevant to the market rates for dedicated
7 one-way transportation service for a single commodity.
8 The headhaul rate is the relevant rate.

9

10 Second, shippers and carriers seek the best economic
11 arrangements they can make in the marketplace. Shippers
12 seek competitive rates; carriers try to maximize earnings
13 and rates. Competitive pressures and service
14 requirements exert pressure and temper the balance
15 between long- and short-term interests. Backhaul rates
16 represent incremental benefits to carriers that are low
17 cost providers. A carrier has no obligation to give back
18 or share these benefits with headhaul customers.

19

20 Third, I have researched the inland waterways headhaul
21 and backhaul markets for many years, often working with
22 major carriers. The backhaul market is far less
23 available to open hopper barges, like TECO Transport's,
24 on the inland waterways moving through the Louisiana to
25 Lower Ohio River corridor. On the ocean side, TECO

Transport has methodically used its fleet's economies of scale and the unique unloading technologies of some of the barges in the trade to provide superior solutions.

5 Fourth, the terms, duration, requirements and flexibility
6 of the fertilizer and phosphate rock contracts are
7 confidential. It would be reckless and cavalier for me
8 to presume any spillover revenue or costs from these
9 other undisclosed contractual relationships between TECO
10 Transport and its customers.

11

12 Fifth, there is the very real possibility that the trade
13 volumes of the coal or the fertilizer industry could
14 change dramatically, thereby creating higher or lower
15 volumes of activity that could destroy or disrupt the
16 terms and even existence of backhaul.

17

18 Additionally, I must point out that while Mr. Majoros
19 presumes that there are backhaul revenues, he fails to
20 include in his analysis the incremental backhaul costs of
21 cleaning, shifting berths, extra sailing distances in
22 Tampa Bay and the Lower Mississippi River, and additional
23 loading and discharge times. Mr. Majoros also omitted
24 the costs for the additional fuel required to push fully-
25 loaded inland barges upstream against the river currents

of the Lower Mississippi and Ohio Rivers and the additional fuel required to push fully loaded ocean barges against the Gulfstream currents as well as potential reductions in inland river tow size and speed. These costs are not trivial. Regardless, in my experience consideration of backhaul is not for outside conjecture, interference, confiscation, or reallocation when setting market rates.

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10 **Q.** So, is it appropriate for Tampa Electric to pay a
11 headhaul rate that includes the full round trip, without
12 consideration or credit for any backhaul cargo that might
13 arise?

14
15 **A.** Yes. This approach to market pricing is consistent with
16 the necessity for dedicated service and reliability. If
17 TECO Transport is able to coordinate backhaul within the
18 constraints of serving Tampa Electric, then they are
19 entitled to the market returns of that business.

20
21 **Q.** On page 27 of his testimony, Dr. Hochstein maintains that
22 additional responses from inland waterways barge
23 companies would have resulted in lower bid proposals
24 because "these companies would have considered backhaul
25 cargoes in calculating the headhaul rates submitted to

1 Tampa Electric." How do you respond?
2

3 A. That is pure speculation. Dr. Hochstein has no basis for
4 concluding that, if an additional carrier had bid, its
5 rate to transport five million tons for a five-year
6 movement of southbound coal would have been below the
7 rates I developed. The rates I developed were for the
8 full five million tons and were very close to the rates
9 bid by [REDACTED], an inland barge company, for just one
10 million tons. Additionally, Dr. Hochstein's assumptions
11 are simplified and lead to erroneous conclusions. For
12 example, the actual opportunities for northbound backhaul
13 cargoes into the Lower Ohio River are extremely limited
14 and are already taken by other business and contracts.
15 Dr. Hochstein's suggestion that the northbound backhaul
16 ratio on the Lower Mississippi is as high as 65 percent
17 is incorrect and misleading; the percentage provided in
18 aggregate by the Corps, fails to consider the separation
19 of cargoes that require different types of barges and the
20 geographic origins and destinations of cargoes.

21
22 Dr. Hochstein also fails to recognize that backhaul is
23 not just a revenue stream for carriers. He makes no
24 attempt to evaluate the cost and operational implications
25 of backhaul business. For example, on page 19 of my

1 report which was filed as an Exhibit No. 1, Document No.
2 1 to my direct testimony, it is clearly shown that
3 backhaul rates into the upper portion of the Ohio River
4 and into the industrially diverse Pittsburgh area are
5 consistently much higher than the southbound rates.
6 However, when combining reported spot northbound and
7 southbound business, the round-trip market rate for a
8 barge is at least \$14.00 per ton, far more than the
9 contractual rates that I proposed in the [REDACTED]
10 range.

11
12 2. Mr. Majoros states on page 21 of his testimony that, in a
13 competitive market, a provider would allocate a portion
14 of costs to backhaul so the provider's rate can be lower
15 to keep the customer. In a non-competitive market, the
16 provider can keep the backhaul revenues as "gravy." Is
17 that what you are proposing?

18
19 A. Not at all. As I previously stated, backhaul is
20 irrelevant when setting market rates for providing
21 dedicated one-way transportation service for a single
22 commodity as is the case with Tampa Electric. Backhaul
23 rates represent incremental benefits to carriers and the
24 carrier has no obligation to give back or share these
25 benefits with headhaul customers. Any presumptions

1 regarding a backhaul rate would be entirely speculative
2 and inappropriate when setting market rates. Like Dr.
3 Hochstein, Mr. Majoros presumes that all backhaul
4 revenues are "gravy" but does not presume any costs.
5 Substantial costs are incurred for cleaning, loading and
6 unloading, extra miles, voyage time, tugs, pilotage, etc.
7 In addition, berth congestion and cargo handling rates
8 may introduce additional delays. Regardless, backhaul is
9 irrelevant when setting market rates.

10
11 **Q.** What additional information did Mr. Majoros rely on to
12 conclude that TECO Transport relies on backhaul in its
13 business?

14
15 **A.** Mr. Majoros points to statements on TECO Transport's web
16 site and in TECO Energy's Form 10-K filed with the
17 Securities and Exchange Commission. TECO Transport's web
18 site states that TECO Barge Line is growing, as
19 "evidenced by the success TECO Barge Line has enjoyed
20 with its northbound shipping." The 10K states that
21 "Northbound river shipments of steel-related raw
22 materials are expected to improve in 2003 as the U.S.
23 economy improves." ". . .In the meantime, TECO Transport
24 expects to move increased volumes of fertilizers and
25 petcoke northbound on the river system." These

statements cannot be relied on to support a robust backhaul business. The barge business is inland and may be unrelated to commodities being backhauled from Tampa. Similarly, northbound shipments can be headhaul to some locations and/or cargoes that require covered hopper barges which predominately carry cement, fertilizers, steel products, ores, non-ferrous metals, salt, and most other northbound commodities, such as steel.

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Q. Mr. Majoros used data obtained from the Port of Tampa to estimate the amount of backhaul on the ocean segment. Should the Commission consider Mr. Majoros' backhaul adjustment to the ocean portion of the rate?

A. No, the Commission should disregard Mr. Majoros' recommended backhaul adjustment on the ocean segment for the same reasons I discussed above.

Q. How did Mr. Majoros determine the amount of the backhaul adjustment for the river segment?

A. Mr. Majoros lacked data quantifying backhaul on this segment, so he arbitrarily used the average backhaul ratio of the ocean vessels, which he arbitrarily assumed was 69.34 percent. He then reduced the river rate I

1 proposed by one-half this amount, or 34.67 percent.

2

3 Q. Is Mr. Majoros' approach reasonable?

4

5 A. Absolutely not. Mr. Majoros cannot assume that the
6 backhaul ratio is the same since the river trade is
7 totally different from the ocean trade. My analysis of
8 2002 traffic moving on the lower Mississippi River
9 suggests that the amount of backhaul available to open
10 hopper barges is very limited on the Lower Mississippi
11 mainstem to all destinations (the Middle Mississippi, the
12 Upper Mississippi, the Illinois Waterway, the Missouri
13 River, the Arkansas McLellan-Kerr, etc.).

14

15 Q. What is your recommendation to the Commission with
16 respect to Mr. Majoros' backhaul adjustment?

17

18 A. For the reasons I stated above, I would recommend that
19 the Commission totally disregard Mr. Majoros' backhaul
20 adjustment. It is not appropriate for the Commission to
21 consider any such adjustment when determining market
22 rates for waterborne transportation services.

23

24 **MR. DIBNER'S MODELS AND MARKET RATE ANALYSIS**

25 Q. What is your response to Dr. Hochstein's assertion that

your model is purely theoretical?

2

3

A. Throughout my involvement in this waterborne transportation solicitation, and previously in 1998 and 1988, I have based my study of rates on a careful factual analysis of the elements of the transportation system and have taken great care in my review of the market including bids and general market conditions. Unlike Dr. Hochstein, who has no actual experience in bidding on business, setting rates or analyzing waterborne transportation costs for or with actual marine carriers, I have more than 27 years of continuous involvement in these markets. My experience is not based on public port policy studies. Instead, it is based on actual experience moving hundreds of millions of tons of cargo.

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My work reflects the responsibility for setting rates

1
2 great lengths to ensure that my study was thorough and
3 reflective of the market. I analyzed a total of 135
4 voyages, examining each vessel in its own right. I
5 ensured that TECO Transport's rates reflected an average
6 rate rather than the rate of the tug-barge unit with the
7 highest required rate. I averaged time charter earnings
8 opportunity costs with depreciated replacement values in
9 a rigorous attempt to bring TECO Transport economies
10 further into the rate-setting. I examined the supply and
11 demand balance of the US-flag fleet and evaluated more
12 than five years of monthly historical rates to identify
13 trends on the inland waterways. I also refrained from
14 including any standby or capacity charges for equipment
15 that could have reasonably been charged to meet
16 fluctuating demands on a monthly or annual basis. My
17 models are anything but theoretical.

18
19 2. On page 18 of his testimony, Mr. Majoros was critical of
20 your models because of limitations from editing formulas
21 and variables within the models. Please explain how
22 access to the model was provided to the Commission Staff
23 and intervenors in this case?

24
25 1. The Commission Staff and the intervenors were given

1 access to my models so they could review and gain an
2 understanding of how the models worked and what they
3 considered. I flew to Tallahassee to provide a tutorial
4 session for the Commission Staff and the intervenors.
5 They were free to make changes to the assumptions and to
6 test the results of the models and their sensitivities.
7 The input values that drove the calculations in the
8 models were allowed to be edited. Only the formulas that
9 run the models were held constant to ensure the integrity
10 of the models.

11
12 **Q.** Could the intervenors create their own models if they did
13 not agree with your analysis?

14
15 **A.** Absolutely. All of the intervenors had ample opportunity
16 to retain a waterborne transportation consultant to
17 develop market models of their own design.

18
19 **Q.** Mr. Majoros agrees that you have "extensive experience"
20 in the area of waterborne transportation, but says that
21 data derived from your own experience cannot necessarily
22 be verified by others. Is this true?

23
24 **A.** Mr. Majoros' statement on this point can be said of every
25 expert who draws on his or her professional experience.

1 However, the important point is that I have shared with
2 the Commission Staff and the intervenors all the formulas
3 that make up my models and all of the inputs I relied
4 upon in my study. Other experts in waterborne
5 transportation could have used their knowledge to
6 corroborate or reject the inputs to my models.
7 Additionally, none of the intervenors have challenged my
8 assumptions despite the fact that every single variable
9 was set forth explicitly for review by Commission Staff
10 and the intervenors. The voluntary tutorial session I
11 conducted provided the Commission Staff and the
12 intervenors an explanation of the data and the models'
13 operations. Tampa Electric also responded to numerous
14 interrogatories regarding the models. Supporting data
15 has been provided in discovery and in my report. In view
16 of this, Mr. Majoros' generalized criticisms of the
17 models and his adjustments appear to be little more than
18 speculation because Mr. Majoros has provided no basis for
19 his concepts of the marketplace that bear on the bulk
20 transportation marketplace.

21
22 Q. Dr. Hochstein states on page 40 of his testimony that
23 "Witness Dibner's methodology apparently assumes that
24 replacement cost, or the cost based on construction of a
25 new TECO Transport fleet and other similar dry bulk

1 vessels, approximates the supply side...". Do you agree?

2

3 .. No. Dr. Hochstein is mistaken in his understanding and
4 explanation that I applied replacement costs for my ocean
5 rate analysis. In fact, my analysis was based on the
6 depreciated value of full replacement cost in almost all
7 cases. This applied substantial reductions in the cost
8 of the assets. The replacement value of the core barges
9 is \$193.4 million; I only used [REDACTED] million as my basis.
10 My total value for the ocean fleet amounts to less than
11 30 percent of TECO Transport's total assets, which
12 substantially understates the investment cost because of
13 vessels under lease agreements.

14

15 2. Do you agree with Dr. Hochstein's assertion that it is
16 impossible to know the costs of US-flag tugs and dry bulk
17 barges?

18

19 A. No. The U.S. Department of Transportation's Maritime
20 Administration ("MarAd") publishes the actual costs of
21 all dry bulk barges and ocean barge towing and pushing
22 tugs in its Title XI mortgage guarantee program. Once
23 adjusted to 2003 cost levels, they provide a very sound
24 basis for understanding the magnitude of costs. In
25 addition, active and expert naval architects in the tug-

barge design arena are constantly working with shipyard quotes and contract prices.

3

4 **Q.** Do you agree with Dr. Hochstein's statement that "the
5 cost that determines price is always the "opportunity
6 cost" and not a theoretical replacement cost?"

7

8 **A.** Yes, I do and that is why I considered the replacement
9 cost of the vessels and also the estimated value of these
10 assets in the marketplace. Overall, my approach served
11 to lower TECO Transport's rates below the real
12 opportunity costs that Dr. Hochstein and I agree
13 determine the price. I did not permit the fleet to price
14 at the highest required rate of the tug-barge, but rather
15 ensured that the efficiencies of the TECO Transport ocean
16 fleet were reflected in the market rate calculations.

17

18 Dr. Hochstein concurs with my assessment that smaller,
19 slower, non-articulated or non-integrated tug-barges
20 cannot possibly provide lower transportation rates for
21 one million tons of coal, let alone five million tons.
22 As a result, I focused on TECO Transport's rates by
23 exploring their earnings potential in the markets they
24 could serve. As I previously stated, I did this by using
25 135 preference transactions served by barges that

1 participate in the Jones Act trade. As shown in my
2 report and in additional documentation provided in
3 discovery responses, the information clearly suggests
4 that vessels that chose to leave their highly utilized
5 activities in Jones Act trade were earning rates that
6 were comparable and consistent.

7
8 **COST-PLUS PRICING**

9 2. Dr. Hochstein concludes that cost-plus pricing,
10 especially for the coastal leg, may be the best way to
11 determine fair and reasonable coal transportation rates
12 since no one can effectively compete. How do you
13 respond?

14
15 A. I do not agree. Dr. Hochstein has not demonstrated that
16 there is not a market for the coastal or ocean segment or
17 that the market rates from my analysis are above market
18 price. With respect to the coastal segment, Dr.
19 Hochstein acknowledges that there are other coastal
20 barges that could deliver coal to Tampa, but that they
21 were unable to pursue the contract due to prior
22 commitments. In addition, Dr. Hochstein acknowledges
23 that TECO Transport is the most efficient and least cost
24 option for Tampa Electric's ocean-going coal movement.
25 The fact that the present supply of vessels in the market

1 does not include another fleet of the size and capacity
2 to serve Tampa Electric does not support the conclusion
3 that there is no market; rather, it reflects the
4 competitive and efficient use of the market's available
5 operating capacity. My task was to analyze in detail the
6 participants in the markets and derive from my analysis
7 fair market rates for transportation services required by
8 Tampa Electric. That is what I did and the use of the
9 resulting rates would be far superior to any type of
10 cost-plus pricing.

11
12 As Dr. Hochstein has acknowledged, and as the Commission
13 has previously recognized, cost-of-service pricing
14 requires specialized knowledge. It is complex,
15 expensive, contentious and time consuming; accordingly,
16 the Commission required that market prices should be
17 established for affiliate provided transportation-related
18 services, if possible. Therefore, there is no reason for
19 cost-plus regulation given that a market does exist for
20 all three segments. Bids were received from the railroad
21 and reasonable and appropriate market rates have been
22 determined based on the bid responses and my
23 comprehensive analysis. Again, the reasonableness of the
24 market rate I recommended is corroborated by the railroad
25 bid as discussed in witness Wehle's direct testimony.

1 The rate I recommended is also lower than the previous
2 contract rate that expired year-end 2003.

3
4 **PREFERENCE TRADE**

5 **Q.** Do you agree with Dr. Hochstein's assertion that TECO
6 Transport's barges are inherently inferior to ships in
7 the preference trades and to ships with the same
8 capacity?

9
10 **A.** No, I do not. First, in response to Dr. Hochstein's
11 testimony, I must clarify the terms integrated tug-barge
12 ("ITB"), articulated tug-barge ("ATB") and tug-barge as
13 he incorrectly referenced them.

14 • An integrated tug barge is a mechanically linked tug
15 pushing a barge 100 percent of the time, usually with
16 a linkage that restricts the tug's movements in two
17 axes of movement, essentially rigidly locking the tug
18 to the barge. An ITB is essentially a ship that has a
19 small crew and is often built at a lower overall cost.
20 ITB tugs are generally not used without their consort
21 barge. Other than TECO Transport, only one other ITB
22 is in coastwise trade, primarily in the Pacific coast
23 sugar trade.

24 • An articulated tug barge is a mechanically linked tug
25 pushing a barge 100 percent of the time, usually with

1 | a linkage that restricts the tug's movement in one
2 | axis, usually transverse, essentially leaving the tug
free to move in another axis. Other equipment, such
as hydraulic pads, notch configurations and other
5 | features may be involved. The tug involved with ATBs
can usually retract its linkage gear and can work with
multiple barges, and operate as a sea-going tug,
8 | towing barges if necessary. Other than TECO
Transport, no other barges have ATB linkages and
consort tugs in operating condition at this time.

- 11 | • A tug-barge unit involves a tug that is able to push
barges in moderate seaways, but must withdraw from the
barge's stern notch and tow the barge when sea
14 | conditions make pushing impossible due to motion
between the tug and barge. All other barges are
loose-linked.

17 |

TECO Transport's barges are among the largest, fastest
and most reliable units due to their interconnection
20 | fixtures and tug-barge connections. From public
statements in reports as well as industry knowledge, TECO
Transport's ITBs and ATBs have successfully operated
through the Americas and to points in Africa, Asia, the
Middle East, the Far East and the former Soviet Union.
Furthermore, Dr. Hochstein is simply incorrect in his

reliance on Maritime Administration data for the identification of ITBs and ATBs because the data is incomplete and inaccurate. For example, one ATB, comprised of a former east coast coastal tug and a former New York City sludge barge, has been engaged in multiple preference voyages to Pakistan from the US Gulf transporting cooking oil during the past two years.

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9 **Q.** Dr. Hochstein believes that the premium for preference trades is not appropriate because the TECO Transport barges presently serving Tampa Electric have limited alternative employment opportunities. Do you agree?

10
11
12
13
14 **A.** No. All barges face some limitations but the TECO Transport barges are among the most competitive in the US-flag fleet and therefore, they can demand high rates in the preference trades. They are large, very well-maintained and extensively re-fitted to provide low cost transportation for their owner and customers. These barges are most competitive in several trades: coal, fertilizer and phosphates from Tampa to the Mississippi River, petcoke from the US Gulf to various plants, fertilizer and grain from the US Gulf and Atlantic coasts to San Juan, Puerto Rico and scrap metal to North Carolina. If necessary, they can also compete in the

1 coastal cement trade, which is served today by smaller
2 barges that are not ideally suited for the long voyages
3 from the Hudson River to the Southeast. As shown in my
4 report, the TECO Transport fleet was highly utilized
5 based on 2001 demand data. In fact, the demand increased
6 in trades other than Tampa in 2002. It is also important
7 to note that TECO Transport's tugs and barges are
8 extremely valuable for their potential to be converted
9 into coastal petroleum products barges or coastwise
10 container barges. TECO Transport's large and powerful
11 tugs are quite rare in these power ranges. TECO
12 Transport's large barges have double bottoms already and
13 can be converted for these purposes. Finally, these tug-
14 barge units can compete in the preference trades, which
15 represent millions of tons of additional trade.

16
17 **MR. MAJOROS' PREFERENCE TRADES ADJUSTMENT**

18 Q. Mr. Majoros made an adjustment to eliminate what he
19 refers to as the "preference trade premium" incorporated
20 in your model. Do you agree with this adjustment?

21
22 A. No, I do not. What Mr. Majoros characterizes as a
23 premium is actually an economically sound consideration
24 of the opportunity costs of the vessels serving Tampa
25 Electric rather than participating in other earnings

1 opportunities available to them. The preference rates
2 are very representative of the rates prevailing in the
3 US-flag-Jones Act marketplace. Barges move between the
4 two trades and would not bid if earnings were very
5 different from the rates that could be earned in the
6 coastwise trade, based on size of vessel. TECO
7 Transport's alternative opportunities include Jones Act
8 and preference trades. Preference time charter rates
9 tend to be higher because the ships are larger than the
10 small and less efficient barges that exist in the Jones
11 Act fleet.

12
13 Q. What is Mr. Majoros' basis for not agreeing with this
14 aspect of your model?

15
16 A. Mr. Majoros provides no basis other than saying, in his
17 opinion, such a premium would not be used in the model of
18 a competitive market. He apparently does not subscribe
19 to the very real opportunities that TECO Transport has in
20 the marketplace, and that these opportunity costs have to
21 be considered in arriving at a market price.

22
23 **Dr. Hochstein's Alternate Market Rate Methodology**

24 Q. Is Dr. Hochstein's methodology for establishing a market
25 rate based on replacement costs appropriate?

1 A. No. It appears that Dr. Hochstein misunderstood the
2 methodology I employed because I did not use replacement
3 cost as he states. As I stated earlier, I used
4 depreciated replacement cost, which recognizes the age
5 and reduced remaining service life of each vessel. My
6 methodology resulted in substantial reductions in
7 valuations, thereby yielding lower rates. Dr.
8 Hochstein's methodology is also erroneous because he did
9 not establish replacement cost for any of the tug-barge
10 units in TECO Transport's service. He used the Corps'
11 "Planning Guide" information as a source for replacement
12 costs for the 35,000 dead tonnage weight ("dwt") bulk
13 ship in his hypothetical example. This information is
14 used by planners and engineers within the Corps for
15 general guidance when considering the cost-benefit
16 analysis of federal infrastructure investments in
17 channels and waterways. While it is drawn from various
18 sources, it is generally processed by individuals with
19 little or no exposure to commercial shipping economics.
20 Consequently, the information is not widely used or
21 accepted, certainly not by actual vessel operators.
22
23 Additionally, the Corps' annual capital costs are
24 incorrect for a commercial enterprise because the costs
25 assume 100 percent debt financing, which is not available

1 to commercial ships and the cost is not replacement cost
2 because it is based on a seven year old built ship.
3 Furthermore, depreciation and tax shield effects are not
4 considered.

5
6 The problem with Dr. Hochstein's analysis is the cursory
7 manner in which he relied on limited, inapplicable
8 statistics, applied them in error and then presumed that
9 he could cast aside market conditions, bid proposals and
10 actual costs for port time, cleaning, additional transit,
11 port costs and other expenses. He also assumes
12 competition exists from vessels he admits cannot apply
13 market pressure and he erroneously evaluates a single
14 hypothetical ship and then puts forward a simple
15 conclusion that has no basis in reality.

16
17 Q. On page 54 of his testimony, Dr. Hochstein presents a
18 sample of time charter equivalent rates of TECO
19 Transport's barges and ships, compared with those based
20 on Corps data. **Is this an appropriate comparison?**

21
22 A. No, it is not. The time charter equivalent rates are
23 based upon a hypothetical 35,000 dwt ship that is non-
24 existent and therefore, meaningless in such an analysis.
25 Furthermore, a single ship, even if it existed and was

1 available, could not move a substantial portion of Tampa
2 Electric's coal.

3
4 **Q.** Is Dr. Hochstein's calculation of TECO Transport's
5 freight rates based on its barges' earnings in the
6 preference trade correct or appropriate?

7
8 **A.** No. Dr. Hochstein's analysis is based on a hypothetical
9 ship, his analysis is severely flawed and as I state
10 above, his use of the Corps replacement costs is
11 inappropriate. Even if I accept his hypothetical
12 example, which clearly I do not, I note the following
13 regarding Dr. Hochstein's analysis and provide Exhibit
14 No. ___ (BD-2), Document No. 1 which corrects his
15 incorrect assumptions and omissions and graphically
16 demonstrates the corrected results:

- 17
- 18 • Assuming commercial terms instead of federal financing
19 terms, the \$65.1 million cost for the same ship cited
20 in the Corps fiscal year ("FY") 2000 "Planning
21 Guidance" and an assumed residual value, the ship
22 would require \$24,000 per day as compared with Dr.
23 Hochstein's \$13,343. Using Dr. Hochstein's 6.02-day
24 voyage, this difference adds \$ 1.82 per short ton to
25 his rate.
 - Using operating costs from the MarAd which is based on

1 actual filings by carriers, the bulk ship costs
2 returns adjusted to 2003 for a 35,000 dwt ship is
3 \$16,400 per day compared with the \$13,900 per day used
4 by Dr. Hochstein. This difference adds \$0.43 per
5 short ton to his rate.

- 6 • Inclusion of the port costs for tugs, pilots, line-
7 handlers, etc. which Dr. Hochstein omitted. Assuming
8 a modest \$10,000, this adds \$0.29 per short ton to his
9 rate.
- 10 • Dr. Hochstein assumes that his ship will burn heavy
11 fuel oil. In fact, as an ITB, the vessel will burn a
12 very light IFO or diesel fuel. Assuming diesel fuel,
13 the fuel cost increases by \$7,161 which adds \$0.20 per
14 short ton to his rate.
- 15 • The actual cost of a new US-flag ship would be even
16 higher than the Corps' \$52.3 million in FY 2002 or
17 \$65.1 million in FY 2000. Based on Title XI costs for
18 the real capital costs of a self-unloading bulk ship
19 would be in the range of \$140 million. A non-self-
20 unloading ship could be less, even at \$100 million
21 this would indicate a daily capital cost of \$36,900,
22 which adds an additional \$2.22 per short ton to Dr.
23 Hochstein's rate.

24
25 Therefore, when fairly adjusted, Dr. Hochstein's \$5.12

1 per ton for a new vessel is more realistically \$10.05 per
2 ton. This is substantially above the [REDACTED] per ton rate
3 that I recommended. By any standard, Mr. Hochstein's
4 calculation is deficient and contains numerous errors.
5 In any event, the methodology is based on a hypothetical
6 example with an inappropriate application of data. His
7 freight rate calculation deviates from reality to pure
8 hypothesis and must be rejected entirely.

9
10 **Q.** Is Dr. Hochstein's calculation of TECO Transport's
11 freight rates based on foreign competition correct or
12 appropriate?

13
14 **A.** Dr. Hochstein grossly understates the freight rates and
15 his analysis of foreign costs is replete with errors,
16 such as short ton conversions and the exclusion of port
17 costs. It completely ignores the fact that at the time
18 of the bid, foreign-flag time charter rates for the
19 35,000, 50,000 and 60,000 dwt were nowhere close to the
20 \$10,062, \$11,029, and \$11,673 rates that he presumed.
21 They were much higher.

22
23 Shipping rates had been on a strong upward trend since
24 August 2002 continuing through mid-2003 when the bids
25 were prepared. Handymax and Panamax spot rates had more

1
2
3
4
5 higher. As of March 2004, the Fearnley Research Monthly
6
7 \$27,200, \$32,800 and \$44,100 per day for Handy, Handymax
8 and small older Panamaxes, respectively. Each of these
9 rates is two to three times the rates used in Dr.
10 Hochstein's model.
11

12 Dr. Hochstein's analysis also fails to adjust for draft
13 limitations that exist at present and will for years into
14 the future. The transportation arrangements needed to be
15 available starting January 1, 2004, not at some future
16 date years in the future, pending Corps approval.
17 Furthermore, given the possibility of declining coal
18 volume, the costs of improvement would be much higher
19 than those assumed by Dr. Hochstein.
20

21 **MR. MAJOROS' TERMINAL ADJUSTMENT**

22 Q. Mr. Majoros reduced the transportation rate in the new
23 contract to reflect the price for terminal services in
24 the old contract. Was this adjustment proper?
25

1 A. No, Mr. Majoros' incorrectly interpreted the "meet or
2 beat" provision by recommending an adjustment to the
3 contract rate to reflect the terminal segment in the old
4 contract instead of the rate I recommended. The rate I
5 recommended was based on a bona fide market bid by
6 [REDACTED]. [REDACTED] bid stands
7 as a valid indication of the market price for terminal
8 services and was appropriately relied on in my analysis.
9

10 Q. Does this conclude your rebuttal testimony?
11

12 A. Yes, it does.
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25

1 BY MR. BEASLEY:

2 Q Mr. Dibner, would you please summarize your direct
3 and your rebuttal testimony?

4 A Yes. Thank you. Good morning, Commissioners. The
5 purpose of my direct testimony is to assure the Commission
6 that, based on my 27 years of experience in the maritime
7 industry dealing with waterborne transportation and bulk cargo
8 logistics, Tampa Electric's waterborne coal transportation RFP
9 and evaluation process as well as the market rates established
10 for each segment of the waterborne transportation system are
11 reasonable and appropriate.

12 The markets rates I recommended are approximately
13 4 percent lower than the previous rates and are based upon
14 careful evaluation of the bid responses and my comprehensive
15 and factual market analysis for moving up to 5.5 million tons
16 of coal each year in a reliable and secure manner.

17 As I explained in my direct testimony, the terms,
18 requirements and operating specifications contained in the RFP
19 are ones that are common in the industry and would be familiar
20 and easily understood by potential bidders. The bid
21 solicitation represented the distinctive requirements to move
22 coal from the Midwest and Appalachian mines to Tampa Electric's
23 generating stations.

24 Tampa Electric requires three segments of waterborne
25 coal transportation and related services. These include inland

1 river services, terminal storage, and blending facilities and
2 ocean or gulf services. Tampa Electric's waterborne coal
3 movement is the nation's largest domestic coal movement that
4 involves an ocean movement. It also requires the services of a
5 coal terminal capable of unloading inland river barges, storing
6 or directly trans-loading coal, blending coal and loading coal
7 into deep-draft oceangoing barges.

8 With respect to the current state of the waterborne
9 transportation market, the inland river market is recovering
10 from a slowing economy and increased barge supply. The lower
11 Mississippi bulk terminal services market is dominated by two
12 major companies that are adjusting to reduced demand. The
13 ocean segment is in balance with full employment in the
14 domestic sector and additional demand created by the U.S.
15 government's preference trade programs.

16 My testimony provides the market rates for each
17 segment of the waterborne transportation system and describes
18 in detail the two customized proprietary market models as well
19 as various supporting analyses and information I relied upon to
20 establish the appropriate market rates for the inland river and
21 ocean segments. Because the company received a bona fide bid
22 for its full requirements of terminal services, I did not rely
23 upon a market model of the bulk terminal services segment.

24 As a result of my evaluation of the bid responses and
25 market simulations and analyses, I recommended that Tampa

1 Electric utilize the market rates established by my inland
2 river model, and reject the inland river transportation bid
3 response, given that the bidder failed to provide a proposal
4 that met Tampa Electric's requirements and because the bidder
5 is in Chapter 11 bankruptcy status.

6 For the bulk terminal services agreement, I utilized
7 the bid response as the appropriate market rate because I
8 determined that the bidder possessed the facilities, capacity
9 and financial strength to meet Tampa Electric's requirements.
10 In addition, the rates were also generally consistent with
11 prior rates tendered by the bidder and market indications for
12 bulk terminal services.

13 In assessing the ocean transportation market, I
14 evaluated the core fleet that presently carries Tampa
15 Electric's coal from the terminal across the Gulf of Mexico and
16 into Tampa Bay. I calculated a market rate and then evaluated
17 the rate to assure that the rate was aggressively competitive,
18 while providing the supplier with acceptable returns given the
19 current market conditions and alternative hauls.

20 Finally, my direct testimony supports the continued
21 use of Tampa Electric's benchmark for waterborne coal
22 transportation costs because rail transportation is the only
23 competitive alternative to waterborne transportation for Tampa
24 Electric to transport the volume of coal it requires.

25 The methodology in place utilizes rail rates as the

1 company's and Commission's best available proximation of the
2 next best alternative. It has served as a means to provide the
3 Commission assurances of water transportation rates in the
4 past, and nothing has changed to indicate a need for a new
5 benchmark.

6 My rebuttal. My rebuttal testimony addresses certain
7 inaccuracies and deficiencies in the assertions and conclusions
8 of the testimony of Dr. Hochstein and Mr. Majoros, Jr. While
9 Dr. Hochstein offers certain criticisms of the company's RFP
10 for waterborne transportation services, he has admitted he has
11 no experience in drafting or evaluating RFPs. In contrast, I
12 have represented both carriers and shippers in this process for
13 many years. I firmly believe for the reasons detailed in my
14 testimony that the specifications contained in the company's
15 RFP are common in the industry and totally appropriate. The
16 2003 RFP is essentially the same RFP structure that Tampa
17 Electric used in 1998.

18 I agree with Dr. Hochstein that no other coastal or
19 ocean carrier could match TECO Tranport's rates. This is
20 because from the inception of the integrated waterborne
21 transportation system, TECO Energy has created a means by which
22 Tampa Electric and its customers have had the economy of low
23 cost fuel delivery in a highly reliable manner. TECO Transport
24 has continued to improve and tailor its fleet to meet the
25 specific needs of Tampa Electric and has provided significant

1 benefits to its customers.

2 The TECO Transport rates are consistently lower than
3 rail rates and have ensured that a single railroad could not
4 win the business, drive away the marine option, establish a
5 captive customer, and raise rates in the future. TECO
6 Transport's rates in the current contract are substantially
7 below those of other marine vessels and are also below the CSXT
8 railroad bid when adjusted to reflect the full cost of the rail
9 movement.

10 I find the consideration and analysis of backhaul by
11 both Dr. Hochstein and Mr. Majoros are totally inappropriate in
12 determining market rates. Backhaul is simply not relevant to
13 market rates for a dedicated one-way transportation service for
14 a single commodity. A consideration of backhaul is not for
15 outside conjecture, confiscation or reallocation in setting
16 market rates. In addition, Mr. Majoros's analysis presumes
17 that there are backhaul revenues, while failing to include
18 incremental backhaul costs which are significant. Both Dr.
19 Hochstein and Mr. Majoros overstate and oversimplify the actual
20 opportunity for northbound backhaul cargo. The backhaul cargo
21 ratios used are incorrect and misleading and are arbitrary and,
22 in some cases, completely unsupported conjecture.

23 Backhaul rates represent incremental benefits to
24 carriers, and the carrier in any market has no obligation to
25 give back or share these benefits with customers.

1 Consequently, any presumptions regarding backhaul rate are
2 entirely speculative and are inappropriate in setting market
3 rates.

4 The criticism of the models I used in my market rate
5 analysis for Tampa Electric is also unfounded. I based my
6 study of this market on a careful, factual analysis of the
7 elements of the transportation system, and I took great care in
8 my review of market conditions. I have applied my extensive
9 experience of continuous direct involvement in these markets,
10 and my results, unlike Dr. Hochstein's, are not based on public
11 port policy studies and faulty U.S. Army Corps of Engineers
12 data. It is based on actual experience in moving millions of
13 tons of cargo. The models I used are clear, explicit,
14 detailed, and above all realistic and fair for this industry.
15 I am sure that my study was thorough and reflective of the
16 market. Likewise, Mr. Majoros' adjustments are a little more
17 than speculation with no basis in the bulk transportation
18 marketplace.

19 With respect to cost-plus pricing, I think that all
20 of the elements presented make it very plain that there is a
21 market for the transportation of coal from the mines to Tampa.
22 Furthermore, there is a definite market for each of the three
23 segments of the waterborne transportation network, contrary to
24 the assertions of Dr. Hochstein.

25 TECO Transport is simply the least cost option for

1 Tampa Electric in this market because it has the largest, most
2 efficient and fastest fleet available to serve Tampa Electric's
3 needs. Because it can provide services in the least cost
4 manner does not mean there is not a market. This concludes my
5 summary.

6 MR. BEASLEY: Thank you. We tender Mr. Dibner for
7 cross-examination.

8 CHAIRMAN BAEZ: Thank you. Mr. Vandiver

9 CROSS EXAMINATION

10 BY MR. VANDIVER:

11 Q Good morning, Mr. Dibner.

12 A Good morning.

13 Q You discussed the consolidation of the barge
14 industry; is that correct?

15 A Yes.

16 Q Is this an industry where the players are generally
17 familiar with one another?

18 A Yes.

19 Q And so one, one competitor would have a good idea of
20 the other's capabilities?

21 A Yes.

22 Q Can you please turn to Page 25 of your report. That
23 would be Bate stamp 77 of the yellow pages, Commissioners, of
24 Mr. Dibner's report.

25 A Yes.

1 Q Thank you. Are you there?

2 A Yes, I am.

3 Q Now here you narrow the universe of competitors down
4 to two for the river, is that correct, sir, where you say that
5 only two carriers could have been reasonably expected to
6 respond to Tampa Electric's solicitation on the river?

7 A That is correct.

8 Q And of those two, one elected not to bid; correct?

9 A That's correct.

10 Q And the other that did bid, you disqualified; is that
11 correct, sir?

12 A I recommended that the bid not be accepted for
13 several reasons.

14 Q And as I understand those two reasons, it was in
15 Chapter 11 reorganization proceedings was one of those reasons,
16 sir?

17 A Yes.

18 Q And the other was the aging equipment, I believe.
19 Was that the -- were those the two principal reasons?

20 A There was a third, and that was that the bid was only
21 for a million tons.

22 Q A partial requirement?

23 A It was a partial requirement of less than 20 percent
24 of the entire inland river volume.

25 Q Okay. And so for those three reasons, the second

1 barge company bid was rejected

2 A That was my recommendation.

3 Q All right. And so out of all of these players we see
4 there on the lower right-hand corner, our universe of really
5 realistic bidders in your view were down to two bidders on the
6 river; is that correct?

7 A That's correct.

8 Q All right. Now if we could turn to Page 56 of your
9 report, sir. And, Commissioners, that would be Bate stamp 108.
10 And here's the -- and this is the blue water piece or the ocean
11 piece; is that correct, sir?

12 A That's correct.

13 Q All right. And here we see that TECO Transport
14 really dominates the field, is that correct, sir, in terms of
15 equipment?

16 A TECO Transport dominates the field in barges over
17 20,000 tons as shown on this exhibit.

18 Q Okay. Would you agree with me that this has been
19 largely financed with ratepayer money?

20 A I don't know that I could characterize it that way.
21 The minority of TECO Transport's business is, in fact, tied to
22 TECO Tran -- to Tampa Electric at this time and has been
23 declining over many, many years. And certainly part of it was
24 acquired, improved, enlarged, upgraded for the benefit of the
25 ratepayers, but it has taken place over a very long time.

1 Q Right. As expressed in the testimony of Ms. Wehle,
2 is that correct, from the '50s forward?

3 A Correct.

4 Q Okay. As we heard in Mr. Willis's opening statement;
5 is that correct?

6 A That's correct.

7 COMMISSIONER JABER: Mr. Vandiver.

8 MR. VANDIVER: Yes. Yes, ma'am.

9 COMMISSIONER JABER: Just because I'm not familiar
10 with what has been afforded confidential treatment, and I don't
11 want to follow up and divulge anything accidentally, if I could
12 get some guidance. What is confidential in the report: The
13 names, the numbers?

14 MR. BEASLEY: Yes. This is a work product that
15 Mr. Dibner has developed, and we have requested that the entire
16 report be treated confidentially, much the same as any kind of
17 work product where you have a professional who's put their
18 career on the line in furnishing this for our use and for your
19 use. So we --

20 COMMISSIONER JABER: That's fine. I don't debate
21 that or dispute that. I'm just trying to understand what -- if
22 I were to ask a question, it is the numbers and the names, I
23 imagine.

24 MR. BEASLEY: That is primarily the case

25 COMMISSIONER JABER: Okay. Thank you.

1 MR. VANDIVER: Thank you, Commissioner.

2 BY MR. VANDIVER:

3 Q And you would agree that in both cases there are a
4 very limited number of players on both legs?

5 A The field is consolidating, but the companies are
6 large, resourceful and vigorous.

7 Q Okay. And do these companies compete against each
8 other every day on both legs of the --

9 A They are in competition with each other.

10 Q And do they frequently bid against one another?

11 A They bid from each -- against one another as the
12 market requires.

13 Q And these sheets are confidential for purposes of
14 these proceedings, but is there anything on these sheets that
15 would surprise or be unknown to the executives at any of these
16 companies?

17 A No.

18 Q Okay. Now is it true that on or about June 26th,
19 2003, Tampa Electric issued its RFP into the industry we just
20 discussed?

21 A That's correct.

22 Q All right. And the RFP was sent to every company on
23 each of these pages.

24 A That's correct.

25 Q All right, sir. Are you familiar with the Platts

1 Coal Web site, sir?

2 A I'm familiar with it.

3 MR. VANDIVER: Okay. I'm going to have Mr. Poucher
4 hand out a -- I think this has now been labeled Exhibit 10.
5 It's been attached to Mr. Wells' testimony, sir. I'm going to
6 give you a second to look at that. This has been denominated,
7 Commissioners, HGW-3, and I now believe it's been admitted into
8 evidence as Exhibit 10, is my understanding, and it's labeled
9 the Platts Article regarding The TECO RFP.

10 BY MR. VANDIVER:

11 Q Have you had the opportunity to --

12 A Yes. Yes. I've looked at it.

13 Q And will you look at the top of that and accept that
14 this ran on the Platts Web site the 7th of July, 2003, sir?

15 A Yes. Yes.

16 Q And this would be about, I guess about ten or 11 days
17 after the issuance of the RFP, sir?

18 A That's correct.

19 Q All right. And could you read there, midway down in
20 the second paragraph, sir, could you read that sentence
21 beginning with, "Industry sources," please, sir?

22 A "Industry sources, however, downplayed the
23 solicitation as 'An exercise in futility.'"

24 "We went through the same process six years ago,"
25 said one industry executive. 'They'll take bids and then award

1 the contract to their sister company, TECO Transport. It's all
2 a game to keep the Public Service Commission happy.' TECO
3 solicited in 1997 for a five-year contract and awarded it to
4 TECO Transport. For details contact Martin Duff at
5 (813)228-1596."

6 Q Mr. Dibner, didn't this basically declare the contest
7 over and say don't bother to submit a bid?

8 A I honestly don't believe so. As you and I discussed
9 in our deposition, my first deposition, this, we don't know
10 where this came from really. TECO is, TECO Transport is a
11 formidable provider. It has a special, specially designed
12 capability to serve the needs of Tampa Electric that is well
13 known. And as you and I discussed, this comment may have very
14 well been placed on July 7th for this moment today for you to
15 ask me about. And I told you that when we were deposed.

16 Q Yes, sir. And, and, of course, this -- I'm going to
17 hand you that discussion, sir, because we did discuss exactly
18 this point, and, and I believe those were your words --

19 A Pretty much.

20 Q -- from that deposition. Because -- I'm going to
21 have this passed out and I'd like to get it, an exhibit number
22 for this, please, Mr. Chairman. Because this was an anonymous
23 quote, and this is detrimental to the process obviously, isn't
24 it, sir?

25 A Yes, it is. It spoils the process. But that's the

1 world we live in.

2 Q And, and this kind of anonymous thing is -- do you
3 believe that it was done by an industry source?

4 A I don't have any idea who it was. That's not -- that
5 would be a matter of speculation.

6 The important thing for me is that there -- let's
7 suppose that this is an exercise in futility. My take on that
8 is that in many respects the unique low cost capabilities of
9 TECO Transport make it an exercise in futility for many
10 providers because even though they're invited to put the pieces
11 together, even though they're invited to take any way they
12 wish, there were no, we've talked about it, no severe
13 technological restrictions, no severe service restrictions.
14 The fact is that beating TECO Transport is very hard work.
15 Nobody sits around and has the same low cost equipment. And
16 the rates that TECO is paid are below the rates that most
17 carriers will tolerate.

18 Q And so this -- would this skew the market in your
19 view or is the market already --

20 A I think the market has its eyes open. The market
21 understands how competitive the TECO Transport capability is.
22 If there were an announcement that said TECO is \$5 over its,
23 the rates that it should get, I think people would, would bid
24 because they could compete.

25 It's very much like the State of Florida asking for

1 software. I think I know who would win to build spreadsheets
2 and do word documents in this state. And I might be a software
3 purveyor and I would call it an exercise in futility.

4 Q Yes, sir. But you would agree with me, when
5 something like this goes out in a small community, people,
6 everyone knows about it in short order?

7 A Everybody knows, and it's, it's an industry that
8 understands the realities of the marketplace.

9 Q Yes, sir.

10 CHAIRMAN BAEZ: Mr. Vandiver, you asked for an
11 exhibit number.

12 MR. VANDIVER: Yes.

13 CHAIRMAN BAEZ: And we're going to call this document
14 entitled Dibner Comments on Platts as Exhibit Number 63.

15 MR. VANDIVER: Thank you, sir.

16 (Exhibit 63 marked for identification.)

17 BY MR. VANDIVER:

18 Q Mr. Dibner, I think we'll move on to another topic
19 now. And have you looked at Mr. Majoros' MJM-2, which is the,
20 the backhaul data that Mr. Perry discussed with you in some
21 detail at your deposition?

22 A Yes, I have. Yes, I have.

23 Q Do you disagree with the factual accuracy?

24 A Not in the least.

25 Q All right, sir. And would you accept, subject to

check, that the 2002 total backhaul tons were 4,652,335 tons?

3 A I'm prepared to accept that on faith for the purposes
4 of your question.

5 Q Okay, sir. Thank you.

6 I'd now like to have Mr. Poucher hand you another
7 exhibit, and this is a response to OPC's interrogatories. And
8 let me get that in front of me for one second and we'll discuss
9 it, sir.

10 This is OPC's first set of interrogatories, Number
11 27.

12 A I am --

13 Q And it's going to be delivered to you shortly.

14 A Thank you.

15 Q Mr. Poucher is searching for it. We'll get it to you
16 right now.

17 We've got it now. I apologize for the delay, sir.

18 A Yes.

19 Q Have you had an opportunity to look at this, sir?

20 A Yes.

21 Q You referenced this in your summary, I believe. And
22 the essence of this interrogatory response is simply that
23 rate -- I'll ask the question.

24 Under your model do ratepayers pay all the round-trip
25 cost from mine to Big Bend from the --

A Yes, they do.

1 Q Okay. And will you take a look at that next to the
2 last sentence and read that into the record, please, sir?

3 A "Mr. Dibner determined that there is no marginal
4 backhaul business."

5 Q Okay. Now can you please explain that sentence in
6 light of the 4,600,000 odd tons of backhaul that we just
7 previously discussed?

8 A That's fine. The reason is this: The coal is the
9 crucial movement for Tampa Electric and the ratepayers. Tampa
10 Electric needs to have that coal moved, and that is the
11 headhaul. The headhaul means it is the dominant leg for which
12 the security and assurance of a fixed rate in this environment
13 must be established. Tampa Electric is able to have a rate for
14 that, which is below the cost that any other barge operator can
15 provide, which is below the cost that any fleet of barges can
16 provide on a round-trip basis, and which is therefore, as is
17 normal in the maritime industry and in the transportation
18 industry in general, going to bear the full costs.

19 The nature of the rate for the return backhaul is not
20 a matter that is compelled to be part of the headhaul
21 consideration. The powerful fertilizer-producing interests
22 over the last 40 years have migrated from a position of having
23 used dedicated one-way vessels to using a group of vessels that
24 today are substantially, if not all, provided by TECO. They
25 are very large; they are three and four times larger than the

1 vessels that were used in the past. They have all decided,
2 despite all of their power, both financial and operational and
3 logistical, to rely on this arrangement. Typically backhaul
4 rates are marginally priced, meaning there may be no coverage
5 of certain costs, and those backhaul shippers benefit from that
6 tremendously. And in any case, the carrier will only be
7 compelled by more efficient equipment in the hands of someone
8 else and contracts to yield. And that is a market and this is
9 normal, and thus there is no need, no pressure, no compulsion,
10 no requirement for the headhaul rate to be compromised by what
11 may be merely the marginal coverage of the backhaul costs. We
12 know nothing about the backhaul business, we don't know how
13 long it will last, we don't know -- it has been highly
14 variable. It has been as high as 8 million tons in the last
15 five years and it has been annualized below 3.2 million tons,
16 as my, one of my final responses to the railroad showed. It is
17 volatile, it is unpredictable, it is a private matter between
18 the fertilizer industry and the carriers that they wish to do
19 business with. It has no bearing on what happens between the
20 carrier and the utility and this proceeding.

21 Q They're certainly not carrying the backhaul for free,
22 are they?

23 A I suspect they're not carrying it for free.

24 Q And, and every nickel goes straight to the bottom
25 line of TECO.

1 A No, not at all. There are -- there is -- there are
2 tremendous direct costs. There are extra time to load, time to
3 discharge, there's the cost of pushing the barge across the
4 Gulf of Mexico loaded, there's cleaning, there's shifting,
5 there are tugboats, there's pilotage, there's going another
6 100 miles up the Mississippi River and going down another
7 100 miles, and in many cases the barges have unique
8 capabilities that serve the fertilizer industry. So by no
9 means is every nickel going straight to the bottom line.

10 Q I misspoke. The revenues certainly exceed those
11 costs, don't they?

12 A We would hope that the revenues exceed those costs.

13 Q Or TECO Transport would not be undertaking those
14 hauls, would they?

15 A That's correct.

16 Q And that excess of those revenues over those costs
17 inure straight to the bottom line of TECO Transport and the
18 corporate family of TECO Energy, don't they?

19 A To the extent that there are any, yes.

20 Q And they wouldn't be engaged in that business if
21 those revenues didn't exceed those costs.

22 A That's correct.

23 Q Can we agree on that?

24 A Yes. But it's also very important to realize this,
25 that I have held TECO Transport's costs to the minimum of the

1 largest and most efficient vessels. And if we considered the
2 daily -- the days consumed to perform the backhaul and built a
3 view that said let's add in the, the two-and-a-half or
4 three-and-a-half or four days required, we would end up having
5 a system that would actually have higher total costs for Tampa
6 Electric. And the reason is that rather than having the need
7 for six large barges, I would need ten or 12 and the rates
8 would rise and they would rise very substantially.

9 I have not burdened Tampa Electric or the ratepayers
10 with that expanded unified cost. I have held Tampa -- TECO
11 Transport to the minimum average cost of the most efficient
12 fleet without regard to the backhaul, and that has to be
13 understood. There's no relief in my rates for that reality. I
14 am holding and expecting and requiring in my recommendations
15 TECO Transport to provide the minimum rate for the lowest cost
16 vessels without regard to any additional complexities or
17 excuses that they would have for carrying backhaul. That's
18 very important to bear in mind.

19 Q All right, sir. I'd like to go to the terminal
20 section of the coal movement, if we could now, sir, the
21 terminal section.

22 A Of my report?

23 CHAIRMAN BAEZ: Mr. Vandiver, before you move on to
24 another subject, you handed us a document entitled Dibner No
25 Marginal Backhaul. Did you want that marked?

1 MR. VANDIVER: Yes, sir. I'd like to have that
2 marked as Exhibit 64.

3 CHAIRMAN BAEZ: We'll show that marked as Exhibit 64.

4 MR. VANDIVER: Thank you, sir.

5 (Exhibit 64 marked for identification.)

6 CHAIRMAN BAEZ: Go ahead.

7 MR. VANDIVER: Okay, sir.

8 BY MR. VANDIVER:

9 Q You discuss this at Pages 29 to 30 of your direct and
10 44 to 50 of your report; is that correct?

11 A 44? My pages or Bates numbers? My pages.

12 Q I think that's your pages, sir.

13 A Okay. I'm going there. 44?

14 Q Yes, sir. Let me get there, sir.

15 A 44 is terminal, yes.

16 Q Yes, sir.

17 MR. VANDIVER: And, Commissioners, that would start
18 on Bate stamp 95 of Mr. Dibner's report for your purposes.

19 BY MR. VANDIVER:

20 Q Where is the terminal located, sir?

21 A At approximately milepost 57 on the lower Mississippi
22 River, about 43 miles below downtown New Orleans.

23 Q And what takes place here, sir, just generally?

24 A It's a large bulk terminal designed to handle very
25 large quantities of coal particularly; it does handle some

1 other commodities. It has docks to unload inland river barges,
2 to unload ships, to load river barges, to load and unload other
3 types of vessels. It also has land for storage and it has a
4 conveying and recovery system to both deposit and pick up from
5 the ground stored material.

6 Q In contrast to our other bids, there are no inflation
7 adders in this bid.

8 A Correct. Right.

9 Q Why is that?

10 A For one thing, the bid, the bid did not request any.

11 Q Are there any, are there any other reasons that --

12 A The bidder, the bidder asked for none. That's it.

13 Q Okay. What are the factors that go into the weak
14 terminal market you described at Page 29, Lines 23 and 24 of
15 your direct?

16 A The United States has lost ground in being a force
17 for the supply of steam coal for the production of electricity,
18 and the United States has lost some ground in the production
19 and export of metallurgical coal for particularly the European
20 steel industry which is stagnant. That's the primary reason.

21 Q Okay.

22 A The fertilizer industry has also been -- the
23 fertilizer industry has been unstable and farm prices have been
24 relatively low.

25 Q All right, sir. Now if we went to Page 68 of your

1 report -- and that's Bate stamped 138, Commissioners. I
2 apologize for these dueling numbers. But in the deposition we
3 referred to Mr. Dibner's page numbers of his report and that's
4 kind of what I'm wedded to, but Bate stamps are easier for you,
5 I think.

6 This shows the terminal rate for Tampa Electric under
7 the 1998 contract and then the new rate for the contract just
8 signed; is that correct?

9 A That's correct.

10 Q And I believe you characterize this as a very
11 favorable rate; is that correct?

12 A If I did, I don't recall it. I, I don't recall
13 saying those words. Maybe I did and you could refresh my
14 memory, but I don't recall that.

15 Q Okay. Let me ask you, the -- do you recall
16 discussing in your deposition the volume discount feature --

17 A Yes, I do.

18 Q -- for terminal rates?

19 A That's right.

20 Q And I think specifically you said that 5 million tons
21 would get a more favorable rate than, say, 2 million tons?

22 A In theory that would be my expectation.

23 Q And why is that?

24 A Well, because I would, I would feel that for a
25 facility that has the capacity available to handle it, it would

1 be attractive and desirable to have a single customer and that
2 there would be a certain learning economy and contractual
3 economy that would permit some passing on. It is possible that
4 if it overwhelmed the facility or it required marginal
5 investment, it could require a higher rate.

6 Q Very well, sir.

7 Now at this lower Mississippi -- on the lower
8 Mississippi there are two terminals, are there not, sir?

9 A That's correct.

10 Q And what's the geographic location of these two
11 terminals?

12 A I believe they're within two miles of each other on
13 the lower Mississippi; one is across the river and one is this
14 one.

15 Q Okay. And are they, are they comparable terminals in
16

17 A They have similar overall capabilities and missions.
18 There are obviously technological and capacity differences, but
19 it would -- they have a general similarity that's greater than
20 certainly the similarity of any other terminals, bulk terminals
21 on the entire lower Mississippi.

22 Q All right, sir. Are you familiar with the Florida
23 Progress movement of coal to Crystal River?

24 A I have some awareness of it.

25 Q All right, sir. Do you know which terminal the

1 Progress movement might use?

2 A They, I believe, use the IMT Kinder-Morgan facility
3 as opposed to the TECO Transport facility.

4 Q Which is the one across the river from the one
5 that --

6 A Correct.

7 Q All right, sir. I want to pass out another document,
8 sir. That's the one --

9 MR. BEASLEY: May I inquire; was the last exhibit
10 handed out the Dibner terminal rate?

11 MR. VANDIVER: Yes, it was.

12 MR. BEASLEY: Was it marked?

13 MR. VANDIVER: I believe it would be Number 65; is
14 that correct?

15 CHAIRMAN BAEZ: I'm sorry. We can mark it 65. Isn't
16 it part of his exhibits?

17 MR. VANDIVER: Yeah. It's part of this series. I
18 want to eventually come back to this 65 Dibner terminal rate.

19 CHAIRMAN BAEZ: Very well.

20 MR. VANDIVER: And talk about it in conjunction with
21 this exhibit I just passed out.

22 CHAIRMAN BAEZ: Okay. Show the document titled
23 Dibner Terminal Rate --

24 MR. VANDIVER: To be Number 65, I believe, sir.

25 CHAIRMAN BAEZ: -- as Exhibit 65.

1 (Exhibit 65 marked for identification.)

2 MR. VANDIVER: And this latest one would be the
3 Progress Energy audit, and I believe that would be Number 66.

4 CHAIRMAN BAEZ: Show the document titled Progress
5 Terminal Rates entered as Exhibit -- marked as Exhibit 66.

6 MR. VANDIVER: Okay.

7 (Exhibit 66 marked for identification.)

8 MR. BEASLEY: Mr. Chairman, if I could, I think that
9 65 has already been marked as a part of his exhibit, which --

10 CHAIRMAN BAEZ: And that was, that was my question,
11 Mr. -- we can, we can use this for reference and --

12 MR. VANDIVER: Okay. We'll just use it for
13 reference. Thank you.

14 BY MR. VANDIVER:

15 Q This latest document I've just passed out to you,
16 sir, we discussed at your deposition, sir.

17 A Yes.

18 Q Commissioners, this latest -- or, Mr. Dibner, this
19 latest exhibit, I would ask that you would turn to Attachment
20 A, sir.

21 A Yes.

22 Q And I'd ask that you read at the top the line
23 starting there where it says, "Progress Energy Florida."

24 A Yes. It says, "Progress Energy Florida response to
25 FPSC waterborne coal transportation system audit report -

1 disclosure number one, Docket Number 031057."

2 Q Yes, sir. And could you please read the next -- that
3 little thing there in between those two lines?

4 A Oh, it says --

5 MR. BEASLEY: Mr. Chairman, I'd like to object to any
6 reference to this exhibit. This came up during the deposition.
7 It has significant numbers of redactions on it. We've not had
8 an opportunity or the privilege of seeing what that is, so we
9 don't know the context in which anything on this document is
10 made under. So we would object to any questions or use of this
11 document for purposes of this hearing unless we can see an
12 unredacted version of it.

13 CHAIRMAN BAEZ: Mr. Beasley, first I need to find --
14 Mr. Vandiver, I need to find where you're referring to on that
15 document.

16 MR. VANDIVER: Yes, sir.

17 CHAIRMAN BAEZ: Let's start by that, please.

18 MR. VANDIVER: Okay. Let's start with that.

19 CHAIRMAN BAEZ: Let's get me located.

20 MR. VANDIVER: If you go down, if you go down one,
21 two -- the third page down.

22 CHAIRMAN BAEZ: Okay.

23 MR. VANDIVER: You will see a document that says
24 Public Version at the top of the page, and it says Attachment A
25 on the right.

1 CHAIRMAN BAEZ: Okay.

2 MR. VANDIVER: Okay. And that is the sheet that I
3 wish to inquire about. And --

4 CHAIRMAN BAEZ: And, Mr. Beasley, your objection is
5 to this particular portion of the document?

6 MR. BEASLEY: That's correct, sir, because we don't
7 know what those large redacted boxes of information are and,
8 consequently, any information otherwise shown on that page, we
9 don't know how it's affected by that redacted portion. We're
10 essentially shooting in the dark.

11 CHAIRMAN BAEZ: Mr. Vandiver, do you have a response?

12 MR. VANDIVER: Yes, sir. In both its direct and
13 rebuttal case, Tampa Electric has repeatedly referred to the
14 Progress Energy Florida movement as similar to that of Tampa
15 Electric. It's in Mr. Dibner's report, it's in Mr. Murrell's
16 rebuttal testimony.

17 This Commission has performed an audit of Progress
18 Energy Florida. In Mr. Dibner's deposition he spoke of the
19 reliability of audited numbers. I can't think of a more
20 relevant and timely comparison for this Commission to make. I
21 think -- and it's something that's running through this
22 proceeding time and time again is the comparison of these two
23 utilities. It's inescapable, and something like this is so
24 relevant and so timely and it's a comparison that Tampa
25 Electric itself has made.

1 Yes, there are certain redactions in this document;
2 however, this Commission is more than competent to look at this
3 document and weigh this information that is before you in this
4 public record and make a judgment on the information that is
5 before it and give it whatever weight that the Commission deems
6 appropriate on what is before it. And I think that it is, it
7 is, it is so relevant and so timely that you are completely
8 competent to evaluate, question and say, well, what about this,
9 and make that comparison for yourselves and give it that weight
10 that it deserves. There is no trick about these numbers that
11 are here. You can see in the left-hand column there's a
12 tonnage number and on the right there is the terminal number.
13 And if you will look here at the other sheet we have here, you
14 will see that there is a very comparable terminal number, and
15 you will see, sir, that the total Gulf terminal number for
16 Progress is considerably lower than --

17 MR. BEASLEY: Mr. Chairman, I hate to interrupt, but
18 we've gone into testimony --

19 CHAIRMAN BAEZ: I think you've gone, I think you've
20 gone past responding to the objection. But I'm going to allow
21 use of the document in any case and you can go ahead and ask
22 the witness to interpret that.

23 MR. VANDIVER: Thank you.

24 (Transcript continues in sequence with Volume 2.)

25

1 STATE OF FLORIDA)
2 COUNTY OF LEON)

CERTIFICATE OF REPORTER

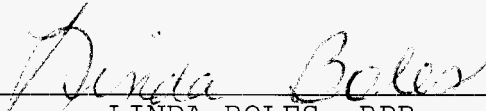
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I, LINDA BOLES, RPR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 1ST DAY OF JUNE, 2004.


LINDA BOLES, RPR
FPSC Official Commission Reporter
(850) 413-6734