

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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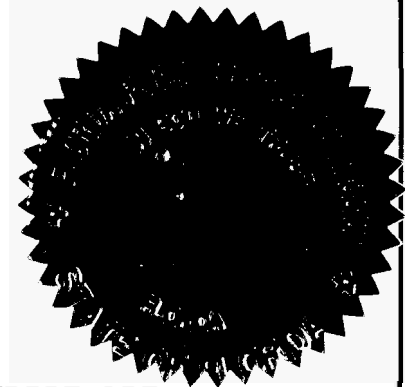
In the Matter of:

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

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VOLUME 2

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Pages 180 through 261

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PROCEEDINGS: HEARING

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

17

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DATE: Thursday, May 27, 2004

19

TIME: Commenced at 9:35 a.m.

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21

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

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REPORTED BY TRICIA DEMARTE, RPR
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APPEARANCES: (As heretofore noted.)

DOCUMENT NUMBER-DATE

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P R O C E E D I N G S

(Transcript follows in sequence from Volume 1.)

BRENT DIBNER

continues his testimony under oath from Volume 1:

CONTINUED CROSS EXAMINATION

BY MR. VANDIVER:

Q Mr. Dibner, how many tons a year does TECO bring down the river?

A I don't know what time period you're referring to. The RFP obviously specified about 5.5 million as the maximum for the future period.

Q So this terminal rate that we have, I think, on your summary sheet here for these terminal rates would reflect that 5 million ton figure?

A Certainly five or five and a half or two or one or whatever.

Q Okay. And what's the tonnage figure over here for the total Gulf terminal figure? Could you read that into the record, please, sir.

A The number I see is \$1,677,095.18.

Q And what's the audit calculation for 2003 for Progress Energy Florida over there on the right-hand side, sir?

A Well, it says \$1.97, but I would point out, if I may --

Q Certainly.

1 A -- yes, that's what it says, but you're asking me to
2 comment as an expert on a document which on the first page of
3 the text has words like erroneous, when correctly calculated,
4 is wrong, the tonnage which varies significantly from segment
5 to segment, the problem with the audit report, the contractual
6 costs do not include other significant noncontractual costs,
7 et cetera. So it is very difficult for me to understand what I
8 am looking at.

9 I'm trying -- I will read anything you wish me to
10 read into the record, but I will tell you that this seems to be
11 a very troubled document and one that I do not understand. I,
12 frankly, have never been asked to comment on a document that
13 seemed to be accompanied by so many problems, **and therefore, it**
14 puts me in an awkward situation.

15 Q I appreciate your position, sir.

16 Where were you reading about the erroneous thing?

17 A The first page of the actual response to Disclosure
18 Number 1.

19 Q Can you point me to that, sir?

20 A Well, it's this page.

21 Q Another blacked out page. Yes, sir.

22 A Yes, it's a blacked out page as well, which is also
23 somewhat frustrating for me. But the first full paragraph it
24 says, as it explained, the audit report's calculation of this
25 average cost is erroneous and so on and so forth. And the

1 pages are replete with this sort of comment. And consequently,
2 what I know is that a large public corporation bid on this
3 business, and what I know is that their bid was what we have
4 put -- what I put here in this bid. And I don't really know
5 where I can go with this document to provide any value to
6 anyone in this room because I am simply unaware and confused
7 and troubled, frankly, by what I have been presented with.

8 Q Are you aware if any of Progress Energy Florida's
9 audit exceptions concern the terminal piece of this audit?

10 A I know nothing about Progress Energy and its
11 regulatory issues. I have no insight into that matter.

12 Q Let me ask you a hypothetical question. If the
13 Progress number were, in fact, \$1.97 for 16 -- 1,600,000 and --
14 1.6 million tons, would that reflect a contrary market analysis
15 to some of the numbers we've seen in these other sheets?

16 A Not necessarily. And let me explain why.

17 Q Yes, sir.

18 A We have a real bona fide bid from a serious player of
19 2.45. It's 20 percent above the number that you're
20 hypothetically asking me to accept subject to all of the
21 caveats that scream through that page that I showed you. Over
22 a five-year period with no escalation, handling and committing
23 one capacity's in a troubled market to this customer, TECO --
24 to Tampa Electric's needs, it would not surprise me that it
25 might impose some recognition of value. So I am not disturbed

1 by that, but I am troubled that I can't respond to you more
2 authoritatively because I understand that maintenance is
3 missing from some areas, capital costs are missing from some
4 areas and other contractual costs. So it could very well be
5 that the 1.97 is, in fact, again hypothetically, 2.15 or 2.20
6 for I believe this is 2003.

7 It would not trouble me that somebody commits for
8 five years to handle coal without an escalator at 2.45 and with
9 different terms which included switching and fleeting and
10 weighing and other services which I have no idea whether or not
11 they are in this piece of paper that you handed me. So it does
12 not in any way necessarily cause me to be able to tell you that
13 I have trouble.

14 CHAIRMAN BAEZ: Mr. Beasley, do you want to instruct
15 your witness to keep a close eye on what he's divulging?

16 MR. BEASLEY: Yes, for, I guess, all of us to refrain
17 from verbalizing dollar amounts.

18 THE WITNESS: Sorry.

19 CHAIRMAN BAEZ: That's okay. I know that you were
20 trying to be as complete with your answer as possible, but I
21 would --

22 THE WITNESS: I apologize. Thank you.

23 MR. VANDIVER: It's very easy to do.

24 THE WITNESS: I'm sorry.

25 BY MR. VANDIVER:

1 Q Mr. Dibner, I now want to hand you a confidential
2 exhibit, and this is Tampa Electric's response to Citizen's
3 first set of interrogatories, and give you a minute to look at
4 this response.

5 MR. BEASLEY: Mr. Chairman, while he's doing that,
6 perhaps to keep the record straight, I understand what was
7 marked Exhibit 65 is not going to be Exhibit 65.

8 MR. VANDIVER: It might be 64, sir.

9 CHAIRMAN BAEZ: Hold on. Hold on, Mr. Vandiver.
10 Let's deal with the questions up here. Hang on.

11 MR. BEASLEY: What was marked as Exhibit 65 --

12 CHAIRMAN BAEZ: Mr. Vandiver introduced or wanted a
13 portion of Mr. Dibner's already admitted or already marked
14 report to use for convenience sake, and we perhaps got a little
15 bit ahead of ourselves and marked it as Exhibit 65. And I
16 don't know if at this point, since we caught it early, it's not
17 better to just renumber and what we have marked as "Dibner
18 Terminal Rate" will not be -- will not be entered or will not
19 be marked for a second time.

20 To get the record straight, the document handed out
21 by OPC titled, "Progress Terminal Rates" will be marked as
22 Exhibit 65 for the record.

23 MR. VANDIVER: Thank you. And thank you,
24 Mr. Beasley.

25 (Exhibit 65 marked for identification.)

1 BY MR. VANDIVER:

2 Q Mr. Dibner, this is Tampa Electric's response to
3 Citizen's first set of interrogatories. And I believe here you
4 costed the Progress movement under your model; is that correct?

5 A No, I did not. I costed the Progress equipment to
6 Big Bend.

7 Q To Big Bend.

8 And under that analysis, you said that it would be \$2
9 higher than the comparable --

10 A For similar sized equipment, not specifically. This
11 does not refer specifically to any particular vessel. It was
12 simply a smaller, 15-, 16-, 14,000-ton barge.

13 Q And that appears on Page 2 of this?

14 A That's correct.

15 MR. VANDIVER: Okay. I don't think that \$2 number is
16 confidential.

17 BY MR. VANDIVER:

18 Q All right, sir. And that's due to -- the
19 differential due to the smaller barges used by Progress?

20 A Smaller, slower. Those are the primary factors.

21 Q Okay, sir. I think now, sir, I'd like to move on to
22 the preference trades.

23 MR. VANDIVER: And what would that exhibit number be,
24 Mr. Chairman?

25 CHAIRMAN BAEZ: This document entitled, "OPC's First

1 Interrogatory Number 5," which Mr. Vandiver has handed out,
2 will be marked Exhibit 66.

3 MR. VANDIVER: Thank you, Mr. Chairman.

4 (Exhibit 66 marked for identification.)

5 BY MR. VANDIVER:

6 Q Mr. Dibner, you discussed the preference trades
7 extensively in both your direct and rebuttal testimony; is that
8 correct?

9 A Yes.

10 Q What are the preference trades?

11 A The preference trades are a series of federal
12 programs that are -- involve primarily the supply of food
13 commodities to foreign countries in programs that are either
14 philanthropically managed or managed by the departments of
15 state and agriculture. As one of the regulations of those
16 programs, a percentage, typically 75 percent, of the trade is
17 reserved for U.S. flag ships which are not subsidized. And
18 therefore, these ships bid on that trade -- American vessels
19 bid on that trade in a public and competitive environment.

20 Q And so this traffic would then be seasonal?

21 A Well, everything is somewhat seasonal. The programs
22 go on, and there is variation from month to month in the amount
23 of cargo loaded and where it goes.

24 Q And in your deposition, you characterized it as
25 variable. How would you define variable?

1 A It is driven by -- where it goes is driven by foreign
2 policy, how much goes is driven by the price of grain and the
3 need of countries and U.S. political objectives, et cetera.

4 Q And you said these were spot transactions. How would
5 you define spot?

6 A It is -- typically the ships are competing for a
7 single voyage to a destination or two ports or three ports, and
8 then they return and that's the end of the engagement.

9 Q So you don't characterize spot as less than a year or
10 less than a --

11 A Well, it's typically less than a year. It's a single
12 voyage.

13 Q Okay. So this business would be less certain than
14 the five-year Tampa Electric contract?

15 A The individual appearance of cargoes is less certain.
16 There are companies for whom preference is a substantial part
17 and in some cases the dominant part of their business strategy.

18 Q Can you name those companies?

19 A Liberty Maritime would be the primary example, and in
20 fact, TECO Transport would probably be the second major carrier
21 on the grand scale.

22 Q But that's not our core fleet that carries our --

23 A No. This would be other vessels primarily.

24 Q And in your model, a premium is averaged with the
25 time charter to arise at the cost ratepayers pay to account for

1 this opportunity cost?

2 A Let me explain.

3 Q Walk me through that, please.

4 A Sure. The fundamental approach that I took is that
5 the responsibility of TECO Transport to Tampa Electric is to
6 provide a market rate that is below the maritime rate, the rate
7 of the smaller, less efficient vessels that are out there. As
8 a consequence, I am already establishing a rate which is below,
9 if you will, the market, and substantially below the market.

10 In searching for a reasonable balance between TECO's
11 strict costs as best I can estimate them based on the
12 information about the specific equipment, its age, its
13 replacement cost, its remaining useful life, I also did
14 consider the market. The best proxy for the market I
15 determined was these preference trades. The reason being, that
16 I could assemble 135 publicly reported voyages, and I was able
17 to use this information to calculate or estimate the earnings,
18 the net earnings to a wide variety of American ships that
19 participate, ships and barges, including the barges of
20 competitors, the barges of TECO Transport, et cetera.

21 Having that market information, I also determined
22 separately that the U.S. flag fleet is essentially at full
23 utilization even without consideration of the preference trade.
24 In other words, a vessel owner in order to go into the
25 preference trade is making the conscious decision to step into

1 this spot market, and my presumption is that the spot market
2 must be providing a return that is comparable, certainly not
3 lower, perhaps somewhat higher.

4 As a result, I used an average of the strict cost
5 that I estimated for TECO with the market to further push down
6 the rates that I assigned to TECO Transport. I could have
7 picked a higher rate that would have truly and fairly
8 represented probably even a low estimate of the marine market,
9 but I didn't do that. I went lower and I went to the
10 preference trade and I said, these are large vessels, they have
11 economies, the economies should be extended to Tampa Electric
12 and its ratepayers. But I went below that. I said, now, I'm
13 going to look at the embedded market value of the equipment on
14 a depreciated basis, and I'm going to find that midpoint. So I
15 have already enforced and taken TECO Transport down below the
16 market by a substantial margin. And I think it's important
17 that this be appreciated and understood in this context.

18 I also found that the results of the market were
19 similar to what my clients indicate to me are the earnings, and
20 therefore, I was heartened and felt confident that this
21 analysis was indeed very fair and very concerned with bringing
22 the benefit of TECO Transport economy of scale to the rate
23 base, not at the marginal rates that would be set by the
24 smaller, slower barges that are out there that could
25 conceivably have bid, could conceivably have left their

1 customers, but to force and enforce a much tougher standard on
2 TECO.

3 I then took the lowest cost vessels and I gradually
4 built up from the very lowest cost TECO Transport vessel that I
5 could find, and I successively went up to the point where I
6 found the marginal barge that could move the full 5.5 million
7 tons, but I didn't use that barge as the price. I took the
8 average, including the lowest cost barge. So, again, I tried
9 to push the TECO Transport rates down in every fair and
10 reasonable way I could to extend to the utility and to its
11 ratepayers the benefits. That's the essence of what I did.

12 Q Could you define rate basis?

13 A Rate basis? Did I use that term?

14 Q Yes, sir.

15 A Well, what I'm saying is this is the process that was
16 employed was described. There clearly is an effort on my part
17 to bring the rate basis down as far as I think it could be
18 fairly and practically brought enforcing every opportunity to
19 extend the economies of this very competitive fleet to the
20 customer and its constituents.

21 Q Does the opportunity to earn the preference premium
22 decrease as competition increases?

23 A In theory it does. But we know, and I worked
24 assiduously to demonstrate this, that the fleet is essentially
25 fully utilized, but again, I didn't rely on marginal pricing.

1 I went far below that in every way I could.

2 Q I'd like to move to the river backhaul very briefly,
3 sir, if we could.

4 A Yes.

5 Q You cited a 26 percent figure for northbound river
6 backhaul on the Mississippi, I believe.

7 A In an aggregate without tying that to the specific
8 loading areas, it is my estimate that on that large main stem
9 between the mouth of the Ohio River on your maps and New
10 Orleans not more than 26 percent of the open hopper barges --
11 open hopper meaning no covers over the cargo compartment which
12 is what is used in the coal trade, there couldn't be more than
13 26 percent backhaul. It's probably much less because there are
14 twice as many covered hopper barges and these barges compete
15 for all sorts of cargo. So it could be 20 or 15 or 10. That's
16 what I said, yes.

17 Q Twenty-six is the maximum?

18 A Absolute maximum.

19 Q Did you analyze any TECO Transport traffic?

20 A I have no proprietary insight into TECO Transport. I
21 was aware of contracts, and indeed, I determined that
22 historically the one tiny 400,000 tons that I would estimate
23 goes back to the primary loading area, that is, the one group
24 of commodities that goes back into the lower Ohio River where
25 most of the coal is loaded, was in the hands of another

1 carrier, according to my best market intelligence. So there's
2 really very little. I looked at 140 terminals on the lower
3 Ohio River, and I determined that I could find only a handful
4 that had any business whatsoever with open hopper commodities.
5 There are a very limited number of commodities that can be
6 exposed to the rain and to hail and sleet and moisture and so
7 on. Most shippers have to have covers to keep their cargo dry.

8 Q And that include iron ore, pet coke, pig iron?

9 A I considered pet coke particularly because it can
10 move, although it doesn't always move in opens. And I
11 considered iron ore which can move, although it does not
12 exclusively move in opens. Yes.

13 Q So you don't really know what the TECO backhaul is?

14 A We do not have any confidential insights. I have
15 seen no documents from TECO Transport.

16 MR. VANDIVER: That's all the questions I have.
17 Thank you, Mr. Dibner.

18 CHAIRMAN BAEZ: Thank you, Mr. Vandiver. I guess it
19 is Mr. Wright. Well, I tell you what, we're getting close to
20 12:30, and that's where I hoped I had broken. So before we get
21 started on a whole line, what we're going to do is we're going
22 to take 45 minutes and be back at one o'clock.

23 Ms. Kaufman, you had a question?

24 MS. KAUFMAN: I do, Chairman Baez. I do have a
25 questions.

1 CHAIRMAN BAEZ: Oh, I'm sorry. I skipped over you is
2 what I did, is what you were saying. My apologizes.

3 MS. KAUFMAN: It's fine.

4 CHAIRMAN BAEZ: I had so hoped that you would remain
5 combined for purposes of this hearing, but it was not to be. I
6 apologize. But nevertheless, I think this breaking point is
7 still good. We're going to take 45 minutes for lunch and be
8 back here at one o'clock. Thank you.

9 (Lunch recess.)

10 CHAIRMAN BAEZ: We'll go back on the record. And
11 when last we were here, Ms. Kaufman, I had skipped over you,
12 but you can go ahead now. Thank you.

13 MS. KAUFMAN: Thank you, Mr. Chairman. I just wanted
14 to let the Commissioners know that I have distributed that
15 order that I referred to in my opening with the pertinent
16 portions highlighted.

17 And, Commissioner Jaber, I was reading from beginning
18 on the quote on Page 11.

19 COMMISSIONER JABER: Thank you.

20 CHAIRMAN BAEZ: Go ahead, Ms. Kaufman. You may
21 proceed

22 MS. KAUFMAN: Thank you.

23 CROSS EXAMINATION

24 BY MS. KAUFMAN:

25 Q Good afternoon, Mr. Dibner. I'm Vicki Kaufman; I'm

1 here on behalf of the Florida Industrial Power Users Group.

2 A Good afternoon.

3 Q I want to ask you a couple of preliminary questions,
4 and I'm going to try really hard not to go over the ground that
5 Mr. Vandiver has already covered.

6 Would you agree with me that one of the main reasons
7 that we're all gathered here today is for the Commission to
8 determine what rates are just and reasonable for Tampa Electric
9 to pass through the fuel adjustment clause to its ratepayers?

10 A This is not really my area of focus or expertise. I
11 understand this is a hearing related to maritime transportation
12 costs. The precise context of that is not really my focus.

13 Q So you don't have any understanding of what the
14 Commission -- what sort of determinations the Commission is
15 going to make here?

16 A The regulatory focus is not my --

17 Q Would that be a no?

18 A Excuse me?

19 Q I said would that just be a no?

20 A I don't think it's a yes or a no. It's not the -- I
21 have a sense of the context. I do not consider myself to be an
22 expert in the regulatory context of this matter.

23 Q So you don't know whether or not the Commission is
24 going to make a determination as to what costs may be passed
25 through to the ratepayers in the context of this case?

1 A I certainly do not.

2 Q Okay. Fair enough. Am I correct, Mr. Dibner, that
3 you don't hold yourself out as an expert in regard to a
4 utility's prudent and reasonable fuel procurement strategy?

5 A Yes.

6 Q Yes, you do not hold yourself out as an expert?

7 A Yes. I qualify my expertise to the maritime
8 transportation context primarily.

9 Q And it's correct, isn't it, that you have been
10 retained in this matter by Tampa Electric?

11 A That's correct.

12 Q And you'd also agree with me, wouldn't you, that both
13 Tampa Electric and TECO Transport are subsidiary companies of
14 the parent, TECO Energy?

15 A Correct.

16 Q Now, I think you have told us that you do have some
17 experience in negotiations for shippers and carriers; correct?

18 A Yes.

19 Q Now, in a transaction where you were negotiating on
20 behalf of the shipper, would you agree with me that it would be
21 your objective to try to get the best rate you could from the
22 carrier to haul whatever cargo was in question?

23 A Yes, considering the long-term viability of that
24 service. I would not want to know that the carrier was being
25 strangled if I had to have a long-term relationship.

1 Q Assuming we were dealing with a reliable, efficient
2 carrier, if you were representing the shipper, you'd want to
3 get the best rate from that carrier that you could; correct?

4 A Yes, considering full costs and all factors. Yes.

5 Q And in the context of what we're talking about here,
6 the shipper is Tampa Electric; correct?

7 A That is correct.

8 Q Now, I think you said in your direct, and you may
9 have said this in your summary, that you were involved in the
10 preparation and the review of the request for proposals;
11 correct?

12 A Yes.

13 Q And it's your opinion that the request for proposals
14 was a reasonable request to the marketplace to provide the
15 necessary services?

16 A Yes.

17 Q And I take it you'd agree, and we've already
18 discussed it, that the sum total of bids received was one on
19 the river, one for the terminal, and zero on the ocean;
20 correct?

21 A Yes.

22 Q Now, I would be correct, would I not, that despite,
23 you know, just those two bids, you did not contact any of the
24 bidders after the conclusion of the RFP to ascertain why they
25 did not bid?

1 A No, I did not.

2 Q But at least one of the bidders on the river segment
3 wrote a letter to TECO expressing why they did not bid; is that
4 correct?

5 A They wrote a letter explaining in their words why
6 they wish to say they didn't bid; correct.

7 MS. KAUFMAN: Okay. I'm going to have Mr. Perry
8 distribute that letter. And, Chairman, if we could have a
9 number for that, please.

10 CHAIRMAN BAEZ: We are at Number 67.

11 (Exhibit 67 marked for identification.)

12 CHAIRMAN BAEZ: And that will be a confidential
13 exhibit.

14 MS. KAUFMAN: Yes, sir. And it's my understanding,
15 Mr. Chairman, that the only confidential part is what's
16 yellowed, and I'm not going to inquire about that.

17 BY MS. KAUFMAN:

18 Q Do you have the exhibit, Mr. Dibner?

19 A Yes, I do.

20 Q Before we look at this though, if you could turn to
21 Page 25 of your report, which is Bates-stamped 77.

22 A Yes.

23 Q And you discussed this page with Mr. Vandiver a
24 little bit. And you discussed the fact with him that there
25 were only two potential bidders on this segment of the

1 transportation; correct?

2 A Correct.

3 Q And the second bidder, who we will not name, was the
4 one that's in bankruptcy; correct?

5 A Correct.

6 Q And the first bidder, who we won't name, is the
7 author of this letter that we've distributed; correct?

8 A Correct.

9 Q And would you agree that the barge company that's the
10 author of what we've now marked as Exhibit 67 is a large and
11 capable river barge company?

12 A Yes.

13 Q Okay. If you would take a look at the letter,
14 please. And again, without revealing any of the yellowed
15 information, if you would read the second paragraph into the
16 record, please.

17 A Certainly. It is, "I can assure you that if TECO had
18 proceeded to divest itself of the barge line, our response
19 would be different. However, our impression from bidding on
20 this business in the past is that our response, along with
21 others, does nothing more than establish the rate structure at
22 which your in-house carrier will continue to move your
23 tonnage."

24 Q Thank you. Let's turn for a moment to the backhaul
25 issue. And we've already had some discussion of that, and I

1 think you've already told us that your model does not consider
2 the backhaul traffic in any way; correct?

3 A Correct.

4 Q And you've allocated the entire round cost trip (sic)
5 to the ratepayers; correct?

6 A Correct.

7 Q If you would turn to Page 116, that's the
8 Bates-stamped number, and it's Page 64, Bates-stamped 116 in
9 your report.

10 A Yes.

11 Q And this deals, am I correct, with the barges on the
12 ocean part of the voyage; correct?

13 A Correct.

14 Q And the first five barges named there are the ones
15 that form the core fleet, if you will, moving the coal over to
16 Tampa?

17 A All of the barges are nominally in what TECO
18 Transport says is the core fleet.

19 Q So all of them?

20 A All of them, all seven.

21 Q I'm going to distribute a copy of Mr. Majoros's
22 Exhibit MJM-2. Again, I believe Mr. Vandiver talked to you
23 about it. Do you have a copy or do you need one?

24 A I can probably locate one, but if you had one, it
25 might save a bit of time.

1 MS. KAUFMAN: And I'll give one to the Commissioners,
2 out this is already part of Mr. Majoros's exhibit, but just for
3 ease of reference.

4 BY MS. KAUFMAN:

5 Q And you've seen this document several times before by
6 now, haven't you?

7 A Yes.

8 Q Okay. And you discussed with Mr. Vandiver, this is
9 information from the Port of Tampa; correct?

10 A Correct.

11 Q And you have no reason to take issue with its
12 accuracy; correct?

13 A Correct.

14 Q And this data shows us the port activities for
15 vessels for which TECO is the agent; correct?

16 A Correct.

17 Q If you would turn with me, just so we can get
18 oriented on this document, let's just look at Page 3.

19 A Yes.

20 Q Before I ask you about this, I wanted to ask you one
21 other question, and that is that it's correct, isn't it, that
22 Tampa Electric receives what are called Ocean Shipping Position
23 Reports from TECO Transport showing where the vessels are?

24 A Yes.

25 Q And they receive those on sometimes more than a daily

1 basis; is that correct?

2 A They may very well receive them more frequently than
3 every day.

4 Q And so TECO knows at all times where the TECO
5 Transport vessels are that are carrying coal for it?

6 A Yes.

7 Q Okay. Back on Mr. Majoros's MJM-5 Port of Tampa
8 data, let's just look at that Page Number 3, and you would
9 agree with me that reading from left to right we've got the
10 name of the vessel, the schedule number, the activity date,
11 what's being carried, how much, how many tons, whether it's
12 being imported or exported, loaded or unloaded, the berth, the
13 destination and the terminal?

14 A Yes.

15 Q And we did go through this in some detail at your
16 deposition, so I'm not going to spend a lot of time on it, but
17 I would just like to look at a couple of these journeys. So
18 let's turn to -- let's see what page we should start with.
19 Let's take a look at Page 21, and the second line there shows
20 the Diana T. That's one of TECO Transport's core coal carrying
21 vessels; correct?

22 A It's one of TECO Transport's many more than four coal
23 transporting vessels.

24 Q Okay. It's one of the vessels that brings the coal
25 to Tampa.

1 A Correct.

2 Q And this port activity log shows us that on
3 July 11th, that vessel came into the port and it had about
4 17,000 tons of coal; correct?

5 A I see 16,000 tons.

6 Q The Diana T, Page -- I'm sorry, I'm on Page 20.
7 You're right, 16,000 tons of coal.

8 A Correct.

9 Q And that was on September 7th, 2003?

10 A Correct.

11 Q And it turned around the next day, and it headed back
12 to Louisiana with about 28,000 tons of phosphate rock bulk;
13 correct?

14 A Correct.

15 Q Let's just -- we'll just stay on that same page since
16 it's probably easier. Can you look down toward the bottom, and
17 do you see the Mary Turner?

18 A Yes.

19 Q Again, a TECO Transport vessel; correct?

20 A Yes.

21 Q It came into the port on September 26th, 2003 with
22 almost 28,000 tons of coal?

23 A Yes.

24 Q And it turned around the next day and went back with
25 about 39 and a half thousand tons of phosphate rock bulk;

1 correct?

2 A Correct.

3 Q And we'll just do one more and then we'll leave this.
4 Take a look in the middle of the same page, 21. We have the
5 Doris Guenther I think you pronounce that.

6 A Uh-huh.

7 Q She came in on September 16th, 2003, and she had
8 22,000 tons of coal?

9 A Yes.

10 Q And she turned around the next day and went back with
11 about 22,000 tons of phosphate chemical bulk; correct?

12 A Correct.

13 Q And we could spend a lot more time going through
14 these reports, but you would agree with me that there are many
15 more examples of this kind of traffic in these 21 pages;
16 correct?

17 A Well, I would agree. But I would qualify it by the
18 fact that overall the volume of backhaul is less than the
19 volume of coal heading into the port. This has been
20 historically the pattern over the entire history of the
21 business. And I would also subject it to the fact that there
22 have been times when the phosphate trade has been severely shut
23 down, major components have been shut down which has also
24 introduced an unpredictability. At this particular moment,
25 obviously the listings that you showed are what they are. I

1 don't dispute that. But we know that over time about
2 50 percent to two-thirds of the barges and the capacity has a
3 backhaul.

4 Q I only picked out selected pages, Mr. Dibner, to
5 spare us some cross-examination, but I'm sure you've looked
6 through these, and they start in, what, October 1, 2001 and run
7 through almost the end of 2003; correct?

8 A Correct.

9 Q And as I said, I appreciate your explanation, but we
10 could spend a lot more time going through and looking at every
11 single voyage where there was a backhaul in these 21 pages;
12 correct?

13 A That's correct.

14 COMMISSIONER DEASON: I need to interrupt for just a
15 moment. Could you explain to me why seawater is listed as a
16 commodity?

17 THE WITNESS: Yes. As I understand it, Tampa
18 Electric carries seawater for the aquarium gratis. In other
19 words, it loads en route. It goes out in the middle of the
20 Gulf of Mexico where the water is cleanest. It picks up the
21 necessary quantity of ballasted water simply by opening valves
22 in the bottom of the barge. It fills up a tank or two with
23 seawater, and then as you can see from that record, on the 25th
24 it went to the aquarium, or you see that it came in with the
25 seawater and spent the 25th of September discharging the

1 seawater and then proceeded to unload the coal. So it is a
2 public service, if you will, that it loads this water.

3 COMMISSIONER DEASON: Thank you.

4 CHAIRMAN BAEZ: Go ahead, Ms. Kaufman.

5 BY MS. KAUFMAN:

6 Q You already discussed with Mr. Vandiver Tampa
7 Electric's response to Interrogatory Number 7 -- 27, excuse me,
8 to the Office of Public Counsel's second set of interrogatories
9 which has now been labeled Exhibit 64. Do you still have that?

10 A I don't recall which one it is. I apologize. I gave
11 back my papers.

12 Q Well, I think I can --

13 A You can just tell me what it is and maybe I will
14 remember it.

15 Q Yes, I will. What I wanted to ask you, now we've
16 reviewed these backhaul, would you accept, subject to check,
17 that this answer was filed on February 2nd, 2004?

18 A Yes, I would.

19 Q Okay. And that was before Mr. Majoros filed his
20 testimony in this case, was it not?

21 A Yes, I believe it was.

22 Q Okay. Would you accept, subject to check, that
23 Mr. Majoros filed his testimony on March 29th?

24 A Yes.

25 Q Now, at the time you answered this interrogatory, am

1 I correct that towards the bottom your answer was, "Mr. Dibner
2 determined that there is no marginal backhaul business"?

3 A Yes.

4 Q And we've just reviewed some examples of backhaul
5 business; isn't that correct?

6 A Yes. The question is whether it has any marginal
7 impact on the pricing and it does not. The reason is that the
8 relationships between a carrier and its backhaul customers does
9 not leap the firewall to the headhaul customers unless there is
10 a competitive reason why it needs to. In this case, it does
11 not. And the reason it doesn't is because the powerful
12 customers on the other side have come to a variety of terms, I
13 imagine, with TECO Transport. We have no idea whether there is
14 any full payment. We have no idea what the rate base is. So
15 we don't have any basis to presume that there is any net
16 benefit that we could reliably count on and reliably expect to
17 relieve the cost burden on the headhaul.

18 This is, as I explained, a volatile trade, the
19 backhaul trade. It has fluctuated in the last five years by
20 more than 150 percent. As a matter of fact, it's almost by
21 200 percent. It cannot be counted on. Its terms are private.
22 The customers are powerful. Cargill is the largest private
23 company I think in the world, certainly in this country. They
24 know what they're doing. I'm sure they have left very little
25 on the table. I'm sure that they have relied on their

1 transportation arrangements because they believe it's best for
2 them. We have no basis to presume that there is any excessive
3 or other profit. We have no information. We don't know what
4 the term of the contract is. We don't know anything about it.

5 Q I think Mr. Vandiver established this with you, but
6 maybe I misunderstood your answers. TECO Transport is not
7 hauling this cargo for free, are they, and they're not hauling
8 it at a loss, are they?

9 A They may be hauling it at the break-even cost of the
10 additional days that it requires. And as I pointed out, if we
11 consider this activity, we would necessarily be raising the
12 required cost of the whole system because other vessels would
13 be required.

14 Q I think you agreed with Mr. Vandiver that they
15 wouldn't be hauling this traffic if the revenues did not exceed
16 the cost.

17 A Correct. And there are real costs.

18 Q And I think you also testified that that increment
19 goes straight to TECO Transport's bottom line; correct?

20 A To the extent that there is a margin above the
21 allocation of cost, it could well do so, yes.

22 Q I want to ask you about a statement that you made in
23 your rebuttal, and I think you mentioned it in your summary,
24 that I found interesting, and that's at Page 5.

25 A Of the --

1 Q Of your rebuttal, Lines 3 to 5.

2 A Yes.

3 Q And I think you might have paraphrased that in your
4 summary, and I guess we've discussed it some already. But what
5 you've said there is that a consideration of backhaul is not
6 for outside conjecture, interference, confiscation, or
7 reallocation in setting market rates; correct?

8 A That's correct.

9 Q So if I understand your recommendation to the
10 Commission in regard to this backhaul traffic, essentially you
11 want the Commission to ignore it or pretend that it does not
12 exist in setting rates?

13 A I am asking the Commission --

14 Q If you could answer yes or no.

15 MS. KAUFMAN: Chairman Baez, I would appreciate that.

16 CHAIRMAN BAEZ: Mr. Dibner, I don't know, I can't
17 remember if you've testified here before, but you can elaborate
18 all you want on your answer, but lead off with a yes or a no as
19 best you can, please.

20 BY MS. KAUFMAN:

21 Q Do you need me to repeat that?

22 A I don't think so. The answer I think is no. And the
23 qualification is, I am not asking the Commission to ignore it,
24 I'm asking the Commission to understand the nature of backhaul,
25 which is that it is a separate commercial transaction that is

1 based on the same competitive and market pressures that exist
2 elsewhere. It reflects the tension between the customer; that
3 is, the carrier and the shipper on its side. In this case it
4 is opaque to all of us. It does not have any normal role in
5 affecting the cost of the headhaul, the heavy leg, it does not.

6 Shipping does not provide mechanisms for rebates when
7 the two parties are not compelled to arrive at that through the
8 forces of the market. Over the years the industry, as I
9 explained, has migrated, the fertilizer industry, towards
10 relying on backhaul. The rates that they are paying is a
11 confidential commercial matter between them and the carrier.
12 The duration of those contracts is a confidential commercial
13 matter. The amount that they're being paid and whether, in
14 fact, there is any -- I think the term that has been used by
15 you, I believe, is gravy above the real costs is unknown to us.
16 The fact of the matter is that this does and would impact my
17 calculations of cost and raise the cost because we would be
18 consuming additional vessels.

19 When I went through with Mr. Perry, the thing I was
20 struck by was the enormous number of days and delays that were
21 inherent in the backhaul business. It is by no means just
22 simply traffic that does not impose cost burdens on the
23 carrier. That's the only thing. I'm not asking the Commission
24 to ignore it, I'm asking the Commission to understand it.

25 CHAIRMAN BAEZ: Commissioner Jaber, you have a

1 question.

2 COMMISSIONER JABER: On that note, in an effort to
3 try to understand this a little bit more, Mr. Dibner, when the
4 contract for headhaul is negotiated, do you know if there's
5 going to be a backhaul arrangement at that point?

6 THE WITNESS: No, you don't, nor do you know that
7 they are synchronized.

8 COMMISSIONER JABER: Okay. Thank you. To the degree
9 this Commission were to consider, and I'm not passing judgment
10 on whether we should consider backhaul revenues, but to the
11 degree we consider backhaul revenues, is there an exhibit you
12 can point me to that would show us what the backhaul expenses
13 are?

14 THE WITNESS: No. There has been, to my knowledge
15 and recollection, no calculation of that that's in this
16 proceeding.

17 COMMISSIONER JABER: When two parties who are
18 negotiating for headhaul sit down at the table, are there
19 proxies that can be used to determine what backhaul revenues
20 might be?

21 THE WITNESS: Yes, I believe there are, and they're
22 precisely what has been considered and let me re-explain. The
23 cost of smaller equipment to carry coal on a one-way basis from
24 Davant to Big Bend are higher than the rates that I have set.
25 Indeed, the cost would almost require a shuffling of the entire

1 U.S. fleet to meet that need, and it is conceivable that we
2 would have very high cost marginal capacity. It's conceivable.
3 We know as a matter of fact that those other carriers do not at
4 this time presumably have access to any of the backhaul. They
5 do not have it in their portfolios.

6 As a consequence, when the two parties came together
7 precisely as you've suggested, my sense is that they would have
8 a pretty good idea of what the rate would have to be to induce
9 the capacity. That would be a higher number than anything I've
10 set by a very substantial margin. And as I explained before
11 lunch, before the break, I, in fact, took those numbers down
12 and then down and then down using -- by ignoring the marginal
13 price. So while I considered the market and I understood the
14 market and I understood the problems that the industry would
15 have at providing a superior solution to Tampa Electric by
16 marshaling forces, which they find to be frustrating or
17 difficult, the fact is that we did not base this on the
18 marginal price. We went below the marginal price and enforced
19 a lower rate that extends the economies, the precise economies
20 that have led to TECO Transport having such an important role
21 in the Tampa trades in both directions. They didn't get there
22 by being high priced. They got there by being low priced.

23 COMMISSIONER JABER: Mr. Dibner, if you were to use
24 that proxy in determining hypothetically what the backhaul
25 revenues would be and you used that as an input to your model,

1 and I'm assuming if you used it as an input to the model, that
2 would mean that headhaul would only be calculated for one-way
3 transportation as opposed to the round-trip, the costs would be
4 for one-way transportation as opposed for the round-trip, in
5 your expert opinion, does the TECO Transport rate result in a
6 higher rate or a lower rate? Does that make sense?

7 THE WITNESS: Yes.

8 COMMISSIONER JABER: You'll have to forgive my
9 layman's approach.

10 THE WITNESS: No, it's fine. I'm going to try to
11 answer your question. First of all, Commissioner, I believe
12 that in a market context if the two parties came together, the
13 headhaul rate would be what I have established it as because I
14 believe that there are no compelling forces in the market even
15 absent this proceeding that could overcome that. If there
16 were, we would see a diffusion of contracts to other players.
17 There aren't any. So I have to believe that both are low cost.

18 The second thing I must impress on you is that the
19 nature of the backhaul contracts is a confidential one. I
20 don't know what the rates are or the terms or the durations or
21 the conditions. And I don't know that --

22 COMMISSIONER JABER: I think you've established that,
23 and I think I understand that. And I preface the question with
24 hypothetically speaking, and I'll tell you why I ask. One of
25 the allegations we've heard already is that the cost should not

1 be based on a round-trip but rather one way. I'm assuming, and
2 I think I've heard, that that's because some of those vessels
3 are taking backhaul. So if you used hypothetically some sort
4 of proxy and could calculate what the backhaul would be, in
5 your expert opinion, would the rate that we're discussing be
6 higher or lower?

7 THE WITNESS: It is conceivable, Commissioner, that
8 the rate would not be lower. And let me, if I may, explain
9 why.

10 COMMISSIONER JABER: Please.

11 THE WITNESS: There is a possibility that the
12 phosphatic fertilizer industry, which is struggling against
13 imports, which is struggling to sustain its demand, may only be
14 paying the costs of the additional time to do the things that I
15 described in the morning, the cleaning and the shifting and the
16 loading and the unloading, et cetera, which entails on a given
17 voyage tens of thousands if not more than \$100,000. But
18 whether or not they can afford to pay more and hold up that
19 level of demand is a question that I don't think any of us know
20 at this moment. We're not sure how much gravy there actually
21 is in their rate. We're not sure how much of those additional
22 costs they could bear or would wish to bear. So there is a
23 question of uncertainty in the confidence of their arrangements
24 with TECO Transport. We don't know.

25 My responsibility was to carry on under the

1 guidelines and the regulations, but I believe that it is not
2 necessarily clear that absent a nonmarket-based set of concepts
3 and absent intrusive discovery into their world, I'm not sure
4 that it would go up or down, Commissioner. I don't know. I
5 don't believe that it would be consistent with the guidelines
6 and the instructions and the regulations that I'm aware of.

7 COMMISSIONER JABER: Thank you, sir. I'm sorry for
8 the interruption, Ms. Kaufman.

9 CHAIRMAN BAEZ: Go ahead, Ms. Kaufman.

10 BY MS. KAUFMAN:

11 Q I just want to follow up on Commissioner Jaber's
12 questions to you and just be sure I understood that
13 explanation. To sort of cut to the chase, I understood you to
14 say you don't know; is that correct?

15 A Well --

16 Q I'm sorry. If you could answer with a yes or no, I
17 would appreciate it.

18 A No, I don't know.

19 Q You don't know one way or the other; correct?

20 A I don't know what the rate would do.

21 Q I also heard you say, and I'll paraphrase, that if
22 there were competition in the market or if competition were
23 brought to bear, then competitors might have to take into
24 account the backhaul business; is that correct?

25 A That's a hypothetical, but yes.

1 Q And so since, in your view, I guess, that there isn't
2 competition for this traffic, it's also correct that it is
3 unnecessary for TECO Transport to consider that when framing
4 its price?

5 A There is competition. It is not competitive because
6 of the scale and the efficiency of the TECO Transport fleet.
7 There are other vessels out there. They are identified in my
8 report. There are other large vessels, but they are not
9 apparently able to provide lower cost transportation or are
10 otherwise occupied in the marketplace.

11 Q Do you happen to have your deposition available,
12 Mr. Dibner?

13 A I do not have my deposition available.

14 Q Okay. We're going to get you a copy if you could
15 hold on one moment. There's so many volumes of it we have to
16 get the right one. If you would take a look at -- there were
17 three volumes and, unfortunately, there are two volumes that
18 begin with Number 1, but this is the one done by Premier
19 Reporting, the outside reporter. That's the one I want to talk
20 to you about.

21 A Yes, I have it.

22 Q If you would turn in your deposition to Page 90, and
23 let me know when you are there.

24 A I'm there.

25 Q And I'm going to direct you to Page 16. And the

1 question there was, "Does the existence or nonexistence of
2 competition in the market have any influence on whether they
3 would reflect any kind of backhaul potential in their headhaul
4 rate quoted?"

5 And your answer was, "Yes, it would."

6 The next question was, "How would it?"

7 And your answer was, "Well, if there was competition,
8 it might cause them to review and reflect on the backhaul, but
9 there is none, then it might not."

10 Is that still your answer today?

11 A Yes, it is.

12 Q So if we had some other competitors out there, it
13 might be necessary to consider the backhaul portion of the
14 haul, if you will?

15 A There are competitors. They are not lower in cost.
16 Therefore, the result is that TECO Transport is in a position
17 where it can provide the lowest cost transportation in both
18 directions, and that's the situation that we're in.

19 Q And it's your view -- I think this is a quote out of
20 your testimony -- that, therefore, TECO Transport is entitled
21 to retain whatever they can earn on the backhaul?

22 A Provided that they are below the cost of the marine
23 market and provided that they are able to provide a superior
24 transportation solution relative to other modes, yes.

25 Q And again, if you could try with a yes or no. You

1 say in your testimony, if I'm reading it correctly, that in
2 your view TECO Transport is entitled to retain the revenue.

3 A If I said that, I said it and I stand by it.

4 Q Fair enough.

5 MS. KAUFMAN: If I could just have one minute. Thank
6 you, Mr. Chairman. That's all I have.

7 CHAIRMAN BAEZ: Thank you, Ms. Kaufman.

8 Mr. Wright.

9 MR. WRIGHT: Thank you, Mr. Chairman.

10 CROSS EXAMINATION

11 BY MR. WRIGHT:

12 Q Good afternoon, Mr. Dibner.

13 A Good afternoon, Mr. Wright.

14 Q When evaluating the construction or deployment of a
15 ship in a particular shipping lane, does the carrier consider
16 both backhaul and headhaul revenues?

17 A The carrier has -- the answer is yes.

18 Q Are you aware of any shipping lanes wherein the
19 backhaul and headhaul moves -- has flipped such that the
20 backhaul has become the headhaul?

21 A It can happen.

22 Q Are you aware of any where it has?

23 A I can't name one off the top of my head, but I'm sure
24 it has happened. It happens in the container trades; it
25 happens in certain segments of shipping.

1 Q Are you aware of -- generally speaking or
2 specifically speaking, are you aware of commodity flows by
3 water between South America and the U.S. Gulf Coast?

4 A I have a general awareness of it, yes.

5 Q If you know, isn't it true that there have been
6 increasing flows of iron ore and pet coke from South America?

7 A Yes.

8 Q And is that a counter event sort of to decreasing
9 metallurgical coal and steam coal exports?

10 A There have been probably I would guess growth in the
11 imports and declines in the exports.

12 Q When the backhaul becomes the headhaul, is it only
13 when the backhaul revenue that counts, the new headhaul
14 revenue?

15 A That counts to what?

16 Q That counts, in your view, of how prices should be
17 set.

18 A The issue is not -- the answer is, it depends on the
19 trade. It depends on whether it's a true direct port-to-port
20 backhaul or whether there are other costs involved. It depends
21 on the types of vessels and whether they are specialized. It
22 depends on many factors. There are trades in which ships have
23 to relocate empty, and what you're really doing is seeing a
24 slight diminution in the number of empty miles that the vessel
25 is sailing to get to its next cargo. That is a much more

1 common mechanism. In other words, sailing to Tampa, unloading,
2 sailing empty to another port, say, Mobile, loading and so on.
3 It's an endless continuous voyage. And the question is, what
4 is the ratio of loaded miles to empty miles and so on. That's
5 in the international trade. The domestic trade we have
6 different mechanics.

7 Q Do you hold yourself out as having expertise in rail
8 costs and rail rates?

9 A No.

10 Q You don't know what the fuel consumption of a rail
11 movement of a thousand miles in a 90-car unit train of coal at
12 109 tons per car is, do you?

13 A No, I don't. Not at this time.

14 Q Are you familiar with the index known as RCAF, rail
15 cost adjustment factor, unadjusted?

16 A No, not really.

17 Q Can you help me out by what you mean by not really?
18 [Is the answer no?

19 A Well, I heard it in the connection of the discussion
20 this morning, but I do not work with rail indexes.

21 Q Do you consider yourself an expert in materials,
22 handling, engineering?

23 A No.

24 Q Did you consider yourself an expert in the
25 engineering requirements for blending of coals or other bulk

1 materials?

2 A No

3 Q So you're not really qualified to discuss the
4 blending capabilities of either Big Bend or Davant, are you?

5 A No.

6 Q You didn't look at TECO Transport's costs or
7 revenues, did you?

8 A As a corporation, I've looked at the annual report.
9 I'm not a stock analyst, and I didn't need it in connection
10 with what I do.

11 Q Okay. You did testify that in your direct testimony,
12 I believe, that Tampa Electric received bids from water vendors
13 and CSX Transportation?

14 A It is my understanding that CSX Transportation did
15 submit a bid.

16 Q Did you evaluate the CSX Transportation bids?

17 A No, I did not.

18 Q Do you consider yourself qualified to evaluate those
19 bids?

20 A It would depend on the context. I think as I
21 described to you earlier, I see myself as a maritime expert,
22 not a railroad expert.

23 Q You participated in preparing the RFP; correct?

24 A Correct.

25 Q Did you recommend to Tampa Electric that they solicit

1 bids from CSX in response to the RFP?

2 A No, I did not.

3 Q Did you see any TECO rail bid analyses in your work
4 for Tampa Electric Company?

5 A I have probably peripherally received certain packets
6 that touched on this; for example, the work of Ms. Wehle, but
7 other than that, I've had no great expenditure of my time on
8 rail-related issues, no.

9 Q You did not specifically evaluate Ms. Wehle's
10 analyses of the rail rates compared to the water rates, did
11 you?

12 A No.

13 MR. WRIGHT: Mr. Chairman, I'm going to have my
14 colleague, Dr. Sansom, hand out an exhibit. It's not
15 confidential.

16 MS. KAUFMAN: Mr. Chairman, while Mr. Wright is doing
17 that, I just wanted to let you know that I asked for that barge
18 letter to be marked as an exhibit, I'm sorry, but it's already
19 in the record. So if you wanted to take that number back --

20 CHAIRMAN BAEZ: It stays.

21 MS. KAUFMAN: Okay. Sorry.

22 CHAIRMAN BAEZ: But if we can keep track of what
23 we've -- that's why we did it ahead of time so that you all
24 could refer to them.

25 MS. KAUFMAN: That's fine. It will be in there

1 twice.

2 BY MR. WRIGHT:

3 Q Mr. Dibner, does this look generally familiar to you?

4 A Yes.

5 Q I understand that it is a chart that shows the
6 mileages by milepost on the Mississippi River and the Ohio and,
7 gee, is that the Red River that goes up through Arkansas?

8 A That's the Arkansas McClellan-Kerr River.

9 Q Thank you. Okay. That's not relevant to this case,
10 is it?

11 MR. BEASLEY: If I could inquire the source of this
12 document, Schef.

13 MR. WRIGHT: I obtained it from Dr. Sansom.

14 BY MR. WRIGHT:

15 Q Mr. Dibner, do the milepost markings on this map look
16 correct to you?

17 A Yes, they do.

18 Q Is it correct that the total mileage from the Mount
19 Vernon dock to Electro-Coal is about 1,055 miles?

20 A I will take your word for it. It would be the
21 distance on the Ohio plus the distance on the lower Miss minus
22 the 50-- actually, I don't think it's 51 miles, I think it's
23 57 miles, but whatever.

24 Q Okay. So --

25 A It's something like that.

1 Q -- basically it's not milepost 954 minus 57 plus
2 milepost 981 on the Ohio minus 829; right?

3 A That's right.

4 Q Thank you. Do you know whether Tampa Electric has
5 loaded coal that it burns at Big Bend at the Mount Vernon dock?

6 A I believe it may have. I think that terminal is on
7 the list and in my report and was in the bid.

8 Q Do you know where coals that would load at Mount
9 Vernon might load by rail?

10 A I don't know which mines would serve it at this time,
11 no.

12 Q And then once the coal gets to Davant, it has to come
13 across the Gulf; correct?

14 A Correct.

15 Q Do I have it right that a nautical mile is
16 5,076 feet?

17 A Yes.

18 Q And do I have it right that the distance by water
19 from Davant to Big Bend is 456 nautical miles?

20 A Correct.

21 Q And does that work out to about 535 or so statute
22 miles?

23 A I believe that's correct.

24 Q It's pretty close, isn't it?

25 A Yes.

1 Q Okay. You don't know what the amount of fuel used to
2 transport coal from western Kentucky to Big Bend would be on
3 rail, do you?

4 A I don't have that number, no.

5 MR. WRIGHT: Mr. Chairman, could I have an exhibit
6 number for my map of river distances, please.

7 CHAIRMAN BAEZ: We're at Exhibit 68.

8 (Exhibit 68 marked for identification.)

9 MR. WRIGHT: Thank you. Mr. Chairman, I'm asking
10 Dr. Sansom to hand out another exhibit which a good part of is
11 confidential. That's why it's in red folders. And this is a
12 letter from -- I don't know if I can name the names or not. I
13 don't see why I couldn't. But it's a letter from someone at
14 Tampa Electric Company to someone at TECO Transport regarding
15 the offer prices for the new -- for the potential -- at that
16 time potential new contract. May I have an exhibit number,
17 please? I think that would be 69.

18 CHAIRMAN BAEZ: Confidential Exhibit 69, show it,
19 letter from Tampa Electric to TECO Transport.

20 MR. WRIGHT: Thank you.

21 (Exhibit 69 marked for identification.)

22 BY MR. WRIGHT:

23 Q Mr. Dibner, have you seen this before?

24 A I don't believe so, no.

25 Q Okay. Now, you would have seen the bid solicitation

1 that's the nonconfidential part, would you not?

2 A Yes.

3 Q Would you look at the last page which bears two
4 different Bates numbers at the bottom. One is 560 and one is
5 21. Have you seen that before?

6 A The numbers are familiar. I don't know that I've
7 seen this precise page, but it may be from my report
8 Certainly the numbers are familiar. The layout looks a little
9 different, but it's familiar.

10 Q Would I be correct that the numbers reflected here
11 are the numbers from your report --

12 A I believe --

13 Q -- for the rate components?

14 A Yes, I believe they are. Yes.

15 MR. WRIGHT: Mr. Chairman, if I may ask you, I don't
16 intend to state the numbers, but if I could ask you to inquire
17 of Mr. Beasley whether it's okay if I mention the headings of
18 the columns there.

19 CHAIRMAN BAEZ: Mr. Beasley, what we've been trying
20 to keep confidential are numbers and --

21 MR. BEASLEY: If I may have one moment.

22 CHAIRMAN BAEZ: Sure. Go ahead.

23 MR. BEASLEY: Yes, the headings are fine. The
24 amounts shown below the headings are confidential.

25 MR. WRIGHT: Thanks. If I might also ask, is it okay

1 to mention the dock names?

2 MR. BEASLEY: Yes.

3 CHAIRMAN BAEZ: I'm sorry, can you -- I didn't get
4 that.

5 MR. WRIGHT: The dock names under the heading, "River
6 Component."

7 MR. BEASLEY: That's fine.

8 MR. WRIGHT: Thank you.

9 BY MR. WRIGHT:

10 Q Mr. Dibner, I'm looking at the column of fuel rates
11 which I understand to be the fuel rate component of the
12 riverine barge movement of coal. Is that a correct
13 understanding of what those numbers show?

14 A Yes.

15 Q Thanks. And I look at Footnote One and that states a
16 fuel rate being based on a set price per gallon of fuel; is
17 that also correct?

18 A Correct.

19 Q If I wanted to calculate approximately the number of
20 gallons of fuel that it would take to move coal from any of
21 these given docks to Davant, would I be okay to just divide the
22 fuel component in the right-hand column there by the rate
23 that's shown?

24 A Yes.

25 Q Thank you. Is it true that the -- or isn't it true

1 that the contract between Tampa Electric and TECO Transport
2 includes a fuel cost escalator?

3 A Yes, linked to the (confidential number) baseline --
4 excuse me. Yes.

5 Q Linked to that number?

6 A Linked to a number, yes.

7 Q That number is probably not confidential.

8 A That number is in the bid, I believe, but yes.

9 Q And actually, that number is --

10 A That's public.

11 Q -- a published number by an industry source; correct?

12 A The indexed number is public, and I believe the bid
13 base was, in fact, issued -- asked for by TECO.

14 Q Thank you. So to get the actual rate at a point in
15 time, would I be correct that we would take the ratio of the
16 then current index price as reflected in the footnote there and
17 divide that by the index price -- the ratio of the current
18 price to the index price and multiply that times the rate in
19 the right-hand column?

20 A That's correct.

21 Q Thank you. Do you know what the current index price
22 is?

23 A I haven't looked lately. Obviously petroleum prices
24 are rising. I would have to speculate. I know -- like
25 gasoline and crude, prices are rising right now.

1 Q You would agree that the rate today would be
2 noticeably higher than the rate of (confidential number) that
3 you mentioned, wouldn't you?

4 A Yes, it would.

5 Q Thank you. Will you agree that it would be
6 appropriate to measure fuel efficiency for various
7 transportation moves on the basis of fuel consumption per trip
8 or per ton trip for the commodity being moved?

9 A It could be measured, yes, that way or other ways, by
10 per ton mile, whatever. There are many ways to measure fuel
11 efficiency.

12 Q Well, if the mileages are significantly different as
13 between one mode versus another, wouldn't you agree that it's
14 appropriate to measure it in either total fuel use or total
15 fuel cost per trip?

16 A Yes. That might not be a measure of efficiency. It
17 might simply be a measurement of cost.

18 Q Cost or cost-effectiveness?

19 A Right.

20 Q Thanks. Would you agree that it would be a fair
21 measure of the energy efficiency of the total haul?

22 A Adjusted for distance it probably is, yes.

23 Q Thank you. I know this may sound simple and I'm
24 going as fast as I can, but would I be correct that if I wanted
25 to calculate the fuel percentage of the total rate, I would

simply divide the fuel rate in any of the cells at the right-hand column by the corresponding rate in the total?

A Yes.

Q Thanks. You don't know what percentage of CSX's rail rate is fuel, do you?

A No.

Q My next line of questions goes to the total time that coal spends on average in transit from the time it is loaded onto a barge on the river until it gets to Big Bend. Can you give me a number of days for that?

A I'll give you a rough ballpark for -- just off the top of my head. It's obviously somewhere in our models. The thousand miles would be roughly ten days, there are some transit, say, 12, 13, 14 days to get to Davant. Let us assume that it goes to storage for some period of time. Let's assume that that coal is moved directly, say, a couple of days. So we're at maybe 16 days. And then the 450 miles would take approximately two days, let's say. So some number, 17, 18 days.

Q Okay. How long does it take to collect the barges on the Ohio River that are then latched together, for lack of a better term, and towed down?

A I believe that our core foundation assumption was that the barge would move in roughly two and a half days or less. So, in other words, once a barge was loaded at the

1 nine -- at the fleeting -- at the dock, it would sit at a
2 moored site for approximately two and a half days, and then it
3 would begin its voyage moving down to the end of the Ohio
4 River, then waiting for the next tow, and then moving on to
5 Davant.

6 MR. WRIGHT: Mr. Chairman, I'm going to have
7 Dr. Sansom distribute another exhibit.

8 CHAIRMAN BAEZ: Mr. Wright, I'm showing this as barge
9 loading logs.

10 MR. WRIGHT: Yes, sir.

11 CHAIRMAN BAEZ: And you need an exhibit number?

12 MR. WRIGHT: Yes, please.

13 CHAIRMAN BAEZ: Show that mark as Exhibit 70,
14 confidential.

15 (Exhibit 70 marked for identification.)

16 BY MR. WRIGHT:

17 Q Mr. Dibner, have you seen documents like this?

18 A I have actually never seen this before, this type of
19 report.

20 Q This document was furnished by Tampa Electric in
21 response to a production request by the Citizens. Have you
22 ever seen any kind of loading log like this?

23 A For Tampa Electric or for a barge line?

24 Q Let's say -- start with Tampa Electric.

25 A I have never seen a report like this for Tampa

1 Electric.

2 Q Have you seen similar reports for other barge lines?

3 A I've seen similar reports, not exactly the same.

4 Q I will aver to you that I picked these at random out
5 of a stack of similar documents that were furnished to us. If
6 I could ask you to look at the right-hand column on, say, the
7 first page which has Bates Number 18 on it. Will you agree
8 that the heading there, "LD DATE," appears to indicate load
9 date for the individual barges?

10 A Yes.

11 Q And will you agree that the time from the time the
12 first barge was loaded until the barge left was about two and a
13 half weeks?

14 A Yes. That's a load of slag. I don't know where it
15 came from. This tow would appear to me to be a lower
16 Mississippi River tow. So this barge might have begun -- that
17 barge might have started up at Pittsburg. It's possible. It
18 might have started in Minneapolis or -- we just don't know
19 where that barge began its voyage. We do know that this boat
20 picked up this tow I presume near Cairo, which is at the mouth
21 of the Mississippi River. But that doesn't mean that's where
22 the barge began its voyage. That barge might have been --

23 Q So the barge actually might have --

24 A It might have come a thousand miles. It is possible
25 it came a thousand miles or a hundred miles or ten miles or

1 whatever. We just don't know.

2 Q I would ask you to look further down the column
3 headed "Type." You'd agree that a good chunk of the coal
4 there -- excuse me, of the commodity there is not slag. It's
5 just the first --

6 A Correct.

7 MR. BEASLEY: Mr. Chairman, if I could interject.
8 Mr. Wright is asking the witness about a document that he said
9 he's never seen before, and it sounds like he's speculating
10 about what the content of it is. And I don't know that there's
11 any foundation laid for him being asked questions about it.

12 CHAIRMAN BAEZ: Mr. Wright, you've got to do a little
13 better to not draw your own conclusions to him. If he doesn't
14 know, he doesn't know. What you can probably ask him is that
15 it is not slag.

16 MR. WRIGHT: I think that was the question that I got
17 to actually, Mr. Chairman. And in response to Mr. Beasley's
18 interjection, I think Mr. Dibner holds himself out as an expert
19 in water transport, both riverine and oceangoing. And even if
20 he hasn't seen this particular document or its specific Tampa
21 Electric counterparts before, or TECO Transport counterparts
22 before, I think he is capable of figuring out what it is. If
23 he's not, he can say so.

24 CHAIRMAN BAEZ: Mr. Beasley, the witness is an expert
25 on maritime transport. He did say that he has seen similar

1 reports. To the extent that Mr. Wright can do a little bit of
2 a better job to walk him through something that he's never seen
3 specifically, I can tell you at least from one Commissioner's
4 perspective, his saying I don't know and you trying to walk him
5 through it is of marginal use to us. I'm sorry, I hope I can
6 speak for the rest of the Commission. If we're getting a lot
7 of I don't knows, the exhibit is not much use anyway at this
8 point.

9 You can proceed, but I'm just warning you the effect
10 that it's having.

11 MR. WRIGHT: I appreciate your comment and the
12 admonition. And I will be as efficient as I can.

13 CHAIRMAN BAEZ: Let's hope so.

14 BY MR. WRIGHT:

15 Q Mr. Dibner, under the type, does that appear to you
16 to indicate the cargo on the individual barges that are part of
17 this tow?

18 A I believe it's the supplier of the material, I think,
19 rather than the -- maybe it's referring to a brand of coal,
20 maybe Ziegler. I don't know. It's a coal. I suppose it's a
21 coal.

22 Q It appears to be coal, doesn't it?

23 A It appears to be coal.

24 Q Okay. And all I was trying to establish by that
25 particular question was that it wasn't just slag in this total

1 tow; correct?

2 A Correct.

Q And you would agree with that, would you not?

4 A Yes.

5 Q Thank you. And as I understood your previous
6 response to me, while this particular tow was -- you think was
7 probably picked up at Cairo, did you say?

8 A Probably.

9 Q It could have actually -- it could have actually
10 started upriver some additional time ahead of the earliest date
shown here?

A Perhaps for a few miles of the lower Ohio. I believe
this is a big line-haul boat for the lower Mississippi River.
14 The Gordon, I believe, is a big boat.

15 Q If I could ask you, and I think we don't want to name
16 the name here, but if I could ask you to look to the next to
17 the last line and the line immediately above that. That
18 appears to reference a particular loading dock; does it not?

19 A Yes.

20 Q Do you know where that loading dock is on the Ohio
21 River?

22 A I could tell you -- yes, I could.

23 Q It's pretty far up the way towards Pittsburg; isn't
24 it?

25 A No. Far is a relative term

1 Q Well, Pittsburg is milepost zero and this dock is at
2 milepost 110.8, isn't it?

3 A Let me check.

4 Q Sure.

5 A I believe the one you're referring to it may be a
6 typo, but I think it's on the Green River.

7 Q Referring to the loading dock whose name consists of
8 eight letters, you think that's on the Green River?

9 MR. BEASLEY: Objection. That, I believe, calls for
10 speculation by the witness, as have most of the questions
11 Mr. Wright has asked about this document.

12 CHAIRMAN BAEZ: Mr. Wright.

13 MR. WRIGHT: Yes, sir.

14 CHAIRMAN BAEZ: There's an objection on the floor
15 here.

16 MR. WRIGHT: Well, I thought that Mr. Dibner would
17 know where most of the major loading docks -- this is a loading
18 dock from which Tampa Electric Company obtains a significant
19 amount of coal for its Big Bend plant.

20 THE WITNESS: Yes. I stand corrected. It's at 111.

21 CHAIRMAN BAEZ: I think you witness overruled you.

22 THE WITNESS: Correct. The numbers are correct.

23 BY MR. WRIGHT:

24 Q And it is on the Ohio; correct?

25 A Yes, it is.

1 CHAIRMAN BAEZ: And you are not speculating,
2 Mr. Dibner?

3 THE WITNESS: No.

4 CHAIRMAN BAEZ: Okay. For the record.

5 BY MR. WRIGHT:

6 Q So if I understood your -- a previous answer that you
7 gave, you said you assumed that that coal sat on the barge
8 about two and a half days before it left to proceed from its
9 loading dock to Davant?

10 A That was a typical assumption and typical industry
11 operating procedure. It could be that the barge moves
12 immediately. It could be that the barge is detained.

13 Q And it could be that the barge doesn't move for two
14 to three weeks, couldn't it?

15 A It is possible. That would not be consistent with
16 either our model or good operating practice.

17 Q If you know, how long is coal typically in stockpile
18 at Davant?

19 A I could make an estimate for you. It would depend on
20 what the inventory level is and what the burn rate is. I don't
21 know if I can use numbers, but it obviously would be the
22 inventory level divided by the annual consumption multiplied by
23 365 would be an approximate simple estimate of that number.

24 Q Well, do you know how many days of inventory are
25 typically kept at Davant by Tampa Electric?

1 A I did not dwell on that issue. It is -- it varies,
2 of course.

3 Q Do you know how much tonnage is typically kept on the
4 ground at Davant?

5 A I have a sense for the approximate range of tonnage,
6 yes.

7 Q I don't think that's a confidential number.

8 A If hypothetically there were 1 million tons and
9 hypothetical there were a utility that's burning 5 million tons
10 or 6 million, let's say 5, that would be approximately 20
11 percent of a year. So it would be roughly 75, 72, 73 days.

12 Q Thank you. So if I can nail down from another source
13 the typical average inventory at Davant, I could do the
14 comparable calculation and convert it to days as you just did;
15 correct?

16 A You could do that. Now, that might be coal that is
17 specifically in a stockpile and the active coal might move
18 right through, but it would be -- those kind of calculations
19 could be used.

20 Q In some responses to questioning by at least
21 Mr. Vandiver and I think perhaps also Ms. Kaufman, I believe
22 that you stated that the Jones Act fleet is at full
23 utilization?

24 A Close to it, yes.

25 Q Does that include TECO Transport?

A Yes.

2 Q Does TECO Transport have excess capacity for
3 cross-Gulf hauls?

4 A I don't know at what time you're referring to. My
5 general sense is that the company has managed to keep its fleet
6 well-utilized, the active fleet, the fleet that's in service,
7 and that's a combination of both international preference and
8 other voyages, but that the fleet is busy and active.

9 Q If you know, how much capacity does TECO Transport's
10 fleet have to handle surges in demand?

11 A My understanding and observation is that TECO uses
12 the flexibility of its fleet to absorb fluctuations upward and
13 downward. It seems to have the ability to move coal when it's
14 required. It seems to carry the coal that is required and
15 works within the market to have the best utilization it can.

16 Q Well, if it's at full utilization, how much extra
17 capacity -- at or close to full utilization, how much extra
18 capacity does it really have?

19 A The answer depends on the fact that they may be
20 selling fill-in work from time to time that creates the
21 appearance of total utilization, successful marketing when, in
22 fact, they might have had 5 or 10 or 12 or whatever percent
23 that was at some point prior to the date that we're looking at
24 may have been available. That's the normal nature of sales and
25 marketing and scheduling.

1 Q Okay. Is the answer to my specific question, I don't
2 know?

3 A At this moment I don't know what the utilization of
4 the fleet is, and I don't know what the utilization of the
5 fleet was yesterday. So I suppose if that's -- I can say no, I
6 don't know at this moment. No.

7 Q To what extent are the cross-Gulf moves dependent on
8 the weather?

9 A Weather is a factor. There are storms. It's a
10 factor. It can delay a voyage. It can delay several vessels.
11 TECO has invested in equipment to minimize those impacts by
12 using tug-barge linkages, but there are weather delays.

13 Q I asked about blending a little bit earlier. Do you
14 know about the blending that goes on at Davant?

15 A It's not an area that I have studied, no.

16 Q Okay. You've testified about the benchmark; correct?

17 A I discussed it, I believe, with you in my most recent
18 rebuttal.

19 Q I think a deposition maybe?

20 A Deposition, excuse me.

21 Q You don't know how the benchmark is calculated, do
22 you?

23 A I have read its description. I have seen a graph by
24 Ms. Wehle summarizing it. I have never tried to recreate that
25 or study it, no.

1 Q The answer to my question is, no --

2 A No.

3 Q -- you don't know; correct?

4 In your deposition testimony -- actually, in response
5 to questions by, I believe, Mr. Keating, you claimed to be
6 concerned about CSX getting the business with favorable rates
7 and then putting the barge company out of business. Is that an
8 accurate characterization of your concerns?

9 A I don't think I used the term "put out of business."
10 I think I said that it could lead to a diminution in capability
11 because the barges could be remarketed, and consequently, there
12 would be a diminution in capability to compete for the
13 business.

14 Q And then you claimed to be concerned that CSX would
15 then raise the rates; right?

16 A Yes.

17 Q I asked you, had this ever happened anywhere that you
18 knew of. Do you recall that?

19 A Yes.

20 Q And my recollection is that you don't know of any
21 such instance, do you?

22 A I don't have a specific example. Obviously rail
23 competition with marine is as old as the existence of
24 railroads, and it is an issue of importance.

25 Q You say it's an issue of importance, but you don't

1 know of a single instance where rail came in, took over some
2 barge business, and then jacked the rates back up, do you?

3 A I don't have an example at my fingertips, no.

4 Q Okay. Are you aware that Seminole Electric
5 Cooperative changed a few years ago from having a
6 significant --

7 MR. BEASLEY: Objection. Schef has gone to
8 testifying again. Ask a question.

9 CHAIRMAN BAEZ: Rephrase it, Mr. Wright.

10 MR. WRIGHT: Certainly.

11 BY MR. WRIGHT:

12 Q Are you familiar with the history of Seminole
13 Electric Cooperative's transportation of coal to its plants at
14 Palatka, Mr. Dibner?

15 A Yes, I am.

16 Q Isn't it true that historically from the time those
17 plants went into service until a few years ago, most of that
18 distance was covered by waterborne transportation?

19 A Yes.

20 Q Isn't it true today and isn't it true that for the
21 past few years the whole move has been by rail?

22 A Yes.

23 Q And you don't have any evidence that CSX has tried to
24 jack up its rate to Seminole, do you?

25 A I have no evidence.

1 Q Do you know anything about the history of rail rates
2 in this country or in the eastern United States for the last 20
3 years?

4 A I'm not a historian of rail rates. No, I don't.

5 Q Thank you. Wouldn't you agree that if the rail
6 company were to provide, say, between 1 and 2 million tons per
7 year of transportation, that wouldn't put the barge company out
8 of business, would it?

9 A It could severely impair the company if -- or the
10 capability if those were the last 2 million tons and the
11 Consent Decree were to reduce the volume. It could lead the
12 dismantling of the capability, certainly its erosion.

13 Q But then your concern is this hypothetical bait and
14 switch theory; right?

15 A Given the tension between the modes, I don't think
16 it's fair to characterize it as hypothetical. But, yes, that
17 is my concern.

18 Q Has anybody in this case advocated that all of Tampa
19 Electric Company's coal be transported by rail that you know
20 of?

21 A No.

22 Q In fact, isn't it true that it's your understanding
23 of Dr. Sansom's testimony that he advocates intermodal
24 competition?

25 A I haven't read Dr. Sansom's testimony.

1 Q Do you believe that intermodal competition for coal
2 transportation to electric generating stations can provide
3 benefits to the customers of those utilities that do so?

4 A It may, it may not. It certainly wouldn't if very
5 high costs were amortized over a very small volume of coal. If
6 someone had to spend \$50 million to carry 12 million tons of
7 coal, it might be a very distorting investment.

8 Q Well, that's a different issue. And you don't know
9 anything at all about the rail handling, equipment, or
10 requirements for Big Bend, do you?

11 A I didn't say I did. I said that if there were
12 additional fixed costs that needed to be borne, they could be a
13 decisive factor in making me feel comfortable saying that it is
14 not in a customer's interest.

15 Q But you'd have to know all the facts to be able to
16 evaluate that?

17 A Yes, I would.

18 Q Is it true that the river barge market for bulk
19 commodity transportation is declining?

20 A No.

21 Q Is it in a weak period?

22 A It is coming out of a weak period. It is now in a
23 period of shock because of the demand in Europe for U.S. coal
24 all of a sudden because of the Chinese impact on shipping, and
25 it is also in demand because the Chinese need grain and the

1 U.S. economy is beginning to pick up. So we have been through
2 a period of overinvestment. We are also seeing high scrap
3 prices for steel leading many barge owners to retire excessive
4 numbers of barges which is tightening supply further and was
5 not anticipated.

6 Q Just to make sure we're communicating effectively,
7 was the answer you just gave in response to a question
8 regarding the river barge system?

9 A River barge system.

10 Q Did you review CSX's bid?

11 A No.

12 Q Okay. So you don't know anything about the
13 escalation factors that were in that bid?

14 A No.

15 Q You don't know anything about how the railroad
16 normally administers those in its negotiations with its
17 customers, do you?

18 A No. I don't know anything about the specific bid.

19 Q I'm still a little bit confused about backhaul and
20 the headhaul, so I've got a couple of follow-up questions on
21 that. I think you testified that it could happen that the
22 headhaul could become a backhaul. Is that accurate so far?

23 A It could happen.

24 Q I think you also testified that phosphate volumes
25 have varied by some nearly 200 percent heading in the backhaul

1 business?

2 A Yes.

3 Q If in any given year the coal transportation were
4 less than the phosphate transportation, would the coal then be
5 the backhaul?

6 A Well, it becomes a somewhat semantical question given
7 the nature of the marketplace for transporting the coal, but in
8 a technical terms, I suppose that would be the semantic
9 situation. Whether the two parties or the carriers have any --
10 whether it has any impact is a separate matter.

11 Q To the extent you know, and you appear to be an
12 expert in this line of analysis, do volatile or inconsistent
13 moves or hauls get a lower rate than the more stable or certain
14 hauls or moves?

15 A Well, it depends if there's a stabilization effect
16 through a take or pay contract. The market could be extremely
17 volatile, but for the carrier, it could provide a stable
18 protection of their earnings. It would depend on how the
19 business was contracted. It depends on how the two parties
20 come together and what they agree to.

21 Q I understand your qualification, but the question I'm
22 trying to ask you is, typically, in your experience, to the
23 extent you know, does the volatile or inconsistent move get a
24 lower rate or a higher rate than the more stable or certain
25 move?

1 A One would expect that the volatility would introduce
2 higher costs that might in a normal hypothetical case lead to a
3 higher rate.

4 Q Thank you. At your deposition I asked you if you
5 knew what the conditions for a competitive market are. Did you
6 happen to study up on that in the meantime?

7 A You know, I studied it as recently as last night, and
8 I'm happy to tell you that my definition was almost verbatim
9 that of Princeton University. The Princeton definition is when
10 two companies vie to provide a service or good. And I think I
11 was very close to that, so.

12 Q To the extent -- you're not an economist, are you?

13 A I do not have a degree in economics. No, I am not an
14 economist.

15 Q To the extent you know, doesn't the status of whether
16 a market is competitive have to do with whether any participant
17 in the market can influence the price?

18 A Well, those are additional factors, but my issue of
19 the two parties competing would suggest that one or more has
20 some pricing power and action. I think it's consistent with
21 what you're saying.

22 Q Well, I'm not sure that it is, because isn't it true
23 that the true characteristic of a competitive market is that no
24 individual buyer or seller can affect the market price?

25 A The supply is the choices remain to some degree in

1 the hands of the suppliers for them to choose what they wish to
2 charge. They do have that decisive power to some degree,
3 whether it's over the short term or the long term. You asked
4 me about competition and I defined it. You didn't ask me about
5 a marketplace. That's a separate issue.

6 Q Well, I asked you about what constitutes a truly
7 competitive market.

8 A Well, I recall it was a competitive market, and what
9 I'm telling you is that there is a price -- I happen to have
10 mechanically dropped the price below the market in the way I
11 described, to provide the -- to extend the economics of the
12 TECO Transport system. There is a market out there, and no one
13 can actually influence it at the end of the day on the ocean
14 side and on the inland side. It would be higher than the rates
15 I set.

16 Q Can the presence of CSX Transportation as -- or
17 could, I should say, could the presence of CSX Transportation
18 as a potential carrier of coal influence the price?

19 A It's hypothetical. Conceivably it could.

20 Q In a downward way, yes?

21 A In a downward way or in an upward way. It depends on
22 the time, depends on the issue.

23 Q Can you conceive of how the presence of CSX
24 transportation being able to carry coal by rail to a power
25 plant could cause the price to go up --

1 A Yes.

2 Q -- where it was intermodally served?

3 A Sure. If CSX had a contract that was hell or high
4 water that compelled TECO to use and amortize and pay for
5 service, if the competitive capabilities of the other mode were
6 diminished, I could see a situation where it would mitigate
7 towards higher prices. It's possible.

8 Q That assumes a what you called a hell or high water
9 take or pay contract, doesn't it?

10 A Well, it assumes some obligation. It assumes that if
11 there were some obligations that led to those kinds of
12 mechanics, that could happen. Whether it's hell or high water
13 or a take or pay or this or that is not the -- that's not the
14 core issue that we can speculate about.

15 MR. BEASLEY: Mr. Chairman, I think Mr. Dibner has
16 indicated in response to a question from Mr. Wright that he's
17 not an economist, and these are -- it sounds like an economic
18 seminar to me and time marches on.

19 MR. WRIGHT: Well, Mr. Chairman, my point is real
20 simple. He's trying to testify that there is viable
21 competition here. When you've got one bid, one bid, and zero
22 bids, I think it's doubtful that there is. And I was trying to
23 establish as a predicate what his basis for saying his
24 understanding of competition is.

25 CHAIRMAN BAEZ: He did testify to that, Mr. Beasley.

1 But I think you're quickly making your point.

2 BY MR. WRIGHT:

3 Q In your deposition testimony in response to
4 questioning by Mr. Keating, you made reference to some
5 measurable and consequential savings of having barge service
6 available for TECO Transport. Do you recall that?

7 A Yes.

8 Q I asked you at your deposition whether you had
9 attached a dollar value to those measurable and consequential
10 savings, as you used the term, and you responded, no, I have
11 not; is that correct?

12 A Yes.

13 Q You've never performed any kind of analysis of that
14 for Tampa Electric, have you?

15 A Not as a specific analysis, no.

16 CHAIRMAN BAEZ: Mr. Wright, before you move along,
17 how long do you have? Because I think our court reporter is
18 going to need to take a break.

19 MR. WRIGHT: I don't have long, but I think taking a
20 break would be a great idea.

21 CHAIRMAN BAEZ: Well, how much longer do you have?
22 Never mind. We'll break for ten minutes.

23 (Brief recess.)

24 CHAIRMAN BAEZ: We'll go back on the record.
25 Mr. Wright, you had a few more questions for Mr. Dibner.

1 MR. WRIGHT: I do, Mr. Chairman. Thank you.
2 Permission to approach the witness. I'm going to ask him just
3 to read about 10, 12 lines of his deposition transcript into
4 the record.

5 CHAIRMAN BAEZ: Okay.

6 BY MR. WRIGHT:

7 Q Mr. Dibner, I would just like to ask you to read into
8 the record the two questions and answers that begin at Page 24,
9 Line 16 of your deposition and then at Page 25, Line 5. I
10 think you'll note that there appears to be a typographical
11 error in the question there and that the word "inconsequential"
12 should be "and consequential." If that's consistent with your
13 understanding, I'd appreciate it if you'd read it that way.
14 Thanks.

15 A "Question: What then is the basis for your statement
16 that they were measurable and consequential savings?"

17 MR. BEASLEY: Excuse me, Schef. What page?

18 MR. WRIGHT: Page 24, Line 16 through Page 25,
19 Line 5.

20 THE WITNESS: "Answer: It is my understanding from
21 TECO -- excuse me, Tampa Electric staff that their assessment
22 and comparisons according to the benchmark and according to
23 their analysis of late is that the marine mode continues to
24 provide a reduction relative to the benchmark and that it is
25 lower in total cost than the CSXT proposal with its ancillary

1 last mile and first mile access issues. That's what I have
2 heard.

3 Question: So to the extent that you made that
4 statement, you are relying on what you have been told by Tampa
5 Electric staff?

6 Answer: That's correct. I have not performed my own
7 analysis."

8 BY MR. WRIGHT:

9 Q Thank you. I believe you've already answered this
10 question in response to Ms. Kaufman, so I'll be fast. You are
11 not holding yourself out as an expert regarding the reasonable
12 and prudent fuel procurement strategies for utilities, are you?

13 A No.

14 Q In your deposition testimony, you made reference to
15 your belief that TECO Transport has a system that works that
16 doesn't require additional capital investment in this uncertain
17 time. Do you recall making that statement?

18 A In this -- could you just repeat the last words?

19 MR. BEASLEY: What page?

20 MR. WRIGHT: Page 36, beginning at Line 5.

21 Mr. Dibner makes the statement, "I believe that it has a system
22 that works that doesn't require additional capital investment
23 in this uncertain time."

24 THE WITNESS: Yes.

25 BY MR. WRIGHT:

1 Q Were you referring to Tampa Electric?

2 A Yes.

3 Q You mentioned that you --

4 A Or TECO Transport, I guess.

5 Q Okay. You mentioned that you had looked at TECO
6 Transport's financial statements; correct?

7 A I have looked at them, yes.

8 Q Isn't it true that those financial statements show
9 that TECO Transport has over the last three years or so made
10 approximately \$20 million in capital expenditures annually?

11 A Yes. I believe the comment referred to -- if it
12 was -- I don't have it with me, but let me take a look to see
13 if we can clarify this.

14 The comment about "doesn't require additional capital
15 investment in this uncertain time" pertained to investment in
16 rail infrastructure at this uncertain time to adding capital
17 costs to provide an additional modality.

18 Q So a minute ago when you said TECO Transport --

19 A I was mistaken.

20 Q -- you should have said Tampa Electric?

21 A Correct.

22 Q Okay. Either as a percentage or in total tons, do
23 you know how much coal that's burned in power plants in Florida
24 is carried into Florida by CSX Transportation?

25 A I don't know the number. I believe it would be most

1 of the balance that's not coming in by marine modes.

2 Q Do you know how much total is coming in by marine
3 mode?

4 A I have a rough idea, that it would be the TECO
5 tonnage plus the Crystal River tonnage --

6 Q And all total that would be about --

7 A -- and Jacksonville Electric, which is coke to a
8 large degree.

9 Q And all total that would be, what, 10 million tons?

10 A Probably less than 10 million tons.

11 Q And do you know out of how much coal, including pet
12 coke?

13 A I do not

14 Q In your testimony, you stated that Tampa Electric and
15 its ratepayers have benefited from --

16 MR. BEASLEY: Page reference, please.

17 MR. WRIGHT: This is his deposition at 42.

18 MR. BEASLEY: Could you provide him a copy of his
19 deposition transcript if you're going to ask him questions
20 about it, so he can see the context of his answer?

21 CHAIRMAN BAEZ: I agree.

22 MR. WRIGHT: All right.

23 BY MR. WRIGHT:

24 Q Mr. Dibner, I'm asking you some questions that come
25 out of our deposition colloquy at Page 42 of that deposition.

1 And there at Lines 3 through 7, you basically -- I confirm with
2 you that it's your testimony that over the years Tampa Electric
3 and its ratepayers have benefited from delivery costs that were
4 consistently lower than rail rates. That's an accurate
5 characterization of your testimony; right?

6 A Yes.

7 Q You did not actually do any analysis of those
8 asserted savings, did you?

9 A I examined the benchmark graph of Ms. Wehle that's
10 the basis of that statement.

11 Q You made no study of rail rates over the past 20 or
12 30 years, did you?

13 A No.

14 Q Do you know whether in the time that Tampa Electric
15 has been transporting by coal Tampa Electric ever solicited
16 proposals from CSX Transportation or any other railroad for the
17 provision of coal transportation services to Big Bend?

18 A To Big Bend, I have no specific knowledge.

19 Q Without a solicitation, how would they know what it
20 really would have cost them to get the coal to Big Bend?

21 A That's really not an area that I have experience
22 with.

23 Q Okay. I think it's your testimony that the
24 oceangoing business is very hot right now in the sense that
25 shippers -- excuse me, I really should say carriers can do very

1 well in the international market; is that true?

2 MR. BEASLEY: Objection. He's testified what his
3 analysis of the market is. If you've got a portion of his
4 transcript or of his testimony that you'd like to ask him about
5 that let's him use his own words --

6 CHAIRMAN BAEZ: Mr. Beasley, address the question to
7 the Chair.

8 MR. BEASLEY: Yes. I object, Mr. Chairman, for that
9 reason.

10 CHAIRMAN BAEZ: Okay. Mr. Wright, do you want to try
11 and reference the transcript if you're asking about something
12 that he said?

13 MR. WRIGHT: I believe I am asking about something
14 that he has testified to, and that was really a predicate
15 question. I really didn't think it was in dispute. I'm not
16 referring to a particular point in the transcript.

17 CHAIRMAN BAEZ: Okay. Rephrase the question.

18 MR. WRIGHT: I will go for it.

19 BY MR. WRIGHT:

20 Q Mr. Dibner, is it your testimony that currently the
21 market for international shipping is favorable for carriers?

22 A Yes.

23 Q Okay. Couldn't TECO Transport redeploy some of its
24 vessels to that market and make more money, assuming no
25 contractual problems?

1 A It's a qualified no. The reason is the international
2 fleet of TECO Transport is limited; it is committed to the
3 preference trade. Even with the relative strength of the
4 international market, the ability of U.S. flag bulk carriers to
5 find it more attractive to be in the international trade has
6 limitations. Certainly they will try to examine that
7 opportunity, but it is not a foregone conclusion that they will
8 abandon, for example, the domestic or other preference trades.

9 Q Can the vessels that are used to transport coal from
10 Davant to Big Bend be used in the international trade?

11 A They conceivably could play some roles in certain
12 niche markets. It's not clear again that U.S. flag costs are
13 competitive at those smaller -- relatively small size ranges.

14 Q Can those vessels, the barges that carry coal from
15 Davant to Big Bend, participate in the preference trade market?

16 A Some of them can, some of them are less likely to or
17 cannot or can only participate in certain regions.

18 Q And is that a lucrative market right now for
19 carriers?

20 A It's a -- I would say the preference trade right now
21 is in a moderate state. It's not a booming market at this
22 moment, which is normal. The preference trade rarely booms.
23 It just moves along.

24 Q I don't recall whether this was in your summary or in
25 response to questions by Mr. Vandiver, but I think in earlier

1 testimony today you made the statement that TECO Transport is a
2 strong competitor analogous to a vendor of computer software
3 such that if the state of Florida were going out to solicit
4 contracts for software, for spreadsheets and so on, you
5 wouldn't have any real doubt as to who would win?

6 A My suggestion was analogous, but it's simply to say
7 that TECO Transport has an excellent fleet to serve this trade
8 at the lowest cost of any vessels that I'm aware of, and I
9 believe Dr. Hochstein agrees with me.

10 Q And was the entity that you would expect to win the
11 state government contract Microsoft?

12 A Well, I don't think they will win everything, but I
13 certainly believe there are some Microsoft products somewhere
14 in this state.

15 MR. WRIGHT: Thank you, Mr. Dibner. Thank you,
16 Mr. Chairman.

17 CHAIRMAN BAEZ: Thank you, Mr. Wright.

18 (Transcript continues in sequence with Volume 3.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON)

CERTIFICATE OF REPORTER

3 I, TRICIA DeMARTE, RPR, Official Commission Reporter,
4 do hereby certify that the foregoing proceeding was heard at
5 the time and place herein stated.

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

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

16 DATED THIS 3rd DAY OF JUNE, 2004.

17 *Tricia DeMarte*

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