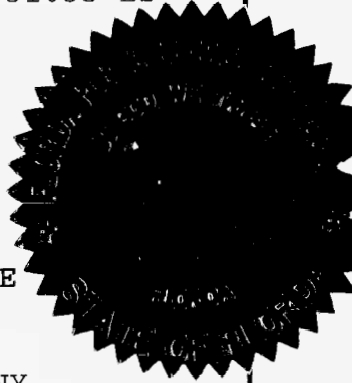


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of

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

DOCKET NO. 031033-EI



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VOLUME 3

Pages 262 through 491

PROCEEDINGS: HEARING

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

DATE: Thursday, May 27, 2004

TIME: Commenced at 9:30 a.m.  
Concluded at 6:22 p.m.

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

REPORTED BY: JANE FAUROT, RPR  
Chief, Bureau of Reporting  
(850) 413-6732

APPEARANCE: (As heretofore noted.)

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION 06271 JUN-3

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## P R O C E E D I N G S

2 (Transcript follows in sequence from Volume 2.)

3 CHAIRMAN BAEZ: Mr. Twomey, do you have questions for  
4 the witness?

5 MR. TWOMEY: Yes, sir, Mr. Chairman.

6 CROSS EXAMINATION

7 BY MR. TWOMEY:

8 Q Good afternoon, Mr. Dibner?

9 A Good afternoon.

10 Q Mr. Dibner, I want to ask you a few questions to see  
11 if I can fully understand your testimony and the conclusions  
12 you draw therein.

13 Is it your testimony that there is competition on the  
14 river?

15 A Yes. The inland industry is generally recognized to  
16 be a competitive industry.

17 Q Okay. If so, in the context of this case in the TECO  
18 RFP, how is that competition represented?

19 A In terms of responses to the RFP?

20 Q Yes, sir.

21 A There was a response. In my 25 years, this is a weak  
22 time for the industry. We have the largest, historically, the  
23 largest carrier in bankruptcy. I believe that there has been,  
24 as I've discussed in my recent deposition, a consolidation, but  
25 there is competition in the industry. The response to the RFP

1 by the inland sector was perhaps disappointing, but there is  
2 competition. There are 18,000 barges, and there are four, or  
3 five, or six carriers with fleets of open hopper barges who are  
4 focused in the coal business. There are, however, issues  
5 surrounding this matter that seem to have mitigated for only  
6 one response, and it was not expected.

7 Q Thank you. And Ms. Kaufman read you, or had you read  
8 a letter from one river vendor that expressed their concerns  
9 about -- or, actually, expressed their reasoning for --  
10 apparent reasoning for not submitting a bid, correct?

11 A Yes.

12 Q Okay. And as I understood the gist of that response,  
13 it was that they thought that they would have no chance of  
14 actually getting the business because they assumed that the --  
15 their bid might go in to help structure a price that would go  
16 to TECO Transport. Am I generally correct in that?

17 A That is what they said, yes.

18 Q Do you have any reason to disbelieve specifically  
19 that response?

20 A Yes, I do. I believe that given their large size in  
21 the open hopper trade, they had an opportunity to lodge a  
22 letter that would potentially lead to further consolidation in  
23 the open hopper sector. And I discussed this in my deposition.  
24 I believe that the greatest value that they saw was to suggest  
25 that the solution is to have further competition and further --

1 excuse me, consolidation and, in effect, a further reduction in  
2 the number of inland carriers that would be extant in the  
3 industry.

4 Q Now, in the previous, your testimony is, I believe,  
5 that the RFP that was issued in 2003 was substantially similar  
6 to the previous RFP that was issued, correct?

7 A Yes.

8 Q And I think it is also your testimony, is it not,  
9 that there were more respondents to the 1998 RFP?

10 A Yes, there were.

11 Q Now, it is true, in fact, is it not, Mr. Dibner, that  
12 despite the respondents -- the responses to the 1998 RPF (sic),  
13 the business was, in fact, let to TECO Transport?

14 A Yes, as they probably all expected.

15 Q And, in fact, TECO Transport has had the contract  
16 since the beginning of the network being established, correct.

17 A Yes.

18 Q Okay. Now, and it is now known, I think, is it not,  
19 that the previous contract, not the current one, but the  
20 previous one contained a meet or beat provision, correct?

21 A I don't recall specifically if it had a meet or beat  
22 provision in '98. I don't recall that.

23 Q Well, '98 was the --

24 A The last.

25 Q The last contract?

1 A Yes.

2 Q And I thought it was your testimony in conjunction  
3 with Ms. Wehle's -- let me finish, please -- that as a result  
4 of the RFP process in conjunction with your modeling, that TECO  
5 Transport was then given the opportunity to take the business?

6 A For this procurement that occurred in 2003, the  
7 answer would be yes.

8 Q Yes, sir.

9 A Yes.

10 Q So the meet or beat provision was in the previous --

11 A Correct.

12 Q -- 1998 contract that was awarded?

13 A Correct.

14 Q And we don't know, it is confidential whether that  
15 was carried through, right?

16 A I believe so.

17 Q Now, would you agree with me, Mr. Dibner, that it is  
18 likely that more vendors would respond to an RFP from TECO,  
19 from Tampa Electric, if they believed they had an actual chance  
20 of winning the bid?

21 A It is probable.

22 Q Okay. Let me phrase it this way. Would you agree  
23 with me that if this Commission required Tampa Electric Company  
24 to send out a new RFP to all the river vendors -- river  
25 carriers that they could find that owned, possess, operate



1 these 18,000 barges you described, and have Tampa Electric say,  
2 in this bid there will be no right of first refusal, the  
3 affiliate company, TECO Transport, if it chooses, will be  
4 required to bid with others and the contract will go to the  
5 lowest qualified bidder. Do you think under those circumstance  
6 that you would get more bid responses than the single  
7 disqualified bid TECO received as a result of the bid last  
8 year?

9 A That is the likely effect.

10 Q Okay. So we have -- we have, if I can summarize what  
11 I think you've said now, there is competition, you believe, on  
12 the river, represented by some 18,000 barges. For whatever  
13 reason, only one RFP response was submitted, and for the  
14 reasons you've testified that was disqualified. Correct?

15 A Correct.

16 Q Okay. Now, as a consequence on the river portion,  
17 you then had to find a number, you had to find a rate, and you  
18 used your proprietary model to do so, correct?

19 A Correct.

20 Q Okay. And the interworkings of your model are  
21 proprietary or secret, correct?

22 A Well, they were very transparent and made available,  
23 I believe, in early January to the group of persons, the  
24 intervenors who had, I believe, until perhaps some days ago  
25 access to the model, access to its structure, its assumptions,

1 the formulas, the results. They had a mechanism to test, I  
2 believe, virtually every parameter that was of any real  
3 consequence, et cetera. So even though it is a model that is,  
4 to use your word, proprietary, for the purpose of this process  
5 it was fully and openly shared with the others. I flew to  
6 Florida and provided a tutorial, et cetera.

7 Q Yes, sir. But isn't it true, not to be picky here,  
8 but proprietary is your word not mine, is it not? Don't you  
9 describe --

10 A Well, it is the word that, I guess, counsel raised on  
11 my behalf. But it was open for the purposes of allowing others  
12 to use it, see it, examine it, et cetera.

13 Q Okay. But still, the Commissioners -- the  
14 Commissioners aren't going to know what goes on inside your  
15 model as a result of these proceedings, correct?

16 A Well, they -- I suppose they could hear from staff,  
17 if they asked a question, but --

18 Q All right. So I want to ask you, if you were sitting  
19 in their seats and having to make the decision they have to  
20 make in this case, and you were a commissioner, would you feel  
21 more comfortable with the output of a proprietary model, or  
22 more comfortable with the outcome of a bidding process that had  
23 three or more responses in which the outcome or the contract  
24 was given to the lowest qualified bidder? Which of those two  
25 would you feel most comfortable with?

1           A       I'm not sure. The reason is that, first of all, we  
2 had a number of bids last time. I believe the number was -- I  
3 don't know if I can mention that, but there were a small number  
4 of bids. Since then two of those bidders have consolidated.  
5 The industry, as shown in my exhibit, continues to be  
6 consolidated on the open hopper coal focus side. This is a  
7 somewhat unique pattern of trade far down the river. This is a  
8 time when the market is -- was assumed to be very low, and,  
9 indeed, the bid confirmed that.

10                       And the fact is that the model was within four  
11 percent, on average, of the bid that was received which was  
12 limited by its partial characteristics that we have discussed.  
13 And if I were a Commissioner, knowing that and knowing the  
14 results of how close it was, I think I might feel that there  
15 are some unique characteristics to this that may mitigate  
16 against having multiple bids. We're really -- I would almost  
17 be indifferent. There is a credibility to the results. The  
18 results are proved through the diligence with which the model  
19 was developed, and in this year, by the closeness of the model  
20 to the bid, and to prior bids, and to other measures and  
21 indicators.

22           Q       Mr. Dibner, is it your testimony that there are fewer  
23 than three vendors or carriers on the Mississippi River that we  
24 are concerned with?

25           A       Well, there certainly is a number of companies with

1 open hopper capacity. They are enumerated in my report, and we  
2 have referred to that page. The Commissioners can see on Page  
3 25 of my report, Bates stamped number 77, the description of my  
4 sense of the situation of each of the companies is presented on  
5 that page and has been since, I guess, October.

6           And as a consequence, the utility industry at large  
7 is limited, in a sense, to those five carriers. One of whom is  
8 relatively larger as you can see; one of whom is owned by  
9 another utility; one of whom does not do long haul  
10 transportation on the lower Mississippi River; one of whom is  
11 TECO; and one of whom is bankrupt.

12           So that is the market, and that is what scores of  
13 utilities are effectively relying upon to handle their upriver  
14 movements, which amount to a hundred and -- I think in excess  
15 of 170 million tons a year, and that is the population that is  
16 available to be most well-positioned to go after this business.

17           Q     Okay.

18           A     And that was all set forth.

19           Q     I'm sorry. I didn't mean to interrupt.

20                     I want to ask you the question again, and I want you  
21 to assume for hypothetical purposes that irrespective of what  
22 is out there that the Commission would get -- would see TECO  
23 receiving four responsive bids on the river. Okay. Do you  
24 follow me there?

25           A     Yes.

1 Q Okay. And all have qualified, okay?

2 A It is a hypothetical.

3 Q Hypothetical. That TECO as a result of a new bidding  
4 round or RFP would receive four responsive bids all by  
5 qualified bidders. And so I want to ask you my question again.  
6 If you were a Commissioner, if you were sitting in their seat,  
7 which would you feel the most comfortable with in terms of  
8 setting a, quote, unquote, market price; Mr. Dibner, the lowest  
9 qualified bidder of those four, or a number that is arrived at  
10 by the use of your or any model for that matter?

11 A Under your hypothetical, if we had four qualified  
12 bids, fully conforming bids, I would rely on the four  
13 conforming bids in some way.

14 Q Okay. Thank you. Now, your model results for the,  
15 let me ask you. The disqualified vendor, who I think we are  
16 suppose to keep secret or confidential, and it was disqualified  
17 for purposes of being in Chapter 11, are you aware --

18 A Just to correct, there were several reasons why my  
19 recommendation was to not accept that bid. The financial  
20 condition was but one of them.

21 Q Are you aware of whether or not that carrier has,  
22 since the RFP last year, received new contracts?

23 A It has shed some, and I believe it has also won a  
24 few.

25 Q Now your model result for the river that is your rate

1 established by your model --

2 A Yes.

3 Q -- did you have modify that in any respect for prior  
4 to its use as the rate-setting level for TECO's purposes?

5 A Well, the model is, in a sense, a model that was  
6 built originally specifically for Tampa Electric and used  
7 previously in a slightly earlier form in 19 -- what we will  
8 call the 1998 process. So it is a -- it is a model that is  
9 specifically suited to carry -- to calculate the cost of moving  
10 coal to Davant. It is a customized model.

11 Q Yes, sir. And my question is that after the model  
12 produced this rate, or cost level, did you make any adjustments  
13 to it outside of the model?

14 A No, it produced these rates. To my knowledge it  
15 hasn't been modified.

16 Q Thank you. Now, it is also your testimony, is it  
17 not, that you believe there is competition for the terminaling  
18 or transloading services?

19 A We did received a bid.

20 Q And you accept that bid as being evidence of a  
21 market?

22 A We accept that bid as being evidence that there was a  
23 credible, qualified bid for that particular service. It is a  
24 very particularized service, given that there are only two such  
25 facilities on the entire Mississippi River.

1 Q So it is your testimony then that aside from those  
2 two terminals, that is the one owned by TECO Transport and the  
3 other terminal IMT, I guess it is, that there are none that  
4 would meet the definition of those that could participate in  
5 the transloading market in question here?

6 A That is correct.

7 Q Okay. Now, with respect to the -- there are none?

8 A There are none that could do this kind of work on a  
9 sustained basis.

10 Q Now, if I understand your testimony correctly, you  
11 decided to use the bid as the basis for establishing the new  
12 price for TECO Transport, correct?

13 A Correct.

14 Q Now, isn't it true, also, that the bid amount  
15 received from the other vendor was different than the amount  
16 previously paid to TECO Transport for that service?

17 A Yes, it was. It was also different from their own  
18 bid previously because that was the basis. The other company  
19 did bid before in '98.

20 Q Okay. And you say you used the bid?

21 A I accepted that bid, yes.

22 Q Okay. Now, without -- without saying -- I think  
23 without disclosing --

24 MR. TWOMEY: Mr. Beasley, without disclosing either  
25 of the dollar amounts, would it be acceptable to describe

1 whether the new number was higher or lower? That doesn't  
2 disclose any --

3 MR. BEASLEY: No, it doesn't.

4 MR. TWOMEY: Okay.

5 BY MR. TWOMEY:

6 Q Isn't it true, then, Mr. Dibner, that the new number  
7 that you used as a result of the bid was, in fact, higher than  
8 what TECO Transport was charging under the previous contract?

9 A Yes, that's correct.

10 Q Okay. Now, with respect to the coastal or gulf  
11 transportation component, it is -- is it your testimony that  
12 there is, in fact, competition there as well?

13 A There is competition amongst the vessels, but as I  
14 have explained, the unique needs of Tampa Electric have created  
15 a unique fleet operated by TECO Transport, which is -- consists  
16 of vessels which are large and fast and are, therefore, a corpus  
17 of low-cost vessels that are below the next vessel, and  
18 certainly any group of vessels, even if those vessels were  
19 available.

20 There is competition. TECO Transport competes for  
21 other business, domestically and in the preference trade.  
22 There are some 60 or 70 vessels. There are some five, six,  
23 seven, significant operators. But the TECO Transport fleet  
24 enjoys the position of being the low-cost producer. It has the  
25 scale and the features.



1           Q     Now, with respect to whether there was, in fact, a  
2 competitive market for the coastal transportation leg, I am  
3 correct, am I not, that your testimony was that there was a  
4 balance between the supply of vessels and the demand for their  
5 services, correct?

6           A     That is correct.

7           Q     Okay. So it is your -- I take it, then, that it is  
8 still your testimony that even though you apparently knew that  
9 the other vessels were engaged or occupied in contracts, you  
10 still -- and unable to take a new contract, presumably, that  
11 you would still call that a competitive market?

12          A     Well, most markets are -- have some degree of  
13 utilization. It is usually quite high. So in that sense there  
14 is -- it is not completely -- we can't be completely sure that  
15 this is a unique or strange circumstance. Companies could have  
16 said, you know something, the rate that TECO gets, or needs, or  
17 whatever, may be high, we are going to go in and compete. We  
18 are prepared to leave certain customers. We are prepared to  
19 leave certain contracts.

20                     It turns out they didn't, but it doesn't mean that  
21 some vessels could not have entered solicitations if they had  
22 decided that this was more rewarding than what they would  
23 otherwise be doing. That is still in the realm of possibility.

24          Q     Yes, sir. But to the extent that one wanted to take  
25 the position, whether they were correct or not, that the

1 existence of competitive bid responses indicated markets, we  
2 would find, then, under that constrained definition that there  
3 was no market evidenced here for the coastal transportation  
4 route, would that be correct?

5 A It is -- I would agree that within the marine mode,  
6 TECO enjoys substantial benefits. That raises the question  
7 about whether the rail mode is, in fact, the competitive  
8 alternative. And that is where the benchmark comes in. That  
9 is where consideration of long-term logistics jumps from marine  
10 to a multi-modal competition.

11 Q Have you ever had an occasion to examine what TECO  
12 was paying for the transport per ton of coal to its Gannon  
13 generating station?

14 A I have not studied that.

15 Q Okay.

16 A I am aware that they have railed some coal. That is  
17 all I know.

18 Q Would you accept that whatever they were paying for  
19 that service would be more indicative of what the market price  
20 of coal transportation to the Tampa Bay or the Big Bend area  
21 than the rail benchmark established by the Commission?

22 A I couldn't comment. It depends on where the coal is  
23 emanating from. It depends on the terms and conditions, the  
24 volume. I'm really not in a position to comment on the Gannon  
25 rail arrangements.

1 Q Fair enough. With respect to the -- with respect to  
2 the -- let me start over. On the coastal leg, because TECO  
3 didn't receive any competitive, any bids at all, you used your  
4 model for that leg, correct?

5 A Yes, because as I explained this morning, I feel that  
6 it is the responsibility, the strategic mission of TECO  
7 Transport. The reason it was created was to provide a low-cost  
8 total transportation cost, essentially, from mine to plant. In  
9 a sense we can think of the ocean component as the one that has  
10 the responsibility, because it is so unique, of being the deal  
11 closer. It has to provide the benefit. And, therefore, the  
12 ocean model, as you have suggested, is the necessary element in  
13 driving that cost down to produce the value for Tampa Electric.

14 Q And you say it is so unique, correct?

15 A It is a very unique and distinctive solution that is  
16 low cost within a competitive marketplace. There are many  
17 other barges, as you see in my report, but few of them are as  
18 efficient as TECO Transport.

19 Q In a sense wouldn't you agree, Mr. Dibner, that for  
20 many decades now the TECO Transport coastal leg vessels, at  
21 least, have functioned almost as an extension of the generating  
22 plants, almost like a conveyor belt, bringing coal from Davant  
23 to the boilers?

24 A Well, the nature of supplying coal is that it is a  
25 high volume process. I believe it is a intercompany

1 transaction. It is operating under regulations and rules that  
2 have been established. I do not see it as an extension of the  
3 power plant. It is a Maritime endeavor. It has different  
4 characteristics. It does deliver coal in high volume, yes. Is  
5 it an extension of a power plant? I don't think a barge is an  
6 extension of a power plant.

7 Q Okay. Now, the rate that resulted from your model  
8 for the coastal leg, it is my understanding of your testimony  
9 that you subsequently adjusted that. Let me ask you this way.  
10 Isn't it true that you subsequently adjusted the rate when it  
11 came out of the model, or did you?

12 A No. I started -- I had a -- there was a process that  
13 is described in the report. Each vessel was costed in  
14 succession, starting with the lowest of the core vessels that  
15 are assigned to the utility. We started with the lowest cost  
16 and then proceeded up the curve, and then when we could carry  
17 the volume of coal, I calculated the average cost, which was  
18 below the cost of the marginal vessel, the last vessel, and  
19 was, in fact, the average cost. So it was a -- if you are  
20 referring to an adjustment, it was the agglomeration of that  
21 information, that we had very distinctive vessels, they had  
22 different costs. We started with the lowest, et cetera. That  
23 is the only adjustments that were made in order to develop the  
24 rate for the ocean component.

25 Q Okay. I'm sorry. I misunderstood, clearly. I

1 thought I heard you testify this morning, or maybe it was this  
2 afternoon, that when you got a certain rate level, you adjusted  
3 it either for what the company could be earning in the  
4 preference trades, or in other foreign trade, and that you  
5 modified it, not the complete distance, but that you had  
6 several modifications to give the customers the benefit of the  
7 doubt?

8 A If I used the word modification, I think we are  
9 caught up in a bit of a semantic understanding. Those were  
10 structural integral adjustments downward that are part of the  
11 process.

12 Q It is part of your model?

13 A Exactly. There is nothing that said, oh, now I am  
14 going to take this down. The model was structured in such a  
15 way that it consistently restrained the pricing. We already  
16 knew we were below the market. We knew that. We knew that  
17 TECO could -- in theory, one could have said, what is the cost  
18 of the next vessels that could do this? And the answer would  
19 be a much higher number. We dispensed with that. If you have  
20 the impression it was a series of post facto modifications, it  
21 really wasn't. They were all threaded in to drive and restrain  
22 the rates. They were adjustments, there is no question about  
23 it, but they were integral.

24 Q Yes, sir. And I apologize, the use of the improper  
25 terminology is my fault. But what I am trying to understand is

1 I thought that your model, at least in the initial segments of  
2 it or processes, looked at things like replacement costs,  
3 right?

4 A It looked at replacement costs and depreciated value  
5 as the way of, again, as I explained this morning, starting  
6 with the minimum cost that the company could be expected to  
7 sustain if we ignored the market functions, and then looked at  
8 the market as calculated through the 135 preference voyages,  
9 which is the best we have for defining the public earnings, and  
10 then taking the average of that. That was a way of carrying  
11 into the calculations the spirit of the market, while at the  
12 same time enforcing cost or pricing and rate restraint on the  
13 fleet. That is why I did that.

14 Q But you used, it is true, isn't it, that you used --  
15 you used replacement cost to set your rate, not TECO  
16 Transport's actual book costs?

17 A We don't have their actual book cost, but I must  
18 emphasize we did not use replacement cost except to start the  
19 process. We then depreciated to the point where I believe, and  
20 it is referred to in my rebuttal testimony that, in fact, I  
21 believe the number is 50 percent of the estimated replacement  
22 cost, so we were greatly reducing and minimizing that capital  
23 cost. By no means was it tied to replacement. That is just a  
24 starting point. Everything was depreciated downward.

25 Q Yes, sir. But isn't it true that the vast majority

1 of the vessels in TECO Transport's fleet, if not all of them,  
2 are in excess of 20, 25, 30 years old?

3 A That is not correct, certainly on the ocean side.  
4 The ocean --

5 Q That's what I'm asking. I meant on the ocean side.

6 A That is not correct. The fleet consists of a variety  
7 of vessels. Some of them are 25 years old, but many of them  
8 have been expanded and enlarged. They have had plugs put into  
9 their holes that have cost tens of millions. They have had new  
10 tugs acquired in the second-hand market and brought in. And  
11 they have multi-million dollar linkages installed in them to  
12 permit them to push quicker and more reliably.

13 So the actual embedded costs are far higher than  
14 assuming that these are 25-year-old assets would suggest. And  
15 these vessels have service lives that have been extended  
16 through massive shipyardings with what is called the service  
17 life extension, which are huge multi -- that is why the \$20  
18 million is being expended. There is a lot of capital to  
19 prolong the lives and avoid building new vessels.

20 Q It is my understanding that when a carrier seeks to  
21 obtain preference trade contracts that the Maritime  
22 Administration requires them to open their books on what their  
23 costs are. Is that true?

24 A I don't believe it's a total opening. The Maritime  
25 Administration has its own guidelines and does its own cost

1 accounting to determine what is termed fair and reasonable.  
2 They may from time to time audit books in order to collect  
3 information. I don't believe they have complete visibility  
4 into the financing of each vessel and the P&Ls of each vessel,  
5 profit and loss.

6 Q Are you saying they don't do that, or you don't  
7 believe they do it?

8 A I believe they do it on a spot basis to collect  
9 certain information. They then determine what they consider to  
10 be fair and reasonable rates.

11 Q Because I believe -- I can't give you a cite, but I  
12 believe someplace in your testimony isn't it true that you  
13 speak, at least generally, about the opening books being  
14 problematic for TECO Transport?

15 A We don't have any insight into their books. We have  
16 knowledge of their fleet, their equipment, their technology  
17 their deployments to a degree. We have an awareness of the  
18 voyages that they take in domestic and preference trade. We  
19 don't have access to their books. We have no discussion or  
20 contact with them and no financial information.

21 Q When you say "we don't have," are you --

22 A I have none; Tampa Electric has none. There is  
23 nothing could give me. There's nothing that I can --

24 Q But did you seek that information?

25 A No. It is my understanding it would have been



1 inappropriate for us to -- for me to ask for that to happen  
2 they are a separate company. There's is an arm's-length  
3 relationship that I see and I respect.

4 Q You say there is an arm's-length relationship?

5 A Oh, yes.

6 Q With the affiliate company?

7 A Yes.

8 Q Okay. Did your attorneys give you a copy of the  
9 order that -- I apologize, Mr. Chairman, I forget the number,  
10 but I have a copy.

11 A I have a copy of something called Docket 920001.

12 Q Right. It's Order Number 20298. Do you have that?

13 A That's not it.

14 CHAIRMAN BAEZ: I don't believe that's the one that  
15 Mr. Dibner identified.

16 MR. TWOMEY: Okay.

17 MR. BEASLEY: I don't believe it is.

18 CHAIRMAN BAEZ: He may have identified the other one.

19 MR. TWOMEY: I'm sorry.

20 MR. BEASLEY: I think this one was referred to by Ms.  
21 Kaufman. No, it's not.

22 CHAIRMAN BAEZ: Which one do you want the witness to  
23 have, Mr. Twomey?

24 MR. TWOMEY: Order 20298, the 1988 order, Mr.  
25 Chairman. I'm sorry if I miscommunicated that to Mr. Dibner.

1 CHAIRMAN BAEZ: I think Mr. Fons is handing Mr.  
2 Dibner 20298.

3 THE WITNESS: I do have Order 20298.  
4 BY MR. TWOMEY:

5 Q And you are family with this order, aren't you, at  
6 least generally?

7 A I have heard of it, yes.

8 Q Have you read it?

9 A No, I have not.

10 Q Okay. I want to ask you a few questions, if I may.  
11 You do understand, do you not, that this is the order that  
12 established the -- or accepted the settlement that is -- that  
13 established the rail benchmark, correct?

14 A Yes, I have that understanding.

15 Q Okay.

16 MR. BEASLEY: Mr. Chairman, it might be helpful to  
17 move things along, we will stipulate that this order says what  
18 it says. I think the witness said he hasn't read it, but we  
19 will be happy to address it in our briefs, and I'm sure that  
20 Mr. Twomey could as well. But asking the witness about an  
21 order of the Commission that he hasn't read, I don't know, is  
22 that productive this afternoon?

23 MR. TWOMEY: Well, Mr. Chairman, my response to that  
24 is I have -- I have a number of very specific questions to ask  
25 Mr. Dibner about the RFP and the bidding process that took

1 place this time, and see if they comply with the conditions  
2 laid out in the order. It is not a legal -- it's not asking  
3 him to play lawyer or anything, and it is not an issue to be  
4 briefed, Mr. Chairman, because I have specific questions.

5 CHAIRMAN BAEZ: Let me save you some time.

6 Mr. Beasley, the questions, at least that Mr. Twomey  
7 has identified as wishing to ask, have to do with his -- with  
8 Mr. Dibner's testimony in the sense that he does give an  
9 opinion, or give a determination that the RFP was of a certain  
10 character. And how he is trying to -- it seems to me, at  
11 least, what Mr. Twomey has said, that he is trying to tie the  
12 order in to the extent the order does place some standards for  
13 that RFP, and I think we will play that as it goes for now.

14 MR. BEASLEY: Fine.

15 CHAIRMAN BAEZ: Am I correct that you have limited  
16 yourself to that, or that is your intention of what your  
17 questions are regarding?

18 MR. TWOMEY: Yes, sir. Mr. Chairman, my  
19 interpretation -- my self-serving interpretation of what you  
20 just said is, yes, sir, that is correct.

21 CHAIRMAN BAEZ: Let's hope you remember what I said.

22 MR. TWOMEY: If I don't, if it appears that I don't,  
23 it won't be intentional.

24 CHAIRMAN BAEZ: Mr. Beasley is going jump in if you  
25 don't

1 MR. TWOMEY: I trust that he will. Thank you,  
2 Mr. Chairman.

3 BY MR. TWOMEY:

4 Q Mr. Dibner, if you would turn to Page 12 of the  
5 order, the actual order page numbers are at the top of the  
6 page. The bottom number is Page 18, if you have got that, too.

7 A The top is the guiding number?

8 Q Yes, sir. Page 12.

9 A Yes, I'm there.

10 Q Okay.

11 MR. TWOMEY: Mr. Chairman, rather than ask him to  
12 read this, I want to read a portion of the order and ask Mr.  
13 Dibner some questions with respect to it, if I may. I will be  
14 brief.

15 BY MR. TWOMEY

16 Q The last full paragraph reads, Mr. Dibner, and I  
17 quote: "There is another reason for switching to a market  
18 pricing system that was alluded to in TECO's statement that the  
19 current system, no matter how outstanding the results, left  
20 lingering suspicions that it resulted in higher costs. That  
21 this might be true would be seen by contrasting affiliated and  
22 nonaffiliated contracts. The latter with few exceptions are  
23 characterized by arm's-length transactions."

24 And I want to stop there for a second and ask you  
25 whether the -- you view the contract between TECO and TECO

1 Transport, as you just said a minute ago, I think, as  
2 arm's-length?

3 A I believe that, to the best of my knowledge, it  
4 carries with it the attributes of an arm's-length relationship,  
5 obviously, with the understanding that it is a negotiation with  
6 an affiliated company, but in which there is a real pressure  
7 put on the other party by this process that works and which  
8 enforces a restraint on TECO Transport.

9 TECO Transport could have come back and said, we --  
10 go get your transportation and this price would be sky high.  
11 There is a tension. There is a real coming together around the  
12 realities of market pressure, and I believe that there is --  
13 there certainly is very limited contact outside of the  
14 operations and the contract negotiation.

15 Q Well, let me stop you there just a second, if I may.  
16 If in a coastal market in which it is in balance, in balance  
17 with the supply meeting pretty much the demand, where do you  
18 suggest TECO Transport would have gone, Mr. Dibner, had they  
19 told TECO they didn't want this carriage?

20 A Where would Tampa Electric have gone?

21 Q No, I'm sorry. I meant to say where would TECO  
22 Transport go in this balanced market if they had told TECO that  
23 they weren't interested in the work, in the contract?

24 A It certainly would cause problems in the short term.  
25 It would be -- have a degree of cataclysmic stress on them.

1 But the fact of the matter is that they understand that their  
2 mission is to provide a benefit, a below marine market benefit.  
3 And even though they may be very upset with the rates that they  
4 have to settle for, it is my sense that they recognize that  
5 perhaps is the better alternative.

6 But I don't think they are happy with the fact that  
7 there is a pressure on them to accept these below -- I think  
8 they believe they are below-the-market rates. They are  
9 certainly below the cost of the competition that could be  
10 mustered to do the business. Even if there were no other  
11 business, they are being pushed and shoved downward by their  
12 customer. And that is power that the customer has to beat them  
13 down, and that is exactly what happens in this mechanic.

14 Q You are stating it's your testimony that TECO beat  
15 TECO Transport down?

16 A Yes. I think they would have said your cost is --  
17 should be the marginal cost of the next -- of carrying it, even  
18 if we could find a slightly smaller barge, and we say no.

19 Q Now, speaking of slightly smaller barges, wasn't it  
20 your testimony, either your prefiled testimony here, or in one  
21 of your depositions, that you recognize that the Progress  
22 Energy vessels were smaller and slower than the superior  
23 vessels owned by TECO Transport?

24 A Yes, they have to be smaller.

25 Q And as a consequence, just in walking-around

1 knowledge of maritime economies of scale, they would  
2 necessarily be lower costs -- I mean, higher costs?

3 A All other things being equal, one would expect that  
4 they would be higher cost; that's correct.

5 Q Okay. If the Commission had access to the Progress  
6 Energy cost, for example, for carrying its coal from the lower  
7 Mississippi-New Orleans area to Crystal River in these smaller  
8 vessels, would you object to them comparing those rates or  
9 costs to the rates being paid to by TECO?

10 A Well, the Commission can do whatever it wishes. I  
11 think the critical issue is whether it is a true comparison of  
12 real costs as opposed to rates, and whether it is -- it is a  
13 real allocation of real ocean costs rather than a formulaic or  
14 somewhat more arbitrary, perhaps, treatment of those ocean  
15 rates. But if it is the real thing, certainly the Commission  
16 is free to do whatever it wants with the information it has. I  
17 would have no -- the criticality is to do it right. That's not  
18 for me to decide.

19 Q Yes, sir. And I'm sorry. I misspoke, because I  
20 meant to say rates. You wouldn't have any problem, then, with  
21 the Commission comparing the rates being paid by Progress  
22 Energy for its coastal transportation versus the rates TECO  
23 pays TECO Transport for its transportation?

24 A No. The Commission do as it wishes. And as long as  
25 it is done right, I think they should.

1           Q       Thank you. Let me finish that sentence. The full  
2 sentence read: "The latter, with few exceptions, are  
3 characterized by arm's-length transactions entered into in the  
4 competitive marketplace." The next sentence says, "Typically,  
5 the contracts result from competitive bidding systems in which  
6 the contract is awarded to the qualified bidder submitting the  
7 lowest bid. In any event, the utility's negotiator has clearly  
8 defined loyalties and knows whose interest he or she is to  
9 protect. In contrast to this, the typical affiliate contract  
10 is let without the benefit of competitive bidding. Instead,  
11 confident that the contract will be given to the affiliate  
12 representative of the two companies, representatives of the two  
13 companies negotiate the rate at which the product or service  
14 would be purchased."

15                   Now, with respect to that, I want to ask you, don't  
16 you acknowledge that the contracts here clearly did not result  
17 from the competitive bid in which the qualified bidder  
18 submitting the lowest bid got the work?

19           A       That is correct. A low bid was forced on to the  
20 carrier; that is correct. Your statement is correct. We force  
21 a rate on to the carrier.

22           Q       Yes. And isn't it true, Mr. Dibner, that as I think  
23 you have already testified, that with respect to the -- with  
24 respect to the transloading component, a higher bid was forced  
25 upon the affiliate company as a result of the single bid being



1 received?

2 A That is -- that is the mechanic that happened this  
3 time. I don't recall last time whether it was higher or lower  
4 than what we might have expected.

5 Q That is a yes, right?

6 A Yes.

7 Q Okay. Thank you. Now, would you agree with me that  
8 the utility's negotiator in this case didn't have clearly  
9 defined loyalties and knew whose interest she was to protect?

10 A Well, I can't speculate. I think that is a matter  
11 for you to take up with someone from Tampa Electric, perhaps  
12 Ms. Wehle. I was not party to the negotiations. I made my  
13 recommendations, and the actual process and the mechanics of  
14 that I certainly was not a party to.

15 MR. TWOMEY: Okay. A little bit more from the order,  
16 Mr. Chairman, if you will indulge me?

17 CHAIRMAN BAEZ: Go ahead.

18 BY MR. TWOMEY:

19 Q The paragraph above that on the same page,  
20 Mr. Dibner, reads thusly: "Cost of service regulation for  
21 public utilities is necessitated by the monopoly status and the  
22 attendant lack of significant competition, if any, for their  
23 end product cost-of-service regulation exists as a proxy for  
24 competition to ensure that utilities provide efficient,  
25 sufficient, and adequate service, and at a cost that includes

1 only reasonable and necessary expenses. Cost of service  
2 regulation of some type is essential when there is no  
3 competitive market for the product or service being purchased.  
4 It is superfluous when a such a competitive market exists."

5 That being so, would you agree with me that at least  
6 as evidenced by the bid responses to TECO's 2003 RFP, that  
7 there has been no demonstration of significant competition in  
8 any of the three transportation legs?

9 A I disagree. I think that there are insights into the  
10 marketplace that have been used very carefully and responsibly  
11 and certainly in an open manner. The fact that TECO Transport  
12 has created a system that is uniquely capable, has not excused  
13 them from being held at each stage of the chain, inland,  
14 terminal, and ocean, from being forced to operate at market  
15 indications.

16 Now, that has extended to each piece. On the inland  
17 side to a pathetically low earnings with rates to carry  
18 everything within a few percent of the bid that was received  
19 from a bankrupt carrier with a terribly old and problematic  
20 fleet. On the terminal side from a legitimate bona fide bid.  
21 And on the ocean side they have been forced to accept not the  
22 marginal price, which we understand. We know what it costs to  
23 run a tug. We know what it costs to run a barge. They have  
24 been forced to accept less.

25 Now, in each case the market and the mechanics of the

1 market have been used to full effect. I concede that it is  
2 different from saying, did we get bids in the mail? The answer  
3 is no, this is a unique, challenging and complicated business  
4 that is in the process of consolidating.

5           But at every stage I have tried to bring in the  
6 market, I have tried to use it in an open and responsible way  
7 and to actually force, certainly the ocean rate, which is the  
8 decisive rate, down. And I have described that several times  
9 today. But the point is the market has spoken; the barges are  
10 earning no money. They are -- it is \$33, it is a pathetic.  
11 That is not my number. These are public numbers. Barges today  
12 are earning nothing. It's in the trade press. We have carried  
13 that into the market.

14           We know that there was a bona fide terminal bid from  
15 a well-qualified company; and we know that there is alternative  
16 equipment, and we have priced that out. And then we drove the  
17 rate down below that. So the market has spoken. It is there.  
18 We have treated it in a manner that I think is as careful and  
19 responsible as possible, that is what we did. And we go to the  
20 carrier and we say, don't tell us about the alternative cost.  
21 You can only do it if you provide a benefit; and here is the  
22 number, and you basically have to take it.

23           Q     Okay. Sir. Just a couple more. At the bottom of  
24 Page 12, the new paragraph.

25           A     Yes.

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

5                   And with respect to that reading, I want to ask you a  
6 question; and that is, of the two comparable market prices  
7 found or constructed, would I be correct in understanding that  
8 your market prices are constructed?

9           A       They are found, in my opinion, and then constructed.  
10 In other words, when we found the returns in the inland side,  
11 and we found that we had a rate, and we found other evidence  
12 which is throughout this report, we used it, we looked at it,  
13 we interpreted it, we used to great effect. And then we said,  
14 now we have a particular move. We have to move a certain  
15 amount. What would that tell us?

16                   When we came to the ocean side, we analyzed the  
17 market as best we could with 135 transactions. We found the  
18 significant drivers; we used it to construct a specific tool.  
19 But we found and we constructed in a very open and integrated  
20 way. And I think the spirit -- I mean, I have never seen this  
21 before, but the spirit of what I have done is precisely to  
22 recognize that this is very unique, and that we have to be very  
23 diligent in finding what we can. And then we have to be very  
24 diligent in applying it in a responsible manner. And I think  
25 that is what we have done here.

1           Q     If there has been a more -- not a more.  If there had  
2 been a response, a bid response to the RFP for the coastal leg,  
3 Mr. Dibner, and there were, in fact, let's say hypothetically,  
4 again, four responsive carriers submitting bids and the  
5 contract was awarded to the least-cost bid to the responsible  
6 bidder, would you agree with me that that would be a market  
7 price found as opposed to constructed?

8           A     Yes, I do.

9           Q     Okay.  Now, the last paragraph I want to address in  
10 the order.

11          A     The only thing I would point out, Mr. Twomey, is that  
12 would imply that there were four bidders, each of whom had the  
13 ability to move five and a half million tons.  That would be  
14 equal virtually to the entire domestic coastal dry bulk trade  
15 of the entire country.  And we don't live in that world.  I  
16 mean, you asked me a hypothetical.  I answered it.  We must  
17 understand that we don't live in that world.  We have to learn  
18 to use the shipping knowledge that we have in a way that works  
19 in the real world, and that is what I have tried diligently to  
20 do.

21          Q     Okay, sir; thank you.  The last part I wanted to ask  
22 you about in the order.  The first full paragraph on the top of  
23 Page 13 of the order reads as follows:  "In concluding, we note  
24 the following caveats; one, from the record in this case, we  
25 are convinced that market prices can be established for the

1 affiliated coals. Two, market prices for the transportation  
2 related to the services should be established, if possible, but  
3 if not, methodologies for reasonably allocating costs should be  
4 suggested. And, three, cost-of-service methodologies should be  
5 avoided if possible."

6 My question is from that reading you would agree that  
7 the number one caveat is addressed strictly to coal, correct?  
8 Go ahead and read it, if you would.

9 A It could be from coal or from anything that is  
10 meaningful and relevant to establishing the rates. I think we  
11 would tend to expect that it would be coal, barging and coal,  
12 terminaling and certainly dry bulk ocean transportation. It  
13 probably would be coal, but there may be cases where it's what  
14 does this equipment earn? And that is what we used.

15 Q I'm sorry. I must not have been clear in my  
16 question. The number one caveat there -- it says, from the  
17 record in this case, we are convinced that market prices can be  
18 established for the affiliated coals. And my question to you  
19 on that is, that is talking about coals, not transportation,  
20 would you agree?

21 A Yes. I think -- you're right. I wouldn't really  
22 know what an affiliated coal is. I'm not sure what that is.

23 Q Number two, though, that talks about  
24 transportation-related services, right?

25 A That is correct.

1           Q       Should be established if possible, but if not,  
2 methodologies for reasonably allocating costs should be  
3 suggested. Now, you haven't -- it's your testimony, I believe,  
4 that you haven't seen any of the costs for TECO transportation,  
5 right?

6           A       No.

7           Q       So you don't have a methodology for allocating costs,  
8 correct?

9           A       I have a methodology for analyzing what the maritime  
10 costs should be, based on the cost of opportunity, the cost of  
11 operations, the cost of fuel. It is not a audit. It is not a  
12 cost of service methodology that would look at the actual  
13 expenditures of Tampa Electric, and then say, is this -- was  
14 this catch-up permitted? Should we replace that plate. To me  
15 that is a cost-based methodology. That would say, show us your  
16 books. We want to go through. You bought a lightbulb, you,  
17 you know, changed the generator, you paid the deckhand \$50 to  
18 take a taxicab. That's a cost-based system. That says do we  
19 permit these costs? That is not where we are.

20                       Where we are is saying, this is what it ought to cost  
21 in the market. That is what you get. And, furthermore, it is  
22 going to be below the market overall, and it is going to  
23 provide a benefit to Tampa Electric and its ratepayers. It is  
24 not three, and it is certainly within two.

25           Q       Well, I was going to get to three. You recognized by

1 the plain reading of that language, do you not, that  
2 cost-of-service methodologies, while they should be avoided --

3 A Cost of service to me is cost. Let's take a look at  
4 your costs. Let's argue about them. Let's allow or disallow  
5 the specific expenses that the party bears. To me that is cost  
6 of service.

7 Q Yes, sir. But you -- my question was going be, had I  
8 finished it, was to ask you, you recognize that that language  
9 doesn't prohibit cost-of-service methodologies, correct?

10 A No. It just says it should be avoided, if possible.

11 Q That is all.

12 MR. TWOMEY: Thank you on that, Mr. Chairman.

13 BY MR. TWOMEY:

14 Q Let me look through my questions, Mr. Dibner, and see  
15 what else I have here.

16 I think you've already told one of the other customer  
17 counsel that you recognized that it would be desirable for a  
18 carrier to have a five-year contract with an electric utility,  
19 did you not?

20 A I don't recall making that specific statement, I  
21 might have said it. If you can refresh me, I would be happy  
22 to --

23 Q Well, let me just ask you the question, then. In  
24 your professional expertise, do you recognize that it is  
25 desirable, or more desirable for a carrier to have a five-year



1 contract with an electric utility for the carriage of coal than  
2 merely operating in the spot market for that period of time?

3 A It may or may not be. Obviously, it is highly  
4 disruptive to endlessly be booking vessels and endlessly trying  
5 to meet the contractual conditions of presenting them. So it  
6 could be more attractive. It could not be. And, certainly, a  
7 contract with a fluctuating demand under various, you know,  
8 years, and terms, and consent decrees, or whatever, could prove  
9 to be a problematical obligation. It depends on the  
10 circumstances.

11 Q It's your testimony, though, Mr. Dibner, that the --  
12 if I recall it correctly, that the river market is in  
13 imbalance, if I may use that term, in the sense -- in the sense  
14 that there is more supplier vessels than there are jobs and  
15 contracts for carriers, correct?

16 A I think I indicated that the ocean side was really  
17 the market where I used the word balance. The inland river  
18 market has gone from a period of weakness and oversupply. It  
19 now finds itself in a period of relative tightness and actual  
20 operating problems. There are screaming shortages of barges.  
21 There are -- there have been points where exports were -- or  
22 southbound shipments were less than head. The northbound --  
23 there have been a lot of operating problems of late. It  
24 fluctuates with the seasons and the grain market on the river.

25 Q You have been questioned at some length about the

1 issue of backhaul. Would you agree with me that as between two  
2 carriers on the same route, one that had backhaul business  
3 versus one that did not, that the one with the backhaul would  
4 likely be in the position to offer the lowest head haul prices  
5 in a competitive bid?

6 A If it needed to, it might. If it didn't have to, it  
7 wouldn't. If it had the business locked up, it wouldn't be  
8 under any compunction to share that advantage. It depends on  
9 what it felt were in its financial interests.

10 Q Well, in fact, that is the case here, isn't it,  
11 Mr. Dibner? If it chooses to, year in and year out, contract  
12 in, contract out, TECO Transport does, in fact, does it not,  
13 have the business locked up?

14 A We don't know if it has the business locked up. We  
15 can speculate. But we also know that Cargill is an extremely  
16 powerful and resourceful customer. And if they wish to, they  
17 will exercise all the methods in the world to do what they  
18 think is right. They seem to have chosen to make a certain  
19 arrangement for moving their fertilizer. IMC made other  
20 arrangements. Different divisions of the two companies have  
21 made arrangements, I suspect. We don't know. They may have  
22 very aggressive rates with no fat whatsoever, or they may be  
23 doing something different. We just don't know.

24 Q Yes, sir, but if, in fact, they want to have it  
25 locked up?

1           A     If you wanted to give back, and it was in your  
2 interest, you could.  If you do not have to because you're  
3 offering lower costs to the shippers, you would find yourself  
4 without a pressure to do so, and that is very normal.  We  
5 rarely read about backhaul in shipping.

6           Q     Yes, sir.  But in terms of having the work or the  
7 contract locked up, it is a fact and a clear fact, is it not,  
8 that TECO Transport, at least as evidenced by the 1998 contract  
9 that just expired recently, had that work locked up if they  
10 chose to take it?

11                     Under the -- let me finish my question, please.  
12 Under the meet or beat as is described provision or right of  
13 first refusal, I'm not sure which is the most correct, but  
14 under that provision, isn't it true that they had the right to  
15 take that work and have that contract, all three legs, or  
16 perhaps fewer legs if they decide to do it?

17           A     Yes.  And I think that was understood and implied  
18 and, in fact, supported by the nature of the relationship.  It  
19 was a special relationship.  I believe that there was no  
20 compulsion on Tampa Electric's part even to request RFPs.  I  
21 believe that they chose to do so, but they had other mechanisms  
22 to determine the market, and they had -- they didn't have to do  
23 this.

24           Q     Right.  And, in fact, under that contract, if you are  
25 familiar enough with it to say so, isn't it true that the

1 language of the meet or beat provision doesn't require under  
2 any circumstances, does it, that TECO Transport beat the rate  
3 of a bidder if there is one, they merely have to meet it,  
4 correct?

5 A I don't recall the specific terms. It may be that it  
6 was one or the other. I don't know.

7 Q Mr. Dibner, I apologize, I don't know where the  
8 reference is in your testimony, so I'm just going to ask you if  
9 you didn't in your testimony with respect to replacement costs  
10 testify to the cost of a vessel that had in its name the Great  
11 Lakes-something, Great Lakes Trader? Did you describe a  
12 replacement -- didn't you describe a replacement value of some  
13 \$100 million for a tug-barge vessel on the Great Lakes?

14 A I don't recall ever saying that about anything on the  
15 Great Lakes. I'm sorry. I don't recall the name of the  
16 vessel, or that number, or anything.

17 Q Mr. Dibner, is pilotage required for U.S.-flag  
18 vessels in U.S. ports?

19 A For a U.S. vessel, if there is a qualified federal  
20 pilot aboard the vessel, it is not necessary to take a pilot,  
21 although an operator may choose to do so for reasons of safety  
22 or general risk avoidance. It is not compulsory for a  
23 U.S.-flag vessel, provided they have a licensed pilot for that  
24 port aboard the vessel.

25 Q Okay. Thank you. With respect to the RFP's

1 requirements for the transloading or terminal link services,  
2 isn't it true that the RFP required that the bids submitted be  
3 all-inclusive for the necessary services there?

4 A Yes. I believe that was the case.

5 Q Okay. Do you have any information or knowledge,  
6 based on your experience in the field, whether pilotage rates  
7 are higher in the Mississippi-New Orleans region or in Tampa?

8 A Are they higher?

9 Q Their rates.

10 A Several pilots that would be taken, if desired by a  
11 U.S.-flag ship in the Mississippi, I suspect it would be  
12 higher, but I did not do a detailed analysis.

13 Q Okay. If, in fact, they were higher in New Orleans  
14 than they were in Tampa, wouldn't it be correct, then,  
15 Mr. Dibner, that a foreign ship going straight into Tampa  
16 would, under the circumstances I just outlined, pay less in  
17 pilotage?

18 A It might be the case, but it is a much longer  
19 passage, so I would have to look at the schedules in detail

20 Q With respect to the backhaul issue, you would  
21 necessarily -- if you understand the cost of service  
22 methodology, you would necessarily consider both the revenues  
23 and the costs of the backhaul in establishing rates for that  
24 service, right?

25 A I think it would depend on the transparency of the

1 cost process and what could be gleaned from the books of the  
2 carrier. In other words, you would have to have the  
3 information, and then you could, perhaps, make some  
4 determinations. There could also be contractual upsets that  
5 would knock the whole thing out of kilter. In other words, if  
6 there was a change in the volume, it could create a  
7 tremendously challenging dynamic where everything could go  
8 haywire.

9 Q With reference to the preference trades, Mr. Dibner,  
10 would you consider that generally barges would be considered  
11 inferior to ships, both in terms of their speed and their --  
12 generally their volumes?

13 A In general, yes. But a tug-barge that has got a  
14 mechanical connection, is articulated or integrated in the U.S.  
15 context, is certainly at less of a disadvantage and more  
16 capable of bidding worldwide, and do, in fact, do so. And  
17 relative to the larger ships that pay heavy canal tolls to  
18 transit Suez and Panama, these smaller vessels can at times  
19 enjoy lower costs, both to transit canals and to load and  
20 unload, because the crews are half the size. So it is a -- it  
21 is a generality, but there are exceptions.

22 Q Sir, you are aware, are you not, that TECO Transport  
23 has other business than just carriage for TECO, Tampa Electric?

24 A Yes, I am.

25 Q Okay. And I think you are aware, are you not, that

1 among some of their other work has been carrying pet coke from  
2 the Houston area to the Jacksonville area for JEA?

3 A From Texas, yes.

4 Q From Texas to JEA, to Jacksonville?

5 A Yes.

6 Q And that is roughly twice the distance, is it not  
7 from --

8 A Maybe roughly twice the distance.

9 Q -- from Davant to Big Bend?

10 A Yes. It is a longer trip for sure.

11 Q Okay. Now, you are aware, too, that one of the rates  
12 they earn from JEA was in the range of \$9 per ton, correct?

13 A One of the spot rates, the short-term, fill-in rates,  
14 as I call it, yes.

15 Q And how do you characterize the difference in the  
16 rate; how do you justify the difference in the rate that they  
17 earn there versus what they would earn from TECO's customers?

18 A I have just --

19 Q For the shorter trip.

20 A I am not highly familiar with that transaction. My  
21 understanding is it was a short-term blip. Frankly, I don't  
22 think they had their thinking caps. They could have charged  
23 more. And I believe in a subsequent renewal or re-up of that  
24 contract, they doubled of the price, roughly, maybe not  
25 doubled, but raised it by 75, 80 percent. In a rising shipping

1 market, I don't think they were really as sophisticated as they  
2 should have been. I think it was a short-term thing. I think  
3 they probably felt that it had some casual value. Frankly, I  
4 don't think they priced it very well the first time. I think  
5 it was dumb. But it's not my business, and I was not a party  
6 to it. They seemed to have woken up subsequent to that. My  
7 understanding is they did do another deal. I don't know for  
8 how long, but at a much higher rate.

9 Q They being dumb, you are not speaking of Tampa  
10 Electric, you're speaking of --

11 A No, TECO Transport.

12 Q -- TECO Transport.

13 A I think somebody was asleep at the switch.

14 Q But you would agree with me, wouldn't you, with those  
15 qualifications and caveats you just put on it, that what TECO  
16 charged somebody -- I mean, what TECO Transport charged  
17 somebody else in the electric utility industry is, with all of  
18 those caveats, indicative of what they could get on the market  
19 in a given time?

20 A I don't think so. If you offered me five dollars to  
21 check your car when I'm done, I will probably take the money.  
22 It is five dollars that I can have, but it is a lot less than,  
23 you know, I would normally expect to earn. For all I know,  
24 they said, you know, we have ships coming back from overseas --

25 COMMISSIONER JABER: You haven't seen Mr. Twomey's



1 car, have you? (Laughter.)

2 MR. TWOMEY: Thank you.

3 A But it is the same thing. I think TECO may have  
4 said, we have got ships coming back. Let's get some fill-in  
5 work so that we can align our ships up with their international  
6 loadings. You know, we will fill in. We will make a little  
7 money. And as I say, I don't think they had their thinking  
8 caps on.

9 BY MR. TWOMEY:

10 Q Have you been privy to the rates TECO Transport  
11 charges its other customers?

12 A No. I have only seen that one because of the --  
13 because of this case. That is the only rate I have ever seen.  
14 My understanding is that they subsequently renewed or did, had  
15 another contract at a higher rate, and I think I saw something  
16 to that effect. But I have not ever seen a TECO rate for any  
17 other business than those, you know, that thing that was talked  
18 about in this case.

19 Q So it necessarily followed that you don't have the  
20 factual basis for knowing whether they charge dumb rates just  
21 part of the time or all of the time, do you?

22 A Well, I presume they don't. I know they keep the  
23 ships busy. There are times when you -- you know, they may do  
24 brilliant things, and there are times when they have done  
25 something that seems a little stupid.

1           Q     Lastly, and somewhat in line, I think, with the idea  
2 behind the rail benchmark, would you -- for whatever purpose  
3 the Commission might find, would you find it instructive or  
4 perhaps valuable for the Commissioners to look at kind of a  
5 cents per ton mile on a voyage for waterborne transportation  
6 and compare costs there -- I mean, not costs but rates there?

7           A     I think there are some real problems with that. The  
8 nature of the TECO trade to Tampa is really -- it's only 456  
9 miles. It is so short that port time and port issues,  
10 navigating on the Mississippi River, getting into the sequence  
11 of ships passing through the mouth of the Mississippi and, in  
12 fact, getting into a schedule in Tampa Bay where there are  
13 cruise ships coming out that shut the channel down. It is a  
14 long channel. Periodically there are other shipping traffic  
15 that shuts the channel down for periods of time. I think it  
16 would have to be taken with a grain of salt.

17                     It's the question of is there a fixed component of  
18 port time, and then the component of distance. And I think one  
19 would have to be careful about simply using cost per ton mile.  
20 We all know that a short railroad trip, or a short marine trip,  
21 or a short taxicab trip is going to cost more per mile than a  
22 long one. If I stepped foot in a cab, I'm going to pay a fixed  
23 fee. I may go nowhere. But if I take a five-mile trip or a  
24 ten-mile trip, the fixed cost starts to go down. So I think it  
25 would have to be taken with a grain of salt.

1 Q Okay. I have one more lastly. As I alluded in my  
2 opening remarks, it is my understanding that Gulf Power  
3 Company, which also purchases coal and takes deliveries in  
4 addition to rail, takes delivery by barge, are you familiar  
5 with the Gulf --

6 A Are you referring to in Mississippi or in Florida?  
7 There is a Gulf Power --

8 Q The Gulf Power Company, part of the Southern Company  
9 located in Pensacola?

10 A I'm not familiar with that plant, no.

11 Q Are you familiar with their barging operations for  
12 their coal?

13 A No, I'm not.

14 Q Okay.

15 A The only thing I'm familiar with is that Seminole,  
16 which we talked about earlier, one of the reasons they dropped  
17 their marine was because they had to creep through the Gulf  
18 Intercoastal Waterway from New Orleans, not at sea, but through  
19 the tortuous Gulf Intercoastal towards St. Marks, I believe it  
20 was, or someplace in the Panhandle. And the lock was miserably  
21 upset by construction problems and delays, and it drove the  
22 cost up and they stopped. But I don't know anything  
23 particularly about Gulf Power. I'm sorry.

24 Q Yes. But on the Intercoastal, is it your observation  
25 they have smaller tows?

1 A Smaller tows.

2 Q Which necessarily would equate to -- should equate to  
3 higher costs, not rates, as compared to vessels of TECO  
4 Transport's size?

5 A Yes, I would think it would.

6 Q Okay. Now, would you find it instructive for the  
7 Commission to at least compare the nonconfidential, publicly  
8 reported water transportation rates of Gulf Power Company to  
9 the confidential rates of -- TECO pays in this case?

10 A It depends on if it's done properly. I can say  
11 nothing about what they shouldn't do.

12 Q Yes, sir. Well, in fact, if the -- if the Gulf Power  
13 coal is carried in smaller tows on the Intercoastal, say, of  
14 what would -- would four barges be --

15 A Four barges might be typical.

16 Q Okay. If they, in fact, receive their coal on the  
17 Intercoastal through tows of only four barges, one would expect  
18 that they would have higher cost and/or rates than what TECO  
19 pays, would you not?

20 A One would expect that if the comparison is fair, yes.

21 Q Okay. So you agree that if it is done properly, it  
22 might be beneficial if the Commission were to examine what Gulf  
23 Power pays for waterborne transportation for its coal?

24 A It might well be. I think our numbers are very  
25 explicit and very reasoned and very, very close to the bid and

1 to prior bids back in '98. So I don't know what the result  
2 will be, but I have no doubt that both the rates that we have  
3 and the rates that they have may be instructive.

4 MR. TWOMEY: Okay. Thank you very much.

5 Thank you, Mr. Chairman.

6 CHAIRMAN BAEZ: Thank you, Mr. Twomey.

7 Mr. Keating, Ms. Rodan.

8 CROSS EXAMINATION

9 BY MR. KEATING:

10 Q Good afternoon, Mr. Dibner.

11 A Good afternoon, Mr. Cochran.

12 Q As you know, I am counsel for the Commission here.

13 The good news is I am the last person, perhaps, with the  
14 exception of your own counsel, that is going have questions for  
15 you this afternoon. The bad news is I do have some questions.  
16 And I suppose the Commissioners might ask some questions as  
17 well.

18 CHAIRMAN BAEZ: Good save.

19 BY MR. KEATING:

20 Q Let me pick up where Mr. Twomey left off. You  
21 touched on this a little bit in your response to one of  
22 Mr. Twomey's questions, but could you tell us a little bit  
23 about the time and expense involved in moving barges of coal  
24 through the Gulf Intercoastal Waterway?

25 A Well, the Gulf Intercoastal is a waterway that runs

1 along the ocean, protected by a barrier, a series of barrier  
2 islands or land masses. In general, it requires barges --  
3 barge tows, group of inland river barges, the same type that  
4 operate in the river system, that are typically moved in groups  
5 of two, or four, or depending on weather and wind, and so on,  
6 small numbers of barges usually pushed by a small tow boat with  
7 a lower horsepower. There are no locks, other than the very  
8 difficult lock of getting from the Mississippi River in  
9 downtown New Orleans to the Gulf Intercoastal east. And then  
10 that passes through Mobile Bay, and then proceeds on into the  
11 Florida Panhandle.

12 Q How would the number of tugs compare between a  
13 shipment on the Gulf Intercoastal to carry the same amount of  
14 coal that TECO Transport could carry in a vessel across the  
15 Gulf?

16 A If you are asking me to -- you said a number of tugs,  
17 I think you mean the number of barges.

18 Q Yes.

19 A The four -- if we had four barges, we might expect to  
20 have four times, 1600 or 1700, let's say about 7,000, 6,500,  
21 7,000 tons of coal in that tow. That would certainly be less  
22 than the size of the typical ocean-going barge, and it would be  
23 less than the 30 barges of cargo that we would have moving down  
24 the Mississippi River.

25 Q How would the average transport speed compare on a

1 trip through the Gulf Intercoastal as opposed to a trip over  
2 the open Gulf?

3 A Over the Gulf?

4 Q Yes.

5 A By sea?

6 Q Yes.

7 A It would be slower. It would probably be four or  
8 perhaps five miles an hour compared with nine, or ten, or  
9 eleven for a modern TECO tug-barge unit.

10 Q And I don't recall if you provided this answer in  
11 response to Mr. Twomey or not, but are you familiar with the  
12 movement of coal through the Gulf Intercoastal for Gulf Power  
13 Company?

14 A No, I'm not. And I don't know where it originates in  
15 particular. I don't know if it originates in Mobile Bay or in  
16 the Mississippi River. I don't think it originates in the  
17 Mississippi River.

18 Q If a coal movement was to go from the terminal near  
19 Davant, Louisiana to, say, Pensacola Florida, would you think  
20 that movement would be through the Gulf Intercoastal Waterway?

21 A You have asked me to assume that it does. I think it  
22 would probably not begin at Davant, but a point above Davant.  
23 But I guess it would, particularly if it was an inland tow.

24 Q I'm going to have an exhibit passed around at this  
25 time consisting of a portion of Gulf Power Company's Form 423

1 filing with this Commission for the first few months of the  
2 year 2001. If I could get this marked for identification.

3 CHAIRMAN BAEZ: I'm showing Exhibit 71. That will be  
4 a composite exhibit of Gulf Power Company's Form 423.

5 (Composite Exhibit 71 marked for identification.)

6 BY MR. KEATING:

7 Q Are you familiar at all with the Commission's 423  
8 filings?

9 A No, I'm not.

10 Q Okay. If you could turn to the first form in that  
11 document, if you look at the first line on the form, it says  
12 reporting month, January 2001?

13 A Yes.

14 Q Okay. And if you look at the title of that form,  
15 monthly report of cost and quality of fuel oil for electric  
16 plant's detailed transportation charges?

17 A Yes.

18 Q And on Line 3, it provides the name of the plant  
19 covered in this form. Do you see that?

20 A Yes.

21 Q Crist Electric Generating Plant?

22 A Yes.

23 Q If I could refer you to Line 8 on that form?

24 A Yes.

25 Q In Column D it shows a shipping point of Int Marine



1 Term.?

2 A Yes.

3 Q Subject to check, would you agree that that's short  
4 for International Marine Terminal?

5 A Yes.

6 Q Okay. And that terminal is located very near the  
7 TECO bulk terminal on the Mississippi River, is that correct?

8 A Yes.

9 Q Okay. If you could look across on Line 8 to the --  
10 to Column K, river barge rate dollars per ton. And do you see  
11 the amount shown there is \$5.17?

12 A Yes.

13 Q Okay. Now, I am know you are not familiar with these  
14 Form 423 forms from what you've told me. Would you agree,  
15 subject to check, that that rate is the rate for shipping coal  
16 for Gulf Power from International Marine Terminal to its Christ  
17 Electric Generating Plant?

18 A It would appear to be. I have no knowledge of this  
19 movement or the contract or anything.

20 Q Now, did you establish an ocean shipping market rate  
21 for Tampa Electric to offer TECO Transport to meet or beat when  
22 Tampa Electric signed its prior contract with TECO Transport,  
23 and I'm referring to the '98 or '99 contract.

24 A I believe that I made recommendations to TECO. I do  
25 not know how they were used specifically in the contract

1 process. I never reviewed that.

2 Q If you could turn to your Exhibit BD-1 to your  
3 testimony, your report to Tampa Electric.

4 A Yes.

5 Q At Page 68.

6 A Bate's Page 68?

7 Q I'm sorry. Bates stamped 138?

8 A Yes.

9 Q In the box on that document, would you agree that the  
10 rate shown under the column "current for ocean" was the rate in  
11 effect under Tampa Electric's prior contract with TECO  
12 Transport?

13 A I believe it was at a particular point in time, yes.

14 Q Okay. And would that rate have been the rate in  
15 effect during the period January 2001?

16 A I don't know that -- I believe it was adjusted  
17 quarterly or monthly. I don't know that that would be the  
18 case.

19 Q Do you know if that was the rate that was established  
20 at the start of that contract or the adjusted rate towards the  
21 end of that contract at the time that you prepared this  
22 exhibit?

23 A I believe it was as of the time that this was  
24 prepared.

25 Q Okay. So this might reflect --

1           A     Say in October, September, August, something like  
2 that, I believe.

3           Q     Okay. So this might reflect the 2003 rate that was  
4 escalated from the original rate set in the contract?

5           A     That's correct.

6           Q     Okay. Even if that is an escalated rate, how could  
7 you, to the extent you can discuss this without revealing  
8 anything confidential, explain the difference between the river  
9 barge rate shown in this Form 423 for Gulf Power of \$5.17  
10 versus the ocean rate shown in your report, particularly given  
11 the information you have given us concerning the transit time  
12 and the barge requirements for going through the Gulf  
13 Intercoastal.

14          A     Certainly. I think my guess would be that -- and I  
15 don't have the distance to, did you say Pensacola, but it is a  
16 shorter distance, substantially shorter distance. It also is  
17 using a much lower amount of power and crew and does not  
18 require ocean-going equipment. We are essentially looking, in  
19 the case of Gulf Power, at a very small towboat pushing four  
20 barges that are at a very low opportunity cost for what I  
21 presume is for four, or five, six days to get to Pensacola.  
22 And the nature of that business is such that the amount of  
23 power, the size of the crew, which might be as few as four or  
24 five people on a much shorter voyage on an inland waterway  
25 could mean that the overall economics are just sufficiently

1 different to make this the case. This is a very different kind  
2 of navigation on very different waters that do not require an  
3 ocean voyage.

4 Q Thank you. I will move on to a different subject.  
5 In your testimony, I believe you indicated that you reviewed  
6 the initial list of companies to whom Tampa Electric wished to  
7 send its RFP, is that correct?

8 A Yes.

9 Q And was CSX Transportation on that list?

10 A No.

11 Q Did you provide Tampa Electric with a list of  
12 additional companies who might be interested in submitting a  
13 bid in response its RFP?

14 A As I have described, I believe that I did add some  
15 names and cleaned up and clarified others.

16 Q Was CSX Transportation one of the companies that you  
17 suggested?

18 A No, it was not.

19 Q Is CSX Transportation, in your opinion, a viable  
20 substitute for TECO Transport to transport some portion of  
21 Tampa Electric's coal requirements from mine to Big Bend?

22 A It is my understanding that there is no rail  
23 connection at this time. My focus was maritime. Consequently,  
24 it certainly was not evident to me that I should suggest a  
25 railroad that did not have a connection. That was not the

1 context with which my expertise was sought.

2 Q Okay. I'm nor sure if you answered the question or  
3 not. Is your answer yes or no as to whether you believe CSX  
4 Transportation is a viable substitute?

5 A I don't believe it is. Certainly not to start on  
6 January 1st of 2004 and meet the terms of the contract.

7 Q Could it be a viable substitute for TECO Transport --  
8 excuse me, a viable substitute to TECO Transport to transport  
9 any portion of Tampa Electric's coal requirements?

10 A Perhaps to a power plant that has rail connections it  
11 might be at some point now. But it is certainly not to Big  
12 Bend, as I understand it, on the first of this year.

13 THE WITNESS: Excuse me. Mr. Chairman, could we take  
14 a brief break? I will make it very brief. Could we do so?

15 CHAIRMAN BAEZ: I think it's about time to take one;  
16 so how about five minutes.

17 THE WITNESS: Five minutes. Thank you.

18 (Recess.)

19 CHAIRMAN BAEZ: We will go back on the record.

20 Mr. Keating, you had some more questions? Okay.

21 BY MR. KEATING:

22 Q Mr. Dibner, before we broke, I had asked you about  
23 whether CSX Transportation, in your opinion, was a viable  
24 substitute for TECO Transport to transport some portion of  
25 Tampa Electric's coal requirements from the mine to Big Bend.

And I believe you answered no. Is that correct.

2           A     Not as of -- my understanding is it couldn't have  
3 been for the procurement. It may have a role in the future,  
4 but it certainly -- from my understanding, there is no rail  
5 connection that would be available on the first of January of  
6 this year.

7           Q     Could Tampa Electric's ratepayers be harmed if Tampa  
8 Electric awarded CSX Transportation the opportunity to  
9 transport part or all of Tampa Electric's coal requirements?

10          A     I presume the only reason they would award it is  
11 because they would conclude it wouldn't be. So the answer  
12 might be that it -- the answer would be, no, it wouldn't harm  
13 them. It is all dependent on the outcome of a process that I  
14 don't have visibility into.

15          Q     I believe, though, you have stated an opinion, at  
16 least earlier today or in your deposition, that if Tampa  
17 Electric were to award a portion of its coal requirements --  
18 coal transportation requirements to CSX Transportation that  
19 that could possibly drive away, I think using your words, drive  
20 away the marine option?

21          A     It would diminish it. For each ton that doesn't move  
22 by water, ultimately leads to the redeployment, in some  
23 fashion, of equipment, and that equipment may not be available  
24 at a future point that would emerge.

25          Q     Would that, in your opinion, make or begin to make

1 Tampa Electric a captive customer of the railroad?

2 A It could contribute to that and have that effect,  
3 particularly if the volumes were reduced substantially under,  
4 let us say, a consent decree that would bring the numbers down  
5 to perhaps only the rail volumes.

6 Q When you presented your report to Tampa Electric, did  
7 any individual at Tampa Electric raise any questions or  
8 concerns about the judgments or assumptions you used to derive  
9 your estimate of market prices for either the inland river --  
10 excuse me, inland service or the ocean barge service?

11 A I cannot recall any, no.

12 Q After presenting your report to Tampa Electric, were  
13 you involved with setting the contract rates for waterborne  
14 coal transportation services provided by TECO Transport to  
15 Tampa Electric?

16 A No.

17 Q And you don't know how TECO Transport may have  
18 reacted to your proposed rates, correct?

19 A No.

20 Q I just want to ask you a few questions concerning the  
21 cost of capital and capital structure assumptions used in your  
22 ocean model.

23 A Yes.

24 Q And we discussed these to some extent in your  
25 deposition.

1 MR. KEATING: I would like at this point to hand out  
2 an exhibit. This is a confidential exhibit. This will be a  
3 good point for me to mention that earlier on in the day I  
4 provided each of the Commissioners and parties with an empty  
5 red folder. Since I don't have these separate exhibits in  
6 separate red folders, if you would like to keep them in your  
7 empty red folder to keep them separate from the nonconfidential  
8 document, that was the purpose. And if I could have that  
9 marked for identification. And I believe we are on 72?

10 CHAIRMAN BAEZ: Yeah. We're on 72. I'm trying to  
11 figure out a catchy title for it. Let's just have Document  
12 Number 01500-04.

13 MR. KEATING: Okay.

14 (Confidential Exhibit Number 72 marked for  
15 identification.)

16 BY MR. KEATING:

17 Q Mr. Dibner, would you agree that this exhibit  
18 consists of a run of your ocean barge model?

19 A Yes.

20 Q If you could, quickly look through this exhibit and  
21 verify for me that this document is a printout of a run of that  
22 model with no adjustments made to the inputs you used in the  
23 model.

24 A It appears to be that, that that is the case.

25 Q Okay. And if you would look at the first page of



1 your model run?

2 A Yes.

3 Q In the third box from the top?

4 A Yes.

5 Q The information in that box reflects your capital  
6 structure and cost of capital assumptions, correct?

7 A Yes.

8 Q Now, is it correct that you developed the cost of  
9 capital inputs used in your ocean model?

10 A I selected them based on the circumstances and the  
11 situation that I was dealing with, yes.

12 Q Regarding the capital structure ratios that you have  
13 assumed in your model are those ratios based on any particular  
14 company?

15 A No.

16 Q And they have nothing to do with the actual capital  
17 structure ratios maintained by TECO Transport, correct?

18 A Correct.

19 Q Okay.

20 MR. KEATING: I would like to hand out another  
21 exhibit. Again, this would be a confidential document that I  
22 would like marked for identification when it comes around.

23 CHAIRMAN BAEZ: Mr. Keating, I'm showing Tampa  
24 Electric Company's Response to Staff's fourth request for  
25 production of documents.

1 MR. KEATING: That's correct.

2 CHAIRMAN BAEZ: And show that marked as Confidential  
3 Exhibit Number 73.

4 (Confidential Exhibit Number 73 marked for  
5 identification.

6 BY MR. KEATING:

7 Q Mr. Dibner, these are responses that were provided by  
8 Tampa Electric to staff discovery. I believe these responses  
9 indicated that you were responsible for providing them?

10 A Yes.

11 Q Okay. Do you recall looking through these documents  
12 that they were provided as source information to support the  
13 capital structure and cost of capital assumptions in your  
14 model?

15 A Yes.

16 Q If you could turn to, in this exhibit, Bates stamped  
17 Page 4?

18 A Yes.

19 Q It is your response to Staff's Production Request  
20 Number 31. And if you could look at the third paragraph of  
21 your response, and it's the last paragraph on that page. If  
22 you could look through that briefly and indicate whether it is  
23 your testimony that networking capital is equity?

24 A No. It is not my testimony that it was. If I said  
25 so, I misspoke. But I don't see a reference to that. The

1 issue is that I looked at the limited information that was  
2 publicly available, and I did consider the networking capital  
3 for a project bid such as this. The working capital is a  
4 consideration. It is an infusion of commitment of capital  
5 beyond asset value, beyond the asset and its debt structure.

6 Q If you could turn to Page 13 of this exhibit, or  
7 Bates stamped Page 13?

8 A Yes.

9 Q Are you familiar with this table?

10 A Yes. I am, yes.

11 Q If you could look under the heading, "Liabilities,"  
12 in the right hand column --

13 A Yes.

14 Q -- and then look across to the column pertaining to  
15 shippers with 10 to \$50 million in revenues?

16 A Yes.

17 Q Would you agree that the amounts shown on this table  
18 under that column for net worth, long-term debt and short-term  
19 notes payable, as shown on this table, summed, equal investor  
20 capital? I'm sorry. I left out one of the items?

21 A Yes.

22 Q Would you agree that investor capital is the sum of  
23 the amount shown on the schedule for net worth, long-term debt,  
24 current maturities long-term debt, and notes payable?

25 A I believe that is correct.

1 Q Okay. Subject to check, would you agree that equity  
2 as a percentage of investor capital based upon the amount shown  
3 in this schedule is approximately 38 percent?

4 A Yes, I'll accept that.

5 Q And if you could turn to Bates stamped Page 5 of the  
6 exhibit? In the paragraph beneath the table on that page, you  
7 discuss financial data of a corporation that you say supports  
8 the debt/equity ratio you used; is that correct?

9 A I said it was working papers. I didn't say it  
10 supported it. This is a collection, as I recall, of materials  
11 referred to, not necessarily the basis of my use of 50/50. As  
12 I think I explained, that was tied to bankers and the advance  
13 rate on aging U.S.-flag equipment. It really had nothing --  
14 nothing was drawn directly from these numbers.

15 Q Let me just ask a few questions about the company  
16 that is mentioned on that page. Could that company meet Tampa  
17 Electric Company's cross-Gulf transportation needs with its  
18 current fleet of ships of their present deployment?

19 A No, I don't believe it could.

20 Q Why in developing your capital structure assumptions  
21 did you rely on, in part at least, on the financial information  
22 of a company that doesn't have the capability to serve Tampa  
23 Electric Company's cross-Gulf needs, instead of the financial  
24 information of TECO Transport, the company that has provided  
25 the service the you are attempting to model?

1           A       The reason is that the data available for Tampa  
2 Electric is far less complete, and the use of this or the  
3 inclusion of this as working papers is different from the  
4 approach that I explained, which has to do with how does one  
5 structure the lending and loans for assets that are not new,  
6 and, in fact, are different from this? It is more of a  
7 project. These are companies. So this was an inclusion of  
8 papers that I did rely on.

9           I never said that this had the precise types of  
10 equipment, but it was order of magnitude confirming that my use  
11 of a 50 percent debt/50 percent equity for the specific  
12 commitment of vessels was not far out of line with the  
13 nation -- one of the nation's largest and, in fact, the nation  
14 largest towing and tug boat company which has tug barge units.  
15 It is the only company for which this sort of information has  
16 been available of this -- a company of this magnitude.

17          Q       I just want to go through a few more questions with  
18 this exhibit. If you can turn to Bates stamped Page 11 of the  
19 exhibit?

20          A       Yes.

21          Q       Was the underlining that is shown on this page  
22 provided by you or by the author?

23          A       It was provided by the person who provided this to  
24 me, a year or more ago. I did not add those underlines.

25          Q       In the second column on that page, could you look at

1 the sentence that is underlined?

2 A Yes.

3 Q Yes. Would you agree that this reference means ships  
4 are financed with the percentage of debt financing shown here?

5 A It they are new and they are international, yes.

6 Q You said if they are new and they are international?

7 A Correct.

8 Q Is that a distinction from U.S. ships that are not  
9 new?

10 A Most definitely.

11 Q Is that distinction made anywhere in this article  
12 where a reader could ascertain it?

13 A Well, we know that we are not dealing with new ships.  
14 The issue that I was most interested in is the page that I had  
15 referred to that said that, you know, vessels older than 15  
16 years internationally, bankers basically have no interest in  
17 them. That is at the upper left-hand corner. And the other  
18 one is that bankers in the United States, whether it is  
19 domestic or potentially international, provide -- need  
20 long-term cash flow comfort in order to lend at all. So the  
21 lending is implicitly restricted.

22 And as I explained in my deposition, U.S. vessels are  
23 more expensive than the broad global market. They have  
24 different applications, and bankers are hesitant to extend high  
25 levels of credit, high percentages of credit because they

1 don't -- they are not sure that they can recover their capital.  
2 They are more cautious, and that is why I used the 50/50 ratio.

3 Q But there is not a distinction made in this  
4 particular article between U.S. and foreign companies, is  
5 there?

6 A No, but there are comments about older vessels and  
7 about U.S. bankers' approaches to lending, which I did refer  
8 to, again, as I drew my own conclusions.

9 Q If you could turn to Bates stamped Page 17 of the  
10 exhibit?

11 A Yes.

12 Q And this is confidential, so I'm just going to have  
13 you read this and point out to the parties and the  
14 Commissioners where I'm looking. It is the first three  
15 sentences at the beginning of the article?

16 A First mortgage financing will always account for 70  
17 percent of the capital formation in the shipping industry.  
18 Again that is international.

19 COMMISSIONER JABER: Mr. Keating, let me get some  
20 clarification from you. The article is confidential?

21 MR. KEATING: It was clarified to me that I believe  
22 this one was not. I was being overly cautious. I was going on  
23 the assumption the entire document was.

24 COMMISSIONER JABER: Mr. Chairman, may I ask  
25 Mr. Beasley a question?

1 CHAIRMAN BAEZ: Sure.

2 COMMISSIONER JABER: Mr. Beasley, you tell me, you  
3 confirm for me whether this article out of what looks like  
4 marinemoney.com is confidential.

5 MR. BEASLEY: No, it is not.

6 COMMISSIONER JABER: So the article the, "Royal Bank  
7 of Scotland PLC (phonetic) in Greece," is not confidential. It  
8 comes from a web cite. This is not confidential, correct?

9 MR. BEASLEY: No.

10 COMMISSIONER JABER: Okay. Could you ask your  
11 question again?

12 MR. KEATING: Yes.

13 BY MR. KEATING:

14 Q And I think Mr. Dibner went ahead and read those  
15 sentences aloud, but if could you read those first three  
16 sentences again.

17 A "The first mortgage financing will always account for  
18 70 percent of capital formation in the shipping industry. And  
19 why shouldn't it? It's dirt cheap, it's flexible, and it's  
20 abundant," period.

21 BY MR. KEATING:

22 Q Again, in this article is there anything that would  
23 distinguish 70 percent for U.S. and non-U.S. companies?

24 A This is clearly focused on the international side.  
25 and the purpose of my including it was the 25 percent for OPIC,



1 which is a government -- at the very bottom of the page, the  
2 OPIC is the Overseas Private Investment Corporation, a  
3 federally funded international development function. And the  
4 reason I put this here is because of the 25 percent ideal rate  
5 of return, which is my purpose in putting this in. This page  
6 clearly talks about international shipping and, in fact, the  
7 note at the top refers to it as well. It says, 70 percent  
8 leverage available for a new foreign built vessel. Again, we  
9 are not, and I was not talking about new or foreign built  
10 vessels. My point was at the very bottom of the page.

11 Q Other than the two articles that we just addressed  
12 that were provided in response to this staff document request,  
13 are there any other documented sources that you relied upon  
14 concerning the level of debt financing in the shipping  
15 industry?

16 A Documented, I don't believe so.

17 Q The cost of equity value that you assume in your  
18 ocean model, that is not based on any specific cost of equity  
19 analysis, is that correct?

20 A It is based upon my firsthand experience with my  
21 clients, working on projects in a sense on the other side of  
22 bidding, and it is drawn from that kind of cumulative  
23 experience. Clients are looking for 18, 20 percent returns on  
24 their equity.

25 Q Are those your clients' target returns?

1           A       They are the target returns which predicate the  
2 pricing and the approach to transactions and projects, yes.

3           Q       Do those target returns always reflect actual  
4 returns?

5           A       No, they are targets, but that is what you have to  
6 try to get.

7           Q       Have you ever testified in a regulatory proceeding  
8 where you gave expert testimony on the appropriate cost of  
9 equity?

10          A       For shipping, I cannot recall an occasion when that  
11 subject came up.

12          Q       If you could turn to page -- to Bates stamped Page 7  
13 of the exhibit?

14          A       Yes.

15          Q       Are you familiar with this schedule?

16          A       Yes.

17          Q       Okay. Would you agree that the return shown on the  
18 schedule are all historical earned returns over one, five, ten  
19 and 20-year time horizons?

20          A       That is what it shows.

21          Q       And would you also agree that the returns shown on  
22 the schedule are earned returns and not expected returns?

23          A       Correct.

24          Q       Okay. Did you rely on any sources that dealt with  
25 expected returns on equity for this industry?

1           A       I relied on my personal experience for target equity  
2 returns in approaching the cost of capital.

3           Q       Other than the documents that were provided in  
4 response to this staff document request, are there any other  
5 documented sources that you relied on to estimate cost of  
6 capital in your ocean model?

7           A       No. I drew on what is here and my experience, more  
8 on my experience than what is here. There is very little  
9 written on the subject.

10          Q       I want to hand you one additional exhibit. And this  
11 one is a confidential exhibit. This one has another racy  
12 title, Document Number 05241-04. And if you would like we can  
13 give it a better title of --

14                   CHAIRMAN BAEZ: That is accurate. That is okay.  
15 Show that marked as Confidential Exhibit 74.

16                   (Confidential Exhibit Number 74 marked for  
17 identification.)

18 BY MR. KEATING:

19          Q       Mr. Dibner, you may recall that we went through this  
20 document at your deposition. This document is comprised of  
21 seven -- seven different runs, each three pages long of your  
22 ocean barge model?

23          A       Yes.

24          Q       Could you verify for me that the first three-page run  
25 is a run of your model with no changes to the inputs?

1 A Yes.

2 Q And could you verify for me that for each of the  
3 remaining six runs that those runs make various adjustments to  
4 your capital structure and cost of capital assumptions?

5 A Yes.

6 Q Okay. Mr. Dibner, are you familiar with the type of  
7 fuel blend that is used at Tampa Electric's Polk facility?

8 A No.

9 Q I just have a few more questions, and I believe you  
10 touched on this with one of the intervenors. I believe in his  
11 deposition Doctor Hochstein stated that spot barge -- excuse  
12 me, spot barge shipment prices are usually higher than contract  
13 rates. Would you agree that for spot barge shipments where  
14 backhaul is not a consideration that spot rates are usually  
15 higher than contract rates?

16 A It depends on the market. If the market is in a very  
17 desperate situation, they will be lower than the long-haul  
18 rates, because shippers are desperate, and they are not being  
19 forced to make a long-term commitment that they would have to  
20 live with for months or years into the future.

21 If it is an extremely strong market, then we would  
22 expect to see the spot rates above the long-term contract rate,  
23 because then we are in a situation where the shipper -- or the  
24 carrier, excuse me, would like to remain in step with a very  
25 strong market and would charge more. So it will definitely

1 vary based on the nature of the business. The state of the  
2 market.

3 Q Have the actual operating costs of transporters of  
4 foreign coal changed significantly in the last year, other than  
5 increases in fuel costs?

6 A The operating costs? Insurance costs have risen,  
7 ship repair costs are rising, regulatory and security costs are  
8 rising as new burdens are placed on the industry. The dollar  
9 has weakened, which has increased the dollar cost of foreign  
10 payments in many cases, so there are upward forces that are  
11 taking effect. Lubricating costs are rising, and other costs  
12 that are tied to petroleum are rising.

13 Q I just have one more set of questions. If you could  
14 go back to the exhibit that I believe was marked as 73,  
15 otherwise known as Docket Number 01500-04, the unadjusted run  
16 of your ocean barge model?

17 A Yes. I will try to find that. Yes.

18 Q If you could look at the top of Page 3 of that model  
19 run.

20 A Yes.

21 Q What does that table show us?

22 A The one labeled, "Rate Buildup and Composition"?

23 Q Yes.

24 A It shows the various barges and the progressive  
25 increases in their estimated rate. It shows the capacity that

1 they can deliver in the course of a year, if they are fully  
2 dedicated to the trade, that is the capacity per year in  
3 thousands of tons. The tons per year is the actual use of that  
4 vessel. In most all but the final vessel, it is the full  
5 capacity; and then the final vessel gets us up to the five and  
6 a half million tons.

7           It has the cumulative tonnage up to the five and a  
8 half million. It has the cumulative costs going up in order to  
9 move that cargo, and then it has the average rate. And it  
10 shows that the low-cost vessels are earning or are have a cost  
11 which is below the average rate; while the -- there are --  
12 approximately half the tonnage is moving in vessels that are  
13 below. Their costs is not fully compensated by the average  
14 rate, so the average rate is in the middle.

15           Q     In your ocean barge model did you establish the  
16 market price by calculating the average cost of delivering  
17 5.5 million tons annually?

18           A     Yes.

19           Q     And what is the significance of the 5.5 million tons?

20           A     It is the maximum amount of coal that needs to be  
21 moved.

22           Q     Is that pursuant to Tampa Electric's RFP?

23           A     To the RFP, yes.

24           Q     As a consequence of how your model calculates the  
25 market price for ocean barge service, would the average cost of

1 delivering less than five and a half million tons annually be  
2 less than the average cost of delivering -- excuse me. Strike  
3 that.

4 Have you been provided a copy of an exhibit with the  
5 cover sheet, Composite Exhibit Stipulated?

6 A I have a pile of -- a large stack.

7 Q Okay. I'm only going to refer you to one page in  
8 that stack, and I apologize for having that entire stack there.  
9 I believe you will find two documents in the stack with binder  
10 clips on them. If not, then we probably have the wrong stack.

11 A I do not have a binder clip. I have stapled  
12 materials.

13 MR. KEATING: Commissioners, and for the parties'  
14 benefit as well, the document I want to refer the witness to is  
15 a Schedule 5 from Tampa Electric's 2003 Ten-Year Site Plan. It  
16 is a single-page document in the stack of nonconfidential  
17 stipulated exhibits that was handed out in the beginning of the  
18 hearing. It should be right behind two documents that are  
19 bound together with binder clips.

20 THE WITNESS: I do have the page.

21 BY MR. KEATING:

22 Q Okay. Mr. Dibner, are you familiar with the Ten-Year  
23 Site Plan filings that utilities make in Florida?

24 A No.

25 Q Could you take a look at that schedule for just a

1 minute?

2 MR. BEASLEY: Do you think this would be better  
3 directed to Ms. Wehle, a company witness.

4 MR. KEATING: I would just like to, for purposes of  
5 my question, just have you look at the exhibit and verify that  
6 the exhibit shows that for the years 2004 through 2008 the  
7 maximum projected coal by Tampa Electric is approximately  
8 4.9 million tons, and if you could look under Columns 8 through  
9 12 of the schedule.

10 A Yes. I see various numbers in that, 4.8 and -- about  
11 4.8.

12 Q And if you look down that schedule towards the  
13 bottom, I believe there is a separate row for pet coke?

14 A Yes.

15 Q Okay. And if you added the tonnage for pet coke and  
16 coal, would you agree that for each of the years 2004 through  
17 2008 Tampa Electric has projected approximately 4.9 to 5  
18 million tons of those fuels to be needed?

19 A About 5 million.

20 Q As a consequence of how your model calculates the  
21 market price for ocean barge service, would the average cost of  
22 delivering 5 million tons annually be less than the average  
23 cost of delivering 5.5 million tons annually?

24 A The average cost per ton would be the same. The  
25 cost, of course, would be less, the total cost. The rate per



1 ton would be the same.

2 Q If you could look back to Page 3 of Document 01500,  
3 the unadjusted model run?

4 A Yes.

5 Q The rate buildup and composition that you walked  
6 through a moment ago?

7 When you move from the -- and I know this is a  
8 confidential document. I don't recall which pieces of  
9 information specifically are confidential, but if you go down  
10 to the fourth named barge --

11 A Yes.

12 Q -- and move over to cumulative tons, it provides an  
13 average rate. And then if you move down to the next line, the  
14 fifth line, with a different cumulative tonnage amount it gives  
15 you a higher average rate. Would you agree that the 5 million  
16 tons falls within the range of those two items.

17 A According to this it would, yes.

18 Q But you are saying that the average rate would not  
19 change?

20 A As I understand it, we set a single rate. Obviously,  
21 this shows a variation in the rate, but we allowed no revenues  
22 for any standby capacity or anything, so that is why we did  
23 that.

24 MR. KEATING: Thank you. That's all the questions I  
25 have.

1 CHAIRMAN BAEZ: Thank you, Mr. Keating.

2 Commissioners, do you have any questions? No  
3 questions? Oh, Commissioner Jaber.

4 COMMISSIONER JABER: Mr. Dibner, just a couple that  
5 are general in nature. Would you agree with me that you would  
6 not characterize the right of first refusal option in the TECO  
7 Transport agreement as a bid?

8 THE WITNESS: Yes, Commissioner, I think that is a  
9 fair characterization.

10 COMMISSIONER JABER: And in that regard, if I could  
11 just have -- and recognizing you are not an economist, I don't  
12 mean to make you testify in that regard, but if you were to  
13 assume that I take your testimony for what it is, and agree  
14 with you that the TECO Transport folks provide an efficient  
15 service at the lowest cost rate, and you are very confident in  
16 that regard, then why did you not recommend to TECO that TECO  
17 Transport provide a bid in response to the RFP?

18 THE WITNESS: First of all, the precise process you  
19 understand was not under my control or my purview, so that  
20 really wasn't something I spent time with. If I have to try to  
21 answer your question now that you have asked it, I, frankly,  
22 think that we were much tougher on TECO Transport than they  
23 would have been on themselves. Make no mistake about it. They  
24 know every barge, they know the costs, they know that they are  
25 sitting in a position where they could try to fight for a

1 higher marginal price.

2 Let's suppose they did that. We would find ourselves  
3 in a position of defending a lower price, I would have. And  
4 people would say, well, what in the world are you doing? And  
5 the answer is we are enforcing the historic mission of TECO  
6 Transport to be aware of the changes in their fleet and in the  
7 fleet at large and so on. But, Commissioner, I think it would  
8 actually work against Tampa Electric and its constituents. If  
9 we had that number, we would be in a contested battle.

10 COMMISSIONER JABER: Now, I assume some things for  
11 purposes of asking you that question. I will ask that you  
12 assume some things for purposes of answering this question. If  
13 you assume that this Commission had the authority to require  
14 TECO to reissue its RFP. Based on what you know today, would  
15 it be your recommendation that TECO Transport submit a bid;  
16 and, therefore, would your recommendation be that they no  
17 longer have the right of first refusal?

18 THE WITNESS: Am I advising Transport or Electric?

19 COMMISSIONER JABER: Electric.

20 THE WITNESS: I believe that the existing process,  
21 Commissioner, yields a lower rate for the same reason I  
22 answered your hypothetical. I don't think they would be  
23 intimidated. I think they would be emboldened, and I think  
24 this way we are forcing them into the fulfillment of their  
25 mission while providing them with some equity in the process,

1 but under harsh and very absolute circumstances, I really do.

2 COMMISSIONER JABER: That is your advice to Tampa  
3 Electric?

4 THE WITNESS: I would say it is not too beneficial.  
5 I think that we would pay more.

6 COMMISSIONER JABER: And what would your advice be to  
7 TECO Transport?

8 THE WITNESS: Honestly, I am so removed from them, I  
9 don't know where -- what their views are. I don't know how  
10 angry they are, or whatever they are. I don't know what my  
11 advice would be. I think that I would -- I would have  
12 confidence ultimately, Commissioner, that this process, I truly  
13 believe, yields the best result; and, therefore, I think I  
14 would tell Transport, if you bid, you should understand that at  
15 the end of the day your traditional responsibility to not be at  
16 the marginal cost or the -- just below parity with rail or with  
17 whatever, I would say you have to expect that you are going to  
18 be taken down.

19 COMMISSIONER JABER: Mr. Dibner, let me tell you  
20 something really for the purpose of providing just a light  
21 moment in a very long day with one witness, Mr. Chairman.

22 THE WITNESS: I'm sorry.

23 COMMISSIONER JABER: Which is this: In law school I  
24 take a maritime class because someone told me it would be an  
25 easy A. It was the worst grade I made. So much for that

1 person's advice. So I say that to let you know that this  
2 question is -- please forgive me for not understanding a whole  
3 lot with regard to maritime.

4 But Mr. Wright asked you a series of questions about  
5 haul switching at some point and becoming backhaul and not  
6 headhaul. For the purposes of negotiation, what is the  
7 difference? What am I supposed to take from those questions?

8 THE WITNESS: Commissioner, if that business were to  
9 be under contract, which we presume it is for the safety and  
10 the security of their own fertilizer industry and various  
11 company interest, I would think it would have very little  
12 impact whether the words change.

13 You know, the analogy would be when I get into a cab,  
14 I don't know whether the cab driver is going home, if he has  
15 another trip at the airport, I don't know. It doesn't matter  
16 to me whether it is a headhaul or a backhaul. I accept that  
17 there are economics. I want the security of the movement. I  
18 can't hedge my bets. I need to know that I will move to the  
19 airport. And think that has the same impact.

20 COMMISSIONER JABER: Okay. In asking this final  
21 question, let me also say for purposes of clearing up the  
22 record I have never seen Mr. Twomey's car. And he asked you a  
23 question, Mr. Twomey asked you a question about modifications,  
24 and I think it was based on what he acknowledged was his  
25 misunderstanding of what you meant by the words modifications

1 and adjustments. You said a couple of times today that you  
2 modified inputs from the beginning in erring on the side of  
3 giving the ratepayers the benefit.

4 THE WITNESS: Yes.

5 COMMISSIONER JABER: And I recognize that I'm  
6 paraphrasing, but is that an adequate assessment?

7 THE WITNESS: That is what meant. I didn't want him  
8 to have the impression that at the end of the day I decided to  
9 do this. It was not an addendum. It was core to the way I  
10 approached it.

11 COMMISSIONER JABER: You made those modifications and  
12 erred on the side of giving the consumer the benefit. What I  
13 take away from that, Mr. Dibner, is that if there was -- you  
14 had a range of costs, you put in your model the least amount of  
15 cost?

16 THE WITNESS: I put in a point between what I felt  
17 fairly was the strict cost and what we knew was going on in the  
18 market, at least a market that was publicly interpretable in a  
19 very strange and, you know, crazy market. And I tried to find  
20 the middle ground; and then I did the things with the lowest  
21 cost and worked my way up. And then I took the average of  
22 that, so that we weren't even going off the highest cost barge.  
23 In other words, there were several levels of structural  
24 analysis. You saw in the exhibits that Mr. --

25 COMMISSIONER JABER: Mr. Dibner, do you want to here

1 ny question?

2 THE WITNESS: Yeah. I'm sorry.

3 COMMISSIONER JABER: Okay. When you did that thing  
4 with the least cost as you described it, isn't it correct that  
5 you are no longer reflecting the market at that point?

6 THE WITNESS: As I said, I tried to find the market,  
7 I tried to evaluate the market. And then being fully cognizant  
8 of the issues that we have discussed today about the market, I  
9 took the view that there was a historical precedent tied to the  
10 market, which is that this company had developed a lowest cost  
11 solution, and that stopping at the market would be not  
12 consistent with the reason that this company was created, that  
13 transport came to exist. It wasn't to be at the market, in my  
14 opinion. It was to be at a market -- at a level that was  
15 reflective of market forces to some degree, but was lower.

16 COMMISSIONER JABER: Thank you, sir.

17 Thank you, Mr. Chairman.

18 CHAIRMAN BAEZ: Commissioners, any other questions?

19 We have redirect.

20 MR. BEASLEY: In light of the hour, Mr. Chairman --

21 CHAIRMAN BAEZ: How much redirect do you have?

22 MR. BEASLEY: In order to move things along, we have  
23 no redirect.

24 CHAIRMAN BAEZ: Oh. Great.

25 MR. BEASLEY: I would like to move Exhibits 4 and 5.

1 CHAIRMAN BAEZ: Show Exhibits 4 and 5 moved into the  
2 record, without objection.

3 (Exhibits 4 and 5 admitted into evidence.)

4 MR. VANDIVER: I would like to move Exhibits 63  
5 through 66.

6 CHAIRMAN BAEZ: Show Exhibits 36 through 66 moved  
7 into the record without objection.

8 (Exhibits 63 through 66 admitted into evidence.)

9 CHAIRMAN BAEZ: Ms. Kaufman, I only have one exhibit  
10 for you.

11 MS. KAUFMAN: Yes, sir. We would move 67.

12 CHAIRMAN BAEZ: Okay. Show Exhibit 67 moved into the  
13 record, moved into evidence without objection.

14 (Exhibit 67 admitted into evidence.)

15 CHAIRMAN BAEZ: And, Mr. Wright, I have you at 68  
16 through 70.

17 MR. WRIGHT: So moved.

18 CHAIRMAN BAEZ: Show them moved without objection.

19 (Exhibits 68 through 70 admitted into evidence.)

20 CHAIRMAN BAEZ: Staff I have you 71 through 74.

21 MR. BEASLEY: I have an objection to 71,

22 Mr. Chairman.

23 CHAIRMAN BAEZ: What is your objection, sir?

24 MR. BEASLEY: This is identified as an exhibit  
25 pertaining to Tampa Electric Witness Wehle, but it was



1 proffered to Mr. Dibner. He said that he had not ever seen  
2 this information before and was not really familiar enough to  
3 address Gulf Power's operations or the transactions reflected  
4 in this exhibit.

5           And beyond that, the exhibit is incomplete. It is  
6 selected pages from Gulf Power Forms 423. The parts that  
7 aren't included include information that is essential to  
8 answering questions about the parts that are included. For  
9 example, on the number, the rate \$5.17, that Mr. Keating  
10 referred to, you cannot tell by looking at this document  
11 whether it was a spot or a contract rate, which, as you heard  
12 today, has a big impact on whether that is a low -- whether  
13 that rate is lower because of the spot rate or higher because  
14 it is a contract rate. So for those reasons we think it would  
15 not be fair to have this document admitted, particularly  
16 because it is incomplete.

17           MR. KEATING: Mr. Chairman.

18           CHAIRMAN BAEZ: Go ahead, Mr. Keating.

19           MR. KEATING: I would propose -- staff can agree to  
20 update the exhibit. It is my understanding that, for instance,  
21 for the month of January 2001 for the Crist Plant there are  
22 three pages in the 423 forms, and if all three of those pages  
23 are provided, it gives the additional context that I think  
24 Tampa Electric is looking for. And if need be I can go through  
25 those documents with Ms. Wehle, who is more familiar with 423

1 forms.

2 CHAIRMAN BAEZ: Well, then, what I -- what I would  
3 propose to do, Mr. Beasley, in light of your objections,  
4 although it sounds like Mr. Keating will be able to address  
5 them properly in due course with the next witness, perhaps, is  
6 to just take your measures under advisement, and we will hold  
7 off on allowing Confidential Exhibit 71 into the record until  
8 proper foundation and proper introduction.

9 So, at this point, Mr. Keating, we will show Exhibits  
10 '2 through 74 admitted into the record without objection.

11 (Confidential Exhibit 72 through 74 admitted into  
12 evidence.)

13 CHAIRMAN BAEZ: Mr. Dibner, wherever you are, thank  
14 you. You are a trooper.

15 And we can take -- Ms. Wehle, do you need to set up  
16 or are you ready to go?

17 THE WITNESS: Probably just one minute.

18 CHAIRMAN BAEZ: Okay. Then why don't we break  
19 quickly for five minutes and see if we can get Ms. Wehle off  
20 and running before we break today. Thank you.

21 Parties, you have got some -- Mr. Wright and Ms.  
22 Kaufman you have got some confidential stuff here you might  
23 want to pick up at this point.

24 (Recess.)

25 CHAIRMAN BAEZ: We're back on the record.

1 Ladies and gentlemen, just by way of housekeeping so  
2 we can set the -- sort of set the schedule, we just got through  
3 with the monster of all witnesses, and I don't mean than in a  
4 personal sense, the mother of all witnesses, let us say. We  
5 are going to try to get Ms. Wehle's testimony or as much of it  
6 as possible. I had planned on stopping today somewhere around  
7 6:30, if not shortly thereafter. And I am hoping we can start  
8 up at nine a.m. tomorrow and run sort of the same time.

9 So the pressure is on you to try and, again, as I  
10 said, you know, try and let's boil down our arguments to the  
11 nub here and get to it as much as possible and see if we can  
12 get the rest of the witnesses in tomorrow. But, anyway, nine  
13 o'clock tomorrow, and we will be stopping sometimes shortly  
14 after -- around 6:30 or shortly after, some logical breaking  
15 point. We will try to get to Ms. Wehle, get her as far as  
16 along as possible.

17 Anyway, we are back on the record. And go ahead Mr.  
18 Beasley.

19 MR. BEASLEY: Tampa Electric calls Ms. Joanne T.  
20 Wehle.

21 JOANN T. WEHLE  
22 was called as a witness, having been duly sworn, was examined  
23 and testified as follows:

24 DIRECT EXAMINATION

25

1 BY MR. BEASLEY:

2 Q Ms. Wehle, were you sworn in the hearing room this  
3 morning?

4 A Yes, I was.

5 Q Would you please state your name and your business  
6 address?

7 A My name is Joann T. Wehle, I work for Tampa Electric  
8 Company, 702 North Franklin Street, Tampa, Florida, 33602.

9 Q By whom are you employed and in what capacity?

10 A I am employed by Tampa Electric Company as the  
11 director of wholesale marketing and fuels.

12 Q Thank you. Did you prepare and submit in this  
13 proceeding a document entitled, Prepared Direct Testimony of  
14 Joanne T. Wehle, consisting of 43 pages?

15 A Yes.

16 Q If I were to ask you the questions contained in your  
17 direct testimony would the answers be the same?

18 A Yes.

19 MR. BEASLEY: I would ask that Ms. Wehle's direct  
20 testimony be inserted into the record as though read.

21 CHAIRMAN BAEZ: Show the direct testimony of Joanne  
22 T. Wehle inserted into the record as though read.

23 BY MR. BEASLEY:

24 Q Did you accompany with that testimony an exhibit  
25 JTW-1 that has been marked as Exhibit 6 in this proceeding?

1 A Yes.

2 Q Was that prepared under your direction and  
3 supervision?

4 A Yes.

5 MR. BEASLEY: I'd ask that -- well, it has already  
6 been marked.

7 BY MR. BEASLEY:

8 Q Ms. Wehle, did you also prepare and submit rebuttal  
9 testimony of Joanne T. Wehle, consisting of 65 pages?

10 A Yes.

11 Q Do you have any -- well, I think you made some  
12 corrections to that, did you not, on May 12th?

13 A Yes, I have.

14 MR. BEASLEY: We submitted corrected pages on May  
15 12th in the testimony, Pages 11, 34 and 35, and then two Bates  
16 stamped pages in her exhibit, 75-76. Those were filed with the  
17 clerk. I have extra copies if anybody needs them, but I think  
18 you should have them here for your information.

19 BY MR. BEASLEY:

20 Q Ms. Wehle, will you please summarize your direct and  
21 rebuttal testimony?

22 CHAIRMAN BAEZ: Why don't we move her rebuttal into  
23 the record.

24 MR. BEASLEY: Move her rebuttal testimony. Thank  
25 you.

1           CHAIRMAN BAEZ:  If I don't do it, then I will forget  
2 I'm terrible about it.  So we will move Witness Wehle's  
3 rebuttal testimony into the record as though read.  And also,  
4 for the record, show that JTW-1 and JTW-2 were both  
5 confidential exhibits attached to her direct and rebuttal  
6 testimony are marked for the record as Exhibits 6 and 7.

7           MR. BEASLEY:  Thank you.

8           CHAIRMAN BAEZ:  Go ahead, Mr. Beasley.

9           (Exhibits 6 and 7 previously marked.)

10

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## 1                   BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

## 2                                   PREPARED DIRECT TESTIMONY

3   OF

4   JOANN T. WEHLE

5  
6    **Q.**    Please state your name, address, occupation and employer.7  
8    **A.**    My name is Joann T. Wehle. My business address is 702 N.  
9           Franklin Street, Tampa, Florida 33602. I am employed by  
10          Tampa Electric Company ("Tampa Electric" or "company") as  
11          Director, Wholesale Marketing & Fuels.12  
13   **Q.**    Please provide a brief outline of your educational  
14          background and business experience.15  
16   **A.**    I received a Bachelor of Business Administration Degree  
17          in Accounting in 1985 from St. Mary's College in Notre  
18          Dame, Indiana. I am a CPA in the State of Florida and  
19          worked in several accounting positions prior to joining  
20          Tampa Electric. I began my career with Tampa Electric in  
21          1990 as an auditor in the Audit Services Department. I  
22          became Senior Contracts Administrator, Fuels in 1995. In  
23          1999, I was promoted to Director, Audit Services and  
24          subsequently rejoined the Fuels Department as Director in  
25          April 2001. I became Director, Wholesale Marketing and

1 Fuels in August 2002. I am responsible for managing  
2 Tampa Electric's wholesale energy marketing and fuel-  
3 related activities.

4  
5 **Q.** Please state the purpose of your testimony.

6  
7 **A.** The purpose of my testimony is to present information  
8 about Tampa Electric's solicitation for waterborne coal  
9 transportation, evaluation of the bids received, the  
10 reasonableness of the market prices established for the  
11 company's waterborne coal transportation contract as a  
12 result of that activity, and the sufficiency of the  
13 Request for Proposal ("RFP") and market analysis  
14 activities to establish new contract market rates.  
15 Finally, my testimony addresses the issue of whether  
16 Tampa Electric's coal transportation benchmark should be  
17 modified or eliminated.

18  
19 **Q.** Have you previously testified before the Florida Public  
20 Service Commission ("Commission")?

21  
22 **A.** Yes. I filed testimony before this Commission in Dockets  
23 No. 010001-EI, No. 011605-EI, No. 020001-EI and No.  
24 030001-EI. My testimony in these dockets described the  
25 appropriateness and prudence of Tampa Electric's fuel



1 procurement activities, fuel supply risk management and  
2 fuel price volatility hedging activities, incremental  
3 hedging O&M costs resulting from maintenance and  
4 expansion of the risk management and hedging plan and the  
5 company's actual waterborne coal transportation costs.  
6

7 **Q.** Have you prepared an exhibit in support of your  
8 testimony?  
9

10 **A.** Yes. Exhibit No. \_\_\_ (JTW-1), containing three  
11 documents, was prepared under my direction and  
12 supervision.  
13

14 **Waterborne Coal Transportation Background**

15 **Q.** How does Tampa Electric currently transport coal to its  
16 power stations?  
17

18 **A.** Tampa Electric has a five-year integrated transportation  
19 services contract with TECO Transport to deliver coal  
20 from various U.S. Midwestern locations on the  
21 Mississippi, Ohio and Green rivers to its generating  
22 stations via river barges and ocean-going vessels. The  
23 previous contract expired as of December 31, 2003, and  
24 Tampa Electric executed a new contract with TECO  
25 Transport on October 6, 2003.

1

2 **Q.** Why is this type of integrated transportation used?

3

4 **A.** Beginning in the late 1950s Tampa Electric recognized the  
5 need to develop a water transportation system that could  
6 reliably and efficiently move coal down the Mississippi  
7 River and its tributaries and then across the Gulf of  
8 Mexico. The transportation system was formed to lower  
9 costs and to provide reliable transportation of coal for  
10 the benefit of Tampa Electric's ratepayers. When this  
11 integrated system was formed, rail rates to Florida from  
12 coalfields in the Midwest were so high that coal was not  
13 competitive compared to oil. Water transportation was an  
14 alternative in some regions, but a reliable water system  
15 for coal delivery to Florida did not exist. The  
16 development of an efficient integrated waterborne  
17 transportation system was necessary for Tampa Electric to  
18 utilize lower-cost coal as a fuel source.

19

20 **Q.** Please describe in more detail the development of the  
21 integrated transportation system.

22

23 **A.** The development of the integrated transportation system  
24 began during the 1950s. In the 1940s and early 1950s,  
25 all electric generation in peninsular Florida was fueled

1 with oil. Steam generating units used residual oil, and  
2 many small municipal systems relied on diesel engines and  
3 No. 2 distillate oil. Since all oil contracts were based  
4 on prices posted in the world petroleum markets on the  
5 day of delivery, there was no real competition. Oil  
6 suppliers were also able to hold Florida's electric  
7 utilities captive to market prices because of the state's  
8 location and high rail rates. These market prices were  
9 high relative to other areas of the country where  
10 alternative fuels, such as coal, were available. Tampa  
11 Electric was very concerned about the long-term  
12 implications of total dependence on oil priced on a spot  
13 basis.

14  
15 For these reasons, Tampa Electric's management  
16 investigated the availability of other fuels when  
17 planning for its Gannon Station in the early 1950s. Both  
18 coal and natural gas were considered in the  
19 investigation. Nuclear power was then in its infancy and  
20 not available for operation on a commercial scale.

21  
22 **Q.** Why did using coal require a waterborne transportation  
23 network?

24  
25 **A.** At the time that Tampa Electric was preparing to build

1 Gannon Station, the principal disadvantage of coal was  
2 transportation costs. Rail rates to Florida from the  
3 Midwest were so high that coal was not competitive with  
4 oil, and the company did not want to be held captive by a  
5 total dependence on rail transportation. Waterborne  
6 transportation systems from the area did not exist. A  
7 new mode of transportation had to be devised if coal was  
8 to become a viable alternative for Florida utilities.

9  
10 **Q.** Describe the first stage of developing the integrated  
11 waterborne transportation system.

12  
13 **A.** In 1955, Tampa Electric decided to use coal as the fuel  
14 for Gannon Unit 1, which was scheduled to be operational  
15 in 1957. Tampa Electric entered into a long-term  
16 contract for coal and waterborne transportation to the  
17 plant from the coal supplier. In spite of the contract,  
18 the supplier refused to deliver, leaving Tampa Electric  
19 dependent on the spot market for replacement coal  
20 purchases. Although Tampa Electric immediately sued for  
21 non-compliance, the case was not resolved until 1963.  
22 Thus in 1959 Tampa Electric, frustrated by its total  
23 dependence on others and an inadequate waterborne  
24 transportation market, decided to participate in a joint  
25 venture to form a transportation company that could more

1 effectively move its purchased coal from the Midwest to  
2 Tampa, Florida.

3  
4 **Q.** How did the company determine that a terminal facility at  
5 the base of the Mississippi River was needed?

6  
7 **A.** Logistics of coal transfer, quality control issues and  
8 storage needs led to a short-term lease of a terminal  
9 facility on the Mississippi River below New Orleans.  
10 Tampa Electric was concerned about risks due to storing  
11 coal at the aging terminal facility. Therefore, a new  
12 company was formed to build and operate a modern facility  
13 for transloading and storage. Tampa Electric still  
14 utilizes this terminal, built in Davant, Louisiana in  
15 1965, to transfer, store and blend its coal.

16  
17 **Q.** What is the purpose of the terminal facility?

18  
19 **A.** The primary purpose for the terminal facility is to  
20 transfer coal from river barges to ocean vessels or from  
21 barges to land storage facilities, and from such land  
22 storage facilities to vessels. It also provides the  
23 company with the ability to blend coals, which has become  
24 a more common practice over the years as environmental  
25 requirements have become stricter. The storage space is

1 of special importance due to the distance of the supply  
2 sources from Tampa and limited ground storage space at  
3 waterfront power plant sites in Tampa.

4  
5 **Q.** What was the result of developing the waterborne coal  
6 transportation system?

7  
8 **A.** The effects of adding another coal transportation  
9 alternative were dramatic. When the waterborne  
10 transportation system began operations, rail rates to  
11 Florida began to drop almost immediately. Even with the  
12 reduction in rail rates, which benefited Tampa Electric's  
13 customers on the small portion of its coal that was  
14 delivered by rail, prices paid by Tampa Electric for  
15 water transportation by its affiliate have consistently  
16 been lower than the rail alternative. This is  
17 demonstrated by the company's costs being below its  
18 waterborne coal transportation benchmark year after year.  
19 In addition, the fact that there are separate and  
20 distinct rail and water transportation systems has  
21 benefited utilities in the bidding and purchase of coal.  
22 It has also greatly increased the reliability of the  
23 delivery system by providing alternatives. The savings  
24 in the use of coal as a primary fuel for boilers versus  
25 oil and gas can be directly attributed to the existence

1 of a waterborne delivery system. The water  
2 transportation system has saved Tampa Electric's  
3 customers hundreds of millions of dollars in fuel  
4 transportation costs during the period from 1988 to 2002  
5 alone, as demonstrated by the company's actual waterborne  
6 coal transportation costs compared to its transportation  
7 benchmark. Finally, the lowering of rail rates in  
8 response to the competition of water transportation has  
9 benefited ratepayers throughout the state.

10  
11 **Waterborne Coal Transportation Contract Requirements**

12 **Q.** Are there existing Commission orders that address Tampa  
13 Electric's waterborne coal transportation services  
14 agreement with its affiliate, TECO Transport?

15  
16 **A.** Yes, the existing transportation order **was first**  
17 established in a settlement agreement approved in Order  
18 No. 20298 in Docket No. 870001-EI-A. This order is  
19 Document No. 1 of my exhibit. Order No. 20298, drafted  
20 by then Commission Staff Counsel, Michael B. Twomey, was  
21 issued on November 10, 1988 and represents the policy of  
22 this Commission until changed.

23  
24 This settlement agreement recites that:

25 In accordance with the Commission's direction,

1 Staff, Office of Public Counsel ("OPC") and  
2 Tampa Electric have met to discuss the methods  
3 by which market pricing can be adopted for  
4 affiliate coal and coal transportation  
5 transactions between Tampa Electric and its  
6 affiliates. As a result of these discussions,  
7 Staff, OPC and Tampa Electric agree as follows:  
8 Public Counsel and Staff agree that the  
9 specific contract format, including the pricing  
10 indices which Tampa Electric may include in its  
11 contracts with its affiliates, are not subject  
12 to this proceeding and Tampa Electric may  
13 negotiate its contracts with its affiliate in  
14 any manner it deems reasonable. [emphasis  
15 added]  
16

17 With respect to TECO Transport and Trade ("TTT"), the  
18 settlement agreement provides:

19 8. The parties agree that the record in this  
20 proceeding indicates that the prices currently  
21 paid by Tampa Electric to TTT are reasonable.

22 9. Tampa Electric, however, agrees to this  
23 establishment of a benchmark price to be used  
24 prospectively for regulatory review purposes.

25 10. The coal transportation benchmark price



1 will be the average of the two lowest comparable  
2 publicly available rail rates for coal to other  
3 utilities in Florida. This rail rate will be  
4 stated on a cents/ton-mile basis representing  
5 the comparable total elements (i.e.,  
6 maintenance, train size, distance, ownership,  
7 etc.) for transportation. The average cents per  
8 ton-mile multiplied by the average rail miles  
9 from all coal sources to Tampa Electric's power  
10 plants yields a price per ton of transportation.  
11 The result will become the "benchmark price" as  
12 shown on Attachment 3.

13  
14 The example transport benchmark calculation shown on  
15 Attachment 3 to this order is the benchmark calculation  
16 that has been in use since 1988. The Commission each  
17 year thereafter made specific findings that the prices  
18 paid under the waterborne transportation services  
19 contract were below the market price as established by  
20 the benchmark.

21  
22 Moreover, in Order No. PSC-93-0443-FOF-EI issued March  
23 23, 1993, this Commission approved a stipulation that  
24 reaffirmed the waterborne coal transportation benchmark.  
25 This stipulation remains in effect until changed by

1 Commission order. Staff or any other party may disagree  
2 with that policy, but the policy is currently in effect  
3 and was in effect at all times in 2003 when Tampa  
4 Electric issued its RFP on June 27, 2003, evaluated its  
5 future transportation services options and ultimately  
6 executed a new contract with TECO Transport.  
7

8 **Q.** Is Tampa Electric required to issue an RFP for waterborne  
9 transportation services prior to executing a new contract  
10 with its affiliate?  
11

12 **A.** No. Tampa Electric is not required to issue an RFP. The  
13 RFP is an information-gathering tool that provides market  
14 price data. However, both the contractual requirements  
15 of the existing contract with TECO Transport and the  
16 policy of this Commission provide that contract rates can  
17 be set through any reasonable market price determination.  
18 As previously described, the Commission, in approving the  
19 stipulation that established the transportation  
20 benchmark, specifically stated, "Tampa Electric may  
21 negotiate its contracts with its affiliate in any manner  
22 it deems reasonable." [Order No. 20298, page 17]  
23

24 **Q.** If Tampa Electric was not required to issue an RFP for  
25 waterborne transportation services prior to executing a

1 new contract with its affiliate, why did the company do  
2 so?

3  
4 **A.** In early 2003, the company met with Florida Public  
5 Service Commission Staff ("Staff") and parties on  
6 numerous occasions to discuss various fuel issues,  
7 including waterborne transportation. In those meetings,  
8 Staff questioned the company about its plans for meeting  
9 its transportation needs in 2004 and beyond. Staff  
10 strongly encouraged Tampa Electric to issue an RFP.  
11 Ultimately, Tampa Electric decided to issue an RFP as  
12 part of its good-faith efforts to obtain the most  
13 relevant and timely waterborne transportation market data  
14 available.

15  
16 **Q.** Was the RFP the only effort Tampa Electric made to  
17 determine reasonable market prices for a waterborne  
18 transportation services contract for the period 2004  
19 through 2008?

20  
21 **A.** No. The company also hired Brent Dibner of Dibner  
22 Maritime Associates, LLC ("DMA"), an expert consultant in  
23 the maritime industry, to conduct an independent  
24 evaluation of the waterborne transportation markets.  
25 This consultant's extensive knowledge of and experience

1 in these markets were utilized in modeling appropriate  
2 and reasonable market rates for each segment of the  
3 waterborne transportation services that Tampa Electric  
4 requires. Tampa Electric also hired Sargent & Lundy  
5 ("S&L"), an engineering design consulting firm, to  
6 evaluate the rail proposals the company received in  
7 response to its RFP.

8  
9 **2004 Waterborne Coal Transportation Arrangements**

10 **Q.** Please describe in detail Tampa Electric's efforts to  
11 secure reliable coal transportation for deliveries  
12 beginning January 1, 2004.

13  
14 **A.** In June 2003, Tampa Electric prepared a RFP for vendors  
15 to provide proposals for waterborne deliveries of coal  
16 from suppliers in the Midwest to its Big Bend Station.  
17 The solicitation was sent to all 24 vendors known to  
18 Tampa Electric and DMA to provide such transportation  
19 services. The solicitation was also described in several  
20 industry publications. This served to inform other  
21 potentially interested parties, to whom copies of the RFP  
22 were provided upon request. Tampa Electric followed a  
23 similar RFP process to establish the contract for  
24 waterborne transportation for the period 1999 through  
25 2003. A comparison of the 1997 and 2003 bid processes is

1 provided as Document No. 2 of my exhibit.  
2

3 **Q.** Did Tampa Electric state, in its RFP, a preference for  
4 the services to be provided by an integrated provider  
5 versus contracting for each segment of transportation  
6 separately? If so, why?  
7

8 **A.** Yes, the company's RFP did state such a preference.  
9 Specifically, the RFP stated, "Tampa Electric prefers  
10 proposals for integrated waterborne transportation  
11 services, however proposals for segmented services will  
12 be considered." Tampa Electric continues to prefer  
13 integrated waterborne transportation services because of  
14 the benefits of receiving priority handling of its coal  
15 transportation needs, having first call on dedicated  
16 transportation resources and benefiting from  
17 administrative efficiencies from dealing with one entity  
18 in the day-to-day management of the waterborne coal  
19 transportation services. These factors greatly increase  
20 the reliability and flexibility of Tampa Electric's fuel  
21 delivery. The direct testimony of Tampa Electric's  
22 witness Dibner enumerates the administrative efficiencies  
23 that result from having a single contact point for all  
24 services. In addition, the terminal in Davant, Louisiana  
25 provides much needed storage, helps with quality control

1 issues and allows for custom coal blending. The terminal  
2 is in an ideal location for deliveries from the Midwest  
3 and can accommodate large vessels delivering  
4 international shipments as well.

5  
6 **Q.** Is the terminal near Davant, Louisiana the only location  
7 or terminal facility that can meet Tampa Electric's  
8 terminal services needs?

9  
10 **A.** No. As stated in the RFP, "terminal facilities should be  
11 accessible to Mississippi River barge traffic and capable  
12 of receiving and discharging inland river barges from  
13 domestic suppliers in Panamax-sized vessels for offshore  
14 coal." Any terminal that meets this requirement and has  
15 the flexibility and storage capacity to store different  
16 types of coal in separate piles and to blend coal would  
17 be able to meet Tampa Electric's needs.

18  
19 **Q.** Why does Tampa Electric require, in the RFP, the ability  
20 to receive coal at a terminal facility that is accessible  
21 to Mississippi River barge traffic and able to receive,  
22 unload and store Panamax-sized vessels for foreign coal?

23  
24 **A.** The requirements included in the RFP are driven primarily  
25 by Tampa Electric's coal quality requirements and supply

1 portfolio. The vast majority of Tampa Electric's coal  
2 originates at docks on the Ohio River and the upper  
3 Mississippi River system because the design fuel for Big  
4 Bend Station boilers, Illinois Basin coal, is mined in  
5 this area of the United States. This necessitates that  
6 the transloading and storage terminal facilities be  
7 accessible to Mississippi River barge traffic. It would  
8 not be cost-effective to use any other waterborne  
9 transportation system to deliver coal to Tampa from these  
10 regions.

11  
12 The company also purchases and blends foreign coal with  
13 domestic coal and petroleum coke at the terminal for its  
14 Polk Power Station. Foreign coal deliveries are  
15 primarily made by the larger Panamax-sized vessels due to  
16 efficiency concerns. A terminal that can receive larger  
17 vessels provides Tampa Electric with the flexibility of  
18 being served by a variety of vessels, providing the  
19 company opportunities for discounted rates in the freight  
20 market when available. The ability of the terminal to  
21 receive and unload Panamax-sized vessels enables Tampa  
22 Electric to rely on foreign coal blended with domestic  
23 coal to meet operational and environmental requirements.

24  
25 Q. Can Tampa Electric have foreign coal delivered directly

1 to Tampa rather than having it delivered to the terminal  
2 and then to Tampa?

3  
4 **A.** No. There are several reasons why Tampa Electric cannot  
5 have foreign coal delivered directly to Tampa. First,  
6 Tampa Electric's generating stations do not have deep  
7 draft access that would allow a Panamax vessel, which is  
8 the size typically used to transport foreign coal, to  
9 approach, dock and unload coal. In addition, no other  
10 facilities in Tampa that could be accessed by a Panamax  
11 vessel have permits to store and blend coal, nor the  
12 facilities to do so. Second, Tampa Electric requires the  
13 use of a terminal facility for coal storage and blending.  
14 Tampa Electric requires additional storage beyond what is  
15 available at its generating stations to effectively  
16 segregate and store the different types of coal it uses.  
17 The company does not use foreign coal without blending it  
18 with coal from domestic sources, and Tampa Electric does  
19 not have existing facilities or the space to build  
20 facilities to meet all of its blending needs at the  
21 generating stations. As stated previously, no other  
22 local facilities currently exist. Third, since Tampa  
23 Electric's domestic coal must be processed at a terminal  
24 facility prior to Gulf transportation, moving the foreign  
25 coal to the terminal facility is currently the most



1           efficient and cost-effective method of handling foreign  
2           coal. The foreign coal that must be transported to the  
3           terminal represents less than ten percent of the total  
4           coal used by Tampa Electric.

5  
6           **Q.** Please describe the process that Tampa Electric used to  
7           evaluate the bidders' proposals.

8  
9           **A.** Tampa Electric took a systematic approach to evaluate the  
10          bids. The main steps that formed the evaluation process  
11          were:

12          1. Tampa Electric evaluated bids to determine  
13             compliance with bid requirements. Late responses  
14             and those that did not meet certain minimum  
15             financial and operational criteria were  
16             disqualified.

17          2. The company clarified proposal information through  
18             discussions with individual bidders and requested  
19             additional information, if needed, to fully evaluate  
20             bids.

21          3. Tampa Electric made any adjustments required for bid  
22             comparisons, such as where bid response terms and  
23             conditions varied or did not meet RFP  
24             specifications.

25          4. The company and its consultant used models to

1 determine the appropriate market rates for the  
2 future contract, given the tonnage and length of  
3 move requirements, where the company did not receive  
4 a valid bid response.

5 5. A complete analysis of evaluated bids and an  
6 assessment of the market were then provided to Tampa  
7 Electric's management.

8 6. In accordance with terms of the then existing  
9 contract between Tampa Electric Company and TECO  
10 Transport, Tampa Electric provided the market rates  
11 established during the process described above to  
12 TECO Transport for its right of first refusal.

13 7. TECO Transport accepted the market rates, and Tampa  
14 Electric proceeded with contract negotiations for  
15 services for January 1, 2004 through December 31,  
16 2008.

17 8. The new contract was executed on October 6, 2003,  
18 and parties in Docket No. 030001-EI were provided a  
19 copy for review.

20  
21 **Q.** Why was TECO Transport given an opportunity to match the  
22 established market prices?

23  
24 **A.** A common practice in the fuel supply and transportation  
25 business is to negotiate with suppliers a "Right of First

1 Refusal" clause in long-term agreements. Such a clause  
2 existed in the contract between TECO Transport and Tampa  
3 Electric.

4  
5 **Q.** In general, why is it beneficial to include a "Right of  
6 First Refusal" clause in these types of contracts?

7  
8 **A.** The "Right of First Refusal" provision encourages the  
9 vendor to provide these highly capital-intensive  
10 transportation services while protecting the buyer, Tampa  
11 Electric, as well as its ratepayers, through a periodic  
12 re-assessment of the competitive market prices for these  
13 services. In addition, the provision requires the vendor  
14 to meet or beat current market prices, which benefits  
15 ratepayers because it ensures the lowest prices for those  
16 services.

17  
18 **Q.** What evaluations did Tampa Electric perform regarding the  
19 bids received in response to its solicitation for  
20 waterborne coal transportation services?

21  
22 **A.** Tampa Electric received one inland river bid, one  
23 terminal bid and two rail bids. Tampa Electric evaluated  
24 each of the four bids, with the assistance of two outside  
25 consulting firms.

1  
2 **Q.** Please describe Tampa Electric's evaluation of the rail  
3 transportation bids received in response to its RFP for  
4 waterborne transportation services.

5  
6 **A.** Tampa Electric received two rail transportation proposals  
7 in response to its RFP. Although the bids were non-  
8 conforming since they were not for the provision of  
9 waterborne transportation, Tampa Electric reviewed the  
10 responses and identified key factors related to the  
11 proposals that supported the need for further analysis.  
12 The first of these factors was the identification of  
13 necessary modifications and their associated costs for  
14 the capital improvements and new capital investment  
15 required for rail deliveries to Tampa Electric's  
16 generating stations. Tampa Electric's facilities  
17 currently do not have the infrastructure to directly  
18 receive rail deliveries. Secondly, the company  
19 recognized that there could be additional transportation  
20 costs, such as trucking costs from existing coal supply  
21 sources to a rail loading facility, that needed to be  
22 taken into account. Third, Tampa Electric needed to  
23 evaluate the impact on cost-effectiveness of acquiring  
24 coal from different supply locations in the event that  
25 rail service were used instead of waterborne

1 transportation services. Finally, the timing of the rail  
2 service infrastructure construction had to be considered  
3 given Tampa Electric's needs beginning January 1, 2004.  
4 To aid Tampa Electric in evaluating the rail  
5 transportation bids, the company hired S&L to review the  
6 bids and complete an analysis of the above-mentioned  
7 factors.

8  
9 **Q.** Please describe S&L's methods for evaluating the costs  
10 and associated operational considerations if rail  
11 deliveries were made to the plants.

12  
13 **A.** S&L reviewed the rail transportation bids, assessed the  
14 capital costs proposed in the bids and determined other  
15 costs and factors that should be evaluated by Tampa  
16 Electric. As a result of its analysis, S&L determined  
17 that it was necessary to modify the bidder's design to  
18 reflect realistic design parameters that take into  
19 account Tampa Electric's specific facilities and  
20 operating needs. S&L also estimated costs that were  
21 omitted from the bidder's proposal. The S&L cost  
22 estimates included construction, installation,  
23 modification and operating changes. For each of the  
24 bidder's two proposals, S&L provided an analysis of  
25 estimated capital costs, installation costs, fixed and

1 variable operating costs and demurrage costs. In  
2 addition, the S&L report listed the environmental  
3 considerations that would need to be studied prior to  
4 acceptance of any of these proposals, such as additional  
5 dust, noise abatement, wetlands reconstruction and permit  
6 modifications.

7  
8 The report from S&L stated that the capital costs  
9 provided by the bidder included costs for new equipment  
10 only and did not address installation or other  
11 modification costs necessary to ready Tampa Electric's  
12 facilities for direct rail deliveries. Nor were  
13 operating costs addressed in the bidder's proposals. In  
14 addition, S&L stated that given the facility design, the  
15 unloading and demurrage rates included in the bidder's  
16 proposal appeared aggressive and that this could result  
17 in increased costs to Tampa Electric and its ratepayers.

18  
19 **Q.** Was S&L's analysis thorough and complete?

20  
21 **A.** Yes, it was. I have reviewed the data utilized and the  
22 methods of analysis employed by S&L. I also asked Tampa  
23 Electric personnel who specialize in generation  
24 engineering to review the assumptions, analysis and  
25 conclusions of the report. They concluded that the

1 report is a reasonable analysis of the costs of  
2 installing rail unloading facilities at Big Bend and Polk  
3 stations and of the operational and environmental impacts  
4 of the rail transportation proposals. In addition, S&L  
5 is a longstanding full-service engineering consulting  
6 firm with extensive experience designing power plants and  
7 related facilities. The S&L report was prepared under  
8 the supervision of a Professional Engineer licensed in  
9 Florida. Given this, I am satisfied that the analysis  
10 completed by S&L was a thorough and complete  
11 consideration of the factors that could reasonably be  
12 anticipated to affect Tampa Electric's operations and  
13 costs if either of the rail transportation proposals were  
14 accepted.

15  
16 **Q.** With respect to the rail transportation bids, what were  
17 the results of the S&L analysis?

18  
19 **A.** The results of the S&L analysis for each rail  
20 transportation proposal showed that estimated capital  
21 costs for infrastructure additions and improvements  
22 greatly exceeded the bidder's estimates for these same  
23 capital improvements. In addition, Tampa Electric would  
24 incur additional operating expenses. In each case, the  
25 capital, installation and facility modification costs

1 estimated by S&L exceed the bidder's estimates by more  
2 than 400 percent. Operating costs were estimated to  
3 increase by a minimum of one million dollars and up to  
4 approximately three million dollars annually. Capital  
5 costs could increase if additional environmental  
6 restrictions are required, such as fully enclosed coal  
7 transfer conveyors. These potential costs were not  
8 included in the S&L analysis. Other costs, such as costs  
9 for demurrage penalties and required environmental  
10 studies, have not been quantified, but they are factors  
11 that must be considered. S&L estimated that the total  
12 costs to prepare Tampa Electric's facilities for direct  
13 rail deliveries and for operational changes ranged from  
14 \$27 million to over \$53 million.

15  
16 **Q.** Did you consider any other factors when evaluating the  
17 rail transportation proposals?

18  
19 **A.** Yes. In addition to evaluating the high capital costs for  
20 infrastructure and operating costs previously described,  
21 Tampa Electric considered the impact on cost-  
22 effectiveness of acquiring coal from different supply  
23 locations in the event that rail transportation were used  
24 instead of waterborne transportation. The company also  
25 considered how the rail proposals would affect overall



1 transportation costs given Tampa Electric's current coal  
2 supply contracts.

3  
4 Tampa Electric has contracts with suppliers to deliver  
5 coal to barges at various specific locations on the  
6 Mississippi and Ohio rivers. Utilizing rail  
7 transportation instead of waterborne transportation would  
8 necessitate additional costs to truck or short haul the  
9 coal from the suppliers' contractual delivery locations  
10 to the nearest rail loading facilities. The company  
11 determined that these costs could range from an  
12 additional \$2.00 to as much as \$6.00 per ton, depending  
13 on distance. Tampa Electric reviewed its portfolio of  
14 coal sources and found that the vast majority of its  
15 current coal supplies are not located close to rail  
16 facilities. Using rail transportation would therefore  
17 make these supply sources more expensive in the short run  
18 and potentially non-competitive in price in the future.

19  
20 As previously stated, the rail proposal grossly  
21 understates or ignores substantial additional capital and  
22 operating costs that must be considered to provide a  
23 reasonable comparison. The incremental short haul  
24 transportation cost to deliver coal to a rail facility is  
25 easily quantified and reasonably certain, and it is a

1 true incremental cost of using rail service.  
2 Consequently, incremental short haul transportation costs  
3 must be included in an analysis of the total rail cost  
4 alternative in order to have a meaningful comparison to  
5 the waterborne transportation rate. It is also  
6 appropriate to adjust for the bidder's synfuel adder;  
7 expected demurrage charges, using the bidder's proposed  
8 demurrage rates; the bidder's published tariff fuel  
9 surcharge; and the incremental cost for rail deliveries  
10 to Polk Station. When these estimated additional costs  
11 are considered, the adjusted rail rate is well above the  
12 market rates included in the TECO Transport contract  
13 effective January 1, 2004. A detailed calculation is  
14 shown in Document No. 3 of my exhibit.

15  
16 There are other costs and impacts that needed to be  
17 considered. Additional costs for environmental impact  
18 mitigation and permitting or other factors would  
19 certainly exist but were not included in the adjusted  
20 rail rate. The rail proposals did not provide services  
21 that are currently provided by the terminal facility as  
22 part of the integrated waterborne transportation  
23 contract. As previously stated, Tampa Electric requires  
24 the ability to receive deliveries of foreign coal from  
25 large, deep draft Panamax vessels as well as storage and

1 blending capabilities at a terminal facility to create  
2 multiple custom blends of coal utilizing both domestic  
3 and foreign coals. These facilities are not currently  
4 available in the vicinity of Tampa, Florida, and the  
5 company does not have the space to install them at its  
6 plants. The company cannot receive Panamax vessels at  
7 its plants due to draft restrictions. The rail proposals  
8 also do not include costs for deliveries of pet coke from  
9 Texas. Providing all of the above-listed services would  
10 result in additional costs to Tampa Electric that  
11 increase overall rail transportation costs.

12  
13 Another important consideration was that the rail  
14 proposals require significant time for construction prior  
15 to the commencement of rail transportation service.  
16 Since Tampa Electric's coal transportation needs began  
17 January 1, 2004, the company would need to obtain short-  
18 term waterborne transportation services to meet its  
19 requirements until the rail construction could be  
20 completed. The need for short-term waterborne  
21 transportation services would certainly result in  
22 increased costs that are not included in the rail  
23 transportation proposals and would result in higher costs  
24 to ratepayers.

25

1 Q. What did you conclude as a result of the evaluation of  
2 the rail transportation proposals?

3  
4 A. Given the significant costs for capital infrastructure  
5 and the additional operating and transportation costs  
6 that would result from choosing to use rail  
7 transportation, as well as concerns about future supply  
8 limitations due to the distance from a rail loading  
9 facility, Tampa Electric determined that the bidder's  
10 proposals were not competitive. I recommended rejecting  
11 both proposals.

12  
13 Q. Did Tampa Electric engage in other activities regarding  
14 the evaluation of the other transportation proposals?

15  
16 A. Yes. Tampa Electric hired DMA to assist with the  
17 evaluation of waterborne transportation proposals. DMA  
18 evaluated the waterborne transportation bids and  
19 constructed market models to assess appropriate market  
20 prices for the transportation services segments. DMA  
21 provided Tampa Electric with its determination of the  
22 appropriate waterborne transportation market prices in a  
23 report that includes descriptions of its methodologies,  
24 evaluations, market assessments and supporting  
25 information. The report provided by DMA is provided as

1 an exhibit to the testimony of Tampa Electric witness  
2 Dibner.

3  
4 **Q.** Have you reviewed the models and analyses DMA used to  
5 determine the appropriate market prices for each of the  
6 three segments included in the waterborne transportation  
7 system?

8  
9 **A.** Yes, I have reviewed the proposals submitted in response  
10 to Tampa Electric's RFP, the data used by DMA's  
11 proprietary models, the modeling methodologies and the  
12 analyses conducted by DMA to evaluate the waterborne  
13 transportation bids and to determine the market price for  
14 each segment of the waterborne transportation services.  
15 DMA conducted a thorough and complete evaluation of the  
16 bids. I believe that DMA's long experience in and  
17 extensive knowledge of the maritime industry allowed it  
18 to conduct a reasonable and thorough market assessment  
19 and to establish market prices that accurately reflect  
20 the markets for the services Tampa Electric requested.

21  
22 **Q.** Do you agree with the recommendations made by DMA?

23  
24 **A.** Yes, I do. I believe that they are reasonable and  
25 appropriate and take into account the best information

1 available regarding the status of the waterborne  
2 transportation markets and Tampa Electric's operational  
3 requirements.

4  
5 **Q.** How did Tampa Electric determine the appropriate market  
6 prices for each of the three segments included in the  
7 waterborne transportation system?

8  
9 **A.** Tampa Electric reviewed the responses to the RFP and its  
10 consultants' findings. The company also utilized its  
11 knowledge of the waterborne transportation market and  
12 Tampa Electric's needs. The company rejected some  
13 proposals for the reasons previously described in this  
14 testimony or in the testimony of Tampa Electric witness  
15 Dibner. Tampa Electric then relied on the results of  
16 DMA's report and the market prices established therein.

17  
18 **Q.** Please describe DMA's findings or evaluation results that  
19 were provided to Tampa Electric.

20  
21 **A.** The inland river bid was only for a portion of Tampa  
22 Electric's requirements, and the bidder is in Chapter 11  
23 bankruptcy status. The bankruptcy and related activities  
24 raised questions about the bidder's fleet status and its  
25 potential to provide transportation services given its

1 existing financial circumstances. The terminal bid was a  
2 bona fide bid for full terminal services. Tampa Electric  
3 did not receive any ocean bids. Therefore, the terminal  
4 bid determined the market price, and the market analysis  
5 performed by DMA determined the appropriate market prices  
6 for the inland river and ocean transportation segments.

7  
8 **Q.** What recommendations did DMA make regarding the market  
9 price components for a new waterborne transportation  
10 contract?

11  
12 **A.** DMA recommended cost structures comprising fixed and  
13 variable charges, and a fuel component, if applicable,  
14 for each segment. In addition, DMA recommended  
15 escalation methodologies and initial fuel price levels.  
16 They are detailed in Tampa Electric witness Dibner's  
17 direct testimony.

18  
19 **Q.** Are the rates determined through the RFP process,  
20 industry review and market modeling sufficient to  
21 determine appropriate market prices for this agreement?

22  
23 **A.** Yes. Using the bids received in response to the RFP and  
24 market analyses provided by Tampa Electric's consultant,  
25 Tampa Electric has demonstrated that the prices

1 established by valid bid and by market modeling represent  
2 the market for the transportation services that will be  
3 provided under the new contract that began January 1,  
4 2004. The activities that DMA performed to evaluate the  
5 bids are described in detail in the testimony of witness  
6 Dibner.

7  
8 **Q.** Do you believe that appropriate market rates have been  
9 established?

10  
11 **A.** Yes. The appropriate market rates have been established  
12 using the bona fide terminal bid received and the results  
13 of the detailed and thorough analyses conducted by DMA  
14 for the inland river and ocean transportation segments.

15  
16 **Q.** After accepting the established market prices, how did  
17 Tampa Electric proceed?

18  
19 **A.** According to the terms of Tampa Electric's then existing  
20 waterborne transportation contract, TECO Transport had  
21 the right to review and decide to meet or beat the market  
22 prices established. Therefore, Tampa Electric  
23 communicated the rates to TECO Transport for that  
24 purpose.

25



1 Q. What was the next step in establishing a new contract for  
2 waterborne transportation services?

3

4 A. Tampa Electric negotiated a new contract with TECO  
5 Transport and incorporated the terms established in the  
6 solicitation and the rates provided as a result of DMA's  
7 market analysis into a new five-year waterborne  
8 transportation agreement. The contract was signed on  
9 October 6, 2003.

10

11 Q. How do the market prices established for the new contract  
12 compare to the waterborne coal transportation costs of  
13 the contract for the previous period?

14

15 A. The market price established for the new contract is  
16 [REDACTED] per ton lower than the rates that were in effect  
17 for the third quarter of 2003, as shown on page 68 of  
18 witness Dibner's report.

19

20 Q. How do the rates established in the new contract compare  
21 to rail transportation rates for an equivalent level of  
22 service?

23

24 A. Once the rail rate is adjusted to include all expected  
25 and appropriate costs that could be quantified, including

1 incremental operating costs and the costs for capital  
2 additions and improvements required to receive coal by  
3 rail, the waterborne rate is [REDACTED] per ton less than the  
4 rail rate. This is included in Document No. 3 of my  
5 exhibit.

6  
7 **Q.** Have any modifications been made to Mr. Dibner's market  
8 analysis since the contract was executed on October 6,  
9 2003 with TECO Transport?

10  
11 **A.** Yes. In December 2003, Mr. Dibner notified Tampa  
12 Electric that he had detected offsetting calculation  
13 errors in his ocean transportation model. The correction  
14 of the ocean model resulted in a market rate that is  
15 \$0.03 per ton higher than the rate originally  
16 communicated to TECO Transport and included in the  
17 contract executed on October 6, 2003. The correction  
18 also changed the fuel, fixed and variable composition of  
19 the ocean segment rate.

20  
21 **Q.** Were modifications made to the contract?

22  
23 **A.** No, Tampa Electric's contract with TECO Transport that  
24 was executed on October 6, 2003 was not modified because  
25 TECO Transport had already accepted the lower rate and

1 related terms. Tampa Electric analyzed the new market  
2 rate and found that the expected overall cost difference  
3 between the two ocean-segment rates over the contract  
4 period was insignificant. Tampa Electric reaffirmed that  
5 the executed contract reflects appropriate market rates.  
6

7 **Sufficiency of the Waterborne Coal Transportation Benchmark**

8 **Q.** How does the Commission independently verify that  
9 waterborne coal transportation services are being  
10 provided at a reasonable cost to Tampa Electric's  
11 ratepayers?  
12

13 **A.** This Commission established a waterborne coal  
14 transportation benchmark to address this issue. Each  
15 year Tampa Electric compares its actual cost for  
16 waterborne coal transportation against the average of the  
17 lowest costs paid by Florida municipal utilities for coal  
18 deliveries by rail. The comparison is submitted to the  
19 Commission for review, and as long as Tampa Electric's  
20 actual cost is at or below the benchmark, the cost is  
21 deemed reasonable. If Tampa Electric's waterborne  
22 transportation costs exceed the benchmark in any given  
23 year, the company must justify any costs greater than the  
24 benchmark amount before the Commission allows recovery  
25 through the fuel clause.

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**Q.** Is the waterborne transportation benchmark still sufficient to evaluate Tampa Electric's affiliated coal transportation costs?

**A.** Yes. In Order No. 20298, issued on November 10, 1988 in Docket No. 870001-EI-A, the Commission stated,

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

Tampa Electric believes that the benchmark is still useful and sufficient for evaluating the prudence of its actual waterborne transportation costs and that the average rail rate comparison serves as a reasonable market proxy for waterborne transportation costs. This

1 benchmark is the best alternative for comparison  
2 currently available. Tampa Electric witness Dibner also  
3 addresses this issue in his direct testimony.  
4

5 **Q.** Should Tampa Electric's waterborne coal transportation  
6 benchmark methodology be modified or eliminated?  
7

8 **A.** No. Tampa Electric believes the benchmark is still a  
9 useful tool in evaluating the prudence of its waterborne  
10 transportation costs. As stated above, the rail rate  
11 comparison is the best alternative for comparison  
12 currently available. In addition, to date Tampa Electric  
13 has always been able to collect the verifiable  
14 information necessary to calculate the benchmark for  
15 timely filing with the Commission. However, if the  
16 Commission decides the benchmark is no longer the  
17 appropriate tool to evaluate Tampa Electric's affiliated  
18 coal transportation costs, then Tampa Electric recommends  
19 that the Commission totally eliminate the benchmark and  
20 rely on the RFP results and market analysis completed in  
21 2003 to determine that the contract costs are reasonable.  
22 The market rates will be in effect for the next five  
23 years with the escalation factors described in detail in  
24 Mr. Dibner's testimony. The process conducted by Tampa  
25 Electric in 2003, in lieu of the benchmark evaluation,

1 ensures that the company and its customers pay market  
2 rates for waterborne transportation services provided by  
3 the affiliate.  
4

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

7 **A.** Although Tampa Electric was not required to issue an RFP  
8 for waterborne transportation services, the company  
9 engaged in extensive market survey and analysis  
10 activities that included issuing an RFP, hiring two  
11 specialized consulting firms to assist with its  
12 evaluation of the bids received in response to its RFP  
13 and directing one of these expert consultants to model  
14 the waterborne transportation markets. S&L concluded  
15 that the rail proposals received did not identify all of  
16 the necessary capital costs to modify Tampa Electric's  
17 facilities to accept rail deliveries, nor did they  
18 account for changes in Tampa Electric's expected  
19 operating costs. Tampa Electric determined that the rail  
20 transportation proposals were not competitive  
21 alternatives when all potential costs, the schedule for  
22 completion of rail infrastructure construction and  
23 environmental impacts were considered.  
24

25 DMA provided Tampa Electric with an analysis of the two

1 waterborne transportation bids and a thorough and  
2 effective study of the inland river, terminal and ocean  
3 market rates that meet Tampa Electric's full requirements  
4 for waterborne transportation services for the period  
5 2004 through 2008. DMA's evaluation of the inland river  
6 and terminal bids resulted in its recommendation to  
7 reject the non-conforming river bid, to use the terminal  
8 bid to set the market rate for that segment and to use  
9 DMA's analysis of the transportation markets to set  
10 appropriate market rates for the inland river and ocean  
11 transportation segments. Tampa Electric agreed with  
12 DMA's recommendations. Tampa Electric used these rates  
13 to negotiate a new transportation contract with TECO  
14 Transport for the years 2004 through 2008. As previously  
15 stated, TECO Transport had the right to meet or beat the  
16 market prices established for the new contract period,  
17 under the terms of its then existing contract with Tampa  
18 Electric. The market analysis and the RFP provided a  
19 meaningful and sufficient basis to evaluate the  
20 waterborne transportation markets and to determine the  
21 appropriate market rates for Tampa Electric's new  
22 contract for waterborne transportation services.

23  
24 Finally, Tampa Electric's existing transportation  
25 benchmark methodology remains valid. However, if the

1 Commission determines that the methodology should be  
2 changed, Tampa Electric recommends that the benchmark be  
3 totally eliminated and that the RFP and market analysis  
4 should determine the reasonableness of Tampa Electric's  
5 transportation costs for the duration of the contract  
6 period.

7  
8 **Q.** Does this conclude your testimony?

9  
10 **A.** Yes, it does.  
11  
12  
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1  
2 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

## 3 PREPARED REBUTTAL TESTIMONY

4 OF

5 JOANN T. WEHLE

6 ON BEHALF OF

7 TAMPA ELECTRIC COMPANY  
89 Q. Please state your name, business address, occupation and  
10 employer.  
1112 A. My name is Joann T. Wehle. My business address is 702 North  
13 Franklin Street, Tampa, Florida 33602. I am employed by  
14 Tampa Electric Company ("Tampa Electric" or "company") as  
15 Director, Wholesale Marketing & Fuels.  
1617 Q. Are you the same Joann T. Wehle who filed direct testimony  
18 in this proceeding?  
1920 A. Yes I am.  
2122 Q. Please describe how Tampa Electric's rebuttal testimony is  
23  
24

25 A. I am one of four witnesses submitting rebuttal testimony on

1           behalf of Tampa Electric. My rebuttal testimony addresses  
2           the numerous inaccuracies and false allegations made by  
3           Messrs. Michael Majoros, Jr. and H.G. Wells testifying on  
4           behalf of the Office of Public Counsel ("OPC") and Florida  
5           Industrial Power Users Group ("FIPUG"), Dr. Robert Sansom  
6           and Messrs. John Stamberg and Robert White testifying on  
7           behalf of CSXT and Dr. Anatoly Hochstein testifying on  
8           behalf of nine residential customers. Mr. Brent Dibner, who  
9           also filed direct testimony in this proceeding, addresses  
10          inaccuracies and deficiencies in the assertions and  
11          conclusions made by Dr. Hochstein and Mr. Majoros regarding  
12          the waterborne transportation market. Mr. Frederick Murrell  
13          rebutts certain aspects of CSXT's testimony specific to the  
14          waterborne coal solicitation, projected coal transportation  
15          costs when compared to CSXT's two proposals and the  
16          benchmark that was established for Tampa Electric in 1988.  
17          Finally, Paula Guletsky from Sargent and Lundy ("S&L")  
18          supports the study which Tampa Electric relied on in  
19          evaluating CSXT's rail proposals. She also rebuts specific  
20          inaccuracies made by CSXT's witnesses Sansom and Stamberg.

21  
22          Tampa Electric's rebuttal testimony comprehensively  
23          addresses the assertions and allegations of witnesses for  
24          FIPUG, OPC, CSXT, and the nine residential customers. In  
25          summary, Tampa Electric has conducted itself in an

1 absolutely prudent manner under this Commission's policies.  
2 Tampa Electric's contract with TECO Transport is priced at  
3 or below market and its customers continue to receive the  
4 most efficient and cost-effective services for coal  
5 transportation services.  
6

7 **Q.** What are your general impressions of the intervenors  
8 testimony?  
9

10 **A.** The Florida Public Service Commission's ("FPSC" or  
11 "Commission") existing policy relied on and followed by  
12 Tampa Electric was established in Order No. 20298. It has  
13 guided and directed Tampa Electric's actions with respect to  
14 its affiliate, TECO Transport, since 1988. Tampa Electric  
15 has consistently complied with the letter and spirit of that  
16 order since it was issued. The Commission has reviewed and  
17 approved the prices paid by Tampa Electric to its affiliate  
18 TECO Transport in hearings held each year in the fuel  
19 adjustment proceeding.  
20

21 Intervenors, on the other hand, have completely ignored  
22 these existing policies by criticizing the content of Tampa  
23 Electric's June 27, 2003 Request for Proposal ("RFP") when  
24 the Commission's current policy clearly does not expect or  
25 require that an affiliate contract be subject to any bid

1 process at all. Moreover, intervenors have not presented  
2 any facts sufficient to change the Commission's policy set  
3 out in Order No. 20298 or to show that any of Tampa  
4 Electric's actions which were guided by that policy were  
5 imprudent. Intervenor's testimony, in fact, supports the  
appropriateness of the pricing of the waterborne contract  
with TECO Transport by conceding that: 1) there is a market  
8 for coal transportation services; 2) waterborne  
transportation service is cheaper than rail transportation  
10 service; and 3) TECO Transport has the largest and most  
11 efficient waterborne fleet available to serve Tampa  
12 Electric. Furthermore, no intervenor has provided testimony  
13 that utilizes a model supported with documented market  
14 information that contradicts Mr. Dibner's recommended market  
rate.

16  
17 The intervenors have presented very broad but extremely  
18 shallow and unsupported or grossly inaccurate theories and  
19 calculations. Through their theories, intervenors reach  
20 outrageous conclusions such as TECO Transport may be  
21 overcharging Tampa Electric for waterborne transportation  
22 services by as much as \$40 million a year. To put into  
23 perspective how outrageous these allegations are, according  
24 to TECO Energy's 2003 Annual Report, TECO Transport's total  
25 net income for 2003 was only \$15.3 million and revenues from

1 | Tampa Electric accounted for about 38 percent of the  
2 | business' total revenues.

4 | No intervenor has provided relevant information that  
5 | demonstrates TECO Transport's rates under the contract for  
6 | 2004 through 2008 for transportation services for coal from  
7 | the Midwest to Tampa are above market rates. This is  
8 | especially true today, just four months into the contract,  
9 | when ocean rates alone have almost tripled.

10 |

11 | No intervenor has offered any credible evidence warranting a  
12 | change to the existing benchmark methodology defined in  
13 | Order No. 20298. Intervenors have only sought to have Tampa  
14 | Electric rebid a service which under this Commission's  
15 | existing policies does not require a bid solicitation in the  
16 | first place. The Commission explicitly recognized in 1988  
17 | that affiliate contracts are not required or expected to be  
18 | bid. The Commission instead established a market-based  
19 | price benchmark to be used as an upper limit to affiliate  
20 | pricing of coal transportation services. Tampa Electric has  
21 | been consistently below the benchmark year after year.  
22 | Intervenors, in effect, seek a retroactive application of a  
23 | new and yet undefined policy as it relates to a contract  
24 | entered into under the policies established in Order No.  
25 | 20298.

1 Q. Have you prepared an exhibit in support of your rebuttal  
2 testimony?

3  
4 A. Yes. Exhibit No. \_\_\_\_ (JTW-2), consisting of seven  
5 documents, was prepared under my direction and supervision.  
6 Document No. 1 is entitled "Excerpts from Order No. 20298";  
7 Document No. 2 is correspondence dated July 16, 2003 from  
8 Ms. Dee Brown to Mr. Tim Devlin; Document No. 3 is entitled  
9 "Articles about CSXT's Poor Service Levels"; Document No. 4  
10 is entitled "Evaluation of Rail vs. Water Delivery Economics  
11 for Western Kentucky Coal"; Document No. 5 is correspondence  
12 dated April 21, 2004 the Petroleum Coke Management Company  
13 to Ms. Joann Wehle; Document No. 6 is a graph showing  
14 Columbian and Venezuelan Spot Price Volatility; and Document  
15 No. 7 is a comparison of TECO Transport's rates compared to  
16 the coal benchmark.

17  
18 **BACKGROUND**

19 Q. Please describe the facts and circumstances which caused  
20 TECO to develop an affiliated waterborne coal transportation  
21 system.

22  
23 A. During the 1940's and early 1950's all electric generation  
24 in peninsular Florida was powered by oil. Steam generating  
25 units used residual oil while many small municipal systems

1 | relied on diesel engines and No. 2 distillate oil. While  
2 | Tampa Electric did have oil supply contracts in those days,  
3 | there was no real competition and all such contracts were  
4 | related to prices posted in the world petroleum market. In  
5 | view of this fact, Florida fuel prices for utilities  
6 | appeared to be relatively high as compared to other areas of  
7 | the country where other fuel types were available to  
8 | electric utilities.

10 | For these reasons, TECO management investigated the  
11 | availability of other fuels for the company's then new  
12 | Gannon Station when planning for this new station began in  
13 | the early 1950's. Both coal and natural gas were  
14 | considered.

15 |  
16 | Coal's principal disadvantage was transportation costs.  
17 | Rail rates to Florida from northern coal fields were so high  
18 | that coal was not competitive with oil. Water  
19 | transportation systems from the same areas were nonexistent.  
20 | Obviously, some new means of transportation had to be  
21 | developed if coal were to become a viable alternative.

22 |  
23 | TECO's CEO William MacInnes met with oil company  
24 | representatives to attempt to work towards a solution. The  
25 | oil companies did not take his concerns and efforts

1 | seriously. He ignored them and a water transportation  
2 | system was created which could transport coal southward to  
3 | Tampa. The barges in the initial fleet were old converted  
4 | oil tankers of about 14,000 dry weight tons and tug-barge  
5 | units of about 19,200 short tons. This fleet has been  
6 | continuously upgraded with larger faster vessels and  
7 | facilities which are finely tuned to Tampa Electric's  
8 | transportation service needs. All of the additional  
9 | investment in TECO Transport's improved fleet has been  
10 | through acquisition of equipment which has improved the  
11 | economies of scale and efficiency of this system to very  
12 | effectively compete in the market for Tampa Electric's coal  
13 | transportation service needs.

14 |  
15 | Once this transportation system went into operation, rail  
16 | rates into Florida began to drop almost immediately. It has  
17 | been conservatively estimated that the transportation system  
18 | has saved Tampa Electric's customers over \$500 million in  
19 | transportation costs alone during the years that it has been  
20 | in operation. The lowering of rail rates in response to the  
21 | competition of water transportation has benefited and  
22 | continues to benefit ratepayers throughout Florida because  
23 | rail carriers compete with waterborne carriers for the  
24 | delivery of coal.  
25 |



1 As I will discuss later in my testimony, rail rates are an  
2 effective gauge of the upper limit of the market for  
3 transportation of coal and are now and have been an  
4 effective market-based price benchmark used to determine the  
5 reasonableness of prices charged by TECO Transport to Tampa  
6 Electric. The existence of a market for the delivery of  
7 coal to Tampa is confirmed by CSXT's interest and  
8 intervention in this proceeding. An appropriate analysis  
9 comparing CSXT's offer to provide rail service with the  
10 contract entered into by TECO Transport and Tampa Electric  
11 shows, without a doubt, that by fair comparison, contract  
12 prices under the new contract, which went into effect  
13 January 1, 2004, are below CSXT's proposals. I will  
14 demonstrate in my rebuttal testimony that the charges made  
15 by OPC, FIPUG, CSXT, and Dr. Hochstein are patently  
16 incorrect and unsubstantiated.

17  
18 **COAL TRANSPORTATION PROCUREMENT PROCESS**

19 **Q.** Under the Florida Public Service Commission's Order No.  
20 20298, is Tampa Electric obligated to issue an RFP for coal  
21 transportation services with its affiliate, TECO Transport?  
22

23 **A.** No. In 1988, as part of resolving a contested proceeding,  
24 Tampa Electric and OPC entered into a settlement with the  
25 approval of the Commission's Staff and the acquiescence of

1 FIPUG, which is now embodied in Order No. 20298. The order  
2 is the policy of this Commission and it plainly states:

3  
4 "Tampa Electric may negotiate its contracts  
5 with its affiliate in any manner it deems  
6 reasonable."

7  
8 The order is attached as Document No. 1 in my direct  
9 testimony and pertinent excerpts from the order are in  
10 Document No. 1 to my rebuttal exhibit. Intervenors have  
11 fundamentally failed to acknowledge the Commission Order and  
12 policy.

13  
14 **Q.** If Tampa Electric was not required to issue an RFP, then why  
15 did it do so?

16  
17 **A.** Tampa Electric decided to issue an RFP as part of its good-  
18 faith efforts and at the urging of the FPSC Staff to obtain  
19 the most relevant and timely waterborne transportation  
20 market data available. Tampa Electric's expert witnesses  
21 Dibner and Murrell have provided rebuttal testimony that  
22 demonstrates Tampa Electric's RFP process was fair and  
23 appropriate.

24  
25 **Q.** Under the Commission's Order No. 20298, is Tampa Electric

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1 obligated to negotiate with its affiliate at "arms length"  
2 as suggested by Mr. Majoros on page 17 of his testimony?

3  
4 .1. Order No. 20298 states Tampa Electric shall "be free to  
5 negotiate its contracts with its affiliates in any manner it  
6 deems to be fair and reasonable." This Order also plainly  
7 states:

8  
9 . . . the typical affiliate contract is let  
10 without the benefit of competitive bidding.  
11 Instead, confident that the contract will be  
12 given to the affiliate, representatives of  
13 the two companies negotiate the rate at  
14 which the product or service will be  
15 purchased.

16  
17 Tampa Electric went well beyond the requirements of the  
18 Commission's policies by conducting the RFP and strictly  
19 followed these policies in arriving at a contract price  
20 which is at or below the market price for coal  
21 transportation services.

22  
23  
24  
25 Not only did Tampa Electric test the market

1 through an RFP, it hired Mr. Dibner to assist in the RFP  
2 review process, analyze the solicitation results, and  
3 develop a comprehensive market pricing model which took into  
4 account current waterborne transportation market conditions.  
5

6 **Q.** According to Mr. Majoros, the RFP was designed to only  
7 benefit TECO Transport but was not sufficient to elicit  
8 bids. How do you respond?  
9

10 **A.** Tampa Electric's RFP was designed to clearly identify and  
11 solicitation responses that met the company's needs and  
12 preferences for the continuation of low cost and reliable  
13 waterborne transportation services for its coal supply to  
14 the generating stations. The RFP was similar to ones used  
15 in the past but contains modifications that the FPSC Staff  
16 acknowledged as improvements. As confirmed by Messrs.  
17 Dibner and Murrell, the RFP specifications and evaluation  
18 process were reasonable, fair and consistent with that of  
19 the industry.  
20

21 **Q.** OPC/FIPUG witness Wells at page 6 of his testimony is  
22 critical of the company for failing to address the  
23 Commission Staff's suggested changes to the RFP. Did Tampa  
24 Electric consider the changes that Staff suggested?  
25

Tampa Electric carefully evaluated and considered Staff's suggestions and took the actions it deemed most appropriate and consistent with this Commission's existing policy. This consideration is documented correspondence sent from Ms. Dee Brown, Tampa Electric's Vice President of Regulatory Affairs, to Mr. Tim Delvin of the Commission Staff. I have attached the letter as Document No. 2 of my exhibit.

Is the right of first refusal provision in the contract an industry standard and would you expect that it was known by potential respondents to the RFP?

Given the length of time that Tampa Electric and TECO Transport have maintained a contractual relationship, one could expect that a right of first refusal clause would be in the current contract. Any long-standing relationship with a supplier who has invested significant capital in providing a service, affiliated or not, warrants the consideration of a right of first refusal in order to encourage that supplier to continue to invest capital to improve its service to that customer.

20

A right of first refusal clause is common in the coal and coal transportation industry. This was confirmed in the fall of 2003 during a deposition of Mr. Herbert Ball, Fuels

Manager for Gulf Power Company. He acknowledged that Gulf's unaffiliated barge carrier, Ingram Barge Line, has the opportunity to match other bidders' rates. (Deposition Transcript, Ball, Pg 17-18) I am also aware of other companies that recently negotiated contracts with right of first refusal clauses. They include Georgia Power, Alcoa Generating, First Energy and Kentucky Utilities.

Did Tampa Electric's undisclosed right of first refusal contract provision adversely impact the RFP process?

13

No. Because the contract terms provision were strictly confidential and by not disclosing the right of first refusal contract provision, the bid prices for transportation and terminal services were reflective of the market and not unduly impacted by external circumstances.

Dr. Hochstein also suggests, on page 5 of his testimony, that there were numerous conditions in the RFP that are non-standard and unreasonable such as the range of volume, demurrage and storage volume requirements, and certain payment requirements, to name a few. How do you respond?

The conditions and requirements included in the RFP are very similar to those used in Tampa Electric's prior waterborne

1 transportation RFP. Tampa Electric's witnesses Dibner and  
2 Murrell agree with me that these provisions are typical,  
3 reasonable requirements and conditions necessary to ensure  
4 that the services Tampa Electric receives under the contract  
5 are the services it requires to reliably serve its  
6 customers.

7  
8 **Q.** Was Tampa Electric's range of volume required in its 2003  
9 RFP a standard and reasonable requirement?

10  
11 **A.** Yes. It was not only standard and reasonable, it was  
12 absolutely necessary to ensure Tampa Electric received the  
13 service it requires. The requested tonnage for each segment  
14 is a percentage of total solid fuel burn requirements. The  
15 river and terminal minimums were set to be 50 to 60 percent  
16 of projected burn through 2008, thereby allowing Tampa  
17 Electric to maintain flexibility regarding where it can  
18 procure coal, and secure the base portion of river  
19 transportation capacity. This same methodology was used for  
20 ocean tonnages, although a higher percentage was specified  
21 to consider Texas petroleum coke ("pet coke") and foreign  
22 coal deliveries.

23  
24 **Q.** On page 20 of his testimony, Dr. Hochstein states that the  
25 RFP payment schedule requirement is not a standard agreement

1 and it is not reasonable. How do you respond?

2  
3 **A.** The RFP stated Tampa Electric's preference. Tampa Electric  
4 was willing to consider any alternatives that were proposed.  
5 Furthermore, in [REDACTED] bid  
6 response, the only bona fide bid received, they agreed to  
7 the payment schedule requirement.

8  
9 **Q.** Was Tampa Electric's RFP requirement for weight measurement  
10 a standard and reasonable requirement?

11  
12 **A.** Yes, it is standard that origin weights at river barge  
13 loading govern. Coal suppliers are unwilling to take the  
14 risk of weights when they do not have control over the  
15 transportation service provider.

16  
17 **Q.** Was Tampa Electric's inclusion of a cargo loss requirement  
18 in its RFP an industry standard and was it reasonable?

19  
20 **A.** Yes. This is a standard industry practice that Dr.  
21 Hochstein seems to confuse with inventory shrinkage. The  
22 cargo loss requirement relates to the carrier's insurance  
23 coverage in the event that the barge or vessel cargo is lost  
24 as a result of accidents, storms, etc. and it protects a  
25 shipper like Tampa Electric.



1 Q. Was Tampa Electric's inclusion of a "no-cost expedition of  
2 shipment" requirement in its RFP an industry standard and  
3 reasonable?  
4

5 A. This clause is standard and reasonable given Tampa  
6 Electric's obligation to ensure the continued reliability of  
7 its generating units. The "no-cost expedition of shipment"  
8 requirement simply allows Tampa Electric the ability to  
9 request priority handling for specific shipments.  
10

11 Q. Why wasn't TECO Transport required to submit a bid along  
12 with the other bidders as suggested by Messrs. Wells and  
13 Majoros?  
14

15 A. As described earlier, the contract between Tampa Electric  
16 and TECO Transport contained a right of first refusal  
17 clause. With this common contractual right, TECO Transport  
18 was not required to submit a bid along with other bidders,  
19 another common practice as evidenced by Gulf Power in the  
20 deposition I referenced above. If TECO Transport was  
21 interested in continuing to perform the services, their  
22 obligation was to "meet or beat" the market price for such  
23 services.  
24

25 Q. OPC/FIPUG witness Wells, on page 7 of his testimony, is

1 critical of the company for not establishing a dialogue with  
2 bidders. Why wasn't this done?

3  
4 **A.** Tampa Electric did provide bidders with the opportunity to  
5 ask questions and to make comments directly to a company  
6 representative. Several bidders did avail themselves of  
this opportunity. The company's practice in procuring such  
services does not require a formal pre-bid conference. In  
addition, I am not aware of other utilities holding such  
10 meetings for procurement of transportation services. The  
11 RFP also invited any bidder to make a presentation of their  
proposal which would have certainly provided a means to  
13 establish dialogue between their company and Tampa Electric.  
No bidder opted to do so.

15  
16 **Q.** Witnesses Wells, Majoros and Sansom have asserted that Tampa  
Electric should have provided the railroad with a copy of  
the RFP. Why didn't the company provide them with a copy?

20 **A.** The RFP was for waterborne transportation of coal. Tampa  
Electric provided the RFP to all companies known to Tampa  
22 Electric that could provide such services. This did not  
23 include CSXT or other rail or trucking companies, since none  
24 currently has the facilities to provide the required  
25 services. However, once CSXT expressed interest in

1 providing rail transportation services and requested the  
2 RFP, it was immediately provided to them and they responded  
3 by the stated deadline.  
4

5 Q. OPC/FIPUG's witness Michael Majoros, accuses Tampa  
6 Electric's waterborne expert, Mr. Brent Dibner of having  
7 acted in the best interest of TECO Transport, not Tampa  
8 Electric. Did Mr. Dibner act in the best interest of Tampa  
9 Electric's customers?

11 A. Absolutely. Mr. Dibner was hired by Tampa Electric to serve  
12 in a consulting capacity for the RFP review process and to  
13 assist in the analysis of the RFP results. Mr. Dibner did  
14 not have contact with TECO Transport, divulge any  
15 information to TECO Transport nor was he given instructions  
16 on how to conduct his modeling or the results it should  
17 yield. The final outcome of Mr. Dibner's study was an  
18 overall rate reduction of approximately five percent. This  
19 could hardly be seen as acting in the best interests of TECO  
20 Transport rather than Tampa Electric and its customers.  
21

22 Q. Dr. Hochstein contends on page 35 of his testimony that  
23 Tampa Electric should issue a new RFP with his recommended  
24 changes. How do you respond?  
25

1 A. A new RFP is not necessary because the original RFP was  
2 sufficient and the bid evaluation process was fair. In  
3 addition, due to the extensive media coverage of this  
4 process and the scrutiny provided to date, it is doubtful  
5 that providers would choose to participate in a second RFP.  
6 Also, market prices for ocean transportation services have  
7 risen dramatically since the fall of 2003; therefore, one  
8 could only expect that RFP responses, if any, would include  
9 much higher waterborne rates than those included in the  
10 existing Tampa Electric and TECO Transport contract. Both  
11 Mr. Murrell and Mr. Dibner address this along with the  
12 causes for these market price increases.

13  
14 **CSXT'S RAIL PROPOSALS**

15 Q. Describe the circumstances that led CSXT to provide its  
16 proposal to Tampa Electric in October 2002.

17  
18 A. CSXT met with Tampa Electric in May 2002 after its rail  
19 service agreement for rail delivery to Tampa Electric's  
20 Gannon Station had expired. While Tampa Electric understood  
21 CSXT's marketing strategy and direction from their senior  
22 management to make up for lost revenues, Tampa Electric  
23 explained its existing waterborne transportation agreement  
24 with TECO Transport to CSXT. Under the agreement, the  
25 contract would expire year-end 2003. Tampa Electric also

1 pointed out that it did not have appropriate rail facilities  
2 to receive coal at either Big Bend or Polk Power stations.  
3 Irrespective, CSXT apparently felt compelled to make an  
4 unsolicited proposal to Tampa Electric in October 2002.

5  
6 Q. Did Tampa Electric request that CSXT submit a proposal as  
7 stated in a letter dated to you on October 23, 2002 from  
8 CSXT's Michael C. Bullock, Director Utility South?

9  
10 A. No. In fact, after Tampa Electric received the letter and  
11 proposal from CSXT, we asked CSXT to change its letter dated  
12 October 23, 2002 suggesting the company made such a request.  
13 The letter was misleading. Tampa Electric never requested  
14 CSXT to submit a proposal.

15  
16 Q. Was CSXT's proposal a bona fide proposal?

17  
18 A. Not at all. There were several elements that suggest this.  
19 For example:

- 20 1. The proposal was conditioned on CSXT's board approval.  
21 2. CSXT's cover letter to the proposal acknowledges that  
22 the proposal would "serve as the framework for further  
23 discussions."  
24 3. The proposal required that at least 1.8 million tons  
25 must be delivered during 2003 even though CSXT knew

2 Tampa Electric had a transportation contract with TECO  
3 Transport with minimum annual deliveries through 2003.  
4 If Tampa Electric did not take all of the tonnage, it  
5 would be subject to dead freight charges of [REDACTED] per  
6 ton from CSXT.

- 7  
8 4. The proposal was to become effective in 69 days with  
9 minimum tonnage requirements even though no facilities  
10 existed for receiving coal.

11 The unsolicited proposal had numerous other shortcomings and  
12 Tampa Electric did not consider it a serious proposal.

13 **Q.** Please address Tampa Electric's operational issues at the  
14 time CSXT made its proposal?

15  
16 **A.** Although CSXT's proposal was made at a time that was  
17 appropriate for its own business needs and direction, its  
18 needs did not correspond with Tampa Electric's business and  
19 customers' needs. At the time CSXT made its unsolicited  
20 proposal, the company was in the process of conducting  
21 various evaluations of its generation resources and needs.

22  
23 Among other things, Tampa Electric was in the process of  
making significant decisions about the most prudent means to  
comply with the U.S. Environmental Protection Agency ("EPA")

1 and the Florida Department of Environmental Protection  
2 consent decrees. One key decision being evaluated in late  
3 2002 through early 2003 was how much longer its coal-fired  
4 Gannon Station could continue to operate safely and reliably  
5 given the environmental requirements that Gannon Station  
6 terminate its coal operations by December 31, 2004.  
7 Depending on the timing of the closure and conditions of its  
8 existing coal transportation contract with TECO Transport  
9 which had been entered into before the consent decrees  
10 existed, the company was facing potential dead freight  
11 impacts totaling over \$15 million. Dead freight is a term  
12 used to indicate minimum tonnage that is "take or pay" in  
13 nature. Tampa Electric was focused on reducing or  
14 eliminating this exposure and potential negative customer  
15 bill impact.

16  
17 Another important issue under consideration in late 2002  
18 through early 2004 was the future of burning coal at Big  
19 Bend Station, again based on federal and state environmental  
20 requirements. According to the consent decrees, Tampa  
21 Electric is required to advise the EPA by May 1, 2005  
22 regarding its plan for Big Bend Unit 4 and by May 1, 2007  
23 with respect to Big Bend units 1, 2 and 3 whether each unit  
24 will i) be shut down, ii) be repowered with natural gas as  
25 its primary fuel, or iii) continue to be fired by coal.

1 While these issues were under consideration, the company was  
2 seriously considering simply extending the terms of the  
3 transportation contract for two or three years to meet the  
4 committed tonnages for delivery and to gain a better  
5 understanding of its future fuel mix and transportation  
6 service needs. It was not practical nor prudent for the  
7 company to enter into any type of serious discussions with  
8 CSXT in October and November 2002.

9  
10 **TAMPA ELECTRIC'S COAL SUPPLY AND COAL TRANSPORTATION**

11 **Q.** Please describe Tampa Electric's fuel procurement practices.

12  
13 **A.** Tampa Electric's fuel procurement strategy is based on its  
14 requirements to generate electricity utilizing fossil fuels  
15 including coal, natural gas, oil and pet coke. The  
16 company's fuels procurement process is based on an analysis  
17 of its generation requirements along with input on fuel  
18 pricing, pipeline operations, and market knowledge provided  
19 by the Fuels section of the Wholesale Marketing & Fuels  
20 Department.

21  
22 The company seeks fuel supply contracts that optimize the  
23 company's needs. Following are some of the specific factors  
24 taken into consideration when procuring coal:

- 25
- Type of coal needed (i.e. low sulfur etc.)



- 1 • Specific burn needs (higher Btu/lb vs. lower Btu/lb)
- 2 • Delivered cost on a cents/MMBtu basis
- 3 • Quality specifications, including sulfur, Btu/lb,
- 4 chlorine, ash content, grindability and fusion
- 5 temperature
- 6 • Reliability of supply
- 7 • Creditworthiness of supplier
- 8 • Source of coal
- 9 • Delivery schedule (location of mine or facility)
- 10 • Payment arrangements
- 11 • Price escalations/re-openers
- 12 • Premium/penalty clauses
- 13 • Discount arrangements

14

15 The above list is not all-inclusive, but represents some of

16 the more common elements considered in the company's

17 procurement strategies.

18

19 **Q.** Would you consider Tampa Electric's coal procurement

20 practices to be prudent?

21

22 **A.** Yes, I would. Our coal procurement practices are cost

23 conscious, proven and efficient. Mr. Murrell, who has had

24 extensive experience in the coal and transportation

25 industries, has confirmed that Tampa Electric's practices

1 are prudent in his rebuttal testimony.

2

3 **Q.** What types of coals are burned at Big Bend Station?

4

5 **A.** Big Bend Station has four units with flue gas  
desulfurization systems or scrubbers. The design fuel for  
7 these units is an Illinois Basin, low ash fusion temperature  
coal with sulfur limitations approximating a maximum of six  
Lbs. SO<sub>2</sub> /MMBtu.

10

11 Tampa Electric's air permit limitations allow the station  
12 only minimal days annually to operate in an "unscrubbed" or  
13 de-integrated mode. For these limited time frames, a mid-  
14 sulfur Illinois Basin coal or foreign coal is procured based  
15 on the best availability and pricing. The station burns  
16 approximately five million tons of coal per year.

17

18 **Q.** Is CSXT capable of delivering domestic coal to Big Bend  
19 Station?

21 **A.** Yes, but with several significant qualifiers. As I have  
22 described, there are currently no rail facilities in place  
23 to allow for direct rail deliveries. The company has also  
determined that CSXT's rates are not the most cost effective  
25 considering our coal supply portfolio. Finally, even if

2 coal could be delivered by rail to Big Bend, there are  
3 certain blending and storage limitations that eliminate rail  
4 delivery as a viable option. Having said this and giving  
5 adequate consideration to certain reliability and service  
6 issues, I assume CSXT would have the capability to deliver  
7 coal once facilities are in place. Indeed, CSXT might be a  
8 partial transportation solution if they were willing to make  
9 an all inclusive legitimate proposal for delivery to Big  
10 Bend, and we were able to solve certain blending and storage  
11 limitations that I describe below.

12 **Q.** What types of coals are burned at Polk Power Station?

13  
14 **A.** Polk Power Station is an integrated gasification combined  
15 cycle unit ("Gasifier") that effectively turns a coal and  
16 pet coke blend into synthetic gas. The fuel blend currently  
17 being utilized is 60 percent pet coke and 40 percent coal.  
18 This very precise blend must be maintained under the  
19 station's stringent sulfur and chlorine requirements.  
20 Utilizing the higher amount of pet coke has allowed the  
21 station to be Tampa Electric's least fuel cost generator.

22  
23 **Q.** Is CSXT capable of delivering pet coke, the predominant fuel  
24 source for Polk Power Station to Tampa Electric?  
25

1 | **A.** No. As described in the rebuttal testimony of Mr. Murrell,  
2 | CSXT is not capable of delivering pet coke directly from  
3 | either domestic or foreign sources due to its location.  
4 |

5 | **Q.** Dr. Hochstein, is a proponent of foreign coal. Do you agree  
6 | with Dr. Hochstein's statement on page 61 of his testimony  
7 | that "Tampa Electric's use of imported coal at Big Bend is  
very limited, especially in contrast to other Florida  
utilities?"

10 |

11 | **A.** Yes. However, it is important to point out that Tampa  
Electric is one of the few Florida utilities utilizing  
13 | conventional limestone scrubbers. The other remaining  
utilities in Florida purchase large amounts of low sulfur,  
foreign coal because their generating units lack scrubbers.  
16 | Because Big Bend Station is fully scrubbed, it emits less  
17 | particulate matter and sulfur dioxide than those units that  
18 | are not scrubbed. In addition, given the boiler  
19 | configuration of three of Tampa Electric's Big Bend units,  
20 | South American coals have limited application in those  
21 | units. This is due to the low ash fusion temperature  
22 | requirements. Recent test burns have shown that the maximum  
23 | amount of South American coals that can be used in the Big  
24 | Bend boilers is 30 percent. Therefore, purchasing and using  
25 | large amounts of foreign coal would not be prudent for Tampa

1 Electric.

2  
3 **Q.** Has Tampa Electric received recent bid solicitations for  
4 imported coal in the last year? If so, what were the  
5 results?  
6

7 **A.** During late 2003, Tampa Electric conducted a bid  
8 solicitation for long-term coal supply. The results of that  
9 solicitation indicate that foreign coal delivered directly  
0 to Big Bend Station was not the lowest cost on a fully  
1 delivered cents per million basis when compared to domestic  
12 coal. The bid solicitation was made prior to the recent  
13 market price run-up in foreign coal and ocean going freight  
14 rates, which would make the rates even higher today.  
15

16 **TAMPA ELECTRIC'S EVALUATION OF CSXT'S RAIL PROPOSALS**

17 **Q.** Did Tampa Electric perform an analysis of CSXT's two rail  
18 proposals submitted in July 2003?  
19

20 **A.** Yes, as I discussed extensively in my direct testimony on  
21 pages 23 through 31, Tampa Electric performed a complete  
22 analysis of the CSXT proposals. It also hired S&L to review  
23 the proposals and to provide an independent technology  
24 screening analysis including cost estimates to retrofit the  
25 Big Bend and Polk Power stations to allow for rail delivery

1 of coal. After our evaluation, including Mr. Dibner's  
2 detailed market analysis, Tampa Electric concluded that  
3 given the significant costs for capital infrastructure and  
4 the additional operating and transportation costs that would  
5 result from selecting rail transportation, CSXT's proposals  
6 were not competitive. I recommended rejecting both  
7 proposals.

8  
9 **Q.** Please address CSXT's witnesses Dr. Sansom's and Mr. White's  
10 criticism that Tampa Electric did not take CSXT's bids  
11 seriously.

12  
13 **A.** As I explained above, Tampa Electric was not in a position  
14 to seriously evaluate CSXT's unsolicited proposal from  
15 October 2002. But once Tampa Electric did elect to solicit  
16 waterborne transportation bids in June 2003, it issued its  
17 RFP. CSXT, certainly not a waterborne transportation  
18 company, submitted two bids in response to the RFP. Tampa  
19 Electric did take CSXT's bids seriously and even hired S&L  
20 to help determine overall costs associated with their  
21 proposals. After a complete analysis, we determined that  
22 CSXT's bids were not reasonable given the rates, terms, and  
23 conditions included in the proposals. This was true even if  
24 rail facilities were in place for delivery beginning January  
25 1, 2004. In any case, based on the construction and

1        permitting time line, this date was not feasible.

2

3        **Q.**    In your opinion, was CSXT's estimate for rail facilities  
4        reasonable?

5

6        **A.**    No.    Based upon the detailed analysis performed by S&L's  
7        Paula Guletsky and the assessments made by Mr. Murrell, it  
8        appeared CSXT underestimated and understated the capital  
9        costs and the time frame necessary for construction of such  
10       facilities, including obtaining permits.

11

12       **Q.**    Were the rail proposals rejected primarily due to capital  
13       costs as asserted by OPC/FIPUG witness Majoros?

14

15       **A.**    No.    There were several cost related reasons why the rail  
16       proposals were rejected, including capital and operating  
17       costs that also needed to be considered. As I stated in my  
18       direct testimony, some of the reasons included 1) the cost  
19       impacts of acquiring coal from different supply locations  
20       for rail versus water, 2) the incremental costs for short  
21       hauls from the coal mine to rail versus water, 3) costs for  
22       environmental impact mitigation, and 4) permitting and other  
23       related costs, to name a few. Capital costs were only one  
24       of several factors that were considered in the evaluation of  
25       CSXT's rail proposals.

1 Q. Please describe some of the other terms and conditions of  
2 the proposals that made them unattractive?

3  
4 A. There were numerous terms and conditions that made CSXT's  
5 proposals problematic. Some of these were:

6 1. The proposals required Tampa Electric to take an annual  
7 minimum of one million tons from a CSXT direct rail  
8 served rail origin or incur dead freight penalties at  
9 [REDACTED]. Besides the penalties, this requirement  
10 would dictate limited supply sources and suppliers and  
11 would likely drive up coal costs once these conditions  
12 were known in the marketplace.

13 2. The proposals required a commitment of 80 percent of  
14 Polk Power Station's entire annual receipts. As I  
15 previously stated and as Mr. Murrell has testified,  
16 CSXT cannot deliver pet coke directly to Polk Power  
17 Station. Therefore, Tampa Electric would be paying  
18 substantially more for its fuel or be subject to dead  
19 freight penalties. Currently, pet coke rates are about  
20 67 percent lower than coal rates.

21 3. CSXT offered two options: a "Shuttle Option" and a  
22 "Direct Rail Option." The price of the "Shuttle  
23 Option" is [REDACTED]/ton higher than Tampa Electric's  
current trucking rate. The "Direct Rail Option" would  
all but eliminate the company's ability to purchase



less costly pet coke and limit coal supply options.

2 | 4. The proposals did not include a rate for the delivery  
3 | of pet coke to Big Bend or Polk Power station. Polk  
4 | Power Station requires pet coke to optimize dispatch  
5 | pricing.

7 | CSXT's proposal was simply unreasonable, incomplete and  
8 | unfeasible.

9 |  
10 | **Q.** On page 25 of his testimony, Dr. Sansom alleges you  
12 | performed a "fatal mistake" when you evaluated CSXT's bid  
13 | and compared coal movement from the mine to rail facilities  
14 | vs. mine to barge facilities. How did you go about  
15 | determining the incremental costs to move coal from the mine  
16 | to a rail head rather than mine to a barge dock?

17 | **A.** As noted in my direct testimony, we made direct inquiries of  
19 | coal suppliers we had under contract, Dodge Hill and Black  
20 | Beauty, regarding the incremental costs associated with  
21 | moving coal from the mine to rail rather than from the mine  
22 | to barge. The incremental costs would increase the cost of  
23 | coal by \$2.00 to \$6.00 per ton. These incremental costs  
24 | cannot be ignored as Dr. Sansom has done in his flawed  
25 | analysis. His omission substantially understates the actual  
delivered cost of these fuels and casts doubt on the

1 legitimacy of his analysis.  
2

3 **TAMPA ELECTRIC'S STORAGE AND BLENDING CAPABILITIES**

4 Q. Both CSXT's witnesses and Dr. Hochstein make certain  
5 allegations that Big Bend Station is underutilized for  
6 storing and blending coal. Please describe Tampa Electric's  
7 policy regarding coal inventory storage.  
8

9 A. Tampa Electric maintains its coal inventory at levels  
10 necessary to protect against potential interruptions in the  
11 supply of fuel and to provide for generation contingencies  
12 such as unanticipated changes in load. The company also  
13 considers supply system reliability, anticipated fuel  
14 supply, market conditions, weather and economics.  
15

16 Q. What has Tampa Electric and the Commission deemed to be an  
17 appropriate level of coal inventory?  
18

19 A. While it may be common for Midwestern utilities to store 30  
20 to 45 days of inventory, the Commission determined in Order  
21 No. PSC-93-0165-FOF-EI that it is appropriate for Tampa  
22 Electric to maintain up to 98 days of system inventory. In  
23 making its decision, the Commission recognized the distance  
24 between Tampa Electric's generating stations and coalfields.  
25

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1                   Furthermore, the Commission has approved the  
2 company's *Long-Term Energy Emergency Plan* requires exact  
3 actions in the event that system-wide inventory levels dip  
4 below a 50-day supply with expected continuing declines.  
5 There is a strong relationship between low inventory levels  
6 and price volatility. Utilities' low inventory levels  
7 certainly contributed to the cost run-ups in the market in  
8 late 2000 and 2001. Given these circumstances, Tampa  
9 Electric maintains its inventory levels for reliability and  
10 to insulate itself from price volatility.

11  
12 Q.   What is Big Bend Station's typical coal storage capacity and  
13 how does that translate to days on hand of inventory for the  
14 station?

15  
16 A.   Big Bend Station's typical storage capacity is approximately  
17 750,000 tons which translates to about 50 days of demand.  
18 About 60,000 tons of the coal inventory are stored at Big  
19 Bend Station for Polk Power Station that portion needs to be  
20 excluded. Additionally, approximately 80,000 tons of medium  
21 sulfur coal must be maintained for Big Bend units operating  
22 in an "unscrubbed" or de-integrated mode. Once those two  
23 amounts are subtracted, the maximum storage of Big Bend  
24 Station coal is about 610,000 tons, which equates to about  
25 40 days of demand.

1 Q. Are there any concerns with increasing storage at Big Bend  
2 Station as suggested by Drs. Sansom and Hochstein?

3  
4 A. Yes, there are. While Tampa Electric had, at one point in  
5 time, an inventory level at Big Bend Station that approached  
6 one million tons, the company encountered numerous  
7 environmental problems. The company experienced dusting  
8 problems, inability to administer dust suppression to coal  
9 piles, and water drainage and runoff issues. Dust  
10 suppression is necessary when a power plant such as Big Bend  
11 is located in a metropolitan area. Given the operational  
12 and the community issues associated with such levels, the  
13 company would not, as a norm, allow these levels of  
14 inventory.

15  
16 Q. Dr. Hochstein states that Tampa Electric's storage volumes  
17 at TECO Bulk Terminal with its eight separate piles are not  
18 standard or reasonable requirements. Is he correct?

19  
20 A. No. This statement makes it apparent that Dr. Hochstein is  
21 not familiar with Tampa Electric's coal plant operations.  
22 Due to the gasifier at Polk Power Station, Tampa Electric  
23 must maintain three separate coal piles at TECO Bulk  
24 Terminal to meet the precise blending requirements of the  
25 gasifier. In addition, for Big Bend Station, Tampa Electric

must maintain a separate pile for "compliance coal" purposes. This coal is utilized when Big Bend is operating in an "unscrubbed" or de-integrated mode. Two standard piles are also maintained that have different Btu values. Typically, the lower Btu coal is used in the shoulder months and the higher Btu coal is used in the summer. Additionally, there is a pile that is utilized for test burns. Therefore, the requirement for up to eight separate piles was reasonable and a necessary requirement based on Tampa Electric's on-going plant operations. Furthermore, in [REDACTED] bid responses, they agreed to not only the eight pile requirement, but also indicated that additional piles and storage capacity could be provided with sufficient notice.

Does Big Bend Station have sufficient storage capacity to take imported coal directly?

16

17

18

**A.** Yes, but only in limited quantities and with smaller vessels delivering the coal.

Are there coal blending capabilities at Big Bend Station?

24

Yes. As I described in my direct testimony, there are blending facilities at Big Bend Station that are integral to the Big Bend boilers. However, Big Bend Station does not

1 have blending capabilities for Polk Power Station. This  
2 precise blend is made at TECO Bulk Terminal where the  
3 products are delivered and stored prior to blending. TECO  
4 Bulk Terminal has the appropriate equipment to mix the blend  
5 to its precise specifications.  
6

7 Q. Do you agree with Dr. Sansom's conclusion at page 41 of his  
8 testimony that Big Bend should replace storage and blending  
9 currently performed at TECO Bulk Terminal?  
10

11 A. No. As I have described above, it would not be reasonable,  
12 practical or feasible to increase the storage capabilities  
13 at Big Bend Station even if it did have the ability to blend  
14 coal for Polk Power Station, which it does not. TECO Bulk  
15 Terminal is an essential link in our transportation chain.  
16 Besides being needed for coal blending and storage, it is  
17 also a necessary coordinating facility that allows river  
18 barges to offload onto gulf vessels. Because river barges  
19 cannot cross the Gulf of Mexico.  
20

21 **REBUTTAL SPECIFIC TO CSXT'S TESTIMONY**

22 Q. Has Tampa Electric ever contracted for coal transportation  
23 services with CSXT? If so, what were the circumstances?  
24

25 A. Yes. Tampa Electric has had a long business relationship

1 with CSXT for coal transportation services. CSXT witness  
2 White mentions a relationship spanning from 1996 through  
3 2001; however, it goes back over 30 years. CSXT delivered  
4 coal to Gannon Station for decades. This contract expired  
5 once Gannon Station was converted from coal to natural gas  
6 and the last rail deliveries by CSXT were in October 2001.  
7

8 **Q.** On a qualitative basis, how would you describe the services  
9 performed by CSXT?

11 **A.** The trade press has recently detailed numerous complaints  
12 about CSXT's service levels. These reports are in line with  
13 Tampa Electric's experiences. Over the last three years  
14 when CSXT was delivering to Gannon Station, the tonnages  
15 were declining from approximately 500,000 tons in 1999 to  
16 just over 200,000 tons in 2001. During this time, we  
17 consistently experienced situations where railcars were  
18 missing or diverted. At other times, unscheduled or  
19 unexpected railcars would show up with other trains. It  
20 became a great administrative burden to investigate and  
21 track supply, make associated adjustments to invoices and to  
22 decipher related billings. On numerous occasions, Tampa  
23 Electric identified billing errors.  
24

25 As I stated above, this experience was not unique to Tampa

1 Electric. Document No. 3 of my exhibit includes recent  
2 articles about CSXT service problems. For example, on page  
3 3 of the Morgan Stanley's April 29, 2004 analysis "CSX  
4 Quarterly Performance Measures Going in the Wrong Direction,  
5 1Q02-1Q04," graphically depicts "CSX's service woes [that]  
6 have dropped to a level where it is meaningfully impacting  
7 the carrier's ability to secure additional business and  
8 customer rate increases on non-captive business."  
9 Additionally, witness Murrell cites in his rebuttal  
10 testimony, numerous CSXT customer complaints regarding  
11 rates. One interesting correlation to note is that railroad  
12 service levels decline in times of pricing volatility.  
13 Tampa Electric experienced this in 2001.

14  
15 **Q.** Since October 2001, have you taken any coal by rail from  
16 CSXT?

17  
18 **A.** Yes. In the fall of 2002, Tampa Electric purchased two  
19 trains of coal to supplement low inventories at Gannon  
20 Station due to geological problems at the Galatia mine and  
21 higher than expected demands for electricity. Given the  
22 inventory levels and a recent proposal by CSXT, Tampa  
23 Electric requested delivery of two trains to Gannon Station  
24 through CSXT's Conrad Yelvington transfer facility. The  
25 Yelvington terminal took over four weeks to unload the two



1 trains which totaled only 17,224 tons. By the time all the  
2 coal arrived at Gannon Station, the inventory levels were  
back to normal because the geological problems at the mine  
were resolved and TECO Transport had given priority handling  
5 for all shipments of the Galatia coal.

6  
7 **Q.** Based upon Dr. Sansom's use of the term "bi-modal  
8 transportation" would you characterize Tampa Electric's  
9 approach to coal transportation as a bi-modal approach?

10  
11 **A.** Yes I would. I understand Dr. Sansom's term to describe the  
12 utilization and optimization of both rail and water  
13 transportation. Tampa Electric has utilized both rail and  
14 waterborne transportation to move coal from the mines to its  
15 generating stations. Even today, after Gannon Station's  
16 conversion, Tampa Electric utilizes rail or truck services  
17 for short hauls to move coal from the mine to a dock  
18 facility.

19  
20 **Q.** Besides the short rail hauls from coal mines to dock  
21 facilities, is it currently feasible for Tampa Electric to  
22 adopt Dr. Sansom's general recommendation that Tampa  
23 Electric should "exploit all available - here, both water  
24 and rail - modes by pursuing bids from alternative  
25 transportation service providers?"

1 | **A.** In theory, yes, but in reality, no. Dr. Sansom's testimony  
is primarily based upon "Monday morning quarterbacking"  
through the development of a very selective scenario that  
4 | must include terminating or modifying existing coal  
5 | contracts in order to justify rail in the bi-modal approach  
that is cheaper than Tampa Electric's current coal commodity  
7 | and coal transportation costs. To do this, Dr. Sansom  
needed to go back into time to a period whereby rail origin  
9 | coal supplier coal prices were less expensive than Tampa  
Electric's existing coal contracts and to then suggest that  
11 | Tampa Electric breach its existing coal contracts which Dr.  
12 | Sansom knows results in monetary penalties, which are  
13 | conveniently excluded from his analysis.

14 |  
15 | In actuality, Tampa Electric has existing long-, medium- and  
16 | short-term coal agreements based upon the needs of the  
17 | company's generating units. These contracts were entered  
18 | into based upon the company's prudent procurement practices  
19 | utilizing the best market information available. Tampa  
20 | Electric's coal contracts were entered into based upon an  
21 | overall analysis of delivered coal prices. Since there are  
22 | no rail facilities in place today, the company's contracts  
are such that river and ocean barges are the most economic  
24 | modes of transportation. This is precisely the reason the  
25 | company issued a waterborne transportation RFP. After

1 | considering CSXT's proposals, the company determined that  
the proposals were not reasonable given the terms,  
conditions, and rates. Based on this, I do not believe it  
is practical to utilize this rail transportation approach.

8 | What would be the impact to Tampa Electric's ratepayers if  
Tampa Electric were to prematurely break its existing coal  
supply agreements as suggested by Dr. Sansom?

Even if there were provisions in existing coal contracts  
that would contemplate a breach, I have not spent much time  
attempting to quantify the impacts. It is illegal to breach  
a contract based upon pricing matters and the liquidated  
damages associated with such actions would be costly and not  
something the company would consider given its reasonable  
and prudent approach to coal procurement. Dr. Sansom himself  
should be aware of the impact that breaching contracts has  
on a utility's reputation and its ability to construct new  
contracts on favorable terms going forward.

Please comment on Dr. Sansom's analysis of LG&E, TVA, and  
Seminole's coal supply and transportation costs compared to  
Tampa Electric's. Are these appropriate comparisons?

No. Dr. Sansom has taken delivered coal information from

1 FERC Form 423s. Delivered coal prices consist of both the  
price of coal along with the price of transportation. It is  
3 important to understand the breakdown of the two along with  
4 the specific utility circumstances for which the coal was  
5 procured. Dr. Sansom does not do this.  
6

To compare Tampa Electric's transportation costs, a  
8 southeastern utility, to LG&E and TVA, Midwestern utilities,  
9 is simply unfair and improper. Obviously these midwestern  
10 generating facilities are advantaged by having the coal  
11 fields close to their generation, thereby lowering their  
12 transportation costs. Seminole maintains a very long-term  
13 relationship with its main coal source, the Alliance Dotiki  
14 mine. We know that their contract term spans some 20 to 30  
years. What we do not know is 1) the breakdown of the  
16 commodity vs. the transportation, 2) if this is a coal deal  
vs. a synfuel deal which trades at a discount to coal and 3)  
if the commodity pricing is based upon the result of a  
19 larger settlement. Dr. Sansom conveniently selects  
20 advantageous delivered costs that are narrowly defined and  
beneficial to his argument. He ignores higher priced  
22 delivered transportation service into Florida for such  
23 intervenors as, Gainesville and and Progress Energy.  
24 Document No. 4 of my exhibit corrects numerous errors and  
25 assumptions Dr. Sansom made in his Exhibit RLS-6a when

evaluating rail versus water delivery for western Kentucky coal. My document demonstrates that once coal rates are adjusted for actual commodity and transportation pricing, the western Kentucky coal delivered by water is as much as [REDACTED] million less expensive than rail.

3  
4  
5  
6  
7 **Q.** Please elaborate on your comments about Dr. Sansom's comparison of LG&E and TVA to Tampa Electric.

9  
10 **A.** LG&E and TVA are not comparatively situated to Tampa Electric. Their generating facilities practically reside in the coalfield and they may have more opportunity to bring coal to their facilities by a variety of modes such as barge, rail, and truck. Tampa Electric does not have those same opportunities.

16  
17 **Q.** On page 15 of his testimony, Dr. Sansom accuses Tampa Electric of purchasing coal from the Alliance Dotiki mine in 2002 and 2003 in order to provide TECO Transport with a profitable move. Is he correct?

21  
22 **A.** No. Both companies operate independently of each other. I am not privy to TECO Transport's profitable moves.

23  
24  
25 Dr. Sansom omits a key piece of information. When the

solicitation was issued in June 2001 the coal market had experienced a significant run-up in prices. Coal inventories of all utilities were low. As a result, coal vendors were taking advantage of the low supply in the marketplace by raising prices. When Tampa Electric procured this limited spot order of 400,000 tons, it did so in a solicitation that awarded other barge origin coals as well in order to meet Tampa Electric's inventory needs. The purchase of the Dotiki coal was not related to TECO Transport or its profits; it has however, to do with Tampa Electric's need to increase coal inventories to acceptable levels.

14 **Q.** Please elaborate on your comments about Dr. Sansom's  
15 comparison of Seminole to Tampa Electric.

17 **A.** Dr. Sansom selected Seminole to serve as a contrast to Tampa  
18 Electric's delivered coal prices at a time when market  
19 conditions were most advantageous to his argument. As I  
20 previously stated, Seminole has a 20 to 30 year agreement  
21 with the Alliance Dotiki mine. Comparing such a long-term  
22 coal agreement with Tampa Electric's agreement is like  
23 comparing apples to oranges. Seminole's contract may  
24 include volume discounts, synfuel, which sells at a  
25 significant discount to coal, or other arrangements which

1 make it less expensive. Because the comparison is for  
2 delivered coal prices, one must understand the coal contract  
3 much better before jumping to the conclusion that Tampa  
4 Electric's transaction with the Alliance Dotiki mine is  
5 imprudent or that, in general, Tampa Electric is overpaying  
6 by utilizing water rather than rail.

7

8 **Q.** How do you respond to Dr. Sansom's allegation that Tampa  
9 Electric paid \$10 per ton more for the Western Kentucky coal  
10 than Seminole did in order to shift business to its  
11 affiliate to move the coal?

12

13 **A.** Once again, Dr. Sansom has made an error in his evaluation  
14 by selecting anomalies in the market. Timing in the coal  
15 market, as in any commodity market, is crucial. It is very  
16 easy to judge pricing after the fact. He jumps to the  
17 conclusion that transportation is what accounts for the \$10  
18 per ton difference. This is not necessarily a correct  
19 conclusion since the coal and transportation costs are  
20 combined for FERC 423 reporting.

21

22 **Q.** Please comment on CSXT's conclusions that Tampa Electric  
23 should have bid the NAPP Pitt 8 and the Illinois Basin  
24 markets in the second quarter of 2003. What is the  
25 relevance of the coal sources? What is the relevance of

1 this time frame?

2  
3 **A.** Again, Dr. Sansom uses hindsight to select an ideal time to  
4 support his argument. He selects a time when prices were  
5 somewhat depressed. If one were to select a different point  
6 in time such as now, Pitt 8 prices have experienced a much  
7 greater increase than the Illinois Basin markets. Dr.  
8 Sansom's argument falls flat.

9  
10 Dr. Sansom also ignores the important fact that Tampa  
11 Electric did not need the coal he claims should have been  
12 procured in 2003 nor did the company have the facilities to  
13 receive it. Ironically, on one hand he criticizes the  
14 company for having too much inventory, yet he advocates that  
15 the company purchase unneeded coal. He also fails to  
16 acknowledge that some of the Pitt 8 producers are routinely  
17 sold out or the coal is only available in limited supply.

18  
19 **Q.** Please comment on Dr. Sansom's assessments that Tampa  
20 Electric should have terminated and replaced coal from  
21 Ziegler, Illinois Fuels, and Galatia with his preference  
22 coal sources from the NAPP Pitt 8 and the Indiana markets.

23  
24 **A.** Dr. Sansom appears to suggest or imply that Tampa Electric  
25 terminate the Zeigler contract. As I mentioned earlier, Dr.



1 Sansom should know that breach of contract without cause is  
2 illegal. Ziegler would not simply walk away from its long-  
3 term contract with the company. There were and are no  
4 grounds to terminate the Zeigler contract. If Dr. Sansom is  
5 suggesting a buy-out or buy-down of the contract, there  
6 would be costs associated with this. These costs would be  
7 based on the remaining net present value of the contract or  
8 the difference between the contract price and what the coal  
9 supplier could sell that coal for in the market, if at all.  
10 In the unlikely event that the Commission found such a buy-  
11 out prudent, these costs, in addition to the new coal  
12 contract costs, would be borne by Tampa Electric's  
13 customers. Dr. Sansom did not factor this into his scenario  
14 exercise.

15  
16 As for the Galatia coal, Tampa Electric had the right to  
17 terminate the coal contract in July 2002; however, at that  
18 time, it was expected that Gannon Station would continue to  
19 burn coal into 2004. Therefore, there was no reason to  
20 terminate the agreement. The Galatia coal is also burned at  
21 Big Bend Station as "compliance coal" for the limited times  
22 when the units are operating in an "unscrubbed" or de-  
23 integrated mode. Again, simply terminating this contract  
24 would result in contract damages that would make other  
25 alternative deals much less attractive.

1 Q. Are there non-quantitative aspects to terminating contracts?

2

3 A. Yes. It is essential to consider the impact to the  
4 company's reputation when doing as Dr. Sansom suggests.  
5 Terminating contracts without cause or due to above market  
6 pricing can surely result in the utility acquiring a  
7 reputation for such activities and would likely yield either  
8 less supply opportunities or higher prices in the long run.  
9 It is more than a little surprising to see a witness such as  
10 Dr. Sansom seriously suggest contract abrogation as a  
11 prudent business path.

12

13 Q. Do you agree with Dr. Sansom that there is a two percent Btu  
14 loss of coal that is transloaded for barge shipment due to  
15 multiple handling and that there is a 25 cents/ton Btu loss  
16 for coal that is transloaded for barge shipment due to  
17 moisture?

18

19 A. No. Dr. Sansom's assertions are incorrect. In his  
20 testimony he states that "coal is loaded into a railcar or  
21 truck and moved to a river dock where it is put in a pile,  
22 then loaded on to barges." While this statement is factual,  
23 it is irrelevant because the quantity and quality of coal is  
24 measured when it is loaded onto a barge. Furthermore, there  
25 is no empirical evidence that shows Btu loss and Tampa

1 Electric's experience does not support his assertions. What  
2 happens to the coal prior to the point in the delivery chain  
3 is not a concern for Tampa Electric. Mr. Murrell also  
4 addresses this issue in his rebuttal testimony.

5  
6 Q. Do you agree with Dr. Sansom that there is an additional one  
7 dollar cost associated with "extra inventory" required to  
8 maintain water deliveries?

9  
10 A. No. His assertion that there is a cost of \$1.00 for "extra  
11 inventory" is irrelevant because Tampa Electric is  
12 reimbursed for only the cost of fuel purchased and  
13 associated transportation at the time of consumption.

14  
15 Q. According to Dr. Sansom, Tampa Electric is overpaying TECO  
16 Transport by \$11.7 million in 2004, by \$22.5 million in  
17 2005, and even more in 2006 through 2008. Do you agree with  
18 his assessment?

19  
20 A. Absolutely not. As I have demonstrated above, Dr. Samson  
21 utilizes a very simple methodology of comparing rates  
22 established under different agreements to Tampa Electric.  
23 He contrives a scenario based on "Monday morning  
24 quarterbacking" through the development of a very selective  
25 scenario that must include terminating or modifying existing

1 coal contracts in order to justify rail. To do this, Dr.  
2 Sansom selected a narrow window back in time where rail  
3 origin coal prices were less expensive than Tampa Electric's  
4 existing coal contracts. Then, he suggests that Tampa  
5 Electric breach its existing coal contracts while ignoring  
6 the associated costs. Furthermore, I think Dr. Sansom's  
7 suggestion that TECO Transport is overcharging Tampa  
8 Electric by over \$22.5 million lacks credibility because  
9 when their total net income for 2003 was only \$15.3 million  
10 and Tampa Electric only accounted for 38 percent of the  
11 revenues.

12  
13 **REBUTTAL SPECIFIC TO OPC/FIPUG'S TESTIMONY**

14 **Q.** Mr. Majoros states that Tampa Electric should have presented  
15 the proposals to TECO Transport to "meet or beat." Would  
16 this have been appropriate?

17  
18 **A.** No, it would not have been. Had Tampa Electric presented  
19 these bids to TECO Transport, it would have knowingly  
20 provided confidential information to a direct competitor.  
21 Moreover, with regard to the rail bids by CSXT, Tampa  
22 Electric would have been providing a proposal it knew was  
23 grossly misleading. With the inland river bid, it would  
24 have been providing a bid that was somewhat incomplete,  
25 given that the bid was from a company in bankruptcy without

1 the ability to deliver the quantities required under the RFP. Mr. Majoros's statement is totally inappropriate.

Mr. Majoros asserts TECO Transport's rates are overstated annually by \$28 million primarily because Mr. Dibner's model did not account for backhaul when determining market rates. Do you agree?

Not at all. As Messrs. Dibner and Murrell address this in more detail, it is totally improper to consider TECO Transport's backhaul activities when setting a market rate for providing Tampa Electric coal transportation services. This Commission has considered backhaul impacts in the past but only in instances when contracts are priced at cost-plus rates, not at market rates. In Order No. 14782 when the FPSC was reviewing Florida Power's cost-based **transportation** pricing, it recognized that:

21 "any profit or loss resulting from the  
22 prudent phosphate backhaul operations or  
other non utility ventures which are  
intended to reduce the cost of coal to FPC  
and the utilization of equipment dedicated  
to the utility's business should be included  
in the price of coal."

1 At that time, Florida Power Corp.'s transportation contract  
2 was priced at cost-plus, not at market.

3  
4 **Q.** Mr. Majoros also states that TECO Transport's rates are  
5 overstated because Mr. Dibner should not have considered a  
6 "preference trade premium" when determining market rates.  
7 Do you agree?

8  
9 **A.** No. Mr. Dibner addresses this issue in more detail. Mr.  
10 Dibner appropriately included this premium when determining  
11 market rates for TECO Transport's services.

12  
13 **Q.** Mr. Majoros alleges that the terminal services component of  
14 the waterborne transportation rate in the current contract  
15 should be the same as that in the old contract. Do you  
16 think his adjustment is proper?

17  
18 **A.** Not at all. Mr. Majoros loosely extends the "meet or beat"  
19 market price concept. Under the right of first refusal  
20 clause in the prior Tampa Electric and TECO Transport  
21 contract, Tampa Electric was required to provide TECO  
22 Transport with the current market rate, which TECO Transport  
23 had the option to "meet or beat" that price. Mr. Majoros  
24 would have you believe that the concept extends to the rates  
25 under the prior contract; that is if the market rates

1 established in 1998 were lower than market rates in 2004,  
2 TECO Transport should be obligated to the older rates. This  
3 is simply absurd.  
4

5 Q. At page 27 of his testimony, Mr. Majoros states that because  
6 JEA paid \$9.00 per ton for transportation and Mr. Dibner's  
7 proposed rate for similar movements is [REDACTED] per ton, Tampa  
8 Electric is paying too much. Dr. Hochstein makes a similar  
9 allegation. Do you agree with them?  
10

11 A. No. The shipments cited by Mr. Majoros regarding TECO  
12 Transport shipping pet coke to JEA are spot transactions  
13 negotiated by a broker. Spot transaction costs may be  
14 higher or lower depending on the circumstances of the deal  
15 and the conditions of the market at a given time. For  
16 example, on April 21, 2004, I received a letter from  
17 Petroleum Coke Management Company, a broker of pet coke that  
18 indicated the 2004 rates from TECO Ocean Shipping are  
19 [REDACTED]/ton. I have attached the letter as Document No. 5 of  
20 my exhibit. This rate is [REDACTED] percent greater than Tampa  
21 Electric's pet coke rate. It is not reasonable to compare a  
22 spot rate to a five-year contract that ensures  
23 transportation services are available as required. Not  
24 unlike hourly wholesale purchase power transactions, the  
25 rate is determined relative to the spot market only and is

1 good for only a short duration of time. Mr. Majoros'  
2 adjustment to the rate is incorrect and inappropriate. Drs.  
3 Sansom and Hochstein have reached incorrect conclusions.  
4

5 **REBUTTAL SPECIFIC TO DR. HOCHSTEIN**

6 Q. On page 5 of Dr. Hochstein's testimony he states "coal from  
7 the mid-west fields can only rationally be transported to  
8 Tampa Electric's Big Bend station by water" when he attempts  
9 to assess the market. Do you agree with his statement?  
10

11 A. No and it appears that Dr. Hochstein, later in his testimony  
12 on page 61, disagrees with his own assertion by stating that  
13 as part of a prudent supply strategy, Tampa Electric should  
14 develop additional transportation options for domestic coal,  
15 such as a rail option. As evidenced by Dr. Hochstein and  
16 CSXT's bid to provide coal transportation services to Tampa  
17 Electric, rail and water delivery of coal are in direct  
18 competition.  
19

20 Q. Dr. Hochstein states that direct delivery of imported coal  
21 to Tampa could save the voyage along the Gulf Coast,  
22 resulting in savings of more than \$10.00 per ton. How do  
23 you respond?  
24

25 A. Dr. Hochstein obviously does not understand the types of



1 coal qualities that are required in the company's boilers.  
2 Many of the foreign fuels have high ash fusion temperatures  
3 which cause operational problems in the Big Bend boilers.  
4 In addition, our most recent bid analysis results show that  
5 imported coal directly to Tampa's port facilities was not  
6 the least cost option. In fact, South American spot pricing  
7 has been extremely volatile over the past three and a half  
8 years. I have graphed Columbian and Venezuelan spot prices  
9 to show this volatility on Document No. 6 of my exhibit.  
10

11 **Q.** Do you agree with Dr. Hochstein's calculation that taking  
12 direct delivery of foreign coal, such as the Colombian  
13 imports, to Big Bend Station will generate savings of about  
14 \$9.35 per ton?  
15

16 **A.** No, I do not. Again, our most recent solicitation conducted  
17 in late 2003 for 2005 and beyond showed that Colombian  
18 imports direct into Big Bend Station or to other Tampa port  
19 facilities were not the cheapest alternative for Tampa  
20 Electric. Like Dr. Sansom, Dr. Hochstein selects a narrowly  
21 contrived time when South American commodity and transport  
22 via foreign vessel was very advantageous to his argument.  
23 The market has changed dramatically since these shipments.  
24

25 **Q.** At the time Tampa Electric went out for bid, were other

terminals at the Port of Tampa operational and does either  
2 facility currently blend coal?

3  
4 **A.** At the time of Tampa Electric's waterborne transportation  
RFP, Marigold/Drummond was planning to build a terminal, but  
6 had no permits in place. The Marigold/Drummond Terminal,  
7 which received its final permits in September of 2003, is  
limited to self-unloading vessels that generally charge a  
9 significant premium for bulk transportation. Kinder Morgan  
10 was operating Pier 219, but was required to offload directly  
11 to trucks, which would have made Tampa Electric liable for  
12 significant demurrage. Kinder Morgan has since closed Pier  
13 219 and is using its Port Sutton phosphate loading facility  
that was purchased in December of 2003.

15  
16 **Q.** Would Tampa Electric consider using the Port of Tampa  
17 facilities in the future?

18  
19 **A.** Yes. Tampa Electric would certainly consider using the  
20 facilities if market conditions and contractual commitments  
21 would yield the most reliable, cost effective alternative to  
Tampa Electric's customers.

23  
24 **Q.** Please comment on Dr. Hochstein's conclusion that if Tampa  
Electric were to modify its transportation pattern by

1 delivering foreign coal directly to Tampa, the savings may  
2 be as high as \$40 million.

3  
4 **A.** His conclusion is outrageous. Witness Dibner demonstrated  
5 that Dr. Hochstein's calculation of freight rates for the  
6 ocean segment is replete with numerous errors and, when  
7 adjusted, result in increased rates, not reduced rates, to  
8 Tampa Electric and its customers.

9  
10 **COAL TRANSPORTATION BENCHMARK**

11 **Q.** Explain how the benchmark for Tampa Electric works.

12  
13 **A.** This Commission established a waterborne coal transportation  
14 benchmark to address this issue. Each year Tampa Electric  
15 compares its actual cost for waterborne coal transportation  
16 services against the average of the lowest costs paid by  
17 Florida municipal utilities for coal deliveries by rail.  
18 The comparison is submitted to the Commission for review,  
19 and as long as Tampa Electric's actual cost is at or below  
20 the benchmark, the cost is deemed reasonable. If Tampa  
21 Electric's waterborne transportation costs exceed the  
22 benchmark in any given year, the company must justify any  
23 costs greater than the benchmark amount before the  
24 Commission allows recovery through the fuel clause.  
25

1 Q. After reading the rebuttal testimony of OPC/FIPUG, CSXT, and  
2 Dr. Hochstein, what is your general assessment regarding the  
3 coal transportation benchmark?  
4

5 A. It is clear that the witnesses for the intervenors contend  
6 that the benchmark is no longer appropriate yet not one of  
7 them offers a definitive alternative. It appears they would  
8 have the Commission simply ignore the approved benchmark  
9 methodology and accept their arbitrary respective approaches  
10 to adjusting the overall costs for coal transportation and  
11 then accept that as the appropriate amount for cost  
12 recovery. I do not believe that is appropriate nor do I  
13 believe any of them adequately demonstrated that the  
14 benchmark is should be eliminated or modified. Anyone  
15 urging a departure from an existing Commission approved  
16 methodology should have the burden of demonstrating why the  
17 methodology is no longer valid.  
18

19 Q. Dr. Sansom concludes that the benchmark has no analytical  
20 value based upon 1) his inability to obtain certain  
21 information about Lakeland from the FPSC Staff, 2) the  
22 backup information the Commission Staff provided him for  
23 JEA's actual rail costs only showed non-discounted  
24 information, and 3) your calculations, which have been made  
25 by the company since the inception of the benchmark are

1 "invalid." How do you respond?

2

3 **A.** Dr. Sansom is wrong. Since the benchmark was first  
4 established in 1988, Tampa Electric has provided accurate  
5 and complete information as prescribed by Attachment A of  
6 Order No. 20298. It appears that Dr. Sansom is challenging  
7 the decisions and orders this Commission has issued on the  
8 subject for the past 15 years. I find his unsubstantiated  
9 conclusions to lack sufficient merit for serious  
10 consideration.

11

12 **Q.** What flaws do you see in Dr. Hochstein's assessment of the  
13 rail benchmark methodology?

14

15 **A.** It seems that Dr. Hochstein has confused establishing the  
16 market rate for coal transportation services with that of  
17 establishing a benchmark rate to gauge the reasonableness of  
18 the market rate as part of an annual regulatory review  
19 process. These are two separate and distinct issues.  
20 First, the benchmark is not a factor in the establishment of  
21 the market rate. Tampa Electric's determination that the  
22 market rate was fair and reasonable was based on the  
23 responses to the bid proposals and the market rate analysis  
24 of Mr. Dibner, not a comparison to the municipal rail rates  
25 as Mr. Hochstein states. Second, the benchmark establishes

1 the upper limit for reasonableness for cost recovery.  
2 Unlike Progress Energy's benchmark for similar services,  
3 Tampa Electric recovers the lesser of either its actual  
4 transportation costs or the benchmark.  
5

6 Q. Mr. Majoros states in his direct testimony that affiliate  
7 transactions are always problematic, particularly when a  
8 regulated affiliate like Tampa Electric is making purchases  
9 from an unregulated affiliate such as TECO Transport. Do  
10 you agree with Mr. Majoros?  
11

12 A. Absolutely not. TECO Transport offers the most efficient,  
13 reliable and cost effective means of transporting coal to  
14 Tampa Electric. Even Dr. Hockstein acknowledges this.  
15 Recognizing that affiliate transactions require more  
16 scrutiny because of critics, like Mr. Majoros, the  
17 Commission approved the rail benchmark to serve as an  
18 effective ceiling price for cost recovery purposes. Tampa  
19 Electric's transportation service costs charged by TECO  
20 Transport have consistently been below the benchmark since  
21 its inception in 1988.  
22

23 Q. Mr. Majoros states in his testimony at page 29 that the rail  
24 benchmark is clearly out of date and is highly overstated at  
25 the present time. Do you agree?

1 **A.** No, I do not. It is illogical to conclude that because the  
2 2002 benchmark was [REDACTED] percent higher than the recent rail bid  
3 that the benchmark is not a useful tool. The differential  
4 between Tampa Electric's contract rate and the current rail  
5 proxy benchmark is about the same as it was in 1988 when the  
6 benchmark was first adopted by the Commission. The  
7 differentials are graphed in Document No. 7 of my exhibit.  
8 This is an indication that conditions today are not  
9 significantly different than the conditions in 1988 when the  
10 benchmark was developed. It also demonstrates that TECO  
11 Transport's rates have continuously, year after year, been  
12 considerably below rail rates. Tampa Electric's customers  
13 have greatly benefited by TECO Transport's efficient  
14 operations.

15  
16 **Q.** Has Tampa Electric conducted itself in a fair manner, from  
17 the perspective of its customers, in administering its  
18 contractual dealings with TECO Transport under the benchmark  
19 approved in 1988?

20  
21 **A.** Yes, we have. As I previously stated, the prices Tampa  
22 Electric has paid have been consistently lower than the  
23 benchmark price and the contract we entered into for 2004 -  
24 2008 has an even lower price than the contract that expired  
25 year-end 2003. In a Commission Staff document produced at

1 the request of an intervenor in this case, Staff made the  
2 following observation concerning Tampa Electric's affiliated  
3 coal transportation payments pursuant to the benchmark  
4 methodology:

5  
6 "... The settlement allows TECO to pay its  
7 affiliate, TECO Transport and Trade any  
8 amount up to the cap. In the last decade or  
9 so, the amount paid by TECO to TECO  
10 Transport and Trade has been about [REDACTED] per  
11 ton less than the cap. Multiplying the [REDACTED]  
12 per ton by about 4 million tons per year  
13 calculates to about [REDACTED] million per year.  
14 This means TECO Energy, the parent of both  
15 TECO and TECO Transport and Trade, could  
16 have increased the amount recovered through  
17 the fuel cost recovery by about [REDACTED] million  
18 per year. It is a tribute to TECO and TECO  
19 Energy that they have not done so.

20  
21 Tampa Electric's customers have continued to enjoy similar  
22 savings for each and every year since the benchmark was  
23 established 1988. It is totally inappropriate to suggest  
24 that there should be any modifications to this methodology  
25 for determining waterborne transportation cost recovery



1 related to this beneficial transaction between Tampa Electric  
2 and TECO Transport.

3

4 **Q.** Does this complete your rebuttal testimony?

5

6 **A.** Yes, it does.

7

8

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25

1 BY MR. BEASLEY:

2 Q Please summarize your direct testimony and rebuttal  
3 testimony, Ms. Wehle.

4 A Good evening, Commissioners. My name is Joanne  
5 Wehle.

6 As the director of the wholesale marketing and fuels  
7 department, I have the responsibility of overseeing Tampa  
8 Electric's procurement of reliable and cost-effective coal  
9 transportation services. My direct testimony describes the  
10 appropriateness and sufficiency of Tampa Electric's market  
11 survey and analysis, including the company's issuance of its  
12 June 2003 RFP for waterborne transportation services, the  
13 prudence of Tampa Electric's actions in entering into a  
14 contract for waterborne transportation services with TECO  
15 Transport, and the reasonableness of the transportation costs  
16 that will be incurred under the new five-year contract.

17 My testimony also addresses the continued validity of  
18 Tampa Electric's waterborne coal transportation benchmark. A  
19 key fact in this docket is that an existing Commission policy  
20 governs Tampa Electric's transactions with TECO Transport. In  
21 1988 the Commission determined that cost-plus pricing should be  
22 replaced with market pricing for Tampa Electric's affiliated  
23 fuel supply transactions.

24 The Commission staff, OPC, FIPUG and Tampa Electric  
25 agreed to a stipulation which was approved by Commission Order

1 20298. The order requires the use of market pricing for  
2 cost-recovery purposes for all affiliated fuel transactions for  
3 which comparable market prices may be found or constructed and  
4 mandates the adoption of a transportation benchmark for  
5 regulatory review purposes.

6 Tampa Electric complied with the terms of the order  
7 when procuring waterborne transportation services during the  
8 last half of 2003, and, accordingly, signed a contract with  
9 TECO Transport for services from 2004 through 2008. As Mr.  
10 Willis described earlier today, this order is still in effect  
11 and all parties are subject to the existing requirements of the  
12 order.

13 Tampa Electric acted prudently in analyzing the  
14 market and entering into a waterborne transportation contract  
15 with TECO Transport. The Company actually did more than it was  
16 required to do. Order Number 20298 states, TECO shall be free  
17 to negotiate its contracts with its affiliates in any manner it  
18 deems to be fair and reasonable. Although, we were not  
19 required by the order to request bids to set market prices,  
20 Tampa Electric did issue a comprehensive and informative RFP.  
21 In addition, Tampa Electric hired to specialized consulting  
22 firms to assist with its evaluation of the bids, and directed  
23 one of the experts consultants to model the waterborne  
24 transportation markets.

25 We hired Dibner Maritime Associates, a firm that

1 specializes in the maritime transportation industry to provide  
2 an analysis of the waterborne transportation bids that were  
3 received. Tampa Electric also requested that Mr. Dibner  
4 conduct a thorough and effective study of the inland river  
5 terminal and ocean market rates that meet the company's full  
6 requirements for waterborne coal transportation services for  
7 the period 2004 through 2008. Mr. Dibner's evaluation of the  
8 inland river and terminal bids resulted in his recommendation  
9 to reject the non-conforming river bid, to use the terminal bid  
10 to set the market rate for that segment and to use his analysis  
11 of the transportation markets to set appropriate market rates  
12 for the inland river and ocean transportation segments. Tampa  
13 Electric agreed with Mr. Dibner's recommendations.

14 Tampa Electric used these rates to negotiate a new  
15 five-year transportation contract with TECO Transport which  
16 resulted in a four percent cost reduction in comparison with  
17 the rates of the previous contract. TECO Transport had a  
18 contractual right of first refusal, and they chose to meet the  
19 market prices established for the new contract period.

20 CSXT provided two rail transportation proposals.  
21 While CSXT's proposals did not conform to the RFP  
22 specifications, Tampa Electric performed a thorough analysis of  
23 these proposals and determined that the rates were higher than  
24 the market rates for waterborne transportation given Tampa  
25 Electric supply portfolio.

1           We hired the engineering design firm Sargent and  
2 Lundy to help analyze the costs associated with the rail  
3 proposals. They concluded that these proposals did not  
4 identify all the necessary capital costs to modify Tampa  
5 Electric's facilities to accept rail deliveries, nor did they  
6 account for changes in our expected operating costs.

7           Specifically, Tampa Electric determined that the  
8 proposed rail transportation rates were not competitive when  
9 all costs, the schedule for completion of rail infrastructure  
10 construction and environmental impacts were considered. In  
11 fact, the proposed rail rates are higher than the TECO  
12 Transport rates, once all applicable shipping surcharges that  
13 were not included in CSXT's base proposal are considered. This  
14 is true even without including the capital cost of installing  
15 rail delivery infrastructure or costs associated with any  
16 environmental impact, as I have demonstrated in the exhibit to  
17 my direct testimony.

18           With respect to Tampa Electric's existing coal  
19 transportation benchmark, it sets a cap on the amount the  
20 Commission will consider reasonable for cost-recovery. The  
21 benchmarks is based on the average of the two lowest publicly  
22 available rail rates to utilities in Florida. The Commission  
23 order allows Tampa Electric to recovery the costs paid to TECO  
24 Transport through the fuel adjustment clause as long as it was  
25 equal to or less than the benchmark price. When the Commission

1 established the benchmark, it determined that the rail rates  
2 are not only comparable, but competitive to a large degree to  
3 waterborne rates.

4 Rail and waterborne transportation mode still compete  
5 today in markets similar to those that existed in 1988. Tampa  
6 Electric's benchmark continues to serve as a reasonable market  
7 proxy for waterborne transportation costs.

8 My rebuttal testimony addresses the inaccuracies and  
9 false allegations made by the intervenor witnesses. As I have  
10 just described, the Commission's existing policy regarding  
11 Tampa Electric's transactions with TECO Transport was  
12 established in Order Number 20298. Tampa Electric has  
13 consistently complied with the letter and spirit of that order  
14 since it was issued, including during its recent process in  
15 contracting for transportation services from 2004 through 2008.  
16 Over the past 15 years the Commission has reviewed and approved  
17 the prices paid by Tampa Electric to TECO Transport in  
18 accordance with that order.

19 The intervenors have ignored the order and have  
20 criticized the content of Tampa Electric's June 2003 RFP, when  
21 the Commission's current policy clearly does not even require  
22 that an affiliate contract be subjected to any bid process.  
23 Intervenors have suggested the Commission further ignore the  
24 existing order and consider cost-based pricing rather than  
25 market pricing. Although coal procurement is outside the scope

1 of this docket, intervenors have criticized Tampa Electric's  
2 coal procurement practices. In addition, intervenors recommend  
3 that the benchmark which has served it provide the Commission  
4 assurance that the affiliates rate are lower than the rail  
5 alternative be eliminated. Tampa Electric does not agree.

6 Tampa Electric has acted prudently and complied with  
7 all applicable Commission policies in establishing market rates  
8 for its new transportation contract and in negotiating with  
9 TECO Transport under its contractual right of first refusal  
10 clause to establish a five-year contract for coal  
11 transportation services.

12 While some intervenors have suggested that this  
13 process needs to be revisited with another bid solicitation  
14 issuance, their motives are clearly to advance the interest of  
15 TECO Transport's competitors.

16 Dr. Sansom's testimony suggests that Tampa Electric  
17 should inappropriately terminate some of its existing contracts  
18 with coal suppliers in order to enter into new contracts that  
19 are favorable for rail deliveries. He alleges that Tampa  
20 Electric has chosen coal supply sources that favor the  
21 waterborne delivery mode. This is completely not true. We  
22 evaluate coal supply sources on a delivered basis and choose  
23 the most cost-effective coal supply and transportation option.

24 Dr. Sansom has chosen retroactively a few selected  
25 contract price examples to support his allegations that rail

1 deliveries would be less expensive than waterborne deliveries.  
2 His method of analysis is inappropriate because Tampa Electric  
3 requires and enters into contracts for reliable delivery of  
4 coal that is suitable for the unique operating characteristics  
5 of its generating stations. Dr. Sansom compares spot contract  
6 prices and isolated months' data or other atypical data points  
7 to Tampa Electric's long-term contract prices, which is not a  
8 fair or reasonable comparison. Dr. Sansom's analysis also  
9 ignores the penalties that Tampa Electric would surely incur to  
10 terminate its existing contracts.

11 Both CSXT's and the residential customers' witnesses  
12 allege that Big Bend Station should be utilized for coal  
13 storage and blending rather than the terminal in Davant,  
14 Louisiana. They suggest that Tampa Electric should use foreign  
15 coal delivered directly to Big Bend Station or another location  
16 in Tampa without considering our operational needs or boiler  
17 design. They ignore the fact that coal is not a fungible  
18 product.

19 Big Bend Station does not have the storage capacity  
20 to physically accommodate the amounts and multiple types of  
21 coal required for Tampa Electric. The channel that leads to  
22 Big Bend Station is also not deep enough for the large vessels  
23 that typically deliver foreign coal. It is important to note  
24 that South American coal represents only about five percent of  
25 our total annual fuel deliveries. Tampa Electric maintains



1 inventory for liability purposes and for protection against  
2 unexpected changes in markets, extreme weather conditions,  
3 economic reasons and operational contingencies.

4 In addition, Big Bend Station does not have the  
5 blending facilities that could create the coal and petroleum  
6 coke blend burned at Polk Power Station. Polk Station burns a  
7 blend of South American coal, domestic coal and petroleum coke.  
8 Two of these sources must be transported pass the mouth of the  
9 Mississippi River; and it is, therefore, most cost-effective to  
10 bring the South American coal to be blended at the terminal in  
11 Davant, Louisiana. For all of these reasons, the utilization  
12 of the terminal is required for storage and blending.

13 Intervenors' testimony does, however, support the  
14 appropriateness of market pricing by conceding that: One,  
15 there is a market for coal transportation services; two,  
16 waterborne transportation service is cheaper than rail  
17 transportation service, and, three, TECO Transport has the  
18 largest and most efficient waterborne fleet available to serve  
19 Tampa Electric. We agree with these three points. They are  
20 fundamental to Tampa Electric's choice of waterborne  
21 transportation service, and demonstrate how the development of  
22 TECO Transport's efficient low-cost fleet has benefitted our  
23 ratepayers.

24 However, FIPUG, OPC and the residential customers  
25 then go on to ignore Order 20298, and the fact that it adopted

1 a market-pricing methodology again by suggesting a backhaul  
2 adjustment which is purely a cost-based pricing adjustment.  
3 The intervenors cannot reasonably or fairly mix market and  
4 cost-based pricing. There suggested backhaul adjustment is  
5 inappropriate, unjustified, and not supported by solid data.

6 With respect to Tampa Electric's transportation  
7 benchmark, no intervenor has offered any credible evidence  
8 warranting a change to the existing benchmark methodology. For  
9 2002, the most recent year for which the benchmark was  
10 calculated, Tampa Electric's actual waterborne transportation  
11 costs were below the benchmark by approximately the same  
12 percentage that it's actual cost in 1988 were below the  
13 benchmark. The fact that Tampa Electric actual costs have been  
14 well below the benchmark in each year since 1988 demonstrates  
15 the ratepayer savings of using TECO Transport's efficient  
16 fleet, not that the benchmark is flawed. There is no need to  
17 modify or eliminate the benchmark.

18 This concludes my summary.

19 MR. BEASLEY: We tender Ms. Wehle for cross  
20 examination.

21 CHAIRMAN BAEZ: Thank you, Mr. Beasley.

22 Mr. Vandiver.

23 CROSS EXAMINATION

24 BY MR. VANDIVER:

25 Q Good evening, Ms. Wehle.

1 A Good evening.

2 Q One of the provisions of the 1997 contract provided  
3 for right of first refusal to TECO Transport, is that correct?

4 A That's correct.

5 Q What is the rationale for the right of first refusal?

6 A The right of first refusal is a negotiated term for  
7 the continued capital investment in the efficient fleet of TECO  
8 Transport.

9 Q And so the rationale for the right of first refusal  
10 is that capital investment made by TECO Transport?

11 A The continued capital investment since the 1950s to  
12 create the actual efficient fleet that exists today to serve  
13 Tampa Electric's ratepayers.

14 Q Is the right of first refusal conveyed to the bidders  
15 in the RFP itself?

16 A No, it is not.

17 Q Do you think it would have been useful information  
18 for bidders to have?

19 A No, I do not. It is a confidential piece of the  
20 contract. I think it actually would have deterred bidders from  
21 bidding. Actually, it might have also encouraged people to put  
22 in very low-cost bids that really were inappropriate.

23 Q So you don't think it would have been useful  
24 information for the other bidders?

25 A No, I do not. In fact, when we have rights of first

1 refusal clauses in other coal agreements, we do not publicized  
2 that fact in any kind of RFP.

3 Q Okay. Didn't Tampa Electric recently renew another  
4 transportation contract to truck pet coke from Big Bend to the  
5 Polk Plant?

6 A Yes.

7 Q Who is that contract with?

8 A That contract is with CTL Trucking.

9 Q Is that trucking company in any way affiliated with  
10 Tampa Electric?

11 A No, it is not.

12 Q When was that contract originally signed?

13 A That contract, I believe, was signed in 1995 or 1996.  
14 It was at the inception of deliveries for Polk Power Station  
15 when it was actually constructed.

16 Q Now, is the amount of coal or pet coke that is  
17 transported between Big Bend and Polk a confidential number?

18 A I don't believe it is.

19 Q What is that tonnage?

20 A Well, how I can really kind of convey it to you is  
21 typically Polk Power Station will burn anywhere from 600,000 to  
22 700,000 tons a year, in that range.

23 Q Okay. And when was the CLT Trucking account renewed,  
24 Ms. Wehle?

25 A I believe it was late 2003.

1 Q All right. And did the trucking company make any  
2 kind of specialized investment to serve this contract?

3 A Yes, it did. It actually purchased or had built,  
4 constructed very specialized trucks for that particular move.

5 Q It must take a lot of trucks to transport that  
6 600,000 tons?

7 A Actually, there is only ten trucks that are usually  
8 in the fleet that are dedicated to our service.

9 Q And did that contract that you just signed, either in  
10 1995 or 2003, include the right of first refusal for the  
11 trucking company?

12 A No, it did not. Actually, it was not raised by the  
13 supplier. It was not something that they requested. And,  
14 really, it would have been in the best interest of the supplier  
15 to raise that issue and try and negotiate for that clause.

16 Q Could we go to Page 13 of your rebuttal testimony,  
17 please, ma'am?

18 A Rebuttal?

19 Q Yes, ma'am. I would like to go specifically, if we  
20 could, to Lines 16 through 21, please, and ask you to read the  
21 sentence into the record, please, starting with any  
22 long-standing relationship.

23 A "Any long-standing relationship with a supplier who  
24 has invested significant capital in providing a service,  
25 affiliated or not, warrants the consideration of a right of

1 first refusal in order to encourage that supplier to continue  
2 to invest capital to improve its service to that customer."

3 Q The CTL contract would seem to have met all of the  
4 tests in your sentence, doesn't it?

5 A Yes.

6 Q And you would agree they have invested significant  
7 capital over the last -- would it be nine years?

8 A Yes. And we have paid for that capital over time.

9 Q And would you agree with me that CTL Trucking like  
10 TECO Transport is a transportation partner with Tampa Electric?

11 A They are a transportation supplier that we utilize.

12 Q And the only salient difference would be that one is  
13 affiliated and one is not?

14 A They are in two totally different types of  
15 businesses. One actually transport -- I mean, there are a lot  
16 of difference between them. One transports a whole lot less  
17 tonnage for us than another; one has been doing it for a lot  
18 longer period of time.

19 Q But both have made significant capital investments --  
20 specialized capital investments to serve the needs of Tampa  
21 Electric; would you agree with that?

22 A That is correct. And I believe that it would have  
23 behooved CTL Trucking to actually ask for a right of first  
24 refusal in the contract. They did not. However, that does not  
25 preclude us from getting the best alternatively when we renew

1 that contract.

2 Q What is the preference -- you discussed the  
3 preference in the RFP for integrated bids in your direct  
4 testimony at Page 16, Lines 8 through 25.

5 A Yes.

6 Q What is the rationale for this provision?

7 A If you will just give me a moment to get to that  
8 page.

9 Q Oh, certainly. I apologize, Ms. Wehle.

10 A Our experience with integrated -- this integrated  
11 transportation service, as it states here in my testimony, is  
12 the benefits of receiving priority handling, of dealing with  
13 one supplier for the day-to-day management of all of our  
14 transportation, and I believe even Mr. Murrell and Mr. Dibner  
15 addressed this as well. In their experience, working with one  
16 provider rather than many eliminates finger-pointing, issues  
17 when there is demurrage claims. It really has served us to --  
18 as the best way to administer this contract. That is why we  
19 included it in our RFP, because it is a preference. We feel  
20 like it is a benefit and a value.

21 Q Can a provision like this exclude smaller players in  
22 the market?

23 A I believe that smaller players could have joined up  
24 with other smaller players to provide an integrated bid. Just  
25 like general contractors will subcontract out with other

1 different types of suppliers to provide a general bid. I also  
2 note in the RFP that we also said that while we prefer  
3 integrated responses, we will consider segment responses as  
4 well.

5 Q The idea of a company joining -- smaller companies  
6 joining together to provide a bid, that might take a great deal  
7 of time, and I believe the time for responses in the RFP was  
8 five weeks, is that correct?

9 A That's correct.

10 Q In your opinion, is that length of time something --  
11 enough time to put something together of this complexity?

12 A Well, I believe that those people are in the business  
13 to do this on a day-to-day basis. I know that there have been  
14 bids for similar size and similar term out in the marketplace,  
15 giving less amount of time to respond. So, I'm sure if someone  
16 had called and said that they needed more time, we have done  
17 that in the past. We have afforded all the bidders when we  
18 have been approached and asked for more time to lengthen the  
19 response period.

20 Q Can you provide me some examples of the people that  
21 have come forward for bids of this complexity, and smaller  
22 players coming forward with something of this complexity in a  
23 five-week time period?

24 A I know we have provided in production of document  
25 requests, even as far back as last year, similar types of bids



1 for transportation services that required response times within  
2 three to five weeks. I can't say specifically, but I do recall  
3 that.

4 Q But you can't think of one off the top of your head  
5 here today?

6 A I cannot.

7 Q Okay. Did any such combinations come forward with  
8 this bid?

9 A No, they did not.

10 Q How about the last bid, in 1998 or '97 when the last  
11 bid came?

12 A I do not recall the responses for that.

13 Q Okay. How many companies in the United States can  
14 provide the end-to-end service under the integration  
15 preference?

16 MR. BEASLEY: I'm sorry. What type?

17 MR. VANDIVER: The integration preference.

18 A I wish you would have asked that question of  
19 Mr. Dibner. I don't know the answer to that.

20 BY MR. VANDIVER:

21 Q Will you accept, subject to check, that TECO  
22 Transport is probably the only one?

23 MR. BEASLEY: Objection. If you can ask a question

24 [ --

25 CHAIRMAN BAEZ: It is subject to check. I mean, and

1 it's in other parts of the testimony. She can answer if she  
2 won't accept it or will accept it. It's her choice.

3 A Again, I don't know how to answer that question.  
4 There may be piece companies that can do two portions of that.  
5 I don't know how to answer your question.

6 BY MR. VANDIVER:

7 Q Did any companies provide bids for end-to-end service  
8 under the integration preference under your bid?

9 A No.

10 Q Now, the decision to award the contract to TECO  
11 Transport was made when?

12 A The offer was made to TECO Transport in that letter  
13 that was actually distributed early, in late September of 2003.

14 Q I apologize for interrupting you. Around September  
15 26 or thereabouts?

16 A I believe that was the date.

17 Q Who made the final decision?

18 A The final decision to what?

19 Q Award the contract to TECO Transport.

20 A I believe at that time it was decided by  
21 Mr. Cantrell, the president of Tampa Electric. He has the  
22 authority to offer such a rate for that length of time.

23 Q And is Mr. Cantrell the person that can bind Tampa  
24 Electric to such a contract?

25 A Yes.

1 Q And does he have to take that to the board of  
2 directors or anybody else?

3 A I don't believe he does.

4 Q All right. Now, when did the Tampa Electric team  
5 begin discussions with the folks at TECO Transport?

6 A After that letter was sent.

7 Q Who participated on behalf of Tampa Electric?

8 A Participated in?

9 Q Discussions. I believe from your deposition, and I'm  
10 trying to cut this very -- I'm trying to accelerate things.

11 A I'm just trying to understand your question better.

12 Q Sure. And I recall from the deposition that there  
13 was a series of discussions with the people at TECO Transport?

14 A Yes.

15 Q Is that correct?

16 A Yes. There were two or three, I believe I said.

17 Q Yes.

18 A Uh-huh.

19 Q And there were some discussions with the people at  
20 TECO Transport once that letter was sent, is that correct?

21 A That's correct.

22 Q And when did those discussions begin?

23 A Again, after that letter was sent, shortly  
24 thereafter.

25 Q So that would have been in late September?

1 A Late September, yes.

2 Q Okay. And who participated in those discussions on  
3 behalf of Tampa Electric?

4 A That would be Bruce Christmas, my boss, myself at  
5 times. I didn't attend every negotiating session. And Ms.  
6 Karen Bramley attended, as well, some of those discussions.

7 Q Okay. So there were three members, Mr. Christmas,  
8 yourself and Ms. Bramley?

9 A Yes.

10 Q Who participated on behalf of TECO Transport?

11 A I believe at the table were Mr. Rankin, the president  
12 of the company, Mr. Bresnahan, who is the vice-president and  
13 controller, Mr. Latriko (phonetic), who is -- I believe his  
14 title is the vice-president of TECO Ocean Shipping. At times  
15 there might have been representation via the phone from the  
16 river barge company, Mr. Mike Monahan (phonetic), who is the  
17 vice-president of the TECO barge line.

18 Q Did anybody from the terminal participate?

19 A I don't recall that they did.

20 Q Okay. And at your depositions I think you indicated  
21 you did not attend all the sessions?

22 A That's correct.

23 Q How many total sessions were there?

24 A I think there were three in total.

25 Q Three total sessions?

1 A Yes.

2 Q Do you know what the total time in hours was of all  
3 the meetings?

4 A I do not.

5 Q And am I correct that price was not discussed at any  
6 of these meetings?

7 A No, the price was not discussed because that -- they  
8 had actually already accepted the right to meet the price.

9 Q Was the right of first refusal discussed?

10 A I think that is confidential.

11 Q All right. Now, at the time of these meetings, Tampa  
12 Electric was in the process of accruing a substantial dead  
13 freight liability to TECO Transport, wasn't it?

14 A I'm sorry. Can you repeat the question?

15 Q Yes. At the time of these meetings, Tampa Electric  
16 was in the process of accruing a substantial dead freight  
17 liability to TECO Transport, wasn't it?

18 A Yes, we were.

19 Q All right. I am going to have Mr. Poucher pass out a  
20 portion of our recent deposition.

21 MR. VANDIVER: And I understand this is not  
22 confidential, Mr. Beasley. I want to be certain of that?

23 MR. BEASLEY: Let me see it first.

24 MR. VANDIVER: Sure. This amount was formerly  
25 confidential, but when I got these, your redacted pages, this

was not redacted. And so, Jim, I'm just concerned about the  
2 number.

3 MR. BEASLEY: It's not. You can use it.

4 MR. VANDIVER: Very well.

5 I need an exhibit number, please, Mr. Chairman.

6 CHAIRMAN BAEZ: Wehle, dead freight document. I have  
7 Exhibit 75.

8 MR. VANDIVER: Thank you.

9 (Exhibit 75 marked for identification.)

10 BY MR. VANDIVER:

11 Q Ms. Wehle, as indicated in this exhibit, at the time  
12 of these meetings, it is my understanding that Tampa Electric  
13 was indebted to TECO Transport, is that correct?

14 A We were accruing potential dead freight liabilities,  
15 but it would not have been determined until the end of the year  
16 whether or not -- what the actual final outcome was for those.  
17 And as a point of clarification, dead freight are charges for  
18 not having met minimum tonnage requirements under the contract.

19 Q Thank you. And this dead freight arose because of  
20 the early closure of the Gannon units that we discussed in  
21 excruciating detail at last year's fuel adjustment hearing, is  
22 that correct, Ms. Wehle?

23 A That's correct.

24 Q Okay.

25 A For the most part that is reason why they occurred.

1 Q Yes, ma'am. And I believe right here at Page 251,  
2 Mr. Beasley's redirect there at Lines 14 through 16, you  
3 indicate that the amount of that dead freight liability was in  
4 the neighborhood of 10 to \$12 million, is that correct?

5 A That's correct.

6 Q And then further on down in this deposition you  
7 further opine that had the contract not been renewed, this debt  
8 would not have been forgiven, is that correct?

9 A That is my opinion.

10 Q Yes. Okay. Thank you.

11 Also in your deposition, I believe you stated that  
12 you were constantly reminded of this debt by TECO Transport  
13 personnel. Do you recall making that statement to me at the  
14 deposition?

15 A Yes, I do. Yes.

16 MR. VANDIVER: And I would like to go ahead and pass  
17 out another passage from that same deposition, if I could.  
18 Mr. Poucher is going to take care of that. And I think we need  
19 that next number, and it has already escaped me; 76, thank you.

20 CHAIRMAN BAEZ: That is 76, yes.

21 (Exhibit 76 marked for identification.)

22 BY MR. VANDIVER:

23 Q I think this was late one evening last week,  
24 Ms. Wehle, when we were discussing this.

25 A Yes, it was, very late.

1 Q It was very late, yes, ma'am. And, again, if we  
2 could go back through this, ma'am. This is Page 256 and 257,  
3 and it was a mercifully brief discussion between you and I --

4 A Yes.

5 Q -- on this same dead freight issue. And it starts  
6 there at Page 257. If we can take a look at that?

7 A Okay.

8 Q And there it is, the thing we were just talking  
9 about. And you said that Mr. Rankin and Mr. Bresnahan, who I  
10 believe you just mentioned, were in the negotiations with you?

11 A That is correct.

12 Q And others in the organization were among those that  
13 had constantly reminded you of this 10 to 12 million-dollar  
14 debt. Who were the others that mentioned this 10 to 12 million  
15 debt?

16 A Probably the others that I mentioned that were in the  
17 negotiation process.

18 Q Okay. And was --

19 A People were aware of it, generally.

20 Q And was the dead freight discussed in the contract  
21 negotiations themselves?

22 A No, it was not.

23 Q Okay. Now, on October 6th, 2003, Tampa Electric and  
24 FESCO Transport signed the new contract, is that correct?

25 A That's correct.



1 Q And in early January they waived the dead freight  
2 charges, is that correct?

3 A That is correct.

4 Q And you are certain the waiver took place in January  
5 2004?

6 A That's correct, because the dead freight would not be  
7 due until the contract year was completed.

8 Q All right, ma'am. Now, I've got one more deposition  
9 I want you to look at, and that is our October 20th,  
10 conversation on this same issue. And you and I discussed this  
11 same issue in October.

12 A I'm sorry, Mr. Vandiver, I didn't hear your last  
13 comment? I didn't hear your last comment.

14 Q Yes, ma'am. You were depose in October, on October  
15 20th, 2003?

16 A Yes.

17 Q And you and I discussed this same dead freight issue?

18 A Yes.

19 Q And if you will take a look -- I will give you a  
20 minute to look at this discussion.

21 A Okay. Do you want me to look specifically at a  
22 particular area.

23 Q Yes, ma'am.

24 THE WITNESS: Mr. Vandiver, do you need this marked?

25 MR. VANDIVER: Yes, sir.

1 CHAIRMAN BAEZ: Call it 77.

2 MR. VANDIVER: Yes, sir. Exhibit Number 77.

3 (Exhibit Number 77 marked for identification.)

4 BY MR. VANDIVER:

5 Q And I want you to look specifically at the bottom of  
6 Page 141 and carrying over to Page 142. And this, again, is --  
7 excuse me, Ms. Wehle.

8 I think this is the third time that you and I have  
9 discussed the dead freight issue.

10 A Yes, I believe it even came up at the November  
11 hearing.

12 Q We may have discussed it five or six times under  
13 oath. And here, again, you indicate that the dead freight  
14 charge has been waived for no consideration?

15 A That is correct.

16 Q And, again, it's a wonderful thing for the  
17 ratepayers?

18 A Absolutely.

19 Q But my question to you is specifically the timing of  
20 the waiver of the dead freight charges. Was it contemporaneous  
21 with the signing of the contract, was it shortly after the  
22 contract? And, obviously, it couldn't have been in January of  
23 2004, because in October of 2003 it had already been waived.  
24 And my question to you is, the decision to waive it had been  
25 made then?

1           A       No. The decision to waive it had been made after the  
2 contract was signed. It didn't even come up as part of the  
3 contract negotiations.

4           Q       Okay. Do you have an exact date as to when the  
5 waiver of the dead freight charges took place?

6           A       I do not. That was not -- I was not a party to those  
7 discussions. I just know that it occurred, and we were not  
8 going to be billed at the end of the year or the beginning of  
9 January.

10          Q       Who told you the dead freight charges were going to  
11 be waived?

12          A       I don't exactly recall. It could have been  
13 Mr. Christmas.

14          Q       So your boss told you that the dead freight charges  
15 were going to be waived? It didn't come from anyone at TECO  
16 Transport?

17          A       No, it did not.

18          Q       Okay. It was -- but you were obviously told sometime  
19 between our deposition -- before our deposition on October  
20 20th?

21          A       That that was the thinking at the time. The final  
22 decision -- the dead freight is not due until you are actually  
23 through with your annual contract period. I think what I was  
24 trying to say was the indications were at the time that there  
25 would be a waiver of the dead freight. I think the bottom line

1 is that there is no dead freight, and there was no discussion  
2 of it in the contract negotiations.

3 Q Okay. And, again, you seem awfully certain here in  
4 the October deposition that there is going to be no dead  
5 freight claimed?

6 A Again, I think this deposition was taken on October  
7 20th after the contract was signed.

8 Q Yes.

9 A I think the indications were that we were not going  
10 to be billed for it.

11 Q Okay. And the decision to waive the ten to \$12  
12 million was made for no consideration between October 6th, 2003  
13 and October 20th, 2003?

14 A No, there was no consideration for that.

15 MR. VANDIVER: That is all the questions I have  
16 Thank you.

17 CHAIRMAN BAEZ: Thank you, Mr. Vandiver.

18 And we are approaching 6:30, so I think we are going  
19 to call this a break.

20 And, Mr. Perry, you will be up tomorrow morning. As  
21 I said, we are going to start up tomorrow at nine o'clock.  
22 Thank you all and see you tomorrow. Have a good night.

23 (The hearing adjourned at 6:22 p.m.)

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COUNTY OF LEON )

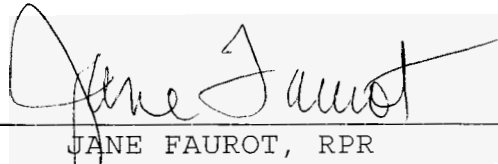
CERTIFICATE OF REPORTER

I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter Services, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 1st day of June, 2004.



\_\_\_\_\_  
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