

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of

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

DOCKET NO. 031033-EI

ELECTRONIC VERSIONS OF THIS TRANSCRIPT ARE
A CONVENIENCE COPY ONLY AND ARE NOT
THE OFFICIAL TRANSCRIPT OF THE HEARING,
THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

VOLUME 11

Pages 1354 through 1455



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, June 10, 2004
TIME:	Commenced at 9:30 a.m. Concluded at 9:17 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 06617 JUN 15 3

FPSC-COMMISSION CLERK

I N D E X

WITNESSES

3	NAME:	PAGE NO.
4	FREDERICK J. MURRELL	
5	Direct Examination by Mr. Beasley	1357
	Prefiled Rebuttal Testimony Inserted	1359
6	Cross Examination by Mr. Vandiver	1405
	Cross Examination by Ms. Kaufman	1411
7	Cross Examination by Mr. Wright	1422
	Cross Examination by Mr. Twomey	1435
8	Cross Examination by Ms. Rodan	1440
	Redirect Examination by Mr. Beasley	1442
9	Further Cross Examination by Mr. Wright	1446

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS

NUMBER:		ID.	ADMTD.
110	Heller Eight-Week RFP	1406	Not Admtd.
111	Bid Solicitation WB-2004	1415	1448
112	Comparison of 1,000 Kilowatt Hour Costs.	1435	1448
62			1448

P R O C E E D I N G S

(Transcript follows in sequence from Volume 10.)

CHAIRMAN BAEZ: We'll go back on the record.

Mr. Beasley, you have one last witness.

MR. BEASLEY: Yes, sir. We call Mr. Frederick J. Murrell.

CHAIRMAN BAEZ: Mr. Murrell, you have been sworn, sir?

THE WITNESS: Yes, I have.

CHAIRMAN BAEZ: And you are our best friend right now, because you happen to be the last witness.

Go ahead, Mr. Beasley.

MR. BEASLEY: Thank you.

F R E D E R I C K J . M U R R E L L

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

D I R E C T E X A M I N A T I O N

BY MR. BEASLEY:

Q Mr. Murrell, would you please state your name and business address.

A My name is Frederick J. Murrell. My business address is 1401 Manatee Avenue West, Suite 910, Bradenton, Florida 34205.

Q By whom are you employed?

A I'm the president of Frederick J. Murrell

1 Professional Association, a law firm.

2 Q Mr. Murrell, did you prepare and cause to be
3 submitted in this proceeding a document entitled, Prepared
4 Rebuttal Testimony of Frederick J. Murrell, consisting of 42
5 pages?

6 A I did. Excuse me.

7 Q If I were to ask you the questions contained in that
8 testimony would your answers be the same?

9 A Yes, they would.

10 Q I ask that Mr. Murrell's prepared testimony be
11 inserted into the record as though read.

12 CHAIRMAN BAEZ: Show the prefiled rebuttal testimony
13 of Frederick J. Murrell entered into the record as though read.

14

15

16

17

18

19

20

21

22

23

24

25

1 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

2 PREPARED REBUTTAL TESTIMONY

3 OF

4 FREDERICK J. MURRELL

5 ON BEHALF OF

6 TAMPA ELECTRIC COMPANY

7

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

9

10 **A.** My name is Frederick J. Murrell. I am President of the
11 law firm of Frederick J. Murrell, Professional
12 Association, at 1401 Manatee Avenue West, Suite 910,
13 Bradenton, Florida 34205.

14

15 **Q.** Please describe your educational background and business
16 experience.

17

18 **A.** I have prepared Exhibit FJM-1, Document No. 1, which
19 describes my education and experience. By way of summary,
20 I received a Bachelor of Science degree in economics and
21 political science from Florida State University in 1972.
22 In 1976, I received the degree of Juris Doctor (with
23 honors) from the University of Florida.

24

25 Upon graduation from law school, I took a position with

1 the law firm of Womble, Carlyle, Sandridge & Rice of
2 Winston-Salem, North Carolina.

3
4 In 1979, I accepted a position in the law department of
5 Florida Power Corporation in St. Petersburg, Florida,
6 where I was assigned to assist Electric Fuels
7 Corporation, which was then a wholly-owned subsidiary of
8 Florida Power, charged with the responsibility of
9 procuring coal and coal transportation for Florida
10 Power's coal-fired plants. In 1981, I moved to Electric
11 Fuels in a business position, and soon became the
12 Director of coal procurement and later Vice President in
13 charge of coal procurement. I held that position until I
14 left the company in August of 1984, purchasing coal and
15 coal transportation for about 4.5 million tons of coal
16 per year.

17
18 In 1984, I accepted the position of Assistant Vice
19 President in the Coal Traffic Department of the Seaboard
20 System Railroad, which became a part of CSX
21 Transportation, Inc. ("CSXT"), when the Chesapeake & Ohio
22 Railroad and the Seaboard merged. I soon became Vice
23 President of the Coal Traffic Department, and was
24 responsible for CSXT's coal movements in the traditional
25 Seaboard coal fields, as well as movements of coal by

1 CSXT to the inland waterway system. The transportation
2 revenue of my department was approximately \$800 million
3 per year.

4
5 In 1986, CSXT suggested I transfer to Baltimore,
6 Maryland, and I declined to relocate there. I took early
7 retirement from CSXT at that time, and re-entered the
8 practice of law in Lakeland, Florida. I moved soon
9 thereafter to Bradenton, Florida, where I opened a
10 practice that specialized in coal procurement and coal
11 transportation matters. Over the years, I have
12 represented numerous electric power producers, public
13 service commission staff, interveners, coal companies,
14 and coal transportation companies.

15
16 In 1992, I established Adaro Envirocoal Americas to
17 represent the coal production of PT Adaro Indonesia, the
18 producer of low sulfur coal called "Envirocoal." My
19 company is responsible for the sale of that coal into
20 North, Central and South America, parts of the
21 Philippines and a power plant in Indonesia. Additionally,
22 I have been involved in coal production and coal imports
23 in the country of Chile, and am part owner of coal mining
24 and synthetic fuel from coal operations in Indiana,
25 Illinois, West Virginia and Kentucky.

1 Q. What is the purpose of your testimony in this proceeding?

2

3 A. The primary purpose of my testimony is to rebut certain
4 aspects of CSXT's testimony provided by Dr. Robert
5 Sansom, John Stamberg, and Robert White. I have been
6 asked by Tampa Electric to review the solicitation by
7 Tampa Electric for waterborne coal transportation
8 services and render an opinion on whether the
9 solicitation was performed in a reasonable and
10 professional manner. I have also been asked to provide
11 an opinion regarding the reasonableness of Tampa
12 Electric's projected coal transportation costs for 2004
13 through 2008, especially when compared to CSXT's two
14 proposals. Finally, I have been asked to review whether
15 the Commission should modify or eliminate the waterborne
16 coal transportation benchmark that was established for
17 Tampa Electric in 1988.

18

19 Q. Have you prepared an exhibit to your testimony?

20

21 A. Yes I have. Exhibit FJM-1 contains three documents.
22 Document No. 1 is my resume, Document No. 2 is entitled,
23 "Articles about CSXT Rate Increases" and Document No. 3
24 is entitled "Comparison of Rail and Waterborne Adjustment
25 Factors."

1 Q. Please summarize your testimony.

2

3 A. The rates contained in Tampa Electric's contract with
4 TECO Transport are reasonable. They reflect the market
5 for transportation services as further supported in the
6 testimony of witnesses Joann T. Wehle and Brent Dibner.
7 The company's waterborne coal transportation services
8 solicitation was designed, issued and evaluated in a
9 manner that was completely consistent with good and
10 acceptable business practices in the industry. The result
11 of the solicitation and evaluation by Tampa Electric was
12 sufficient in all regards and provided important and
13 reliable information regarding the status of the
14 marketplace for waterborne coal transportation.

15

16 The overall transportation costs Tampa Electric will
17 incur under its contract with TECO Transport are below
18 the level for ocean freight that would likely be
19 established today if Tampa Electric were to go out onto
20 the market for transportation services. The cost of some
21 ocean transportation movements are double and sometimes
22 triple the level they were in the summer of 2003.

23

24 In addition to costs, one cannot ignore the reliability
25 of TECO Transport's fleet. One of the very real assets of

1 the Tampa Electric's delivery system is that its services
2 are provided by a reliable and sound entity. The non-
3 price value of this reliable and efficient transportation
4 system is significant, particularly given the reliability
5 concerns unique to Tampa Electric.

6
7 Although there have been questions raised about the
8 appropriateness of the benchmark established by the
9 Florida Public Service Commission ("FPSC" or
10 "Commission") in 1988, I have seen no evidence which
11 reasonably supports a modification of the benchmark. The
12 benchmark seems to have worked well and the fundamental
13 conditions that are in place today are not substantially
14 different from those present in 1988, when the Commission
15 carefully considered and adopted the current benchmark
16 for waterborne coal transportation costs. It is my
17 understanding that the Commission each year since 1988
18 confirmed the reasonableness of the prices paid by Tampa
19 Electric to TECO Transport as being below the market-
20 based benchmark. The new contract which went into effect
21 January 1, 2004 provides for lower prices than the prices
22 charged under the old contract.

23
24 Q. What is your general view of CSXT's involvement in this
25 proceeding?

1 A. After reviewing CSXT's testimony, it is clear that CSXT
2 is attempting to misuse this proceeding as a means of
3 marketing its virtually unregulated rail transportation
4 service. From my perspective and experience, CSXT is
5 asking this Commission to help it put a foot in the door
6 to establish new business in Florida. After reviewing
7 their proposals, there is no doubt that Tampa Electric
8 was prudent in entering its contract with TECO Transport
9 for the delivery of coal to Tampa over the next five
10 years.

11
12 COAL TRANSPORTATION SOLICITATION

13 Q. Do you have personal experience with a coal
14 transportation system?

15
16 A. Yes, I do have experience with coal transportation. While
17 I was responsible for coal procurement for Florida Power
18 Corporation at Electric Fuels Corporation, the water
19 transportation system was similar, in many ways, to Tampa
20 Electric's. During my tenure, the company did not have a
21 river barge company, although one was acquired by
22 Electric Fuels after my departure. Instead of using the
23 TECO Bulk Terminal known as Electro-Coal Transfer at that
24 time, Electric Fuels used International Marine Terminal
25 ("IMT"), which is just across the Mississippi River from

1 TECO Bulk Terminal. Electric Fuels' ocean freight
2 contractor was Dixie Fuels, which used vessels of a
3 similar configuration to those used by TECO Transport in
4 its TECO Ocean Shipping fleet. The vessels were
5 integrated tug/barges, such as those operated by TECO
6 Transport, but were smaller, having a draft of less than
7 20 feet, to accommodate the shallow entry channel at
8 Florida Power's Crystal River plants.

9
10 During my tenure at Electric Fuels, I was involved in the
11 solicitation for transportation services and the
12 evaluation of the responses to the solicitations.
13 Additionally, since leaving Electric Fuels I have
14 consulted for other companies who use waterborne and rail
15 transportation to receive coal at their coal-fired
16 facilities.

17
18 **Q.** Have you reviewed Tampa Electric's June 27, 2003 Request
19 for Proposal ("RFP"), the responses that were received,
20 Tampa Electric's analysis of the bid responses and the
21 coal transportation contract entered into by Tampa
22 Electric with TECO Transport?

23
24 **A.** Yes, I have.
25

1 Q. Did Tampa Electric administer its recent coal
2 transportation solicitation in a reasonable and
3 professional manner?
4

5 A. Yes, it did. First, let me point out that Tampa Electric
6 was under no requirement to bid the services. This
7 Commission, in its 1988 original benchmark order, states
8 clearly that Tampa Electric can enter into a contract for
9 its freight requirements in any manner it deems
10 appropriate and specifically recognized that affiliate
11 contracts are not normally bid. Nevertheless, Tampa
12 Electric issued its bid solicitation in a reasonable and
13 professional manner to help provide an indication of the
14 market for coal transportation and to help establish an
15 appropriate market based rate for transportation.
16

17 Notwithstanding the fact that Tampa Electric was not
18 required to bid for transportation services, it is my
19 opinion that the waterborne coal transportation services
20 solicitation was designed, issued and evaluated in a
21 manner that was completely consistent with sound and
22 acceptable business practices in the industry. The result
23 of the solicitation and evaluation by Tampa Electric's
24 staff was sufficient in all regards and provided
25 important and reliable information regarding the status

1 of the marketplace for waterborne coal transportation.
2 The contract entered into with TECO Transport for 2004
3 through 2008 reflects a reasonable price for those
4 services.

5

6 Q. Did Tampa Electric handle the solicitation in a manner in
7 keeping with industry standards?

8

9 A. Yes, Tampa Electric's actions during the solicitation
10 process were entirely appropriate, and did not deviate
11 from the industry standard for seeking bid responses from
12 the market. Tampa Electric's obligations were to prepare
13 a bid solicitation package that was understandable,
14 present it to the members of the market that could
15 provide responses and provide potential respondents with
16 sufficient time to submit their bids.

17

18 Q. Was Tampa Electric's competitive bid process conducted
19 with enough time before the expiration of Tampa
20 Electric's water transportation contract with TECO
21 Transport?

22

23 A. Yes. Tampa Electric conducted its solicitation a full
24 six months prior to the expiration of its contract for
25 affreightment of waterborne coal. This allowed more than

1 sufficient time to send out the solicitation, provide a
2 reasonable period to respond, negotiate with the winners
3 selected and enter into the required contracts. While
4 there may be instances where other utilities have allowed
5 longer periods for accomplishing this, I believe that
6 most coal-burning companies conduct their solicitations
7 with less time. The suggestion that six months was
8 insufficient time to conduct this solicitation is simply
9 without merit. In fact, my experience in the coal and
10 coal transportation markets has taught me that most
11 solicitations are issued with less than six months prior
12 to the expiration of the contract that is being replaced.

13
14 Q. Did Tampa Electric's RFP allow enough time for potential
15 bidders to learn about the opportunity and respond to the
16 RFP?

17
18 A. Yes, it did provide sufficient time. Tampa Electric
19 allowed about five weeks for potential bidders to learn
20 about the bid opportunity, construct the bid response and
21 submit it to Tampa Electric's offices. That is sufficient
22 time to respond to the RFP in a studied and responsible
23 manner and did not provide a burden for the potential
24 bidders. Additionally, Tampa Electric went to pains to
25 identify potential bidders and ensure that each potential

1 bidder received a bid package. For the most part, the
2 potential bidders are large corporations who are quite
3 familiar with the requirements of analyzing and
4 responding to bid solicitations from companies such as
5 Tampa Electric, and the time allowed would be entirely
6 sufficient for such companies to determine whether and at
7 what level they would price the potential business. In a
8 recent solicitation for transportation services, First
9 Energy allowed about the same amount of time for
10 responses as Tampa Electric did. In AEP's and Southern's
11 recent solicitations, they allowed only 25 days and 28
12 days, respectively.

13
14 **Q.** In your opinion, should CSXT have been provided with a
15 copy of the RFP, as asserted by CSXT's witness Sansom and
16 OPC/FIPUG's witnesses Wells and Majoros?

17
18 **A.** No, for two basic reasons. First, there are no rail
19 receiving facilities at the Big Bend and Polk Power
20 stations capable of receiving rail shipments of coal.
21 Based on that fact alone, it appears that the inclusion
22 of railroads in the bidding process was not needed or
23 appropriate. Second, because Tampa Electric may be
24 required to dramatically alter the number of tons of coal
25 it can ultimately burn based upon its environmental

1 agreements with the EPA and DEP, adding rail receiving
2 facilities, with their high capital costs and potentially
3 burdensome contractual commitments, made no sense.

4

5 Q. Should Tampa Electric have contacted non-responsive
6 companies to encourage their response?

7

8 A. No. Based on my experience, such an action is not in
9 keeping with normal bid solicitation practices of most
10 electric generating companies in the United States.

11

12 Q. Did Tampa Electric create an ineffective bid package when
13 it stated that Tampa Electric preferred integrated
14 proposals?

15

16 A. No. I don't believe that any company misread Tampa
17 Electric's RFP statement that it "prefers proposals for
18 integrated waterborne transportation services." The bid
19 package went on to state "however, proposals for
20 segmented services will be considered." It is logical to
21 prefer integrated proposals. When I was responsible for
22 coal transportation at Electric Fuels, our transportation
23 services were not performed in an integrated manner and I
24 was constantly faced with transportation subcontractors
25 pointing the finger at each other when problems arose

1 that caused costs to increase. An integrated proposal
2 removes this problem and allows the staff at the utility
3 to deal with one point of contact for contract
4 administration. On the other hand, by stating clearly
5 that Tampa Electric would consider and evaluate proposals
6 for less than the full-integrated package, Tampa Electric
7 encouraged offers for less than the full package of
8 services. Additionally, by stating that segmented
9 services proposals would be evaluated, it clearly
10 reflected the intent of Tampa Electric to evaluate total
11 delivered economics to put together the combination of
12 services that resulted in the lowest cost for
13 transportation.

14
15 Q. Based upon your experience, is a right of first refusal
16 clause common for these types of transportation
17 contracts?

18
19 A. Such a clause is common. Special conditions can make
20 such a clause entirely appropriate. In this instance,
21 TECO Transport had developed a large quantity of
22 dedicated transportation assets almost entirely to serve
23 Tampa Electric's coal delivery requirements. Based on
24 this reliance upon that particular business, it is not
25 inappropriate for a company in that position to have a

1 right of first refusal or "last look" provision.

2

3 **Q.** In your opinion, should TECO Transport have been required
4 to submit a bid along with the other bidders?

5

6 **A.** No, I do not believe that should have been required given
7 that TECO Transport had a right of first refusal. This
8 Commission, in its previous order, indicated that Tampa
9 Electric and TECO Transport should negotiate a contract
10 price for transportation services, provided that the
11 contract price does not exceed the benchmark pricing.
12 However, Tampa Electric is not required to call upon TECO
13 Transport to set the market.

14

15 **Q.** The residential customers' witness Hochstein suggests
16 that the range of volume included in the RFP was not
17 standard. What is your view of this assessment?

18

19 **A.** First, it is not at all uncommon for there to be a broad
20 range of volume in both coal and transportation
21 solicitations. This provides the utility with flexibility
22 when deciding how best to meet its procurement and
23 transportation needs. However, more importantly, the
24 broad range of tonnage described in the Tampa Electric
25 RFP is consistent with the consent decrees with

1 environmental regulators, and simply recognizes the
2 potential variations in the volumes of coal to be used at
3 the Big Bend Station.

4
5 Q. Dr. Hochstein also states that the demurrage requirement
6 in the RFP was not industry standard and was not
7 reasonable. Do you agree?

8
9 A. I was quite surprised by Dr. Hochstein's assertion that
10 the demurrage requirement in the RFP was not a standard
11 provision. Perhaps this is explained by his admission at
12 his deposition that he has never had experience in
13 preparing or reviewing an RFP for either rail or
14 waterborne transportation services. (See Hochstein
15 Deposition, Volume 1, page 16, line 1.) I have seen that
16 same provision in many solicitations in various parts of
17 the world, and believe that it is both common and
18 standard. It is not unreasonable for the purchaser to
19 require that the carrier and the intermediate
20 transloading facility work out issues related to
21 demurrage. In fact, it would be quite unusual for the
22 buyer to agree to be the responsible intermediary between
23 the carrier and the transloading facility. I don't think
24 I have ever seen this in the marketplace. The fact that
25 [REDACTED] accepted the provision without objection indicates

1 that the provision is not peculiar.

2
3 Q. Dr. Hochstein states that the "storage volume
4 requirement" and the requirement for eight separate
5 storage piles in the RFP were not in keeping with
6 industry standards and were not reasonable. Do you agree?

7
8 A. No, I do not agree with his assertion. The first point I
9 would like to make is that this is the level of service
10 that Tampa Electric currently receives at TECO Bulk
11 Terminal. Therefore, it is entirely appropriate for Tampa
12 Electric to seek the same level of service out of
13 bidders. Second, the bid received by Tampa Electric from
14 [REDACTED] did not object to these requirements, and that is
15 evidence that the provisions in the RFP were acceptable.

16
17 Q. Dr. Hochstein states that the RFP weight measurements
18 were not standard or reasonable. Do you agree?

19
20 A. No, I do not agree with this position, and his statement
21 may reflect on his lack of experience in the industry.
22 This requirement is similar to what is imposed by
23 Cincinnati Gas & Electric, American Electric Power, and
24 some of the Southern Company divisions. It is subject to
25 negotiation, but the stated preference of Tampa Electric

1 regarding the setting of controlling weights is entirely
2 within standard industry practice.

3
4 Q. Dr. Hochstein states that the "cargo loss requirement"
5 and the "no-cost expedition of shipment" in the RFP were
6 not industry standard and were unreasonable. Do you
7 agree?

8
9 A. No, I do not. The provisions requested by Tampa Electric
10 reflect the level of service that Tampa Electric was
11 receiving from TECO Bulk Terminal and it is entirely
12 appropriate to seek this level of service from other
13 entities bidding on the business. These issues are
14 subject to negotiation, but the inclusion of these
15 provisions in the solicitation was well within industry
16 standard practice. Specifically, regarding the "no-cost
17 expedition of shipment" requirement, it is important to
18 remember that Tampa Electric, as a Florida-based coal
19 burning utility, is positioned far from the coalfields.
20 The provision in question simply recognizes this risk
21 factor faced by Tampa Electric and shifts that risk to
22 the carrier.

23
24 **ANALYSIS OF CSXT'S PROPOSALS AND ALLEGATIONS**

25 Q. Based upon your experiences working for a regulated

1 utility that procured rail and waterborne transportation
2 services and your experiences working for CSXT, how does
3 the existence of a viable water transportation system
4 affect the rates offered by bulk commodity transportation
5 services like rail carriers in the United States?
6

7 A. It has been my experience that a rail carrier, such as
8 CSXT, will offer its lowest rates when it is attempting
9 to secure business from a coal user that also has a water
10 transportation system. Where there is no water
11 transportation system in place, the rail rates tend to be
12 the highest. I have observed that companies without
13 effective water transportation alternatives have
14 experienced dramatically increased rail transportation
15 costs. This is no more evident than in the recent Duke
16 Energy and Carolina Power & Light cases before the
17 Surface Transportation Board ("STB"), a railroad
18 favorable board. In those cases, which were brought by
19 the utilities against the Norfolk Southern and CSXT
20 railroads, the utilities charged that their existing
21 contract rail rates were too high and not competitive.
22 Most of the generating stations for these utilities are
23 basically rail captive, with no access or ability to
24 receive waterborne deliveries of coal. As a result of
25 the challenge to their high rail rates, the STB ruled in

1 favor of both of the railroads and the resulting rates
2 for the utilities have increased by as much as 50% over
3 their previous contract rates. I have included an
4 article about this along with two other articles about
5 similar issues in Document No. 2, "Articles about CSXT
6 Rate Increases," of my exhibit.

7
8 It is vital for Tampa Electric to continue to use coal
9 suppliers where it can maintain a water transportation
10 alternative so that the railroads are not in a position
11 to increase rates, as they do when dealing with captive
12 rail receivers. Tampa Electric also needs to maintain a
13 strong waterborne coal alternative to permit Tampa
14 Electric to accept foreign coal, if needed. Colombian and
15 Venezuelan coals, in particular, offer alternatives in
16 limited quantities for Tampa Electric in times when
17 domestic coals may experience price increases. The
18 amounts of purchases from foreign sources of coal must be
19 governed by the limits of coal with chemical properties
20 that can be successfully burned in Tampa Electric's
21 boilers, the potential shortage of the commodity, the
22 origin of the commodity and the practical or viable means
23 of transportation.

24
25 Q. Is there a market for coal transportation?

1 A. Absolutely. This is evidenced by the number of
2 waterborne transportation providers who received Tampa
3 Electric's RFP along with CSXT's rail proposals. These
4 providers include Dixie Carriers, Moran Towing, American
5 Steamship, Central Gulf Lines, Kirby, Matson Navigation,
6 and Express Marine. Other belted-unloading vessels
7 available from various carriers who commonly transport
8 coal from South America to American ports also
9 participate in US Gulf markets. Of course, some of these
10 vessels are not Jones Act qualified and cannot move
11 between two US ports. However, the presence of these
12 vessels to service the US market helps to establish the
13 market conditions that affect buyers of coal in today's
14 market.

15
16 Q. Have you reviewed the proposals submitted by CSXT?

17
18 A. Yes, I have. I found CSXT's rate proposals to contain
19 aggressive rail rates for the services offered. The
20 rates are at cost per mile levels below those which are
21 in place for captive rail customers CSXT has in Florida.
22 I have also reviewed the work of Sargent & Lundy ("S&L")
23 assessing the likely cost of building rail service into
24 the Big Bend Station. The Commission should acknowledge
25 the CSXT proposals for what they are - an artificially

1 low bid aimed at displacing waterborne transportation
2 with the ultimate goal of pricing rail service at higher
3 levels later. The Commission should not penalize the
4 company by disallowing any portions of the amounts it is
5 paying to TECO Transport for transportation services
6 based on the CSXT proposals.
7

8 Q. What is your general assessment of the proposals
9 submitted by CSXT?
10

11 A. The CSXT offers fail to take into consideration several
12 significant factors which Tampa Electric must consider in
13 evaluating the rail alternative in the market. For one,
14 the offers ignore the costs that some of the origin coal
15 producers selling coal to Tampa Electric would incur in
16 getting their coal to a rail facility for movement to
17 Tampa Electric. Also, I concur with S&L's Ms. Guletsky's
18 testimony that CSXT has significantly understated the
19 time required to secure environmental and engineering
20 permits to construct the facilities and the time to
21 construct the facilities. In short, the prices being
22 charged to Tampa Electric for water transportation by
23 TECO Transport are below the charges contained in the
24 CSXT rail bid, when proper adjustments are made to the
25 bid to reflect the full cost of the movement.

1 Q. If Tampa Electric were to incur the costs associated with
2 terminating its existing coal supply and coal
3 transportation contractual obligations and move to the
4 alternative coal mining and coal transportation suppliers
5 suggested by Dr. Sansom, would Tampa Electric likely
6 become a captive customer of the railroad for that
7 portion of its coal supply requirements?

8
9 A. Yes. First of all, it would incur liquidated damages
10 and dead freight charges under existing coal supply and
11 transportation agreements, which would be significant,
12 according to Ms. Wehle. Second, it would damage its
13 relationships with its contractual partners and undermine
14 its ability to secure its coal supply. Perhaps most
15 importantly, it would subject itself to CSXT's own
16 desires for an enhanced revenue stream, leveraged through
17 rail rate increases unregulated by this Commission.

18
19 Q. How have you reached your conclusion that the CSXT
20 proposed rates are at levels below those which you
21 believe are in place for captive rail customers CSXT has
22 in Florida? Wouldn't that benefit Tampa Electric's
23 customers?

24
25 A. Based on the data available today, the rates that CSXT

1 proposed to Tampa Electric are lower than those generally
2 provided to other customers in the Florida peninsula. I
3 have taken a couple of points for comparison of the CSXT
4 rates proposed for Tampa Electric and contrasted them
5 with the average rate levels charged to other Florida
6 customers. I have also reviewed Tampa Electric's most
7 recent benchmark filing made with the Florida Public
8 Service Commission that shows the average actual rates
9 for the cities of Lakeland, Jacksonville, Gainesville and
10 Orlando. Based on a "cents per ton mile" comparison
11 using the 2002 rates for other Florida shippers, the CSXT
12 rates offered to Tampa Electric appear to be about █%
13 below the level offered to Lakeland Electric, from █% to
14 █% below the rates provided to Gainesville Regional
15 Utilities, around the same █% to █% below the rates of
16 Orlando Utilities Commission and nearly █% below the
17 rates used by Jacksonville Electric Authority.

18
19 Although CSXT has offered Tampa Electric lower rates,
20 this could be good news for Tampa Electric and its
21 customers initially, but CSXT would likely increase rates
22 in the future to approach the rates charged to other
23 customers. I would expect that after the initial
24 contract period, rates would increase.

25

1 Q. How do you think CSXT will impose rate increases?

2

3 A. First, since the contract would have taken effect on
4 January 1, 2004, I believe that CSXT realizes that the
5 rates it offered Tampa Electric would not be usable for a
6 period of about two years. This is because during the
7 first two years of the proposed contract, Tampa Electric
8 would be involved in securing permits and performing the
9 actual construction of the rail receiving facilities,
10 which currently do not exist. Even though no coal could
11 be delivered during this period, the contract puts Tampa
12 Electric at risk for approximately [REDACTED] in dead
13 freight charges from CSXT for tonnage that was required
14 to be shipped under the contract, but could not be
15 shipped. Therefore, the aggressive rates offered by CSXT
16 to Tampa Electric would only be available to Tampa
17 Electric for the last three years before the utility
18 faced the threat of a dramatic increase in rates upon
19 expiration of the contract with CSXT.

20

21 Q. What would you expect CSXT to propose at the end of the
22 initial contract period?

23

24 A. I would expect CSXT to dramatically increase its rates
25 over the most recent rates offered to Tampa Electric. I

1 base this on the fact that the rates to other Florida
2 customers are higher than the proposed Tampa Electric
3 rates and on the fact that CSXT and its competitor,
4 Norfolk Southern, are increasing their rates on customers
5 in other parts of the eastern United States, including to
6 their customers Duke Energy and Carolina Power & Light
7 Company.

8
9 Q. Wouldn't that put CSXT at risk of having Tampa Electric
10 terminate the contract after five years after CSXT
11 invested in rail receiving facilities at Tampa Electric's
12 power plants?

13
14 A. Probably not. CSXT's proposal to Tampa Electric was
15 unclear regarding how it would pay for the required rail
16 receiving facilities at the Big Bend and Polk Power
17 stations. It has been my experience that CSXT doesn't
18 actually advance the cash to a shipper for the
19 construction of rail facilities. Almost without
20 exception, it is the shipper's responsibility to
21 construct and pay for the facilities up front. CSXT then
22 allows the shipper to take a reduction or credit on a per
23 car basis of \$10 to \$25 per car, until the capital
24 expended for construction of the new facilities is
25 recovered. In such a case, it would be essential for

1 Tampa Electric to haul a substantial amount of coal by
2 rail for a lengthy period in order to get its money back.
3 If you assume that Tampa Electric could get a "refund" of
4 \$100 per rail car, a rate I have never seen, and Tampa
5 Electric shipped about 2.5 million tons per year, then it
6 would take Tampa Electric over 12 years to get its money
7 back. At 1.5 million tons of rail shipments per year, it
8 would take about 20 years to recover the funds spent to
9 build rail receiving facilities.

10
11 Q. Would this present any risk to Tampa Electric?

12
13 A. Yes, it would present very significant risks. As I have
14 said before, I believe that CSXT can be depended upon to
15 dramatically increase its rail rates, as it has done with
16 other customers. If Tampa Electric spent its own money to
17 construct the rail receiving facilities and then CSXT
18 increased its rates at the expiration of a current
19 contract, as I predict it will, then Tampa Electric would
20 have to choose between paying higher rates for
21 transportation and failing to recover the capital costs
22 it paid for the new rail receiving facilities.

23
24 Q. Are there risks to Tampa Electric for dead freight that
25 concern you?

1 A. Yes, there are. CSXT's proposal requires Tampa Electric
2 to purchase coal from CSXT direct-origin mines - that is,
3 mines where CSXT is the originating carrier - at the rate
4 of a minimum of one million tons per year. The failure by
5 Tampa Electric to meet this minimum would subject Tampa
6 Electric to dead freight charges. This is important
7 because of the need of Tampa Electric to purchase low ash
8 fusion temperature coals for its Big Bend Station. While
9 CSXT directly serves a large number of coal mines, most
10 of those mines produce coal with ash fusion temperatures
11 that exceed Tampa Electric's specifications. There are
12 few direct rail served mines with low ash fusion
13 temperature coal. This puts Tampa Electric at risk by
14 having to 1) buy unsuitable coal from origins offering
15 high ash fusion coal or 2) be forced to buy one million
16 tons from a few mines or 3) pay CSXT for dead freight at
17 the rate of over [REDACTED] dollars per ton of coal for the
18 number of tons less than one million that it originates
19 at CSXT origins. This problem is exacerbated when one
20 considers that Tampa Electric uses a substantial amount
21 of petroleum coke at its Polk Station. I know of no
22 acceptable petcoke source that is located on CSXT. The
23 fact that CSXT's offer does not include rail rates for
24 this important fuel source increases the probability of
25 incurring dead freight charges.

1 Q. Based upon your experiences with CSXT, what impacts are
2 there to CSXT's proposal that depend on Tampa Electric's
3 decision regarding the Big Bend Station?
4

5 A. There is no detail offered by CSXT regarding what happens
6 in the event that Tampa Electric reduces its coal burn at
7 Big Bend Station to comply with its agreements with the
8 U.S. Environmental Protection Agency and the Florida
9 Department of Environmental Protection. The devil is in
10 the details, and the contract that would ultimately be
11 offered by CSXT would likely contain "claw-back"
12 provisions to recover the capital dollars expended, if
13 paid for by CSXT, in the event that Tampa Electric
14 reduces its coal burn at Big Bend. In fact, as I
15 mentioned before, the railroad usually requires that the
16 shipper, in this instance Tampa Electric, pay the capital
17 costs up front and recover the capital expenditures on a
18 per car basis. If Tampa Electric is precluded from
19 burning significant quantities of rail coal due to
20 environmental issues, the ability for Tampa Electric to
21 recover its capital would be over an even longer period
22 of time for it to recover its initial investment.
23

24 Q. Do you have any concern about the demurrage provision in
25 the CSXT offer?

1 A. Yes, most definitely. Demurrage is a charge assessed for
2 delay of rail equipment in discharging its freight at the
3 destination. Based CSXT's proposed four hour unloading
4 time in the demurrage clause, it appears that Tampa
5 Electric would be in a penalty situation every time it
6 received a train at Big Bend Station. Based on S&L's
7 study, it will take more like six hours, not four to
8 unload a train. Even the information provided by CSXT
9 seems to suggest that the receiving facility could not
10 unload a train during a four hour period. Because of
11 this, Tampa Electric would face train demurrage charges
12 each time a train was unloaded at its power plants.
13 Tampa Electric must be concerned about these added costs.

14
15 Q. Have you reviewed Ms. Wehle's estimate of additional
16 demurrage charges under the CSXT bid?

17
18 A. Yes. Ms. Wehle's estimates indicate that demurrage will
19 cost about [REDACTED] cents a ton or up to \$ [REDACTED] per year.
20 Her estimates are very conservative in my view.

21
22 Q. What is the rail cost adjustment factor that CSXT
23 includes in its proposal and what is your concern about
24 it compared to the escalators in the TECO Transport
25 contract with Tampa Electric?

1 **A.** The rail cost adjustment factor ("RCAF") is an index of
2 changes in railroad costs. The index accounts for fuel,
3 materials and supplies, equipment rents, purchased
4 services, depreciation, interest, taxes other than income
5 and payroll taxes, and other expenses. The CSXT proposal
6 includes a RCAF-U which means it is the RCAF without a
7 productivity adjustment that reduces the adjustment.
8 Therefore, the RCAF-U adjustment is always more than the
9 RCAF adjustment. The escalator is applied quarterly to
10 all transportation costs.

11
12 TECO Transport's contract with Tampa Electric also
13 includes adjustment factors but they are based on the
14 Consumer Price Index ("CPI") and the Producer Price Index
15 ("PPI"). Their index is also applied quarterly but only
16 on the variable costs for the river and gulf segments.

17
18 My concern when comparing the two factors is that the
19 RCAF raises rates at a more significant rate than CPI and
20 PPI. In comparing the two, I took the TECO Transport-
21 Tampa Electric contract rate in 1999 (the start of the
22 last contract) and I assumed a same rail rate also
23 starting in 1999. I applied the RCAF-U to rail and the
24 CPI and PPI to water. By the end of the contract period,
25 the rail rate was \$1.59 higher than the water rate. Over

1 this five year period, the rail escalator grew 12.7%
2 while the water escalator only effectively grew 3.8%
3 since it is only applied to the variable components in
4 the TECO Transport contract. Therefore, when comparing
5 coal transportation rates, Tampa Electric needed to
6 consider not only the beginning rate, but also the
7 expected rate at the end of the contract period. I have
8 summarized my comparison in Document No. 3 of my exhibit
9 entitled "Comparison of Rail and Waterborne Adjustment
10 Factors"

11
12 **Q.** Please address Dr. Sansom's criticism that Tampa Electric
13 did not take CSXT'S bid seriously.

14
15 **A.** That criticism is not well founded. Because of the
16 problems I have discussed regarding CSXT's rate
17 proposals, it was not appropriate for Tampa Electric to
18 act on any proposal that requires the company to accept
19 commercial risks regarding the construction and use of a
20 rail receiving facility. It is well known that Tampa
21 Electric may have to dramatically reduce or eliminate its
22 coal use at Big Bend. Under the circumstances, Tampa
23 Electric prudently avoided the commercial risks related
24 to the proposal offered by CSXT. The bids provided by
25 CSXT were treated with all the respect and consideration

1 that they deserved.

2

3 **Q.** Please comment on Dr. Sansom's assertion that Tampa
4 Electric should have "synchronized" its coal contracts
5 and its transportation contracts.

6

7 **A.** It is neither common nor appropriate in most instances
8 for a coal receiving utility to enter into coal
9 transportation contracts and coal supplies at the same
10 time. The market conditions affecting transportation
11 costs are often not tied to the market conditions
12 affecting coal supply, and by handling these separately,
13 there can be an advantage in going to market for either
14 coal or transportation when it favors the lowest
15 delivered coal costs. In my experience, I have seen
16 unsynchronized coal and transportation contracts from
17 large companies, including the Tennessee Valley
18 Authority, Consumers Power Company and American Electric
19 Power. In my own experience, coal transportation
20 contracts at Florida Power Corporation were not
21 synchronized with coal supply contracts. This did not
22 create any difficulties at Florida Power. Additionally,
23 when I coordinated the coal procurement activities of
24 United Illuminating in 1999 as a consultant, the
25 transportation contract terms were not synchronized with

1 the coal supply contracts.

2

3 Q. Dr. Sansom spends a significant portion of his testimony
4 asserting Tampa Electric should have terminated and/or
5 modified its coal supplies. Does CSXT directly serve
6 mines which have coal that would be attractive to Tampa
7 Electric for its Big Bend Station?

8

9 A. While CSXT has some coal mines on its CSXT lines that can
10 provide coal for Big Bend, a preponderance of the coal
11 located on CSXT lines exhibit ash with high fusion
12 temperature. As I stated above, most of the coal sourced
13 by Tampa Electric must have low fusion temperature
14 characteristics because Big Bend Units 1, 2 and 3 are wet
15 bottom boilers that require low ash coal for the boiler
16 to operate properly.

17

18 For that reason, much of the coal currently purchased by
19 Tampa Electric today is located on a rail carrier other
20 than CSXT or has no rail service at all. Therefore, much
21 of the coal that Tampa Electric requires would either
22 have to be sourced in a two or three line rail haul (that
23 is, where two or three different railroads handle the
24 coal cars from origin to destination) or the coal would
25 have to be trucked or barged to a rail transloading

1 facility for loading into railcars. These short-haul
2 transportation costs must be considered when evaluating
3 the proposal made by CSXT for rail delivery service.
4

5 Q. Is CSXT capable of delivering petcoke to Tampa Electric's
6 power plants?
7

8 A. No. So far as I know, CSXT does not originate any
9 petcoke on its system. The petcoke currently used by
10 Tampa Electric is sourced from the Lake Charles,
11 Louisiana area and the Texas Gulfcoast, and those sources
12 are entirely water-served. CSXT would not be capable of
13 going to the source of that petcoke and most other
14 petcoke available in the United States to have its
15 railcars loaded for delivery to Tampa Electric.
16 Additionally, the offshore petcoke that is available from
17 Aruba, Venezuela and elsewhere must be delivered to the
18 United States by ocean vessel.
19

20 Q. Do you agree with Dr. Sansom that there is a two percent
21 BTU loss for coal that is transloaded for barge shipment
22 due to multiple handling?
23

24 A. No, I do not. Moreover, the coal pile adjustments
25 recorded by Tampa Electric do not support Dr. Sansom's

1 contention, either. Looking at the coal pile inventories
2 for both TECO Bulk Terminal and Big Bend Power Station,
3 there is no evidence that any appreciable amount of coal
4 has been lost to the transloading of coal over time.

5

6 Q. Do you agree with Dr. Sansom that there is 25 cents per
7 ton loss in the heating value of the coal that is carried
8 on barges, due to moisture increase during transit?

9

10 A. No, I do not. My experience has been that the only
11 negative related to moisture increase for waterborne coal
12 is that there is a small increase in the final leg of the
13 transportation cycle - the gulf barge portion. If you
14 assume that the gulf water barge portion of the rate is
15 approximately [REDACTED] per ton, then the probable impact of
16 moisture increase would be less than [REDACTED] cents per ton,
17 not the 25 cents per ton attributed to this by Dr.
18 Sansom.

19

20 Q. Are Tampa Electric's waterborne coal transportation costs
21 reasonable based upon its contract with TECO Transport
22 for 2004 through 2008?

23

24 A. Yes, the costs contained in Tampa Electric's contract
25 with TECO Transport are reasonable costs. The costs

1 reflect the market for transportation services as further
2 supported in the testimony of Ms. Wehle and Mr. Dibner.
3 This is especially true in light of the recent
4 substantial increase in the ocean freight market. The
5 costs are below the level for ocean freight that would
6 likely be established today if Tampa Electric were to go
7 out onto the market for transportation services. The cost
8 of some ocean transportation movements are double and
9 sometimes triple the level they were in the summer of
10 2003.

11
12 In addition to costs, there is the issue of dependability
13 that must be addressed. One of the very real assets of
14 the Tampa Electric's delivery system is that it is
15 comprised of a reliable and economically sound entity.
16 The non-price value of this reliable and efficient
17 transportation system is significant.

18
19 The coal industry trade press is replete with examples of
20 poor rail service in recent months, where coal-burning
21 utilities are facing coal shortages as a result of
22 locomotives and railcars being pulled away from utility
23 service to work in the more lucrative export coal
24 business that the railroads favor. The railroads often
25 make more money in the export trade than in domestic

1 service, and this causes them to deploy their rolling
2 stock in such a manner as to reduce service to their
3 utility customers. Ms. Wehle addresses CSXT service
4 issues in her rebuttal testimony.

5
6 **Q.** You say that the cost of some ocean transportation
7 movements are double and sometimes triple the levels they
8 were in the summer of 2003. Can you explain what has
9 recently happened to the ocean freight market?

10
11 **A.** Yes. Ocean freight markets around the world have
12 experienced a significant run-up in the past several
13 months, due mostly to a revived economy in China, where
14 demand for steel-making materials has resulted in a
15 shortage of vessels around the world. While that market
16 is not one that would normally be addressed by TECO
17 Transport's vessels, the increase in freight rates has
18 been experienced in virtually every shipping basin,
19 including the US Gulf of Mexico and the Caribbean.

20
21 As an example, freight rates for hot briquette iron from
22 Venezuela to the US Gulf (New Orleans) have increased
23 from a pre-run-up level of \$10 per metric tonne, to a
24 current level of around \$30 per metric tonne. Similarly,
25 Jepsens USA reports that grain transportation rates from

1 the US Gulf to Venezuela, Colombia and the Dominican
2 Republic have gone from \$14 per tonne in February of 2003
3 to \$34 per tonne in March of 2004. Time charter rates in
4 the same period in the US Gulf and Caribbean have
5 increased from \$7,500 per working day to \$32,000 per day.

6
7 In the area of coal transportation, the shipping company
8 Navios reports that coal haulage rates from Colombia and
9 Venezuela have gone from about \$6.50 per tonne in
10 February, 2003 to nearly \$20 per tonne today. The rate
11 for moving coal to Jacksonville Electric Authority from
12 Colombia, South America, has increased from a low of \$4
13 per tonne to a current spot rate of \$14 per tonne.
14 Finally, while Panamax day rates for an annual charter
15 were as low as \$12,200 per day in January of 2003, they
16 are now as high as \$46,000 per day.

17
18 As can be seen from these dramatic increases in freight
19 rates around the Gulf of Mexico and Caribbean, the cost
20 of shipping has increased significantly over the past
21 several months. If TECO Transport were to move to a
22 market price today, the rate would probably be
23 considerably higher than the level agreed to in the
24 contract with Tampa Electric. Against this backdrop
25 Tampa Electric is paying lower rates under its new

1 contract with TECO Transport than it was under the
2 contract it replaced. Furthermore, Tampa Electric's
3 customers clearly are the beneficiaries of the timing of
4 the new contract between Tampa Electric and TECO
5 Transport.

6
7 MODIFICATION OR ELIMINATION OF THE CURRENT BENCHMARK?

8 Q. Should the FPSC modify or eliminate the waterborne coal
9 transportation benchmark?

10
11 A. No. In my opinion the system in place and the benchmark
12 for waterborne coal transportation costs are working
13 well. The fundamental conditions that are in place today
14 are not substantially different from those present in the
15 1988 time frame, when the Commission carefully considered
16 and adopted the current benchmark for waterborne coal
17 transportation costs. For these reasons, I see no reason
18 why the Commission should change its policy regarding the
19 benchmark at this time.

20
21 Q. Is the benchmark accomplishing its purpose?

22
23 A. Yes. Based upon my reading of the order in which the
24 benchmark was established, the purpose of the benchmark
25 was to provide an effective ceiling for the amount that

1 could be charged by TECO Transport for waterborne coal
2 transportation services. The benchmark was based on a
3 measurable and logically-based parameter, which was the
4 rail cost per ton-mile incurred by other Florida-based
5 coal users. The benchmark has worked well over the years,
6 and in each instance the amount charged by TECO Transport
7 for waterborne coal transportation services has been
8 below the level that would otherwise be allowed by the
9 benchmark. The logical conclusion from reviewing the
10 facts regarding the benchmark and the prices charged by
11 TECO Transport to Tampa Electric is that the benchmark
12 has worked well and continues to work well.

13
14 **Q.** Have circumstances changed that warrant a change in the
15 benchmark methodology?

16
17 **A.** No, they have not. So far as I can tell by comparing the
18 overall markets affecting coal transportation in the
19 United States at the time the benchmark was established
20 and today, there does not appear to be any substantial
21 change in the market that would warrant changing in the
22 established process. I have not seen any testimony that
23 outlines any substantial change in the industry or market
24 to support such a modification. As pointed out by Ms.
25 Wehle, the prices currently charged by TECO Transport to

1 Tampa Electric bear nearly the same relationship with the
2 benchmark that they did when the benchmark was first
3 established several years ago.

4

5 Q. Does this conclude your testimony?

6

7 A. Yes, it does.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 BY MR. BEASLEY:

2 Q Mr. Murrell, did you also prepare the exhibit marked
3 FJM-1 and also identified as Exhibit 62 in this proceedings?

4 A I did.

5 Q Thank you. Would you please summarize your rebuttal
6 testimony.

7 A I will. Good Evening, Commissioners. My name is
8 Fred Murrell, and I'm testifying on behalf Tampa Electric
9 Company.

10 My rebuttal testimony responds to the prepared
11 testimony of CSXT's witnesses, Robert Sansom, John Stamberg and
12 Robert White, as well as that of the OPC/FIPUG witness,
13 Mr. H. G. "Pat" Wells.

14 Additionally, I have reviewed and commented on the
15 waterborne and coal transportation solicitation issued by Tampa
16 Electric Company, and my testimony also includes my expert
17 opinion on the reasonableness of Tampa Electric's projected
18 coal transportation costs for 2004 through 2008, including a
19 comparison with CSXT's two proposals to provide Tampa Electric
20 with rail service at the Big Bend and Polk Power Stations.

21 Finally, I recommend that the benchmark established
22 in 1988 is still an appropriate measure to use when evaluating
23 Tampa Electric's affiliate waterborne transactions. It is my
24 opinion that CSXT is attempting to misuse this proceeding as a
25 means of marketing its unregulated rail transportation services

1 to Tampa Electric.

2 After reviewing the testimony and documents filed in
3 this proceeding, I have reached the conclusion that the
4 waterborne coal transportation solicitation issued by Tampa
5 Electric was properly prepared, administered and analyzed, and
6 that Tampa Electric was prudent in entering into its contract
7 with TECO Transport for the delivery of coal to its power
8 plants near Tampa Florida over the next five years.

9 My review of the waterborne coal transportation bid
10 documents reveal the request for transportation proposals that
11 was completely within industry standards. The provisions in
12 the bid documents were reasonable and standard provisions. The
13 responses to the solicitation helped Tampa Electric establish
14 the market conditions that control the rate for waterborne
15 transportation services to be provided by TECO Transport.

16 The parties to whom the solicitation was sent had
17 five weeks to analyze and respond to the bid request. That is
18 ample time to respond to the solicitation, and the solicitation
19 was sent out sufficiently in advance of the expiration of Tampa
20 Electric's contract to enable the Company to move to a new
21 contract in a studied and effective manner.

22 And the next time I testify at eight o'clock at
23 night, I'm going to leave solicitation out of the document.

24 The proposals from CSXT to provide rail
25 transportation services did not provide a cost-effective

1 transportation alternative for Tampa Electric when all the
2 attendant costs are taken into consideration. Whether CSXT
3 paid for the capital costs of the rail receiving facilities up
4 front or not, the total cost of transportation of the CSXT
5 proposal, excluding the capital costs, exceeded the cost of the
6 TECO Transport contract. Joann Wehle demonstrated this in her
7 direct testimony, and I concur with her analysis.

8 Additionally, because of the escalation factors used
9 in the CSXT bid, the rates in the CSXT proposal would almost
10 certainly escalate faster than the rates in the TECO Transport
11 contract based on the stated escalation factors. Making the
12 CSXT option even more expensive over time in comparison with
13 the existing waterborne fuel transportation contract.

14 When looking at their rail facilities offering and
15 based on my experience as a vice-president with CSXT, CSXT does
16 not advance capital expenditures up front, but rather discounts
17 the price per ton over numerous years. This guarantees that
18 the utility has to use CSXT to recover these capital costs and
19 captures the company and its customers in this higher cost
20 transportation alternative for many years. This is because,
21 although the CSXT bid provided aggressive initial rates, Tampa
22 Electric would be subject to these rates for only about three
23 years.

24 After considering the amount of time required
25 obtaining permits for the construction of the rail receiving

1 facilities and then constructing those facilities, almost two
2 years of the five-year contract would have transpired. Upon
3 termination of the initial contract, it is very likely that
4 CSXT would seek to increase its rates, as it has recently done
5 with other customers.

6 Tampa Electric would then have to face two equally
7 bad alternatives: One, walk away from rail completely and
8 strand its capital investments; or, two, sign up for another
9 five-year contract at higher rates to recoup capital
10 investments and other costs incurred to switch from water to
rail transportation. The CSXT proposal is just not a good deal
for Tampa Electric and its customers.

I believe the waterborne coal transportation
benchmark that was established by the Florida Public Service
15 Commission in 1988 has worked effectively since it was
16 established. There have been no significant changes in
17 circumstances since that time that would warrant altering or
18 eliminating the benchmark which has worked effectively for the
19 past 15 years. It has provided an effective ceiling for the
20 amount that can be charged by TECO Transport for waterborne
21 coal services.

22 This concludes my summary, and thank you.

23 MR. BEASLEY: We tender Mr. Murrell for questions.

24 CHAIRMAN BAEZ: Mr. Vandiver.

25 CROSS EXAMINATION

1 BY MR. VANDIVER

2 Q Good evening, Mr. Murrell.

3 A Good evening.

4 Q As you know, my name is Robert Vandiver, and I'm with
5 the Office of Public Counsel?

6 A Yes, sir.

7 Q Page 7 of your testimony, Lines 19 and 20, you
8 compare the movement here to that of Florida Progress or
9 Florida Power. Do you see the reference, sir?

10 A I do, yes, sir.

11 Q Would you agree that the RFP process for the two
12 companies on the various legs of the journey would be similar?

13 A Yes, I do.

14 Q Different tonnages and port features very alike in
15 the carrying of coal across the Gulf?

16 A That's correct. For that portion of what we bought
17 during my tenure at Electric Fuels?

18 Q Yes.

19 A Yes, sir.

20 Q Okay. And then on Page 11, Line 19, you indicate
21 that five weeks was an adequate amount of time for folks to
22 respond to the RFP, is that correct?

23 A That is correct.

24 Q Who is James Heller?

25 A James Heller is an expert in the area of coal

1 transportation and a personal friend of mine.

2 Q Very well. As in your deposition, Mr. Murrell, I
3 want to get you a copy of Mr. Heller's testimony filed February
4 11th, 2004, in Docket 031057, and ask that you accept, subject
5 to check, that this concerns the RFP for Florida Progress?

6 A Very well.

7 MR. VANDIVER: Mr. Poucher is going to hand that out.
8 I would like that this be given an exhibit number, please,
9 Mr. Chairman.

10 CHAIRMAN BAEZ: We will mark it as soon as I get it.

11 MR. VANDIVER: Absolutely, sir.

12 CHAIRMAN BAEZ: Show the exhibit titled, Heller
13 Eight-Week RFP as Exhibit 110.

14 (Exhibit 110 marked for identification.)

15 MR. VANDIVER: Thank you, sir.

16 BY MR. VANDIVER:

17 Q Mr. Murrell, I would like to start at the bottom of
18 Page 4, Line 21. Hopefully, we will get the pagination right
19 this time, that we didn't do in our deposition very well, and
20 ask that you read that question and answer on the next page
21 into the record, please, sir?

22 A "Question: What methodology did you follow in
23 determining what constitute reasonable procedures for
24 soliciting and awarding business for the waterborne route?

25 "Answer: As part of my ongoing work, I have

1 developed, evaluated, or analyzed the policies, procedures, and
2 RFPs used by other companies to solicit bids for coal
3 transportation services. For example, rail, transloading,
4 barge and ship. I have also discussed the processes for
5 soliciting and evaluating bids with various coal transportation
6 providers and electric generators, including studies conducted
7 in the coal transportation area for the Electric Power Research
8 Institute (EPRI). Based on this information and experience, I
9 have recommended processes for soliciting and evaluating bids
10 for WCTS four PEF."

11 Q Based on that, would you agree that Mr. Heller has
12 some expertise in the area of RFPs?

13 A I do.

14 Q Thank you, sir. If we could now go to the bottom of
15 Page 9, sir, and this time I think I got that reference right,
16 sir, and ask that you read that question and answer, sir.

17 A "How much time should be allowed from the time that
18 the RFPs are sent until the submission are due?

19 "Answer: Typically, the time to respond to an RFP
20 may range from two to eight weeks, depending upon the
21 complexity of the request and the prior familiarity of the
22 suppliers with the bid requirements. This bid request should
23 probably allow eight weeks for the cross-Gulf response, given
24 the magnitude and complexity of the requirement. Less time
25 should be required by those bidding on the terminal and barge

1 segments, because these bids requirements are less unique."

2 Q And, basically, you disagree with Mr. Heller, is that
3 correct, sir?

4 A I don't think there is anything inherently wrong with
5 what he says here. I'm saying that five weeks is completely
6 sufficient, and he says eight. I'm not going to disagree with
7 Jamie in particular, but I think that five, under the
8 circumstances, was completely adequate.

9 As an example, I got recently a bid solicitation
10 request from Southern Company Services in which I'm going to
11 provide a blue water services as well as coal. I was allowed
12 only 11 days to respond to that Southern Company bid for
13 Savannah Electric Power. From the time I got the bid by e-mail
14 until it was due was 11 days. I think that is too short, but
15 we were able to get it done. I think five weeks is completely
16 fine.

17 Q All right, sir. When did the Staggers Rail Act
18 become law?

19 A I believe it became law in 1981. It was passed in
20 1980, as I recall, as the Staggers Rail Act of 1980. I may be
21 wrong about that, but it is in that time frame.

22 Q All right, sir. And prior to the Staggers Rail Act,
23 did most traffic in the United States move under public tariff
24 rates?

25 A So far as I know, prior to the act, all traffic moved

1 under tariff.

2 Q Did the Staggers Rail Act provide for confidential
3 contract rates?

4 A Yes, sir, it did.

5 Q How does most coal move in the United States today?

6 A Most coal moves today under confidential contract
7 rates.

8 Q And everybody --

9 A You are talking about rail code?

10 Q Yes, sir.

11 A Yes, sir.

12 Q And do you have an opinion as to which rates would be
13 lower, the confidential contract rates or the public tariff
14 rates?

15 A As a general rule, confidential contract rates will
16 be lower than published tariff rates or scale rates.

Q And what is the benchmark based on, sir?

18 A I'm sorry, I apologize, I don't understand the
19 question.

20 Q The benchmark --

21 A The benchmark in Florida that is utilized here?

22 Q (Indicating yes.)

23 A That benchmark is from rates provided from municipal
24 coal-burning utilities, as I recall municipalities, that
25 respond to an inquiry, as I understand it, of what their rail

1 rates are. I think there are about four such rates gathered,
2 and the lowest two are used to establish the benchmark. That
3 is my memory of it.

4 Q Now, when you were at Florida Power, were the rail
5 rates there public?

6 A Florida Power Electric Fuels' rates?

7 Q Yes.

8 A No, sir.

9 Q And did you believe this was in the best interest of
10 your customers?

11 A I did.

12 Q Why was that?

13 A Well, I did not want the various coal providers
14 increasing their cost of coal for me on an FOB mine basis on
15 the basis that I might have a better rail rate to their
16 location than to their competitors. Also, I just felt it was
17 in our best interest to keep that kind of information
18 confidential.

19 Q And was that in a post-Staggers Act environment, sir?

20 A Yes, sir, it was.

21 MR. VANDIVER: That's all the questions I have.

22 Thank you.

23 THE WITNESS: You're quite welcome.

24 CHAIRMAN BAEZ: Ms. Kaufman.

25 MS. KAUFMAN: Thank you, Mr. Chairman. I have saved

1 all of my questions for Mr. Murrell.

2 CHAIRMAN BAEZ: You've been pacing yourself.

3 MS. KAUFMAN: I've tried.

4 CROSS EXAMINATION

5 BY MS. KAUFMAN:

6 Q Good evening, Mr. Murrell. I was just teasing

7 A Good evening.

8 Q I'm Vicki Kaufman, I'm here on behalf of the Florida
9 Industrial Power Users Group. You know that because we met at
10 your deposition, correct?

11 A That's correct.

12 Q Now, you have attached your CV as Document Number 1
13 to your testimony, correct?

14 A That's correct.

15 Q And am I right that at one time you were the
16 vice-president of coal operations at Electric Fuels
17 Corporation?

18 A That's correct.

19 Q And Electric Fuels is a subsidiary of Florida Power.
20 Now we know them as Florida Progress, correct?

21 A Right. I think even during my tenure it became a
22 sister company and was not always a subsidiary. When I first
23 started it was a subsidiary.

24 Q And now it is what we would call an affiliate or a
25 sister company?

1 A An affiliate of Florida Power Corporation and a
2 subsidiary of Florida Progress or Progress Energy, I guess it
3 is now.

4 Q And am I correct that during your tenure there you
5 reported to Mr. Pat Wells who was the president of EFC?

6 A That is correct.

7 Q Who testified, I guess, the last time we were all
8 here together?

9 A That's correct.

10 Q Okay. And you talk about your tenure at EFC
11 beginning, I think, at Page 7. Let me find the line number.
12 Page 7, Line 16, you talk about your personnel experience
13 there, correct?

14 A I do, yes.

15 Q And I guess you would agree with me that you think
16 that you and Mr. Wells did a good job for the ratepayers when
17 you were at EFC?

18 A I do. With the change in the market and some good
19 luck, I believe we lowered the delivered cost by about 38
20 percent, as I recall. It was a very good couple of years.

21 Q And I think you have already discussed with
22 Mr. Vandiver that the waterborne system that Tampa Electric
23 uses is similar to what Florida Progress uses, correct?

24 A Yes.

25 Q And when you and Mr. Wells were at EFC, would it be

1 your opinion that the ratepayers got reliable service, reliable
2 and cost-effective service in regard to waterborne
3 transportation?

4 A Yes, I would still maintain that as my position, yes.

5 Q Okay. Now, we have heard a lot of talk -- you have
6 been here through this whole hearing, haven't you?

7 A I have.

8 Q So you have heard all the testimony, and you know we
9 have heard a lot of talk about Tampa Electric's preference for
10 integrated waterborne carrier?

11 A Correct.

12 Q Now, when you were at EFC, the waterborne
13 transportation system was not integrated, is that correct? And
14 by that, I mean there were different carriers on different
15 segments of the coal's journey?

16 A That's correct.

17 Q And, in addition, Florida Progress did not take all
18 of its coal by water, did they?

19 A That's correct.

20 Q And they still don't today, do they?

21 A I have heard it today that -- I have heard a split
22 today, but I just don't know how Florida Progress handles it
23 business, so I believe you are correct.

24 Q And at least when you were there they had what we've,
25 I guess, shorthanded as intermodal competition?

1 A Right.

2 Q Would it be your opinion that this dual mode of
3 delivery helped Progress get lower rail rates?

4 A That is my opinion.

5 Q Now, if you turn to Page 9 of your testimony, sir,
6 beginning at Line 5, you talk about the fact that Tampa
7 Electric was under no obligation to issue an RFP, correct?

8 A Yes.

9 Q But we discussed this some in your deposition. You
10 would agree, wouldn't you, that since Tampa Electric decided to
11 go the RFP route that they had an obligation to issue an RFP
12 that was reasonable and would solicit a response from the
13 marketplace?

14 A I do.

15 Q And you also note on Page 9 at Line 9, that TECO can
16 enter into a contract for its requirements, quote, in any
17 manner it deems appropriate, close quote, correct?

18 A That is my reading of that order, yes.

19 Q You would agree that implicit in that is that the
20 contract must be a prudent one, wouldn't you?

21 A I have do, yes. I think it should be a prudent
22 contract. I agree with that.

23 Q Now, on Page 13 you talk some more about this
24 integration preference. This is at Line 20, and you say,
25 quote, it is logical to prefer integrated proposals, correct?

1 A That is exactly what I say, and I still believe it.

2 MS. KAUFMAN: I wanted to distribute a document,
3 Mr. Chairman. And this is the actual RFP, Mr. Chairman, if I
4 could have a number for this?

5 CHAIRMAN BAEZ: I'm sorry. This is the actual RFP?

6 MS. KAUFMAN: This is the RFP, the bid solicitation
7 that we have heard so much about.

8 CHAIRMAN BAEZ: Show the bid solicitation, WB-2004,
9 marked as Exhibit 111.

10 (Exhibit 111 marked for identification.)

11 BY MS. KAUFMAN:

12 Q Mr. Murrell, you have seen this document before, have
13 you not?

14 A Yes, I have.

15 Q And this is the bid solicitation that Tampa Electric
16 issued that has been the subject of this case, correct?

17 A That's correct.

18 Q Let me just ask you before I turn to the document, is
19 it your understanding that the Commission staff had a number of
20 concerns with this document?

21 A Yes, that is my understanding. Pardon me for my
22 throat. I believe I read some testimony in the docket from
23 which this proceeding devolved where there was some specific
24 comments made.

25 Q And you have reviewed Mr. Wells' testimony, have you

1 not?

2 A I have.

3 Q And do you recall that he has an exhibit attached
4 there that has already been admitted into evidence that is
5 essentially the staff's correspondence to Tampa Electric
6 expressing their concerns?

7 A I recall having seen that. I'm going to take your
8 word that that is where it is attached.

9 Q And you also recall, do you not, that Tampa Electric
10 responded to the staff and didn't make any of the changes that
11 the staff suggested, correct?

12 A That's my understanding.

13 Q All right. Let's take a look at Exhibit 111 now,
14 which is the RFP. And the very first page, first paragraph, we
15 see the integration preference. Do you see that? It is about
16 midway, and I will just read it. It says, "Tampa Electric
17 prefers proposals for integrated waterborne transportation
18 services. However, proposals for segmented services will be
19 considered." Do you see that?

20 A I sure do, yes.

21 Q Now, anywhere in this bid, and take a minute to look
22 at it if you need to, does Tampa Electric tell perspective
23 bidders how important or how much weight they are going to
24 place on this preference for integration?

25 A No, I don't believe there is any reference of any

1 kind of weighting system for that particular topic.

2 Q So would it be correct that the bidders wouldn't know
3 if that was something that Tampa Electric viewed as extremely
4 critical, or something that they just thought would be a nice
5 addition to someone's proposal?

6 A I think the only language that addresses it is this
7 language right here in the middle of this paragraph that you
8 just read, and I think that is the only information they would
9 have.

10 Q And just on the scoring, there is no information in
11 this package at all as to how anybody's bid is going to be
12 scored, is that correct?

13 A That's correct.

14 Q And the entity that did the scoring was Tampa
15 Electric, correct?

16 A Well, you know, let me back up on my last statement.
17 There is reference on Page 5 of 5 that just refers to an
18 overall evaluation process, but there is no delineation of
19 scoring. So, I'm sorry, I interrupted you, and I missed your
20 last question.

21 Q I just wanted you to confirm that the entity that
22 actually did the scoring here was Tampa Electric, correct?

23 A That is my understanding.

24 Q To your knowledge, is there any company in the United
25 States that could meet this integration preference other than

1 TECO Transport?

2 A If the question is, is there any single company,
3 there is no single company to my knowledge other than TECO
4 Transport. Any company would be capable of aligning with other
5 companies in the various market segments and providing a
6 consolidated response, and that would be, I think -- I would
7 consider that an integrated bid.

8 Q But there is no single company other than TECO
9 Transport that could do it?

10 A You are correct, as I understand it.

11 Q If you turn to Page 5 of your testimony at the
12 bottom, going over to 6, you talk about the fact that one
13 cannot ignore the reliability of TECO Transport's fleet. And
14 on Page 6, Lines 2 and 3, you talk about the nonprice value of
15 this transportation system, correct?

16 A That's correct.

17 Q Is that nonprice value something that you think TECO
18 would consider in evaluating the bids?

19 A I would expect anybody in their position to -- let me
20 start out with the correct way of answering it. Yes. The
21 answer to your question is, yes, I would expect any reasonable
22 group to include nonpecuniary values along with the pecuniary
23 issues.

24 Q And, again, a prospective bidder that was responding
25 to this RFP, they wouldn't have any idea what value TECO would

1 place on this, quote, nonprice item, correct?

2 A Right. Correct.

3 Q So this would be a subjective judgment that TECO
4 would make?

5 A Yes.

6 Q And in this case, TECO made that subjective judgment
7 in favor of its affiliated company, correct?

8 A I believe that Ms. Wehle is the best responder for
9 that, but I would think that that would have been included in
10 their evaluation and the decision made. But I would just have
11 to surmise that. I have not discussed that with her.

12 Q In your testimony, also, you talk about the right of
13 first refusal. We have heard a lot about that. On Page 14, I
14 believe you discussed that?

15 A Correct.

16 Q And that just means, if I'm understanding that, TECO
17 Transport was not required to submit a bid in response to the
18 bid solicitation, correct?

19 A That's correct.

20 Q They had, actually, I guess, Mr. Dibner's prices
21 presented to them, and they were permitted to accept or reject
22 those prices, correct?

23 A I believe I heard that in this room, but I wasn't
24 privy to that and that wasn't part of my assignment.

25 Q Would you agree that the right of first refusal

1 conveys an advantage to TECO Transport in competing for this
2 business?

3 A I would, yes. I think there is an inherent advantage
4 there. I agree with that.

5 Q I just have one more brief line of questioning for
6 you, Mr. Murrell. And that is, as I understand your testimony
7 and also you refer to it in your summary, you are concerned
8 that if Tampa Electric were to do business with CSX and accept
9 prices that they have bid, that some have said may be less than
10 the prices in the contract with the affiliate company, that
11 after the term of the contract CSX will jack up the prices, is
12 that correct?

13 A Yes, that is part of my concern. The concern is a
14 little broader than that. It also includes the fact that Tampa
15 Electric is relying upon a contract or an affiliate,
16 admittedly, but a contractor that has acquired a large amount
17 of assets in order to service their business. And I think they
18 service it quite well. I was always jealous of them where I
19 was over at Florida Power and Electric Fuels.

20 In the event that they were to feel that their
21 business was at risk, or if they, in fact, lost substantial
22 amounts of business to another carrier, I think one very
23 reasonable response, particularly in a hot blue water market
24 like we have today, is to sell assets, particularly put them
25 into service over in Asia right now, which is the hottest of

1 the markets I work in right now. So I would be quite concerned
2 about that if I was Tampa Electric.

3 At the same time, I would want to be doing something
4 with CSX railroad, if I possibly could. And I don't deny that.
5 If I possibly could, I would. I don't think that this deal
6 that was originally offered was the right one to take, but I
7 would be interested in trying to make something happen at the
8 end of the day with CSX. I'm completely in agreement with the
9 actions that Tampa Electric took in this instance. But at the
10 end of the day, it would be nice to have flexibility and some
11 alternatives.

12 Q And do you think that flexibility might be able to be
13 achieved by a dialogue and discussion with CSX in the context
14 of some sort of negotiations?

15 A I think so, yes, I do.

16 Q I'm sorry. And do you understand it to be the case
17 that that did not occur here?

18 A Well, I understand the facts to be just what you have
19 heard here in this room. I understand that. I believe that
20 there have been some changes in heart on part of the CSX guys,
21 certainly, since my day and all the numbers of times that I
22 have negotiated with CSX on behalf of clients, or been in the
23 background own behalf of clients that I have done work on in
24 dozens of cases, I never seen CSX do what they propose they
25 would do in this instance. And I think if Tampa Electric can

1 take advantage of that, then that's a great idea. And I hope
2 that CSX continues to hold on to those thoughts, because that
3 is great.

4 MS. KAUFMAN: Thank you, Mr. Murrell. That is all I
5 have.

6 THE WITNESS: Yes, ma'am.

7 CHAIRMAN BAEZ: Mr. Wright.

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

9 CROSS EXAMINATION

10 BY MR. WRIGHT:

11 Q Good evening, Mr. Murrell.

12 A Good evening.

13 Q I think that you and I are now are best friends of
14 everybody in the room.

15 A That remains to be seen, I guess.

16 Q We have the opportunity. I will go as fast as I can.

17 Just a moment ago in response to the last line of
18 questioning by Ms. Kaufman, you made the statement that you
19 have never seen CSX do what they proposed in this context.
20 What were you referring to specifically.

21 A I'm speaking specifically to the statement made by
22 Mr. White on the stand this morning, I believe it was this
23 morning, sometime today, that CSX was going to advance those
24 funds and put those funds, CSX funds at risk without requiring
25 sufficient backup contract provisions to make sure that they

1 get their money back. This is absolutely a one-off
2 opportunity. I have never heard that, particularly with these
3 kind of dollars.

4 Admittedly, I think the CSX numbers were too low.
5 But just to come up with that proposal was quite interesting.
6 The CSX proposal, I think their budget was quite low, and I
7 think their expectation of how quickly it could be done with
8 permitting delays and things like that was unrealistic. But
9 what I heard today was exciting, and I think that it bears
10 additional work.

11 Q So, we can probably save a bunch of questions
12 depending on how you answer this question. Would it be fair to
13 say that based on your previous answer, all of your criticism
14 about TECO capital at risk and all of that stuff in which you
15 criticized CSX for allegedly -- assertedly attempting to claw
16 back, and go back and get back the capital expenditures in your
17 direct testimony, you just basically recanted that, haven't
18 you?

19 A No, I don't agree with that.

20 Q Based on Mr. White's testimony this morning?

21 A I disagree with that. I think the devil is going to
22 be in the details, and we are going to have to see how this
23 works out. I really believe I know what CSX had in mind when
24 it submitted its proposals. But I think that what was said
25 here today, if it can be put into practice, would be an

1 exciting opportunity for any coal receiver.

2 Q You don't have any reason -- you don't have any basis
3 at all to believe that CSXT intended anything other than what
4 Mr. White testified to this morning, do you?

5 A I have all my -- the answer is, no, I disagree. I
6 have all of my experience as vice president for CSX, and all of
7 the times I have worked on the other side of the table from CSX
8 to make things happen for rail shippers. So I disagree with
9 your comment. I think I have lots of basis.

10 Q Did you see anything in the proposal, per se, that
11 would conflict with what Mr. White testified to this morning?

12 A The answer to your question is no.

13 Q In your summary, you testified about escalation. Do
14 you know exactly what the escalators are that apply in the
15 barge contract?

16 A I have seen the escalators on the barge contracts.

17 Q Do you know how they work?

18 A Sure, I know how they work. I have done a lot of
19 work on escalator drives.

20 Q You have done a lot of work on?

21 A Escalator drives, escalation provisions.

22 Q Do you know how the fuel escalation factors in the
23 barge contract works?

24 A I don't remember it word-for-word, but I was not
25 surprised by any aspect of what I heard about it.

1 Q Do you know how it compares to the fuel surcharge
2 that applies to CSX's rates?

3 A Yes. I believe it is going to be more favorable. I
4 believe it is going to drive the price up more slowly, and I
5 will be interested to see, when we get all the exhibits in, how
6 they compared one to the other. So I think it will be more
7 favorable for Tampa Electric and its ratepayers.

8 Q Did you do any analysis of the escalation factors in
9 the TECO Transport contract as compared to the CSX proposal?

10 A I ran some very, very, back-of-the-envelope numbers
11 just for myself, based on the percentage of the escalation
12 drive that I saw in the TECO Transport deal. And I think it is
13 going to be better for Tampa Electric on their water side than
14 on the rail side. We will have to wait and see how it comes
15 out when these exhibits are filed.

16 Q Will you agree that you are not aware of any rail
17 shipping contract where the customer, the shipper pays 100
18 percent of RCAF-U?

19 A That's correct. I agree with that. No company that
20 I've been familiar with has paid 100 percent of RCAF-U.

21 Q With regard to the benchmark, have you performed any
22 comparison of actual rail costs incurred by Tampa Electric
23 Company during the years that it carried coal by rail to Gannon
24 to the benchmark values for those years and to the total
25 waterborne cost, mine to power plant, that Tampa Electric was

1 incurring during those same years?

2 A No.

3 Q In your work in this case, you didn't look at any
4 rail origin coal or coal alternatives for Tampa Electric, did
5 you?

6 A I'm sorry?

7 Q You didn't look at any rail origin coal alternatives.
8 You just looked at the coals that TECO is already buying,
9 didn't you?

10 A No, I won't agree with that. Sure, I'm familiar with
11 all of the coal basins in the United States and all of those
12 served now by CSX. I did consider that. I didn't do a
13 specific rate analysis, but I am quite familiar with the
14 various coals, and I have some knowledge of what ash fusion
15 temperature requirements are imposed by most of Tampa
16 Electric's units. So, yeah, I looked a little bit at that.

17 Q I think we will come back to that. Isn't it true
18 that the Illinois basin coals accessible to either rail or
19 barge generally have satisfactory ash fusion temperatures for
20 TECO's units.

21 A As I understand it, yes.

22 Q Isn't it true that the Pittsburgh Seam 8 coals,
23 accessible largely by rail but to some extent by water, also
24 have satisfactory low ash fusion temperatures?

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

1 the eutectics there for those coals. I'm not familiar with the
2 Pitt 8 coals.

3 And I am not familiar that Pitt 8 has been burned
4 heavily in the Big Bend units. I believe it has gone to Polk.
5 So I think it is unknown at this point.

6 Q Well, you can check the transcript. I think there is
7 contrary evidence to what you just said in the transcript.

8 A Okay. I can easily stand corrected there.

9 Q I think you already stated this, but I just want to
10 make clear. Is it your understanding that Tampa Electric would
11 have no obligation beyond the initial term of the proposal
12 offered by CSXT?

13 A No, that is not my understanding. It certainly
14 wasn't my understanding when I reviewed the proposal by CSXT.
15 Based on what I heard from Mr. White today, I may be coming to
16 that conclusion, but, no, my understanding was completely
17 different. I thought Tampa Electric would face substantial
18 financial penalties if they entered into a contract with CSX.

19 Q Okay. I've got a question for you about demurrage.
20 Do you keep track of CSX's demurrage charges in Florida?

21 A No, sir, I do not.

22 Q Okay. So you don't know whether CSXT has charged a
23 demurrage charge in the state of Florida in the last year and a
24 half, do you?

25 A I do not.

1 Q In the summary of your testimony that you gave a
2 little while ago you said something about railroad companies,
3 perhaps you mentioned CSXT or perhaps you didn't, having
4 recently raised with regard to other customers. Was that a
5 reference to the Duke Energy proceeding at the STB?

6 A Yes, Duke Energy and Carolina Power and Light.

7 Q That really wasn't a bait and switch, was it?

8 A I going to say -- I'm going to agree with you, based
9 on what I think I know about that case, based on my review the
10 STB files.

11 Q You will agree, will you not, that those cases did
12 not involve a case where a railroad went in, where there was
13 waterborne transportation available, offered a favorable deal,
14 got part of the business, and then tried to raise the rates.
15 They weren't like that, were they?

16 A I think I agree with you, yes.

17 Q Do you know anything about -- do you know anything
18 about Seminole Electric Cooperative's coal transportation
19 modes?

20 A Currently? No, not currently.

21 Q Okay. Historically?

22 A I did work for them as a consultant years ago, and I
23 knew something about it at that time.

24 Q Isn't it true that Seminole used to receive all of
25 its coal largely by water with a final rail move?

1 A Yes, they did.

2 Q And now isn't it true that they get all of their coal
3 by rail?

4 A I don't know.

5 Q Okay.

6 A I mean, they always got it -- they always received it
7 at the plant by rail, but I don't know what the routing is. I
8 don't keep up with that.

9 Q Do you have an opinion as to whether dual mode
10 delivery, i.e., by barge and rail to Crystal River has helped
11 Florida Power and Progress Energy Florida over the years?

12 A I do.

13 Q And what is that opinion?

14 A I think it has helped.

15 Q In what way or ways?

16 A I think a water transportation alternative has driven
17 or has helped to drive rail rates down for Florida Progress.
18 It certainly did during my day.

19 Q Is the same true in the opposite direction, that rail
20 rates have been -- have enabled Florida Power or Progress
21 Energy to reduce its water transportation rates?

22 A I don't know that. I guess I would say I just don't
23 know. I know I used it once in a threat, in a conversation
24 with a contractor I had back in my Electric Fuels days, but I
25 don't know the answer to the question.

1 Q Okay. That was Flowers Barge, Flowers
2 Transportation, right?

3 A That's correct, Flowers Transportation.

4 Q Yeah. And was your effort there successful?

5 A You know, I don't remember. But I think so, because
6 we were -- we got almost all of our costs down during that
7 year. So I don't believe we left Flowers alone. But I think
8 it was largely on the basis of bidding that business. I would
9 have to get somebody else to reflect on that.

10 Q You don't contend that any CSX witness in this case
11 is advocating that Tampa Electric go to all rail delivery to
12 Big Bend, do you?

13 A I don't know. I would say that their bid
14 solicitation included that option, or seemed to include that
15 option. And what their thoughts are, I don't know. I'm sure
16 they would love the business.

17 Q Well --

18 A Assuming rail facilities were built.

19 Q You haven't heard a CSXT witness in this case testify
20 that they want to take all the business away from the barge
21 company, have you?

22 A I didn't hear anybody from the marketing department
23 come in and make a presentation. I heard the logistics guy
24 come here, Bob White. I don't think that anybody has appeared
25 from CSX who has got any marketing authority. I didn't see

1 anybody in this whole proceeding that has any authority.

2 Q Can I get a yes or no?

3 A I'm sorry. The answer is no. I haven't heard it,
4 but I don't think there has been a competent marketing official
5 that has been in this proceeding. I didn't hear anybody with
6 authority to commit the company come forward.

7 Q Okay. With regard to moisture pickup by coal that is
8 transported by water, you and I discussed that at your
9 deposition, and I believe you testified that there is an
10 increase in transportation costs due to -- a very modest
11 increase, you said, due to the increased weight. Do you recall
12 that?

13 A I do, yes.

14 Q Isn't it true that you didn't take any account of any
15 additional fuel costs occurred by a utility resulting from
16 additional moisture in the coal when that coal is subsequently
17 combusted in the boilers?

18 A That's correct. I think that is negligible. You're
19 right. The answer is I did not, and I don't believe you could
20 calculate it.

21 Q Are you an engineer?

22 A No, sir, I'm not. I am a lawyer and an economist, a
23 bad combination.

24 Q Oh, my goodness. Well, we have two things in common,
25 Mr. Murrell?

1 A Maybe it is too late for me.

2 Q Life is funny that way.

3 With regard to the rates that went into the
4 benchmark, do you know whether the rates that you looked at
5 included volume discounts provided by the railroad company?

6 A I do not.

7 MR. WRIGHT: I'm going to hand the witness a copy of
8 his deposition.

9 BY MR. WRIGHT:

10 Q I would like to ask you to look at Pages 51 and 52 of
11 your testimony, Mr. Murrell, and this is coming back to a
12 subject we touched on a little while ago. On Page 51 I believe
13 you testified that you did some analysis of CSXT rail costs
14 versus TECO transportation waterborne cost. Is that about
15 right?

16 A Yes.

17 Q I would like to ask you to look at Page 52. To
18 shortcut, I'll just ask you the question. Did you look at any
19 rail source alternative coal supplies in that analysis?

20 A In that analysis that we were talking about there,
21 no.

22 Q Okay. Isn't it also true that you did not examine
23 the possibility of Tampa Electric delivering Pitt 8 coal by
24 rail direct, did you?

25 A I did not, that's correct.

1 Q It is also true that you didn't look at Dotiki,
2 correct?

3 A I think that's correct.

4 Q It's also true that you didn't do any specific
5 evaluation of whether Pattiki would be cheaper delivered by
6 CSXT's rail bid than by the rates charged by TECO Transport,
7 isn't it?

8 A I think that's correct.

9 Q At Page 6 of your rebuttal testimony at the top --
10 I'll read you the sentence and save you hunting for it. You
11 make this statement: "The nonpriced value of this reliable and
12 efficient transportation system is significant, particularly
13 given the reliability concerns unique to Tampa Electric."

14 A I'm sorry, is there a question?

15 Q Well, I just wanted to make sure that we had --

16 A That is a correct reading.

17 Q Okay.

18 A And I see where you are.

19 Q And here comes the question.

20 A Okay.

21 Q Will you agree that Progress Energy with its Crystal
22 River plants being served by dual sources, i.e., rail and
23 barge, also receives significant nonprice value and reliability
24 benefits attributable to that intermodal transportation
25 service?

1 A Yes.

2 Q As a general proposition regarding the procurement of
3 coal and coal transportation service, do you believe that it is
4 prudent for a utility to evaluate all options in procuring such
5 services and commodities?

6 A I do.

7 Q Will you agree that there are potential benefits to
8 Tampa Electric Company of being able to source coal from more
9 mines, i.e., rail-served mines as well as water-served mines?

10 A I agree there are potential benefits.

11 Q Would you agree as a general matter that it is the
12 utility's duty to secure the lowest total delivered cost of its
13 fuels for the benefit of its ratepayers?

14 A Subject to -- the answer is yes, but subject to
15 reliability issues and being sure that you are going to keep
16 the fire lit, yes. But I think the short answer is to that
17 question is, yes, you are always trying to go for the right
18 expense, but that has got to include a reliability factor.

19 MR. WRIGHT: Thank you.

20 Just a moment, Mr. Chairman.

21 That's all I have. Thank you, Mr. Chairman. Thank
22 you, Mr. Murrell.

23 CHAIRMAN BAEZ: Mr. Twomey.

24 MR. TWOMEY: Mr. Chairman, I will be very brief.

25 CROSS EXAMINATION

1 BY MR. TWOMEY:

2 Q Good evening, sir.

3 A Good evening.

4 MR. TWOMEY: Mr. Chairman, I would like to -- I have
5 only got one short line of questions. I would like to have
6 handed out by Mr. Poucher a copy of the Commission's
7 comparative costs for a thousand kilowatt hours that we had
8 originally -- I handed out in my introduction. The court
9 reporter has been given a certified copy by the Chief, Bureau
10 of Records, and I would like to have that identified, sir.

11 CHAIRMAN BAEZ: Show it marked as Exhibit 112.

12 MR. TWOMEY: 112. Thank you, Mr. Chairman.

13 (Exhibit 112 marked for identification.)

14 BY MR. TWOMEY:

15 Q Mr. Murrell, you acknowledged to Ms. Kaufman, did you
16 not, that Progress Energy or Florida Power Corporation, when
17 you were there, had won bimodal rail water competition,
18 correct?

19 A Yes.

20 Q You acknowledged to her as well, did you not, that
21 when you were there it did not have a fully integrated
22 waterborne contractor, correct?

23 A Yes. Yes, Mr. Twomey, that's right. And as I
24 mentioned on my deposition, that was the source of a lot of
25 trouble for me, but that is correct.

1 Q Is that what you had said a moment ago that you were
2 envious of TECO for?

3 A Yes, included in that, but also our perception was
4 that TECO Transport was providing or Gulf Coast Transit, at the
5 time, was providing very low cost blue water bottoms, and I was
6 jealous of that. I thought their costs were lower than ours.

7 Q On the blue water bottoms?

8 A Particularly on the blue water side. That is
9 correct.

10 Q Were you envious, did your envy extend to the full
11 route, overall pricing, or just the blue water bottom, or do
12 you recall?

13 A Well, I think that we were being beaten in all
14 regards, but I know that the blue water is the one that I
15 thought was the biggest source. We didn't see the non -- we
16 didn't see the broken out segments, but we did get the feel
17 for -- particularly since we were in the market on a regular
18 basis, that we were getting beaten by Tampa Electric. And our
19 biggest source of discomfort was the blue water, the Gulf
20 portion.

21 Q Okay.

22 A I also thought that the transloading facility,
23 Electric Coal, did a very fine job for Tampa Electric, and I
24 was jealous of that.

25 Q Yes, sir. Now, I believe you told Mr. Wright that

1 you believed that the waterborne and rail bimodal competition
2 that you enjoyed at Florida Power Corporation benefitted
3 customers, or words to that effect, by providing pricing
4 competition in both directions, is that correct?

5 A Mostly against the rail, but I think I would say it
6 was mostly against the rail. I think it was -- we were a
7 little bit ambivalent about whether or not we get anything
8 against the blue water guys, but against the rail it worked
9 very well.

10 Q Okay. Now, what has been identified as Exhibit
11 Number 112, Mr. Murrell, do you have a copy of that?

12 A Is this what you just handed me?

13 Q Yes, sir.

14 A Yes, sir.

15 Q Okay. Now, this is a certified copy of a Commission
16 table or chart, whatever you want to call it, that is effective
17 by its title a comparison, comparing residential electric
18 service for a thousand kilowatt hours, effective April 15th,
19 2004, to December 31, 2004. And now, I want to ask you just
20 very briefly, if you look at the total monthly bill and compare
21 Progress Energy's in the second column of companies versus
22 Tampa Electric, would you agree with me that for whatever
23 reason Progress Energy enjoys a \$9.90 per month advantage?

24 A It certainly looks like that, yes.

25 Q Okay. Now, and if you look at the second line of the

1 entries, the fuel cost-recovery clause, you'll see, and these
2 are all, of course, nonconfidential numbers, that the totality
3 of fuel for Progress Energy is \$34.58. Do you see that?

4 A I do.

5 Q Whereas, the corresponding fuel cost-recovery number
6 for Tampa Electric is 39, which I have done the math, and if I
7 have done it correctly, it is a difference of \$4.81. Okay.

8 Now, would I be correct in assuming that that
9 difference of \$4.81 has to either be a result of savings TECO
10 enjoys in acquiring coal itself, coal transportation, or a
11 combination of the two?

12 A I don't have the competence to respond to that
13 question. My initially thought was that maybe it was high gas
14 prices, natural gas. But I'm not competent to respond to that
15 question.

16 Q Okay.

17 MR. TWOMEY: Mr. Chairman, I would like to approach
18 the witness and give him one page of testimony out of
19 Dr. Sansom's testimony, and if you want to follow along, it was
20 Page 23?

21 CHAIRMAN BAEZ: If you can just direct the rest of
22 us, Page 23?

23 MR. TWOMEY: Yes, sir.

24 BY MR. TWOMEY:

25 Q On Page 23, Mr. Murrell, starting at Line 13,

1 Dr. Sansom asked a question regarding his Exhibit RLS-6A, and I
2 want to caution you the numbers that are in yellow are
3 confidential. And he says in the testimony, my Exhibit RLS-6A
4 shows that even for barge accessible coal, such as coal from
5 the Dekoven Mine, TECO could have saved money in 2004 by
6 transporting such coal by rail. More significantly, however,
7 for least-cost rail origins in West Kentucky, TECO could have
8 saved at least, blank, per ton if they had moved coal under
9 CSXT's rail bid," and he goes on. Now, do you see that number?

10 A Yes, sir, I do.

Q Would you agree with me that there is -- I'm trying
to think how to say this -- that it is somewhat close to the
total fuel difference between TECO and Progress Energy?

A Just agree with you on the math?

15 Q Yes, sir.

16 A I agree with you on the math. I don't agree with
17 this statement by Dr. Sansom, but I agree with you on the math.

18 Q Do you think that similarity and the difference
19 between the manner in which your former employer's parent, or
20 the way your former employer transported coal utilizing a
21 bimodal competitive methodology, enjoying the competitive
22 advantages there and so forth, do you think -- and, whereas,
23 TECO does not, concededly, do you think the similarity of those
24 two numbers is purely coincidental.

25 A Completely, and also false. I don't believe any part

1 of this is -- I disagree with these statements in this portion
2 of his -- his testimony, I guess? His testimony. I just don't
3 agree with it.

4 CHAIRMAN BAEZ: Mr. Twomey, I have to caution you at
5 this point how closely you come to divulging the number. I
6 know that you are trying to be careful, but try to be a little
7 more careful.

8 MR. TWOMEY: Okay.

9 BY MR. TWOMEY:

10 Q Well, do you purport to have any -- again, on Exhibit
11 112, do you purport to have any understanding of what the
12 difference in the rates are for a thousand kilowatt hours
13 between Progress and TECO, and particularly the fuel numbers?

14 A I do not. As I mentioned to you, I thought -- my
15 initial thought was high gas prices, high natural gas over at
16 the, what used to be the Gannon Station.

17 MR. TWOMEY: Thank you. That's all I have.

18 CHAIRMAN BAEZ: Thank you, Mr. Twomey.

19 Ms. Rodan.

20 THE WITNESS: I have somebody's copy of Dr. Sansom's
21 testimony.

22 CROSS EXAMINATION

23 BY MS. RODAN

24 Q Good evening. I just have two short questions for
25 you. Please turn to Page 19 of your testimony, Lines 12

1 through 15. Here you state that companies without effective
2 water transportation alternatives have experienced dramatically
3 increased rail transportation costs, is that correct?

4 A That is correct.

5 Q Which of Florida's publicly owned utilities do you
6 believe have effective water transportation alternatives that
7 protect them from increased rail costs?

8 A Currently, I think that -- oh, publicly owned, so you
9 are looking for?

10 Q Publicly-owned?

11 A Okay. Investor-owned utilities. I think Gulf Power,
12 which I would include in the Southern Company Service System as
13 a publicly owned utility has effective water alternatives. I
14 think that Florida Power Corporation or whatever the correct
15 name is, I apologize for slipping back into my old genre,
16 whatever the Progress Energy group is referred to here, has an
17 effective water transportation. I think that there is
18 effective water transportation available for Tampa Electric
19 Company, but it doesn't have an effective way to receive coal
20 by rail.

21 Q Which of Florida's municipal utilities do you believe
22 have effective water transportation alternatives that protect
23 them from increased rail costs?

24 A I believe that Jacksonville Electric is demonstrating
25 the ability to receive coal effectively by water. Oddly

1 enough, Lakeland Electric has shown some real interest in
2 trying to take advantage of some water receipts. And I think
3 the jury is out on that, on how effective that will be at the
4 end of the day. But I think that their heart is in the right
5 place. And that is all I can think of off the top of my head
6 right now.

7 MS. RODAN: That is all the questions I have. Thank
8 you.

9 THE WITNESS: Thank you.

10 CHAIRMAN BAEZ: Thank you, Ms. Rodan.

11 Commissioners, any questions?

12 Mr. Beasley.

13 MR. BEASLEY: Very short redirect, sir.

14 REDIRECT EXAMINATION

15 BY MR. BEASLEY:

16 Q Mr. Murrell, Mr. Wright asked you some questions
17 regarding whether you had done any kind of comparison of the
18 adjustment factor escalations as between waterborne and rail.
19 Do you recall that?

20 A Yes

21 Q Will you turn to your Document Number 3, Page 1 of 1
22 in your exhibit?

23 COMMISSIONER BRADLEY: Which page are you on?

24 CHAIRMAN BAEZ: Mr. Beasley, can you repeat the page
25 cite, please?

1 MR. BEASLEY: Yes, sir. It is his exhibit. It's
2 Document Number 3, Page 1 of 1. It has got a Bates stamp 54 at
3 the bottom of it. It is the last page attached to his
4 testimony.

5 A Yes.

6 BY MR. BEASLEY:

7 Q Is this such a comparison?

8 A Yes.

9 Q Without disclosing any of the confidential
information, which is highlighted in yellow. I believe it is
on your copy, too, as well, right?

A Yes.

14 Q Could you tell us what this does, and without
verbalizing any of the confidential information?

15 A It is titled: The Adjustment Factor Comparison
16 Between Rail and Waterborne Transportation." And it just
17 simply reflects my assessment of the difference between the way
18 I would expect to see the escalator drives perform over a
19 five-year period, comparing CSXT's proposals as was contained
20 in their proposal, which is the way I would evaluate it. I
21 would evaluate CSXT's proposal based on the way they proposed
22 it. I don't know how else I could do it. I compared against
23 the documents -- I mean, the escalator drive that is contained
24 in the TECO Transport contract, and it comes out with that
25 differential.

1 Q Thank you. You were also asked some questions about
2 the chart that Mr. Twomey handed out that has been marked
3 Exhibit 112, and the difference between the fuel cost-recovery
4 component of the Progress Energy Florida prices for a thousand
5 kilowatt hours and the Tampa Electric Company prices. Do you
6 recall that?

7 A I do.

8 Q Does Progress Energy enjoy any efficiencies from
9 having generation capacity available from nuclear power?

10 A Yes. I believe it does. Crystal River Unit Number 3
11 is a nuclear unit.

12 Q Does Tampa Electric have a similar capacity?

13 A Not to my knowledge.

14 Q Would that provide any generating efficiency to
15 Progress Energy that Tampa Electric might not enjoy?

16 A It sure might.

17 Q Are there other factors that could influence the
18 relationship between these two numbers for fuel cost-recovery
19 as between Progress Energy and Tampa Electric Company, other
20 than the information referred to in Dr. Sansom's testimony,
which I believe you disagreed with and testified had no real
connection with this?

A Yes, I think I mentioned a couple of times a couple
of other factors that always leaped to my mind when I look at
25 this differential. But I would really have to know more to

1 really have a firm answer. But I think there are lots of
2 potential explanations.

3 MR. BEASLEY: Thank you. That's all we have.

4 MR. WRIGHT: Mr. Chairman, may I follow up on Mr.
5 Beasley's interrogation about Bate's 54.

6 CHAIRMAN BAEZ: There's that word again. Why? What
7 specifically did Mr. Beasley ask that was outside the cross?

8 MR. WRIGHT: Well, it wasn't that it was outside,
9 it's that it went beyond.

10 CHAIRMAN BAEZ: Okay. I'm sorry.

11 MR. WRIGHT: I asked about escalation study, and he
12 said he hadn't done one. And Mr. Beasley directed him to one
13 that he has, and I want to ask him two questions about it.

14 CHAIRMAN BAEZ: Say that again.

15 MR. WRIGHT: I asked him had he done an escalation
16 comparison, and I believe he said he had not. Mr. Beasley
17 reminded him that he had. And I want to ask him two questions
18 about that purported analysis.

19 CHAIRMAN BAEZ: Mr. Wright, hang on.

20 MR. WRIGHT: Yes, sir.

21 CHAIRMAN BAEZ: Did you know that this was appended
22 to his -- when he said no, did you know that this document
23 existed?

24 MR. WRIGHT: Honestly, Mr. Chairman, I did not.

25 CHAIRMAN BAEZ: You know what, I'm going to play

1 along with the theater of the absurd. Go ahead and ask your
2 two questions. Go ahead.

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

4 FURTHER CROSS EXAMINATION

5 BY MR. WRIGHT:

6 Q First, Mr. Murrell, is it true that this analysis
7 doesn't include any consideration of the fuel surcharges and
8 the respective contracts and proposals?

9 A Yes, I see that it does not. That is correct.

10 Q Thank you. Second, what is the source for the -- I
11 didn't say the whole thing. What is the source for the index
12 values that are highlighted under the TECO Transport column
13 there?

14 A It was an evaluation I was doing of the -- on the
15 indexes, on the --

16 Q The indexes themselves. My question is where did you
17 go to get those index values.

18 A I'm not going to say it, because part of this is
19 highlighted.

20 Q Yes.

21 A So let me direct you --

22 Q I tried to do the same thing.

23 A -- to what I can talk about. Adjustment used, colon,
24 go under the CSXT provision.

25 Q Yes.

1 A And then you look under the TECO Transport provision.

2 Q Correct.

3 A And the source of that information?

4 Q Yes, sir.

5 A The contract.

6 Q Where did you go to get the numeric value that

7 appears immediately below that that purports to be the numeric

8 value for the five-year growth that is calculated using those

9 indexes? That is what I want to know.

10 A Okay. I used historic data that was available and
11 straight-lined it, and then I had a telephone conversation with
12 Jamie Heller.

13 Q Where did you get -- I just want to know where you
14 got -- was there a data source like a Federal Reserve bulletin
15 or something? Where did you go to get the numeric value that's
16 the --

17 A Oh, yeah.

18 Q Where did you go to get it?

19 A Bureau of Labor Standards. On the numeric value for
20 the one in the right column, the TECO Transport column?

21 Q Yes, sir. That is my question.

22 A Bureau of Labor Standards, BLS data.

23 Q Okay.

24 A Publicly available, any library.

25 MR. WRIGHT: That's it. Thanks.

1 CHAIRMAN BAEZ: Are we all done?

2 MR. WRIGHT: Yes, sir. Thank you very much.

3 CHAIRMAN BAEZ: We have exhibits.

4 MR. BEASLEY: I would like to move the admission of
5 Exhibit 62.

6 CHAIRMAN BAEZ: Without objection, show Exhibit 62
7 admitted.

8 (Exhibit 62 was received into evidence.)

9 MR. TWOMEY: And 112, Mr. Chairman, please.

10 CHAIRMAN BAEZ: Mr. Twomey, I've got you down for
11 112. Without objection, show 112 admitted.

12 (Exhibit 112 was received into evidence.)

13 Ms. Kaufman, I have for 111. We are going to work
14 backwards.

15 MS. KAUFMAN: Yes, sir, 111.

16 MR. VANDIVER: 110.

17 MR. BEASLEY: I have an objection on 110, sir.

18 CHAIRMAN BAEZ: Then hold off. Without objection
19 show Exhibit 111 admitted.

20 (Exhibit 111 was received into evidence.)

21 CHAIRMAN BAEZ: Mr. Beasley, what is your objection?

22 MR. BEASLEY: This is testimony of a witness who did
23 not participate in this proceeding. We have not had an
24 opportunity to cross-examine him. But I don't think it
25 really -- it goes into areas other than what was inquired about

1 by Mr. Vandiver. And our witness vouched for the
2 qualifications of the witness and read everything that
3 Mr. Vandiver considered relevant into the record. So I don't
4 know that these irrelevant portions of this testimony should be
5 included in the record. So we would stipulate to what the
6 witness read into the record as being what it is.

7 CHAIRMAN BAEZ: Mr. Vandiver, is there --

8 MR. VANDIVER: There is no need to --

9 CHAIRMAN BAEZ: -- include anything other than what
10 was read into the record?

11 MR. VANDIVER: That's fine.

12 CHAIRMAN BAEZ: Okay. And now, I'm sorry, but I
13 guess we don't even have to admit 110, if we have already read
14 it into the record. So 110 is not admitted. I'm trying see if
15 there is any -- we have got everything admitted.

16 Mr. Keating, dates that we need to address?

17 MR. KEATING: The current order establishing
18 procedure has a brief due date of June 14th. Obviously, that
19 is not a date that we can reasonably expect the parties to
20 meet.

21 CHAIRMAN BAEZ: And why not?

22 MR. KEATING: You saw how the three days of hearing
23 went.

24 CHAIRMAN BAEZ: You know, I think it would make for
25 shorter briefs, don't you think? Briefer briefs, as it were.

1 Go on. I kid, and it's late.

2 Mr. Keating, you had dates for consideration?

3 MR. KEATING: What we have -- what staff has sketched
4 out is some tentative dates; a brief due date of July 12th, a
5 recommendation date of August 19th, going to the August 31st
6 agenda.

7 MR. BEASLEY: Mr. Chairman, if I might propose
8 something in connection with that schedule.

9 CHAIRMAN BAEZ: Mr. Beasley.

10 MR. BEASLEY: We think that given the factual
11 intensity and the differing opinions on the facts involved in
12 this, it would be beneficial for the Commission to have the
13 benefit of short reply briefs from the parties, and that could
14 be done on an expeditious basis after the receipt of the
15 initial briefs. It could be done simultaneously. It would
16 give you the benefit of having our ability to say what we
17 disagree with in their brief, and the intervenors would have
18 the same opportunity. And I think that would help flesh out
19 the differences and would give you the benefit of a full
20 discussion of it.

21 CHAIRMAN BAEZ: Mr. Beasley, if after three long and
22 arduous days, okay, we have not -- and I hope I'm speaking for
23 the rest of us, and if not somebody stop me -- but if we
24 haven't been able to figure out what the differences are, I
25 don't think a reply brief, even on an expedited basis, is going

1 to do the trick. So I'm not going to grant the request. I
2 think we have slid out the days over 30 days, right? We have
3 added --

4 MR. KEATING: For briefs?

5 CHAIRMAN BAEZ: We have added basically four weeks.
6 We slid that out.

7 MR. KEATING: Right.

8 CHAIRMAN BAEZ: I have one special request to deal
9 with. Although transcripts were due to be back on the 14th, we
10 are going to tack on one day for that. I think the remainder
11 of the transcript, if you can believe it, has run to over 300
12 pages. So we are going to tack on a day. They will be out
13 June 15th, I have been told.

14 Is that it, Mr. Keating?

15 MR. KEATING: I believe so.

16 CHAIRMAN BAEZ: Okay. I want to thank you all for
17 your efforts. This has been one for the books. I counted
18 roughly, I think over 50 percent of the exhibits that were
19 admitted into the record were confidential. I think that is
20 some kind of record for a three-day hearing, and certainly for
21 three issues. Thanks again.

22 One thing I do want to remind you, all right? Is
23 that the opportunity for the parties to get together and find
24 some kind of resolution for this has not run. You see the
25 recommendation dates of August 19th, and the end of the month.

1 I would urge you, to the extent that there are resolutions out
2 there, do not stop considering them with each other, with each
3 other. Okay. Let's not make this a one-man show, or a
4 one-person show.

5 Thanks again, and we are adjourned.

6 MR. KEATING: Mr. Chairman, I apologize. Staff --

7 CHAIRMAN BAEZ: Yes. Sorry. Thanks.

8 MR. KEATING: We may need a date for late-filed
9 exhibits. I was reminded we do have some late-filed exhibits
10 out there.

11 CHAIRMAN BAEZ: There are three by my count, and I am
12 wondering, we have had -- how are we doing on the first two? I
have exhibit -- we haven't made any progress. One that Ms.
Wehle was supposed to produce, updated rate adjustment.

MR. BEASLEY: I think that was filed today, sir.

CHAIRMAN BAEZ: Was it filed?

17 MR. BEASLEY: I believe so. If it wasn't it --

18 CHAIRMAN BAEZ: The dog didn't eat it, right? Okay.
19 Next I have 103, which is recalculations of RCAF-U. How much
20 time do you need do that, if they haven't been filed already?

21 MR. WRIGHT: Mr. Chairman, I do not know how much
22 time we need, but we would do it expeditiously, I would think.

23 CHAIRMAN BAEZ: Within a week.

24 MR. WRIGHT: A week, yes, sir. That is what I was
25 going to suggest.

1 CHAIRMAN BAEZ: And I think we have got 107, which is
2 a response to the TECO -- this should be available. It was a
3 response to a production of documents.

4 MR. WRIGHT: We should be able -- we can file that no
5 later than Monday, even assuming --

6 CHAIRMAN BAEZ: All right. Great. Those are all the
7 late-fileds that I'm showing. Am I missing any?

8 MR. KEATING: The only other one I can think of is
9 the composite exhibit to be provided with Mr. Hochstein's
10 deposition, and then various other items. I don't know if that
11 has been provided yet or not.

12 CHAIRMAN BAEZ: I'm sorry. I'm also showing update
13 of index values by Wehle that was requested by CSX, 85. That
14 was already filed?

15 MR. BEASLEY: That's correct.

16 CHAIRMAN BAEZ: Great. I'm not showing any other
17 ones.

18 MR. KEATING: That is all on my list.

19 CHAIRMAN BAEZ: Okay. One week or better. And now I
20 think we can adjourn. Thank you all.

 MR. BEASLEY: Thank you.

 MR. WRIGHT: Thank you.

 MR. VANDIVER: Thank you, Mr. Chairman.

 (The hearing concluded at 9:17 p.m.)

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF FLORIDA)

 :

COUNTY OF LEON)

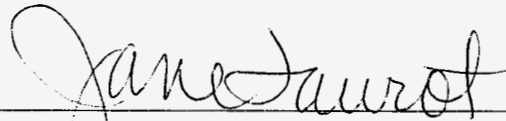
CERTIFICATE OF REPORTER

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 15th day of June, 2004.



JANE FAUROT, RPR
Chief, Office of Hearing Reporter Services
FPSC Division of Commission Clerk and
Administrative Services
(850) 413-6732