

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 031033-EI

In the Matter of

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



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PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 19

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

DATE: Tuesday, September 21, 2004

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

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1 PARTICIPATING:

2 RICK MELSON, GENERAL COUNSEL; COCHRAN KEATING,
3 ESQUIRE; TIM DEVLIN; BOB TRAPP; TODD BOHRMANN; BERNIE WINDHAM;
4 ROLAND FLOYD and ANDREW MAUREY, representing the Florida Public
5 Service Commission staff.

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P R O C E E D I N G S

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2 CHAIRMAN BAEZ: I guess we can, we can go ahead and
3 move on to Number 19.

4 Mr. Keating.

5 MR. KEATING: Commissioners, before we get into the
6 substance of staff's recommendation on this item, we have one
7 preliminary matter to address.

8 Staff filed its recommendation on August 26th to be
9 addressed at the September 7th agenda, which was eventually
10 canceled due to Hurricane Frances. Prior to that agenda, Tampa
11 Electric filed a motion to hold the proceeding in abeyance to
12 allow it time to discuss with the parties an offer of
13 settlement that accompanied the motion.

14 Tampa Electric's motion for abeyance is still on the
15 table and pending. In response to the motion, Public Counsel,
16 the Florida Industrial Power Users Group and nine residential
17 customers represented in this docket have filed a response in
18 opposition to Tampa Electric's motion declining the invitation
19 to further settlement discussions.

20 The remaining party, CSX, filed a response indicating
21 its willingness to participate in further discussions based on
22 the offer of settlement included in Tampa Electric's motion.

23 Now if you wish to hear from the parties on the
24 motion, they are present to give their thoughts on it. It's
25 your pleasure.

1 CHAIRMAN BAEZ: Thank you. Commissioners, what's
2 your pleasure?

3 COMMISSIONER DAVIDSON: Chairman, I actually will
4 move that we deny TECO's motion for abeyance and take up the
5 staff recommendation forthwith. I personally don't have a need
6 for oral argument on this issue. We've had a full, indeed a
7 lengthy hearing, the Commission has taken evidence, the
8 Commission has heard from the witnesses, we have a staff
9 recommendation on the table, and we're posthearing. As such, I
10 don't see a basis for, for consideration of this motion. Had
11 all the parties come to the PSC with, say, perhaps a joint
12 proposed settlement, we might be in a different posture, but
13 that's not the case. We have one party posthearing, post-staff
14 recommendation unilaterally seeking an abeyance. As such, I
15 move that we deny the motion and take up staff's
16 recommendation.

17 CHAIRMAN BAEZ: Commissioners, there's a motion. Is
18 there a second?

19 COMMISSIONER DEASON: Second.

20 CHAIRMAN BAEZ: Moved and seconded. All those in
21 favor, say aye.

22 (Unanimous affirmative vote.)

23 CHAIRMAN BAEZ: Okay. Now, Mr. Keating, I -- we're
24 on the posthearing rec, and I know that you -- I note here that
25 you have an oral modification to make; is that correct?

1 MR. KEATING: Mr. Chairman, I don't believe we have
2 an oral modification.

3 CHAIRMAN BAEZ: No? Perhaps I'm reading something
4 else.

5 MR. DEVLIN: We had some -- okay. I'm sorry, Mr.
6 Chairman. We did distribute a one-page or two-page document, I
7 don't have it in front of me, making some minor modifications,
8 not of substance, and they did not affect the staff
9 recommendations in any way. It's just minor grammatical errors
10 that we're trying to correct.

11 CHAIRMAN BAEZ: Very well. Commissioners, you, you
12 heard Mr. Devlin clarify as to what the modifications were.
13 If, if there's no objection, and maybe I'm out of procedure
14 here, but if we can -- if there aren't any objections, then we
15 can take up whatever recommendations we're considering as, as
16 modified in staff's document.

17 I'm sorry. Was someone speaking up?

18 COMMISSIONER DAVIDSON: I was, Chairman.

19 CHAIRMAN BAEZ: Oh, Commissioner Davidson.

20 COMMISSIONER DAVIDSON: Just a short question. On --
21 I've got the -- I have what's titled "Staff Corrections to
22 Staff Recommendations on Item 19, September 21st, 2004, Agenda
23 Conference," and it appears that at Pages 29 and 32 there are
24 several numerical changes. Page 29, paragraph, Line 2,
25 11,698,000 should be changed to 11,922,791. Similar changes on

1 Page 29 and Page 32. And I just -- if staff could just briefly
2 summarize the basis of those changes. And I note that the rest
3 there appear to all be typographicals.

4 MR. TRAPP: Yes, sir. The changes on Page 29, the
5 first change to 11,922,792 -- 91 was a calculational error
6 basically that staff corrected. It did not affect any number
7 that was used by staff in its recommendations in first
8 alternate one.

9 The second change again was a calculational error.
10 We were trying to summarize some of the adjustments that were
11 being made. The, the number shown on 29 was put in error. The
12 number that is actually reflected in the staff recommendation
13 is \$7,987,000. And then on Page 32, again, another
14 calculational error. This number changed to 657,720. Again,
15 that's the number that is reflected in the staff
16 recommendation, both in the summary and in the appendices.

17 COMMISSIONER DAVIDSON: Thank you. Thank you,
18 Chairman.

19 CHAIRMAN BAEZ: Very well. Commissioners, if you'll
20 indulge me, this -- we can probably go issue by issue and deal
21 with questions, if that's all right with, if that's all right
22 with you all, we can go issue by issue.

23 COMMISSIONER DAVIDSON: That makes sense.

24 CHAIRMAN BAEZ: Very well. Okay. Issue 1. And,
25 staff, if, if you guys, y'all can walk us through so that we

1 can have a basis to start our discussion, I'd appreciate it.

2 MR. TRAPP: If I could direct your attention just to
3 Page 10 of the recommendation. We've prepared a summary of
4 the, the issues and recommendations that may help with the flow
5 of things, if you'd like to use it.

6 CHAIRMAN BAEZ: Flow is good. Thank you.

7 Commissioners, questions?

8 COMMISSIONER DAVIDSON: No questions, and I can move
9 staff on Issue 1.

10 COMMISSIONER DEASON: Let me -- I'm sorry. Let me
11 ask a question at this point.

12 CHAIRMAN BAEZ: Commissioner Deason, go ahead. I'm
13 sorry.

14 COMMISSIONER DEASON: Staff, you've listed out a
15 number of deficiencies that you detected as a result of the
16 hearing in the, the bid process which was originally done. In
17 subsequent issues there is a recommendation to, for TECO, for
18 any subsequent contracts that there, that there be another bid
19 for, for that; not a rebid of this, but your issue addresses in
20 the future for another contract. You address those
21 deficiencies on a going-forward basis as to what the new RFP
22 should look like. Am I correct in that?

23 MR. BOHRMANN: That is correct.

24 COMMISSIONER DEASON: Now it's, it's your position
25 that if the new RFP addresses all of those deficiencies, that

1 it would be a good basis to determine what the market price for
2 these transportation services would be, or would it be open to
3 interpretation at that time? Or it would be a good foundation
4 anyway; is that correct?

5 MR. BOHRMANN: I believe it would be a good
6 foundation, a good starting point of what a fair and reasonable
7 RFP should look like.

8 COMMISSIONER DEASON: Okay.

9 MR. BOHRMANN: How they implement, how they evaluate
10 the responses to the RFP, you know, are not addressed here and
11 not contemplated in Issue 3. But assuming that they would
12 evaluate the responses fairly, that would, this would be a good
13 foundation for going forward.

14 COMMISSIONER DEASON: So I would take it from that
15 then that it's staff's belief that a properly structured RFP
16 and a fair and unbiased evaluation of that with opportunity for
17 full participation, that that is a good mechanism to determine
18 a market price for these services.

19 MR. BOHRMANN: Yes.

20 COMMISSIONER DEASON: Okay. And it's your position
21 that in the instant RFP that the deficiencies you identified
22 has rendered that, I won't say useless, but it is not a good
23 tool to ascertain the market price of these services.

24 MR. BOHRMANN: That is correct.

25 COMMISSIONER DEASON: Okay. Thank you.

1 CHAIRMAN BAEZ: Commissioner Bradley.

2 COMMISSIONER BRADLEY: If what staff -- and I'm
3 trying to follow Commissioner Deason's line of questioning. I
4 think I heard staff say, state that if the variables within
5 your recommendation as it relates to Issue 1 could be included
6 in the RFP, that we would be able to get a, in our opinion or
7 in staff's opinion, a truer picture as it relates to what the
8 cost of coal, waterborne coal transportation is. Is that what
9 I just heard?

10 MR. BOHRMANN: Yes. If these deficiencies were not
11 present, we would be able to have seen a more representative
12 sample of what the market price would be for coal waterborne
13 transportation.

14 COMMISSIONER DEASON: Mr. Chairman, can I follow up?

15 CHAIRMAN BAEZ: Yeah.

16 COMMISSIONER DEASON: Okay. I guess it leads me to
17 my next question, and that is this: If a properly structured
18 and properly administered RFP is a good mechanism, why is it
19 that staff's not recommending that there be a rebid?

20 MR. KEATING: Let me attempt to address that.
21 There's a section in the recommendation, a little bit unusual
22 that we've included it here, but at the beginning starting at
23 Page 4 it's a section on authority of the Commission.

24 A couple of the parties, CSX and the residential
25 customers, have proposed that the Commission require Tampa

1 Electric to rebid the contract. The problem that, that staff
2 sees with requiring a rebid is you bump up against two things.
3 One, you bump up against the fact that the current contract is
4 still in effect and that under existing law we believe that the
5 Commission cannot rescind the current contract. Because of
6 that we believe the --

7 COMMISSIONER BRADLEY: Excuse me. Okay. You believe
8 that we cannot rescind. I think that that's crucial.

9 MR. KEATING: That's correct. And none of the
10 parties are asserting that we can rescind the current contract.
11 CSX has suggested that we can require Tampa Electric to rebid
12 while the current contract remains in place. Staff's concern
13 with that is that, with that approach is that if we do that, we
14 have put Tampa Electric in the position of going out for bid
15 for services it doesn't need and we've required it to do that,
16 and we may be in a bad position on the tail end of that
17 situation where Tampa Electric comes in for cost recovery for
18 something that we've required them to do.

19 COMMISSIONER DEASON: Well, let me ask it this way
20 then. If we cannot require it, is it at the discretion of TECO
21 to rebid at some point before the termination of the existing
22 contract?

23 MR. KEATING: Tampa Electric could certainly rebid at
24 any time before the expiration of the current contract.

25 COMMISSIONER DEASON: All right. If they chose to do

1 so, how would this Commission react to that or how would -- how
2 do you recommend the Commission react to that?

3 MR. KEATING: I think it would depend on the
4 circumstances. If Tampa Electric rebid the contract
5 voluntarily or rebid for coal transportation services during
6 the term of its current contract, it would have to face the
7 consequences of whatever contractual problems it might have
8 with TECO Transport under its current contract. I don't, I
9 don't think that they could come in and, and ask us for
10 recovery of, essentially double recovery for the same services.

11 COMMISSIONER DEASON: If TECO were able to negotiate
12 an out of the existing contract with TECO Transport and they
13 were able to issue an RFP that met the requirements as
14 established by staff, would we be in a position to look at that
15 as a proper surrogate for the market rate on a going-forward
16 basis?

17 MR. KEATING: I may let technical staff address that.

18 COMMISSIONER DEASON: Okay.

19 MR. TRAPP: Commissioners, I, I think Issue 2 is
20 involved here. Issue 2 has to do with basically the current
21 contract period. There is an issue of prudence with respect to
22 the actions of the company for that period of time. Now if the
23 company does decide, does elect to rebid the contract to remedy
24 what we have identified as deficiencies with their initial RFP
25 process, again I agree with Mr. Cochran (sic.), it depends on

1 the circumstances. That may be a remedy; however, I still
2 think we need to struggle from a regulatory perspective with
3 the consequences of the company's actions starting in 2004.
4 And so I guess it depends on what you do in Issue 2 with
5 respect to a regulatory adjustment, if you would, for what we
6 believe were the prices that were available to TECO in our best
7 attempt to, to get a handle on what the market was at the
8 beginning of 2004 going forward. Because that's what they
9 should have or would have contracted for had the RFP process
10 been appropriately administered.

11 COMMISSIONER DEASON: Well, I don't disagree with
12 that, but let me tell you what the, the dilemma that I'm, I'm
13 faced with, and at some point the Commission is going to have
14 to address it.

15 The RFP process was deficient that resulted in the
16 contract that is currently in effect. We don't have confidence
17 that the rate established from that RFP is reflective of the
18 market and, therefore, fair to be based, to be included in
19 rates and passed on to customers. So we go through -- we've
20 had the evidentiary hearing, we've, we've heard from a number
21 of experts who have gone about the problem in different ways.
22 Staff has addressed the problem in different ways, thus the
23 number of alternative recommendations that we have. And I'm
24 not faulting you for that. I think that was probably necessary
25 given the complexity of the case and the number of different

1 ways of viewing it, trying to get our hands around what is the
2 best way to determine a market price given that the RFP was
3 deficient.

4 Given all of that, I appreciate staff's analysis, but
5 I'm not all that confident that your numbers are reflective of
6 the market price either. Now you've done a very thorough, I
7 believe unbiased, professional job in trying to do that, but
8 you've already stated that the best mechanism for doing that is
9 a properly structured, fairly administered RFP. We don't have
10 that, we don't have that luxury of that, so we're having to
11 address these issues through the various alternatives and
12 different viewpoints utilizing models and expert testimony.
13 And I'm not critical of that. I mean, we're just trying to use
14 the best tools that we have, given that our number one tool
15 that we would have used is not available to us.

16 The problem that I'm having is, is that using that
17 second best tool, whatever we determine that is, do we continue
18 to use that during the whole life of this next contract or do
19 we allow an opportunity to have the best tool utilized on a
20 going-forward basis at some point? And I understand
21 Mr. Keating's position is that we cannot require a rebid, we
22 cannot nullify the existing contract. Our jurisdiction is over
23 the approval of prudent costs to be allowed to be included in
24 rates, and that we can address this situation by disallowing
25 costs under the current contract, but we cannot void the

1 current contract. And I, I agree with that. I don't think --
2 I think that goes beyond our jurisdiction.

3 I guess what I'm trying to get at is how is the best
4 way for us to get to a point to where we're utilizing the best
5 tool out there to establish costs that are going to be borne by
6 ratepayers on a going-forward basis? Because I'm, I'm
7 uncomfortable, while the analysis is as complete and as good as
8 it can be, I'm not critical of it, using that for the next --
9 what is the term of this contract, four years?

10 MR. TRAPP: Five years.

11 COMMISSIONER DEASON: Five years -- using that for
12 five years when we know that there is a better tool out there
13 if it were made available to us. This is the dilemma.

14 MR. MELSON: Commissioner Deason.

15 COMMISSIONER DEASON: I'm open to whatever.

16 COMMISSIONER DAVIDSON: Well, I just had a, sort of a
17 response. I, I share some of Commissioner Deason's concerns.
18 It's -- and maybe I'm missing it. Issue 1, I thought, was just
19 limited to our assessment of the RFP but not necessarily what
20 do we do from there, which is, I think, Issue, Issue 2.

21 COMMISSIONER DEASON: And I probably have jumped the
22 gun a little bit and I apologize.

23 COMMISSIONER DAVIDSON: Well, and on that, but I
24 share the concerns because, I mean, we've got different
25 scenarios and I think we'll flesh that out when we, when we

1 talk. But I wanted to make sure that I wasn't sort of missing
2 the delineation of the issues based on the comments. If, if we
3 move staff on Issue 1, does that preclude us from addressing
4 all of the concerns that Commissioner Deason has raised?

5 MR. TRAPP: No, Commissioner Davidson, I don't
6 believe it does.

7 Staff used this case a little bit intertwined on
8 itself. Issue 1 and 2 really primarily focus on the current
9 contract period, and then Issue 3 kind of focuses on what do we
10 do on a going-forward basis. But in looking at Issue 3, you
11 kind of circle back into, you know, can the company rebid in
12 the current contract period? If they feel that staff has not
13 identified the market properly in our analysis, will, will a
14 new rebid accomplish that? I think that may be a reasonable
15 approach.

16 COMMISSIONER BRADLEY: Question.

17 CHAIRMAN BAEZ: Commissioner Bradley.

18 COMMISSIONER BRADLEY: Who has the -- I think I heard
19 staff state that we cannot require a rebid; is that correct?

20 MR. TRAPP: That's my understanding, yes, sir.

21 COMMISSIONER BRADLEY: Who holds the fate of that
22 possibility?

23 MR. TRAPP: That -- because this -- well, I'm not a
24 lawyer. Maybe I should let the attorney address it, but a
25 contract is a contract.

1 COMMISSIONER BRADLEY: Is that something that --

2 CHAIRMAN BAEZ: That's a fine legal determination,
3 Mr. Trapp. I commend you.

4 MR. TRAPP: Okay.

5 MR. KEATING: That usually, in my experience, doesn't
6 hold Mr. Trapp back.

7 CHAIRMAN BAEZ: I know.

8 MR. KEATING: He's going to get me later.

9 MR. TRAPP: Do you want me to respond?

10 CHAIRMAN BAEZ: He may get all of us; you never know.
11 Go ahead, Mr. Keating.

12 MR. KEATING: I think it ultimately lies in Tampa
13 Electric's hands. I mean, getting back, you know, this goes
14 back to the motion for abeyance and their offer of settlement.
15 Part of that offer was that, that they would rebid the current
16 contract. And I assume as part of that, in getting to that
17 point they may have reached some agreement or would have
18 otherwise have to face the consequences from, from its
19 affiliate TECO Transport that it has a current contract with.
20 But I think ultimately it's in the company's hands as to
21 whether they choose to rebid for the coal transportation
22 services during the current contract term.

23 COMMISSIONER BRADLEY: Since we don't have the
24 authority to deal with the rebid issue, if -- well, I'm trying
25 to figure out how to deal with the other issues and they'll

1 probably fall out just based upon what we do here.

2 CHAIRMAN BAEZ: I'm sure they will, Commissioner. If
3 --

4 COMMISSIONER DEASON: And I apologize. I probably
5 jumped the gun a little bit, Commissioner, beyond --

6 COMMISSIONER BRADLEY: No, you didn't. They are
7 relative.

8 CHAIRMAN BAEZ: Well, it's, it's kind of hard to
9 separate them out. I think staff has done about as good a job
10 as possible to try and do that for us and perhaps organize our
11 thinking, if, if, if that be the case.

12 COMMISSIONER DEASON: Mr. Chairman, I --

13 CHAIRMAN BAEZ: I tend to agree with Commissioner
14 Davidson though. I think Issue 1 is merely a determination
15 that the RFP process as it was was inadequate to, to serve as,
16 to serve as much of a guide in terms of reflecting a market, a
17 market price that resulted in the contract.

18 COMMISSIONER DEASON: During the questions that I had
19 I got the impression that Mr. Melson wanted to add something.
20 I'd like to give him that opportunity.

21 CHAIRMAN BAEZ: He did a lot of nodding, so I'm
22 assuming he --

23 MR. MELSON: Commissioner Deason, I was going to
24 point out that your question really probably goes to
25 Issue 3. And if you look on Page 13, sort of the third bullet

1 indicates that if Tampa Electric at its own election decided to
2 rebid, that the company could petition the Commission for
3 alternate regulatory treatment based on the results of the
4 rebid.

5 What I took that to mean is if there had been a
6 disallowance in Issue 2 and the company, as you say, was able
7 to negotiate an out clause and rebid, that the company would be
8 free to come in when that process was finished and say on a
9 going-forward basis from that point forward you ought not be
10 bound by the issue, any Issue 2 adjustment, but look to their
11 new RFP.

12 COMMISSIONER DEASON: And we would be free to
13 entertain that based upon the merits of that pleading at that
14 time.

15 MR. MELSON: Yes. I mean, your, your fuel clause is
16 an annual look at what was reasonable and prudent. And if the
17 company has taken some action that gives you better information
18 about what's reasonable and prudent, I think you'd be free to
19 consider that.

20 COMMISSIONER DEASON: I believe Commissioner Davidson
21 made a motion to move staff on Issue 1.

22 CHAIRMAN BAEZ: There is a motion on the table.

23 COMMISSIONER DEASON: I can second the motion.

24 CHAIRMAN BAEZ: There is a motion and a second on
25 Issue 1. Commissioners, all those in favor, say aye.

1 (Unanimous affirmative vote.)

2 CHAIRMAN BAEZ: Thank you, Commissioners. We are, we
3 are on Issue 2.

4 Commissioners, any questions, or would you prefer
5 staff to walk us through some of the --

6 COMMISSIONER DEASON: I would prefer staff to at
7 least make a brief introduction.

8 CHAIRMAN BAEZ: Mr. Devlin.

9 MR. DEVLIN: Well, I believe we have five
10 recommendations on Issue 2, so -- and I think it's indicative
11 of the dilemma that we're in. There's no one answer here.

12 And the primary recommendation, which is one I
13 support, is, and this may not be too popular to the parties,
14 but I feel we missed an important segment of information in
15 this case, and that is TECO Transport's market information,
16 which by settlement was off their table, if you will. So the
17 primary recommendation, that's the one I'm going to give, I'm
18 giving an overview to, and then other staff members will give
19 overviews to the other four recommendations, is to have another
20 day and look at what I would call third-party information at
21 TECO Transport. I think that may give us the best indication
22 of the market price, the transfer price between TECO Transport
23 and TECO Electric, mainly because there's a substantial market
24 there. TECO Transport's business is 60 percent, I believe,
25 nonaffiliate. So that's the primary recommendation is to have

1 another day for some more information, I think, would be the
2 most relevant to this case.

3 MR. TRAPP: In way of summary of the balance of the
4 recommendations, the other four -- first of all, let me say
5 that I put my name with Mr. Devlin. Not only is he my boss,
6 but I agree with him in that the best way to look at that would
7 be to look at TECO Transport's rates charged to other
8 companies.

9 But to summarize the other alternatives, staff felt a
10 need to explore the complete record and try to develop as many
11 ways of analyzing the market as we could. As a consequence, we
12 did three separate analyses involving numerical adjustments.
13 The first basically dealt with Tampa Electric Company's main
14 witness, Mr. Dibner, looking at his model and picking at it,
15 making some different assumptions primarily in the areas of
16 backhaul adjustment, preference trade adjustments. And then we
17 also looked at some adjustments with respect to their, their
18 cost of capital and capitalizations, and also the, the amount
19 of coal that should have been subject to the transport. That's
20 addressed in primary, I mean, excuse me, first alternate staff
21 recommendation. And should you have questions of that,
22 Mr. Bohrmann is the main analyst and prepared to answer those.

23 In second alternate staff what we attempted to do was
24 look at transactions that had occurred with other companies, in
25 other companies dealing with nonaffiliate transport

1 transactions, and there were basically three that were looked
2 at. And we tried to, to the best of our ability, bring them in
3 line or comparable to the TECO, TECO Transport transaction.
4 And in looking at those comparable transactions, Mr. Windham
5 has recommended certain adjustments and can explain those for
6 second alternate staff recommendation.

7 And then finally the third alternate staff
8 recommendation basically looks at the testimony that was
9 submitted in the record by CSX Railroad and their offer in the
10 RFP process to ship up to 2 million tons annually by rail, thus
11 establishing a bimodal type of transportation system for Tampa
12 Electric Company where a certain 2 million tons would be
13 transported by rail and the balance by ocean barge. That also
14 was analyzed by Mr. Windham, and he's prepared to answer
15 questions on that.

16 And then finally the fourth alternate staff is
17 supported by Mr. Jenkins, which basically says that no monetary
18 adjustment should be made for the current contract period
19 because the company was operating under the established
20 benchmark that was established by the Commission.

21 CHAIRMAN BAEZ: Commissioner Bradley.

22 COMMISSIONER BRADLEY: As it relates to the primary
23 staff recommendation, does that conflict with what we just,
24 with the previous discussion that we just had, that is staff
25 doing an audit of the books and records to determine the, the

1 true cost? And I'm just wondering because earlier we discussed
2 the fact that if we -- well, we just agreed that the contract
3 RFP was unfair or was improperly worded and that we should make
4 some adjustments and encourage TECO maybe to -- maybe as a
5 result TECO would give consideration to, to rebidding the
6 contract to determine the true-up as it relates to the costs.
7 Might we have a problem if we used the primary staff
8 recommendation as it relates to what was done previously?

9 MR. DEVLIN: I don't believe so, Commissioner
10 Bradley. The primary recommendation, similar to the four
11 alternatives, is to deal with the cost recovery issue in
12 absence of a fair RFP. And as Mr. Keating pointed out, this
13 legal opinion that we don't have the authority to mandate an
14 RFP. So in the absence of that, then what I was professing is
15 let's look at the third-party market of TECO Transport as a
16 reasonable proxy of market value. So it's really an absence of
17 a fair RFP. If we had a fair RFP, then that would make moot
18 the necessity of looking at TECO Transport's third-party
19 market, if you will.

20 MR. TRAPP: If I could just add to that, please. As
21 part of the RFP process that's being proposed by staff in Issue
22 3, it would entail basically Tampa Transport submitting a
23 separate bid and not having a right of first refusal. So it
24 puts them on a level playing field so that they can represent
25 what they believe they can transport for, submit a rate that is

1 then competitive with others.

2 COMMISSIONER BRADLEY: You said and not have a first
3 right of refusal?

4 MR. TRAPP: That's correct.

5 COMMISSIONER BRADLEY: Well, let me ask this
6 question. To eliminate the first right of refusal, might not
7 that preclude the possibility of, of them submitting a bid that
8 might be less than the bidders, which would, in my opinion,
9 save the ratepayers even more?

10 MR. TRAPP: And let me back up a little bit and
11 clarify my response. I perhaps misstated by saying not have a
12 right of first refusal. What the staff recommendation is, as I
13 understand it, is basically that Tampa Transport -- TECO
14 Transport be required to participate in the RFP process like
15 any other bidder so that, so that if there is some pencil
16 sharpening going on at the end of the contract period,
17 everybody gets an opportunity to do that.

18 COMMISSIONER BRADLEY: Okay. Okay. Thank you for
19 that clarification.

20 CHAIRMAN BAEZ: A follow-up question to something
21 Commissioner Bradley had asked. Mr. Devlin, on the notion that
22 looking at the third-party transport activity would give you
23 perhaps the best, the best representation of a market, of a
24 market price and the fact that that information wasn't
25 available to the staff or to the Commission as a result of the

1 hearing notwithstanding, if you had it today, would that
2 obviate any -- in your estimation would it obviate any
3 discussion or any necessity to leave the opportunity open for a
4 rebid, whether, and I'm not trying to get into the legalities
5 of us being able to, having authority to, to order that, but I
6 think in your opinion, if, if you, if you said, well, we've
7 looked at, we've looked at the third-party business or the non,
8 nonaffiliated business, this is a, this is a number that we
9 come up with based on that information, in your mind does that
10 obviate the need to say and whatever, whatever the result of
11 that is, you still have to leave the opportunity, you still
12 have to give the company the opportunity to, to rebid the
13 contract? I mean, are they, are they mutually exclusive? Can
14 they exist together?

15 MR. DEVLIN: I believe they can exist together. But
16 without seeing that information, it's hard -- I guess we're
17 talking in an academic sense. But assuming that that
18 information, that third-party information gives the Commission
19 comfort that we now have a solid market price that we can rely
20 upon, maybe that would obviate the need for an RFP. But it's
21 hard, hard to know unless we have that information to evaluate.

22 CHAIRMAN BAEZ: But it would always -- even, even if
23 that were true, that would always still remain the company's
24 decision, I guess, or the company's discretion to, to, to avail
25 themselves of that opportunity.

1 MR. DEVLIN: That's correct.

2 CHAIRMAN BAEZ: The, the, whatever the financial
3 impact would be of any of these alternatives, including the
4 primary, because there, there is a potential financial impact
5 if it turns out based on the nonaffiliated information that
6 there's a, there's a discrepancy between the value of the
7 contracts, and you're obviously by your suggestion taking the
8 lower of the two, if you will, that number would be for the
9 life, for the life of the contract, again subject to the
10 company's discretion of, of refileing an RFP or reissuing an
11 RFP, assuming they could get an out, as Commissioner Deason
12 suggested, assuming they could get an out from the current
13 contract if it was in their best interest to do so.

14 MR. DEVLIN: Yes, sir, I believe that's true.

15 CHAIRMAN BAEZ: Commissioner Deason also asked a
16 question or at least, I don't want to put words in his mouth,
17 but at least he suggested the fact that even though we don't
18 have the authority to, to require a rebid, we know -- nor do we
19 have the authority to rescind the existing contract by our
20 actions, if there were, if there were to be on the basis of
21 your recommendations an adjustment, if you will, for cost
22 recovery purposes, that would create, that would create a, a
23 consideration on the part of the company whether to go ahead
24 and rebid under their own, on their own discretion or not.

25 He, Commissioner Deason made note of the notion that

1 because we are outlining as part -- or because staff has
2 outlined as part of its recommendation not just the
3 deficiencies with the current, with the RFP as it was
4 administered and issued, but what, what staff might like to
5 see. I mean, sort of one example, the right of first refusal
6 issue saying, you know, leveling the playing field for all the,
7 for all the respondents, including the affiliate and others.
8 Commissioner Deason, I think, asked a question of would that
9 stand in your mind as a, as an adequate, assuming all those
10 conditions or all those suggestions were met, upon a refiling
11 or upon a resubmission of a resulting contract, I don't know if
12 you gave him an answer, would that stand for you as some
13 favorable measure that you did have a, a fair representation of
14 the market?

15 MR. DEVLIN: I believe so. There may be a varying
16 opinion on that question, but that's really what we were
17 striving for a year ago, quite frankly, so.

18 CHAIRMAN BAEZ: Fair enough. And I guess I need to
19 feel, I need to feel comfortable one way or another if it, if
20 it would have been your intent, if it is your intent that by
21 any decision that we make that adopts some kind of what the
22 Commission might like to see in, in, in a future RFP issued,
23 does that, does that in any way bind us beforehand? I mean,
24 are we saying as long as you check these boxes A, B, C and D
25 are present in the RFP, et cetera, et cetera, that that for us

1 is going to, that for us is going to signify out of hand that,
2 that it is a fair market rate and, therefore, there's no more,
3 there's no more discussion to be had?

4 MR. DEVLIN: That's a very good question, and Mr.
5 Trapp may want to chime in here. But I think we have embedded
6 in our recommendation is a review. I mean, we probably don't
7 have an exhaustive list of items we'd want to see in an RFP, so
8 there's probably a dynamic process where we would expect some
9 give and take. But --

10 MR. TRAPP: I, I truly would like to say yes to your
11 question, but I, I am, I am gnawed by one point and one point
12 only. I don't know what current market conditions are. I
13 don't know since the, since the contract was entered into in
14 January of 2004 what has changed, or is the market going up, is
15 the market going down, is it flat? And I'm troubled only
16 because if the company had done it right to begin with, we, we
17 think, based on our analysis, that we would have had cheaper
18 rates for Tampa's company, I mean, for customers.

19 So I am, I am willing to accept an RFP rebid under
20 the current contract period, I'm willing to give it a fair look
21 if the company wants to bring the results in to, to mitigate or
22 moderate our market analysis because it is not a perfect market
23 analysis. We did our best with the record we had and we looked
24 at it several different ways. But, but if it results in a
25 higher rate because market conditions have changed in the 18

1 months it takes to get through the rebid and we wind up with a
2 rate that is significantly higher than the current contract, I
3 don't think we've done any service to the ratepayers. That's
4 my only problem.

5 So I'm willing to look at it, but I guess I'm not
6 willing personally to recommend that we set any judgment on it
7 at this point in time. We'd certainly give the company the
8 opportunity to, to make another case though.

9 COMMISSIONER BRADLEY: Well --

10 CHAIRMAN BAEZ: Commissioner Bradley.

11 COMMISSIONER BRADLEY: -- what happens if it's, if
12 it's lower and not higher?

13 MR. TRAPP: We'll take the deal.

14 MR. DEVLIN: If I could -- I think what we're looking
15 for is not a good deal or a bad deal, we're looking for what's
16 fair.

17 COMMISSIONER BRADLEY: A true-up.

18 MR. DEVLIN: And if the RFP, if we are comforted with
19 the RFP process, I think what Mr. Trapp is alluding to, that
20 may be fine prospectively at some point. And we should accept
21 that, whether it's a good deal or, you know, whatever, we
22 should accept a fair RFP if we're comforted with the process on
23 a prospective basis. That just leaves the question of what
24 about 2004.

25 CHAIRMAN BAEZ: Well, and I guess 2004 we'll get to

1 as part of a different recommendation because I know that I
2 have questions, or at least trying to get a, get a better
3 handle on what the adjustments are that, that may be suggested.
4 But there are some things that you said there that trouble me.

5 First of all, Mr. Trapp, I don't need a yes -- I'm
6 just as comfortable with you giving me a yes answer as I am
7 with, with a no answer. I'm just trying to ascertain what the,
8 what the future intent might be. And I do recognize the, the
9 need to have at least some open-ended ability to, to deal with
10 market forces or, or to deal with things that haven't been -- I
11 mean, obviously, staff's suggestions, I would never agree that
12 would be an exhaustive list, but certainly good guidance for
13 the future in terms of what, how something starts looking
14 fairer doesn't run into these Issue 1 problems. I'll accept
15 that.

16 At the same time, it's a little troubling to say if
17 we all agree that by our actions and by any adjustments we may
18 put the company in, in a, in, in a position to revisit the, the
19 transport contract and we're providing for that, and yet coming
20 back and saying, but if it doesn't come back lower, we're not
21 going to, you know, we're not going to consider it. So if you
22 can tell me what some of the, and I'm not trying to pin you
23 down, but what some of the conditions might be where you would
24 say -- where we wouldn't get into the, the argument over, ah,
25 but if you had done it 12 months before. Because in essence we

1 have created or we have, we have facilitated the creation of
2 this, of this situation at a certain point. I don't want --
3 I'm not ready to take responsibility for, have this Commission
4 take responsibility for anything. I firmly believe it's the
5 company's responsibility at the end of the day. But somehow
6 our decisions or the fallout of our decisions may bring this
7 back before us. And what would you contemplate might be a
8 situation where you could say, well, it was a, it is a higher
9 value contract, but that's okay?

10 MR. TRAPP: Well, again, I think the RFP proposal
11 that we propose in Issue 3 on a going-forward basis, once we've
12 cleared this contract period, is, is what staff thinks would be
13 a suitable means of testing the market to determine an
14 appropriate market proxy or benchmark price at that
15 going-forward basis.

16 Again, I'm troubled with the current contract period,
17 and we have offered monetary adjustments in Issue 2. Certainly
18 I would think at a minimum the Commission would want to select
19 one of those and apply it for the period that it takes to get
20 to a new contract. From that point forward whether or not you
21 want to cap it at, you know, the adjusted level or the current
22 contract level, I just don't know. I think it's -- you
23 probably have to be there to see it and how much money we're
24 talking about. I'm not sure I can give you any more firm
25 guidance than that.

1 CHAIRMAN BAEZ: Okay.

2 COMMISSIONER BRADLEY: Mr. Chairman.

3 CHAIRMAN BAEZ: Commissioner Bradley.

4 COMMISSIONER BRADLEY: Yes. Let me ask this
5 question. Staff, how long have you all been working on this
6 item?

7 MR. KEATING: This really goes back to the 2002 fuel
8 cost recovery proceeding when staff first raised an issue
9 concerning whether the benchmark that we've used to determine
10 the reasonableness of these costs was still a useful tool for
11 the Commission.

12 COMMISSIONER DEASON: It was an issue raised by our
13 staff; correct? The staff of the Commission raised that issue?

14 MR. KEATING: That's correct. I believe it was
15 roughly summer 2002, during that fuel proceeding.

16 COMMISSIONER DEASON: And it was basically as to
17 whether the existing benchmark was a good -- continued -- was a
18 good benchmark to continue to use in the future.

19 MR. KEATING: Yes.

20 COMMISSIONER BRADLEY: And did you all in good faith
21 try to negotiate a number with TECO?

22 MR. DEVLIN: Commissioner Bradley, yes, I guess the
23 word "negotiate" is a fair word. Last summer we had meetings
24 with TECO where we, we tried to express what at a staff level
25 we felt would be a reasonable RFP.

1 COMMISSIONER BRADLEY: What, what was the figure that
2 you all at that point thought was reasonable? Is it the same
3 as what we have before us today?

4 MR. DEVLIN: No, sir, I don't think we were talking
5 about figures at that point or adjustments. We were talking
6 about an RFP process that we thought would work to lead us to a
7 figure.

8 COMMISSIONER BRADLEY: Okay. Okay.

9 MR. DEVLIN: And then I believe, and somebody can
10 correct me if I'm wrong, after that, and that was, again, I
11 think summer 2003, it looked like we weren't going to have an
12 agreement, if you will, on an RFP, and staff filed testimony in
13 the fuel docket last fall.

14 MR. KEATING: I believe there may be one blank I
15 could fill in there. After the RFP was completed and prior to
16 the contract being signed we did meet with the company and the
17 parties in the fuel cost recovery proceeding to, to throw out a
18 number for discussion. Now I don't know if it would be
19 appropriate for me to reveal that because that was in the
20 nature of settlement discussions.

21 COMMISSIONER BRADLEY: Okay. If it's, if it's not
22 appropriate, then by all means do not reveal it.

23 In view of the discussion that just transpired
24 between the Chairman and staff, let me ask this question. If
25 the contract is rebid, if a rebid process does occur, I'll put

1 it that way, and the number comes in -- say we take one of the
2 alternatives and a figure comes back that's less than the
3 alternative that, that we may decide to take, will there be an
4 adjustment for that figure?

5 MR. DEVLIN: I guess the company could petition to
6 make the adjustment. I think -- I believe that we still would
7 have to deal with the intervening period, 2004, what's
8 appropriate for that period of time. I don't know if I'm
9 answering the question. But if an RFP comes in and it's
10 acceptable to the Commission, whatever number comes out of that
11 RFP process in my mind would be reasonable for that point
12 forward. It just doesn't answer what do we do about this year
13 and maybe the first part of next year?

14 CHAIRMAN BAEZ: Commissioner Davidson.

15 COMMISSIONER DAVIDSON: A couple of comments and
16 questions. Just there's a lot here to grapple with. My
17 problem with that suggestion, Mr. Devlin, is we've got record
18 evidence that suggests that had TECO gone through a
19 commercially reasonable and competitive RFP process, the
20 number, what constitutes a reasonable cost would be
21 substantially lower than what the RFP would suggest, and based
22 on staff's analyses that number ranges between \$13.8 million
23 and \$20.3 million annually.

24 And I'll tell you as an aside, this, this amount
25 coupled with what are some of the highest rates in the state

1 for an IOU cause me grave concern, but that's for, for another
2 day.

3 On this issue we've got evidence and staff analyses
4 that show reasonable costs should be \$13.8 million to
5 \$20.3 million lower. I agree with -- I think Commissioner
6 Deason got at this, and I apologize if I'm mischaracterizing or
7 putting words in his mouth, that a reasonable and competitive
8 RFP process is perhaps sort of the best way to get to the
9 actual market price. We haven't had that yet.

10 For me, a future RFP at some point, let's say we
11 didn't have 2004 to deal with, a future RFP would be acceptable
12 in general, but it wouldn't be acceptable to me if the number
13 comes in even higher than where we should have been had we done
14 this process correctly. Because we have evidence now and
15 staff's analyses again that suggests the number should be
16 lower. So go through a perfect open process, if market
17 conditions have changed, the ratepayers shouldn't have to pay
18 the price of the mistake of not doing it right in the first
19 instance.

20 So somehow in my view the, an adjusted RFP -- and I
21 don't know what, what the level of adjustments are. I mean,
22 again, staff suggests \$13.8 million in its first alternate all
23 the way down to \$20.3 million in the third alternate. Somehow
24 a properly adjusted RFP has got to serve as the cap. Whatever
25 that exists, if TECO then goes through another RFP, albeit

1 proper and open and no onerous right of first refusal and sort
2 of addressing all the staff conditions, if that number comes in
3 higher, for me that won't be acceptable. So if you can hold on
4 to that thought and perhaps respond, I have a couple of, of
5 specific questions.

6 On the primary recommendation -- as I recall, no
7 competitive rate based on the rates charged by TECO Transport
8 to nonaffiliated companies sort of came forward, sort of jumped
9 out at us in the hearing. Am I missing something? I mean, was
10 there clear evidence of a competitive rate? And if, if so,
11 sort of where's the specific analyses under the primary
12 recommendation that we see in some of the alternates?

13 MR. TRAPP: If I understand your question, we
14 received no information in, in, in the docket about TECO
15 Transport's rates with other nonaffiliated companies. There
16 was one point that was used in Mr. Windham's analysis of a TECO
17 Transport trade with JEA, with JEA that went into his analysis,
18 but that was just one trading point. The company did not wish
19 to give us information or have, let us have access to the
20 information of TECO Transport in the record, so there was no
21 analysis done other than that one point that we had from JEA.

22 COMMISSIONER DAVIDSON: So as we sit here today, is
23 it accurate to state that we don't have an evidentiary basis in
24 the record to factually support the primary recommendation?

25 MR. TRAPP: No. It would require reopening the

1 record and going forward.

2 COMMISSIONER DAVIDSON: And let me jump down to the
3 fourth alternate staff recommendation that would conclude based
4 on the use of, of the proxy.

5 Is it accurate to state that that alternate is fourth
6 in terms of staff's assessment or vote of confidence in the
7 recommendation? Meaning -- let me ask you this. Is there any,
8 is there anyone here who --

9 MR. TRAPP: It depends on which staff you ask.

10 COMMISSIONER DAVIDSON: Well, is there, is it ranked?
11 I mean, is it fourth in order of significance? The reason I
12 ask that is I'm sort of, given the context of this case and all
13 the evidence that has come out, other than sort of a policy
14 decision by the Commission that we are going to just defer to
15 the proxy because it was the proxy, I'm not aware of any
16 factual basis that would say the costs are reasonable.

17 MR. TRAPP: I think the arguments put forth by
18 Mr. Jenkins in alternate four are rational, reasonable
19 arguments and are certainly supported by the record. I, I, I
20 hesitate to really rank any of the recommendations other than
21 the names that we've assigned to them to present.

22 COMMISSIONER DAVIDSON: Fair enough. Mr. Keating
23 will do that. No.

24 Specifically now on -- I would like to compare the
25 first and second alternate staff recommendations. On the

1 first factor, river barge transportation, the first alternate
2 would be adjusted to reflect backhaul opportunities that occur
3 in a competitive market. And on the second alternate, the
4 market price estimate would be reduced by a dollar per ton to
5 be consistent with the nonaffiliate market rates paid by
6 others.

7 The strength of the adjustment in the first alternate
8 is that it really relies upon the market. The strength of the
9 river barge transportation in the second alternate is that it
10 reflects the notion of regulatory parity across the IOU
11 industry. A couple of questions on that.

12 Is there a way that staff in a true-up proceeding or
13 some other -- some vehicle could actually reflect the backhaul
14 opportunities that occur in a competitive market? Could that
15 actually be measured so that that number could be sort of based
16 on the market? And related, the nonaffiliate market rates paid
17 by Gulf, Progress Energy, and a nonaffiliated shipper of Tampa
18 Electric, are those fairly set such that if on that factor we
19 went with the second alternate, there's sort of a factual,
20 reasonable basis for doing that?

21 MR. TRAPP: Again, Commissioner, the staff working
22 with the record we had tried to build a proxy model, if you
23 would, for competition. In terms of the backhaul opportunities
24 that were used in the first alternative, they were based on
25 testimony that Mr. Todd is going to -- Todd Bohrmann is going

1 to explain to you.

2 MR. BOHRMANN: Tampa Electric did receive one bid for
3 inland river barge service, and their witness, Mr. Dibner,
4 rejected that bid as not being bona fide for reasons he
5 outlined in his testimony. In addition, we looked at the
6 record and found that some backhaul does occur on the river.
7 Witness Dibner estimated it may be as much as 26 percent
8 backhaul exists on the river. First alternate staff chose to
9 accept the bid that was received for inland river barge service
10 as a proxy for the rates that would have been agreed to if
11 river backhaul was taken into account.

12 COMMISSIONER DAVIDSON: In staff's opinion, on the
13 river barge transportation factor, which of -- just on that
14 factor, which of the treatments of that factor would provide
15 the greatest amount of regulatory certainty? Would the river
16 barge transportation factor addressed in the second alternative
17 provide some clarity up front on the issue, or do you think
18 that that clarity could also be provided going with the
19 first alternate on river barge transportation?

20 MR. BOHRMANN: The rates that first and second
21 alternate staff have recommended for inland river barge service
22 are relatively close in number.

23 COMMISSIONER DAVIDSON: The second alternate has an
24 actual reduction of a dollar per ton. How does that compare
25 with what staff is recommending in the first alternate which

1 doesn't in the summary set forth a specific number?

2 MR. BOHRMANN: Thirty-four cents per ton.

3 COMMISSIONER DAVIDSON: Reduction?

4 MR. BOHRMANN: Reduction.

5 COMMISSIONER DAVIDSON: So alternate one, 34 cents a
6 ton reduction; alternate two, a dollar per ton reduction.

7 MR. BOHRMANN: That is correct.

8 COMMISSIONER DAVIDSON: And at the risk of asking you
9 to be repetitive, what's sort of the basis for the difference
10 in those amounts? How should we sitting here look at that
11 other than to say, well, one number is lower, one number is
12 higher? If you had to say, and I'll stop after this, which of
13 those numbers has greater record support?

14 MR. BOHRMANN: I would believe that the bid that was
15 presented as a part of the RFP process is very clearly, you
16 know, prominent in Witness Dibner's exhibit, and we took those
17 numbers as a point that exists in the marketplace. The second
18 alternate staff took three different transactions that exists
19 out in the marketplace and evaluated those bids to the point
20 where they recommend a dollar per ton adjustment. Beyond that,
21 I would refer any question -- Mr. Windham can respond further.

22 COMMISSIONER DAVIDSON: On that -- for whoever is the
23 appropriate person to respond, that dollar per ton reduction in
24 the second alternate to reflect the nonaffiliate market rates
25 paid by Gulf, Progress, and a nonaffiliated shipper for Tampa,

1 that dollar reduction, does that reflect -- if the dollar
2 reduction was made, would that reflect sort of actual market
3 rates paid by these other entities?

4 MR. WINDHAM: These other numbers that are in the
5 record are for real shipping that is being done under a
6 contract with another shipper with some party. And so in that
7 sense, it does reflect what happened through independent
8 negotiations with other parties between a shipper and
9 utilities.

10 COMMISSIONER DAVIDSON: Do we have any idea as to how
11 the volumes shipped under these other contracts compare to the
12 proposed volumes to be shipped by TECO? The thought being, if
13 TECO was seeking to ship the same or significantly higher
14 volumes, it might be reasonable to assume they could negotiate
15 a comparable rate, whereas if they were shipping perhaps
16 smaller volumes, perhaps the rate would be higher, or maybe
17 it's the opposite. What conclusions can be drawn about the
18 volumes of shipment amongst these different companies?

19 MR. WINDHAM: The shipping that was going on that was
20 compared here actually was for some pretty big contracts
21 overall. But when I looked at what was in the record was
22 for -- that was comparable was I looked at a specific upriver
23 dock. For example, Gulf Power, I looked at the Cook terminal
24 in Illinois because both Tampa Electric and Gulf Power ship
25 from that terminal, and so I did a comparison between Gulf

1 Power and TECO because they both ship from that terminal to New
2 Orleans. And so it was not for all of Gulf's shipping. It was
3 for a portion of Gulf's shipping that was comparable, in a
4 sense, because it went from one point -- same point to same
5 point. That was similar for the others. The other two I
6 looked at were from a particular upriver dock, comparing it to
7 shipping from another upriver dock for the other company that
8 was comparable. And so it wasn't for the total volume, but
9 each one was looking at a portion of a bigger contract that was
10 in some sense comparable between the two utilities.

11 COMMISSIONER DAVIDSON: Moving on to the second of
12 the three factors addressed in the first and second alternates,
13 terminal service. The first alternate would make no
14 adjustment; the second alternate makes adjustments. Can staff
15 summarize the reasoning for the adjustment and -- no adjustment
16 in the first alternate and the adjustment in the second
17 alternate pointing to record evidence, wherever possible, or
18 the existence or lack thereof of evidence in the record?

19 MR. BOHRMANN: In the first alternate staff looked at
20 the bid that was presented to Tampa Electric as a result of its
21 RFP, and that response was a bid that Witness Dibner accepted
22 as bona fide and in the absence of the right of first refusal
23 enjoyed by TECO Transport.

24 COMMISSIONER DAVIDSON: I'm sorry to interrupt. Was
25 the bid you're talking about on that -- relating to the second

1 factor affiliated party bid or nonaffiliated?

2 MR. BOHRMANN: The respondent is not affiliated with
3 TECO Transport. And first alternate staff accepted that one
4 market bid as a representative price for terminal service.

5 COMMISSIONER DAVIDSON: So is it accurate to state on
6 the first alternate that making no adjustment and sort of based
7 on the evidence and the input of nonaffiliated respondent, that
8 the no adjustment is commercially reasonable?

9 MR. BOHRMANN: That is correct.

10 COMMISSIONER DAVIDSON: Now, I also take it that
11 staff would maintain that the adjustments to terminal service
12 in the second alternate are also commercially reasonable, and
13 again, the task for us will be, okay, we've got two options
14 that staff maintains are both commercially reasonable, and we
15 will have to decide between them. So if you can -- if somebody
16 can address the terminal service in the second alternate.

17 MR. WINDHAM: Right. Basically the record
18 demonstrated that the amount of storage that was required in
19 the RFP was higher than usual for a lot of other utilities, and
20 some of the other witnesses basically addressed that issue of
21 the high storage amount that was required. The amount of
22 storage that was actually required by -- in the RFP was more
23 than what any other terminal on the river had at the time. And
24 to bid, the terminal that did bid had to say, okay, we have
25 some additional acreage over here that we can develop if we get

1 the contract so we can meet that need. But basically there was
2 an argument in the record by an expert in that field who said
3 that because of the additional extra storage requirement that
4 in his opinion wasn't needed and that also there was additional
5 evidence in the record that supported that position, because of
6 that extra cost of the extra storage, I looked at making an
7 adjustment that dealt with the extra storage that really wasn't
8 needed per the evidence in the record.

9 COMMISSIONER DAVIDSON: Is it accurate to
10 characterize the different approaches as the approach to
11 terminal service in the first alternate is based upon an actual
12 nonaffiliated response to a bid, whereas the approach to
13 terminal service in the second alternate is based upon expert
14 testimony but not on an actual bid that was submitted?

15 MR. BOHRMANN: That would be correct.

16 COMMISSIONER DAVIDSON: One more series of questions,
17 Mr. Chairman.

18 'On the ocean barge transportation, if staff can just
19 sort of walk through the same process again, summarize the
20 difference in the recommendations, and then sort of discuss the
21 basis in the record for the two differences.

22 MR. BOHRMANN: In first alternate staff, we took the
23 approach that when Witness Dibner presented his report to Tampa
24 Electric, they did not look at it critically in the light of
25 information that was publicly available, in some cases,

1 information that was available within TECO Energy. And they
2 did not look at it critically in the terms of examining
3 backhaul traffic that the Port of Tampa has publicly available.
4 They did not look at it in terms of how comparable preference
5 trades are to the contract in question. They did not look at
6 it in terms of the cost of capital that TECO Transport would
7 have to pay for the cost of ownership of its tugs and barges.
8 And they did not look at it in terms of the throughput that
9 would be expected to travel on TECO Transport's barges during a
10 given year. They did not look at this information. They did
11 not critically review the Dibner report in light of this
12 information.

13 And what first alternate staff attempted to do is if
14 they had done so and if they had, you know, pressed in its
15 negotiation with TECO Transport what sort of difference could
16 that have made in such negotiations, and we attempted to -- you
17 know, first alternate staff attempted to estimate the impact of
18 that more aggressive approach in the negotiation between Tampa
19 Electric and TECO Transport.

20 COMMISSIONER DAVIDSON: Thank you, Chairman. No
21 further questions at this point.

22 CHAIRMAN BAEZ: I have a couple of quick questions on
23 the alternates. First, concerning the backhaul opportunities
24 on the first alternate, staff, that's Mr. Bohrmann; right?

25 MR. BOHRMANN: Yes.

1 CHAIRMAN BAEZ: Question. Do you -- because you --
2 and let me back up a second and say I'm concerned about the --
3 you know, in one alternate or another no matter what the
4 result, what kind of precedent we're setting, what kind of
5 policy statement we're making. So with regard to the backhaul,
6 the fact that we've included it in this case would -- and
7 assuming we accepted those types of adjustments or
8 considerations, would this -- in your opinion, is the
9 Commission therefore saying backhaul is appropriate for
10 inclusion as adjustments where they hadn't been accounted for
11 otherwise, are they appropriate for inclusion in every
12 instance?

13 MR. BOHRMANN: I think what first alternate staff is
14 trying to say is appropriate is that the utility, Tampa
15 Electric in this case, should have looked at what information
16 was publicly available to help them negotiate the best rate
17 possible for the ratepayers. In this instance, you know, they
18 should have known that for every hundred tons of coal that came
19 into the Port of Tampa, approximately 70 tons were going out
20 the next day or maybe the day after on the same TECO Transport
21 ship. And, you know, the first alternate staff believes that
22 there should have been some sort of allocation of cost at least
23 considered within these negotiations, and Tampa Electric did
24 not bring that point forward in negotiations. If they had and
25 they had failed, well, at least they tried, but they did not

1 even attempt to do so. They did not even have the information
2 available to them even though it was in the public domain.

3 CHAIRMAN BAEZ: So in order to translate, I guess, in
4 the context of again future RFPs, what we're in fact saying is
5 not necessarily that backhaul is appropriate as a -- I don't
6 know what the word is, as a discount or as an offset to a
7 price, but certainly a future RFP should include or should ask
8 bidders to address the backhaul, address a backhaul issue in
9 some form. I mean, is that fair?

10 MR. WINDHAM: There was some support in the record
11 actually that when you have a competitive market and when there
12 is a bid process, that the winning bidder will virtually have
13 to address the backhaul issue or else he's not likely to get
14 the bid because backhaul is a very big item. It makes a lot of
15 difference in the cost of shipping whether or not you have a
16 backhaul trip or not.

17 CHAIRMAN BAEZ: Right.

18 MR. WINDHAM: It can double your revenue for the same
19 trip and you don't have much additional cost. So it can make a
20 really big difference. So basically in a competitive market,
21 and this is what was argued by witnesses and also some surveys
22 they did of other bidders, that in a normal circumstance, it
23 would be taken into account by the bidder or else he wouldn't
24 get the bid.

25 CHAIRMAN BAEZ: And you said something interesting

1 and I think we have to look at it from that perspective. There
2 is record evidence that that kind of consideration goes on as a
3 result of -- in the presence of a competitive market.

4 MR. WINDHAM: Yes.

5 CHAIRMAN BAEZ: So that it's not so much a policy
6 statement that we're making or a decision that we're making
7 that that should be included, but rather that we acknowledge or
8 we recognize that a competitive market would involve these
9 kinds of considerations. Is that the kind of thing that needs
10 to be reduced to a -- I guess for ease of confirmation? I
11 don't know how else to say it. Do we take it as a given? How
12 would a company in the future say, oh, and by the way, we did
13 consider this, you know? I mean, no need to worry about it; or
14 here's what the backhaul situation was in this particular case.
15 Is there something that we need to do over and above just our
16 acknowledging the competitive markets have these kinds of
17 aspects to them for a future RFP or future discussion over an
18 RFP to have some form of confirmation --

19 MR. WINDHAM: I think on an ongoing basis it's
20 automatically taken into account. If you have a competitive
21 market and if you have a legitimate RFP, I think that the
22 process takes that into account and deals with it without
23 having to specifically address it.

24 CHAIRMAN BAEZ: Okay. And I had another question
25 concerning the third recommendation, Mr. Windham, along the

1 same lines. The fact that the third alternate is the only one
2 that recognizes perhaps the potential of a rail alternative or
3 at least a partial alternative by rail, what kind of policy
4 statement, if any, gets fashioned out of recognizing that? I
5 mean, are we saying it's preferable to have -- it's preferable
6 that a contract or how you supply your fuel should have some
7 diversity involved that there should be a rail component, or it
8 should be one way or another? Is there any concern that that's
9 what you're saying?

10 MR. WINDHAM: There was a lot of -- well, most of the
11 witnesses who looked at this agreed that there is a benefit to
12 having a bimodal option.

13 CHAIRMAN BAEZ: Right.

14 MR. WINDHAM: And I think even one of Tampa
15 Electric's witnesses who has dealt with this kind of thing in
16 the past agreed that there's an advantage to having bimodal,
17 and in his past work he had actually had a bimodal and said it
18 was advantageous. So if you can work out a situation where you
19 get that, I think there is an advantage to having it for the
20 customers, for the ratepayers.

21 CHAIRMAN BAEZ: And based on the record, your
22 recommendation suggests recognizing that there was an alternate
23 mode of transport available. That's a determination that
24 you're making based on the bid that it was a reasonable price?
25 I mean, is that the statement that you're making?

1 MR. WINDHAM: Yes. I compared the actual bid to the
2 actual contract rates for the waterborne and did a comparison
3 as best I could to take into account the fact that one of them
4 was FOB barge and was missing part of the cost, the other one
5 was FOB mine. So you have to look at the upriver cost of
6 getting the coal from the mine to the upriver terminal. But
7 looking at factors like that to make them as comparable as
8 possible, I looked at the actual bid from CSX and compared it
9 to the rates of the waterborne.

10 CHAIRMAN BAEZ: And you determined that it was
11 reasonable such that it could have met the public interest of
12 having bimodal. Essentially that's the statement that you
13 would be making.

14 MR. WINDHAM: Yes.

15 COMMISSIONER BRADLEY: Mr. Chair.

16 CHAIRMAN BAEZ: Commissioner Bradley.

17 COMMISSIONER BRADLEY: Under the current conditions,
18 how is the coal being transported from the mine to the dock?

19 MR. WINDHAM: To the upriver dock, it's either by
20 truck or by rail. Some of the transport to the river terminal
21 is by rail and some is by truck. But that cost when you buy it
22 FOB at the river dock, that cost is borne by the supplier and
23 it's within the contract cost, so you don't see it in the
24 transportation cost.

25 COMMISSIONER BRADLEY: So it's a nonfactor.

1 MR. WINDHAM: Well, it's important in a sense. It's
2 just that part of the cost is hidden in the contract cost when
3 you buy it FOB barge at the river terminal. And there's a
4 significant cost there often that you don't know how much is
5 the actual coal commodity and how much is the -- to get it to
6 the dock. And we had some information in the record for
7 specific cases of what that cost was, but we don't know for all
8 possible cases what it is. We only had it for some specific
9 cases. And so I used some of the information that was in the
10 record for specific cases in coming up with what I thought to
11 be a conservative estimate of what that cost might be.

12 CHAIRMAN BAEZ: Commissioners, any other questions on
13 Issue 2?

14 COMMISSIONER DAVIDSON: A question for staff. Issue
15 2 asks, are the projected coal transportation costs for this
16 period reasonable for cost recovery purposes? In what
17 proceeding, at what point in the future would we actually be
18 looking at the actual cost and making a determination either
19 reasonable or unreasonable? Is that now? Or are we sort of
20 giving some general guidance, and then we're going to address
21 this issue in some subsequent proceeding?

22 MR. BOHRMANN: I believe this docket is the proper
23 forum to determine that costs are reasonable or not. And then
24 in our annual fuel hearings, the costs that are in the rates
25 that are approved by the Commission at those hearings would be

1 a fallout of a decision in this docket.

2 CHAIRMAN BAEZ: Commissioner Deason.

3 COMMISSIONER DEASON: We've had a lot of questions
4 about the different alternatives, but I have a question, I
5 guess, that pertains to all of them, and I want to put it in
6 the context of how staff foresees whatever methodology we use
7 or even a hybrid methodology that we may come up with here
8 today. If we come up with a number that is a number to adjust
9 downward the contract cost, is that number -- does staff
10 foresee that that number will be static, it will be constant
11 through the five years of the contract? Or how does staff
12 actually foresee the adjustment number being utilized from one
13 year to the next?

14 MR. BOHRMANN: In the first page of the appendix on
15 the right-hand column, there is an annual --

16 COMMISSIONER DEASON: What page is that?

17 MR. BOHRMANN: That would be Page 45.

18 COMMISSIONER DEASON: Okay.

19 MR. BOHRMANN: On the right-hand column, there is an
20 annual number in millions of dollars. Each of those numbers
21 translates to a per ton number. And in 2004 that -- you know,
22 for every ton of coal that's transported by TECO Transport for
23 Tampa Electric, the amount that Tampa Electric could recover as
24 contemplated by staff would be reduced by that per ton number.
25 And then as we move forward in time, the ratio between the

1 adjustment and the total number would change as the contract
2 amount changes due to the escalation factors that are present
3 in the contract.

4 COMMISSIONER DEASON: So we do recognize the
5 escalation factors in the existing contract.

6 MR. BOHRMANN: Do we recognize --

7 COMMISSIONER DEASON: Do we recognize that when --

8 MR. WINDHAM: Yes, we recommend recognizing the
9 escalation factors as a part of the contract.

10 COMMISSIONER DEASON: And I may be oversimplifying,
11 but correct me if I'm wrong, what you're saying is, is that
12 whatever methodology we choose, we equate that to a per ton
13 impact.

14 MR. BOHRMANN: Yes.

15 COMMISSIONER DEASON: Okay. And then depending upon
16 the actual tons shipped for that year, we would apply that
17 impact, correct, and that that impact from year to year changes
18 based upon the escalation factors that are inherent in the
19 existing contract?

20 MR. BOHRMANN: Yes, and the amount of tons that are
21 shipped per year.

22 COMMISSIONER DEASON: Okay.

23 CHAIRMAN BAEZ: Commissioners, any other questions?

24 COMMISSIONER DEASON: I have just a few.

25 CHAIRMAN BAEZ: Go ahead.

1 COMMISSIONER DEASON: In the second alternative,
2 there is an adjustment for the terminaling costs, but I think
3 there was evidence in the record that there was a bid that was
4 solicited and received for terminal service and that Tampa
5 Electric accepted that as reasonable, but staff is making an
6 adjustment to that. Can you explain again why you're seeing
7 fit to make an adjustment even though there was a bid received
8 for terminal service?

9 MR. WINDHAM: Basically the company that bid had a
10 certain amount of storage at their site, and they have other
11 existing contracts. For example, they service with a major
12 contract one of our other IOU Florida utilities. And the
13 amount of storage that was required by the TECO RFP was
14 actually more storage than they had in total at their facility.
15 So to make a bid they had to say, okay, we have some adjoining
16 property over here that we can develop if we get the bid and we
17 need it. And so they did make the bid based on the fact --
18 even though they didn't technically at the time have enough
19 storage to meet the RFP, they did make a bid saying, okay, we
20 will develop this other property over here if we need it.

21 There's some additional cost, I think, in developing
22 property and in having more storage on site than what you have
23 currently. And so what I was looking at was that additional
24 cost that it might have driven up the bid, and it was suggested
25 that that would be the case by another expert on maritime

1 terminals and such that that would likely drive up the case.
2 And so I made an adjustment to a number in between what the
3 current contract of that same terminal is for another Florida
4 utility and this new bid. I took the midpoint basically
5 between what their current contract with another Florida
6 utility is and this bid.

7 COMMISSIONER DEASON: So you took the midpoint of
8 what you determined to be the rate given to another Florida
9 utility and the bid rate?

10 MR. WINDHAM: Yes.

11 COMMISSIONER DEASON: And I guess that raises a
12 question. If whatever capacity exists out there and if it's
13 being utilized and it requires the expansion of existing
14 facilities, isn't that the marginal rate, and isn't that what
15 market prices are, based upon marginal rates providing service?

16 I mean, I think you're assuming in your analysis that
17 whenever -- that only a legitimate bid is a bid for existing
18 capacity that's not being used, and isn't it fair that in some
19 markets existing capacity is being utilized and that the market
20 price for that capacity is going to be based upon the need to
21 expand facilities? That's the market as it exists.

22 MR. WINDHAM: In this case, we have a very limited
23 market that exists. Actually, there was only one terminal and
24 that was a TECO barge terminal that actually had enough storage
25 at the time of the RFP to satisfy the contract. So we're

1 talking about a very limited amount of competition we're even
2 thinking about. And for the one other company that was close
3 and could in fact bid, if they say, okay, we can bring in this
4 additional area over here, they would have additional cost. I
5 don't really know how to calculate --

6 COMMISSIONER DEASON: Mr. Bohrmann, you made an
7 adjustment for terminal costs as well. What was -- your
8 adjustment, what was it based upon? I think you answered
9 Commissioner Davidson that it equated to 34 cents a ton.

10 MR. BOHRMANN: That 34 cents was attributed to river
11 barge transportation. My alternate does not adjust the
12 terminal service.

13 COMMISSIONER DEASON: So that was in terms of how it
14 would impact inland river barge service, and it was not
15 terminal cost, per se.

16 MR. BOHRMANN: No.

17 COMMISSIONER DEASON: What, you just accepted the bid
18 amount as TECO received it?

19 MR. BOHRMANN: Yes.

20 COMMISSIONER DEASON: Okay.

21 MR. WINDHAM: I might not have made myself clear in
22 terms of what you were asking, and maybe I didn't fully
23 understand what you were talking about. But basically the
24 adjustment I was making was for the fact that it was a matter
25 of -- in the record that the amount of storage that they

1 required in the RFP was more than what seemed to be reasonable,
2 and by requiring excessive storage that likely wouldn't even be
3 used, that it would tend to drive up the cost. And that was
4 part of the rationale --

5 COMMISSIONER DEASON: So you're saying that was
6 another flaw in the original RFP.

7 MR. WINDHAM: Yes. We had a ten-year site plan, for
8 example, that showed that -- the Tampa Electric ten-year site
9 plan showed that the amount that they based their requirement
10 on for the storage was in excess of what they had put in the
11 ten-year site plan as being a likely amount that would be
12 burned. And there was also evidence in the record regarding
13 how much they burned over each of the last three years, and it
14 was also less than the amount that they were utilizing in
15 looking at numbers for storage in the RFP.

16 COMMISSIONER DEASON: So is your adjustment for
17 terminal service, is it based upon the rate, or is it based
18 upon the throughput that would be necessary, that the RFP was
19 using an inflated number of tons, or is it a combination?

20 MR. WINDHAM: It's a combination.

21 COMMISSIONER DEASON: Can you separate out the
22 effect, or is it just -- it's not calculateable, if that's a
23 word.

24 MR. WINDHAM: I don't know how to calculate it.

25 COMMISSIONER DEASON: Okay.

1 CHAIRMAN BAEZ: No further questions, Commissioners?

2 A couple of questions that may be outside the four
3 squares of this. I'd like to talk a little bit about TECO
4 Transport and what these -- I know there's evidence on the
5 record in terms of what their revenues and so on; am I correct?

6 MR. MAUREY: The evidence regarding TECO Transport is
7 limited to what was reported in the company's annual report to
8 shareholders, but we do have some information.

9 CHAIRMAN BAEZ: Okay. Based on that, can you sort of
10 quantify at least for me what a likely impact of any of the
11 three, certainly the three alternatives that actually have a
12 financial -- a number tied to them? Can you help me understand
13 what -- in relation to the information that you do have on the
14 affiliate?

15 MR. MAUREY: I can try to put it into perspective for
16 you on a couple different measures. If you assume the tonnage
17 that's represented in the schedule, the 13.8 million, the 16.3,
18 and the 20.3, those compare -- now, those are before tax
19 adjustments. Their net income for the most recent year of
20 2003 was 15.3 million, and that's an after-tax number so you'd
21 have to adjust it. But those numbers, we know what the net
22 income is; we don't know how they got from the 260 million in
23 revenue down to the 15 million in net income. We don't know
24 what happened in between.

25 One other way to look at these adjustments is the

1 earnings per share impact on TECO Energy. Now, we've done
2 those calculations. And looking at it in that manner, they're
3 somewhere between five cents and seven cents per earnings per
4 share adjustments.

5 CHAIRMAN BAEZ: On a percentage basis, what is that,
6 or is that even an appropriate question to ask?

7 MR. MAUREY: I don't have what that represents on a
8 percentage basis. I can tell you what it represents relative
9 to other recent adjustments on an earnings per share basis.

10 The cancellation of the turbine order, that was a 37
11 cents per share impact. The write-off of the Texas Independent
12 Energy investments, that was a 52 cents earning per share. The
13 cumulative amount of write-off associated with the Union and
14 Gila River plants was close to \$4.76. So by comparison to
15 write-offs associated with merchant activities, these
16 adjustments are relative small.

17 COMMISSIONER DEASON: Is that a fair comparison? I
18 mean, that's like maybe saying, you know, if we still regulated
19 MCI, you know, the fact that they basically went bankrupt, that
20 we could, you know, have their revenues or something and say,
21 well, you know, it's small in comparison to what their
22 bankruptcy showed. I mean, I'm just trying to -- can you tell
23 me, what is the relevance of these comparisons that you're
24 making here?

25 MR. MAUREY: Well, I'm trying to address the

1 Chairman's question on how these compare of order of magnitude
2 to other adjustments that have occurred in the last 18 months.

3 CHAIRMAN BAEZ: And, Andrew, I appreciate your trying
4 to do that. Maybe this got blown out from what my initial --
5 the intent at least of my question, and I was trying to get
6 some kind of idea for what these alternatives represented to
7 the subsidiary. I mean, perhaps Commissioner Deason's point is
8 well taken, that to put them on a parent company basis kind of
9 starts mixing events that probably obviously dwarf them by
10 comparison, but that's not really --

11 MR. MAUREY: Well, I guess what my perspective was is
12 I look at it as a total company. TECO Energy, there are
13 various affiliates. There's TECO Transport; there's Tampa
14 Electric. And by far, Tampa Electric is much larger than all
15 the other affiliates certainly in terms of revenue.

16 Now, if you want to focus simply on TECO Transport,
17 I'm looking at their total revenues, and they've ranged from
18 254 million to 274 million a year over the last three years.
19 And so these adjustments of 13 million to 20 million a year, I
20 don't have the ratio in front of me what they represent. But
21 the company in its own testimony said it's experiencing
22 pressures at the TECO Transport unit, and that's reflected in
23 some of the ratios. Their ratio of net income to total revenue
24 has been declining over the last three years. And there are a
25 number of factors that are responsible for that.

1 Back to your original question as best as I
2 understood, the adjustments of 13 million to 20 million a year
3 compare with net income of 15 million to 28 million over the
4 last three years.

5 CHAIRMAN BAEZ: Okay. Maybe it was an unfair
6 question and I apologize. I guess I'm trying to grapple with
7 what the -- as much as it is important for us to try and --
8 well, let me say this. This whole process at least for me has
9 not been, and I don't believe in theory should be, about, you
10 know, taking money away or giving money to such as it is. I
11 think what for me this process represents is trying to get it
12 right, which is why for -- which is why any alternative that
13 would say let's try and get a transparent RFP that everyone can
14 agree is as fair and transparent and accessible and available
15 to as many people as possible is really what one of the major
16 objectives should have been.

17 Now, I understand, as Mr. Devlin has pointed out a
18 good point, I think, that still leaves this, you know, how we
19 review this interim or these 18 months that will have
20 transpired before we could get potentially an RFP that meets
21 with our desires for it to be transparent and fair and
22 nondiscriminatory no matter what the result may be, and that
23 brings us to these, in my mind at least practically speaking,
24 to these alternatives.

25 And I'm trying to get an idea of, well, if we follow

1 one of these alternatives, any one of which are fairly well
2 reasoned given the information that we've had available and,
3 you know, some of our best minds have been engaged in trying to
4 come up with, you know, what a reasonable representation of the
5 market would have been given our information, inevitably that
6 has a financial impact not -- while not on the scale of impacts
7 that certainly the parent company has taken, but the
8 subsidiary, it will have an impact on the subsidiary. Perhaps
9 that's not something that we need to be worried about. You
10 know, I don't know.

11 The flip side to that question is, maybe we shouldn't
12 be asking -- maybe I shouldn't be asking about TECO Transport.
13 Let's say contracts are -- a contract is a contract, as a wise
14 man said earlier, and TECO Transport holds the other
15 subsidiary, in fact, the one that's regulated by this
16 Commission, TECO Electric, Tampa Electric to the contract
17 terms, what kind of -- and our disallowance of cost recovery
18 has an impact on the regulated utility, is it fair to ask what
19 kind of impact that this allowance has? Again, assuming no
20 rebid, assuming no out, no contractual out on the part of the
21 transport company, assuming those things, is it a fair question
22 to ask what kind of -- is it a question that you can answer
23 what kind of impact any disallowance would have?

24 MR. MAUREY: Unfortunately, staff has very limited
25 information on TECO Transport. I know what their net income

1 is, but I don't know how they got from their revenue to their
2 net income, what types of expenses recurring, were not
3 recurring.

4 CHAIRMAN BAEZ: And again, I'm not -- I guess I
5 flipped the question around, or at least I thought I had.
6 Asking about the regulated utility, assuming again that TECO
7 Transport holds Tampa Electric to its contract, that there is
8 no out, that all of a sudden Tampa Electric is responsible for
9 the costs of that contract and also factoring in whatever the
10 impact of these alternative recommendations that staff has
11 made.

12 MR. MAUREY: Well, Tampa Electric would certainly be
13 in a better position to weather that adjustment. Their net
14 income is much higher. It's, I think, 125 million for -- I'm
15 sorry, I have the annual report here. I don't have the 10K
16 report in front of me. But the net income varied from
17 123 million to 196 million over the last three years. Their
18 net income is much higher.

19 CHAIRMAN BAEZ: Okay. Fair enough.

20 COMMISSIONER DEASON: Mr. Chairman.

21 CHAIRMAN BAEZ: Commissioner Deason.

22 COMMISSIONER DEASON: I believe that the task in
23 front of us, it sounds simple but, of course, administering it
24 is difficult. But in my opinion, the task in front of us is
25 determining a fair rate to be charged to customers for the

1 transport of fuel that is necessary to go into the boilers to
2 generate the electricity as part of the regulated service.
3 Tampa Electric through the years has seemed fit to put together
4 a system for transporting that coal. I would observe that it's
5 been a very reliable system, and the coal has been delivered.

6 One could argue that it was perhaps the most
7 expedient thing to do at the time that TECO was facing the
8 dilemma as to how to do that and how to reliably get the fuel
9 to their boilers to adequately serve their customers. The
10 decision was made to do that through an affiliate company.
11 There are advantages to that; there are disadvantages. There
12 perhaps are some efficiencies in doing that, and perhaps you
13 have more control over the reliable side of it to make sure
14 that the fuel is always delivered.

15 The downside is the question that comes out that,
16 well, if you're dealing with an affiliate, how do we know that
17 the prices you're paying are not somehow inflated? And that's
18 what we've had to deal with through these years. And there are
19 some alternatives in addressing that, and one of which is just
20 simply treat that affiliate as if it were part of the regulated
21 company and subject it to rate base, rate of return regulation,
22 i.e., cost of service. But then people question, well, how do
23 we know they're acting efficiently then? They have no
24 incentive to act efficient because they're basically just
25 operating under a cost plus contract because the Commission

1 allows all prudently incurred costs plus a reasonable rate of
2 return to be passed through to customers. So you get into the
3 question of, well, customers really shouldn't pay more than
4 what the market should bear, and I agree with that and that's
5 good economics, that's good regulatory philosophy. The
6 question is, well, how do you determine what the market is?

7 And I think to the credit of TECO and to Public
8 Counsel's Office and to FIPUG, a number of years ago they got
9 together and said, we believe market is the best. It gives the
10 right incentives for TECO and its affiliates to act fairly and
11 to act efficiently, and the opportunity is there for TECO
12 Transport. Maybe if they can be very efficient and beat the
13 market, they can make lots of money, and customers are better
14 off because they get a reliable source of transportation of
15 coal, and they're not paying any more than the market and
16 perhaps market prices would be depressed because TECO Transport
17 is so efficient. A potential win-win situation. So there are
18 merits to market, but how do you determine what market is?

19 As I started to indicate, FIPUG and Public Counsel
20 and TECO got together and they came up with a benchmark. And I
21 think it served a useful purpose, but I think it has outlived
22 its usefulness. And having gone through this hearing and the
23 difficulty we've had in trying to get our hands around what is
24 market, perhaps the solution would be some type of a benchmark
25 that, here again, parties can agree to which would be

1 appropriate on a going-forward basis. I think that it has its
2 benefits.

3 But absent that, we have the responsibility to
4 determine what is the fair rate to be passed through to
5 customers. Unfortunately, one of the best tools that we could
6 have had to do that was an adequate RFP. We don't have that.
7 So now we're trying to, in my opinion, what is the next best
8 tool that we can employ. I think that it is clear from the
9 record that there needs to be an adjustment made. An
10 adjustment needs to be downward from the contract amount. I'm
11 open to hear from my fellow Commissioners as to exactly how we
12 do that and how much, but I think we need to do that.

13 Part of the problem I'm having, and I expressed it
14 early on, is, I don't want to make a decision here which
15 basically is going to be static or have the effect of being in
16 effect for five years when perhaps there is the opportunity for
17 a better methodology to come forward either through stipulation
18 of the parties or else through an adequate open, fair RFP. And
19 I think it's been established by our staff and the discussion
20 we've had with them that that is at the discretion of TECO. If
21 they can negotiate an out with the affiliate company, if they
22 can put together the proper structure, administer that
23 structure and come forward and meet the burden that they will
24 have to demonstrate to the Commission that the RFP met all of
25 the criteria and that it is a fair standard upon which to

1 measure a market rate, I'm all for doing that at the time. The
2 question is, what do we do now until we get there?

3 We've got 2004 to concern ourselves with and
4 2005 probably. I mean, when does staff anticipate that if an
5 RFP could be issued, we're looking at what, at least a year
6 from now? Staff, do you have any feel for that?

7 MR. BOHRMANN: I believe in the motion for the
8 abeyance Tampa Electric had contemplated a start date of a new
9 contract of July 1st, 2005.

10 COMMISSIONER DEASON: Okay. Well, less than a year
11 but almost a year. The alternatives we're faced with, I can
12 see advantages and disadvantages to each of those. One of the
13 advantages I see to staff's second alternative is that it is
14 based upon rates that exist that can be verified in the market.
15 The problem is, how do we know that these rates that have been
16 negotiated with other entities are comparable to what is being
17 required of TECO Transport to meet the requirements of TECO,
18 the utility? But it has that advantage.

19 The staff's first alternative, it has the advantage
20 in that it is based upon TECO Transport's specific amounts or
21 considerations but it's a model. It's a little bit -- perhaps
22 one step removed from the real world. And I know models, they
23 are designed to replicate the real world, but we all know that
24 models are just that, models, and that there are difficulties
25 in doing that. So, to me, there is some advantages there and

1 there's some disadvantage.

2 Of the three, and I'm just kind of throwing this out
3 for discussion, and I certainly would welcome feedback from
4 fellow Commissioners, the one that gives me the most concern is
5 the third alternative, which is based upon trying to include
6 rail transportation into that. While I believe that there are
7 tremendous benefits from bimodal transportation in that it
8 probably would work in the long-term strategic advantage of
9 customers in having that intermodal competition, I'm
10 uncomfortable with the numbers, not critical of staff's
11 analysis. It just seems to me based upon the record we have
12 it's a little bit more of a stretch, but the information that
13 is presented there is useful.

14 And then we get to the other alternative, which is
15 Mr. Jenkins. He hasn't had the opportunity to talk, and maybe
16 he wants to, but I agree that there is some merit to the
17 argument that a contract is a contract, and there was a process
18 in place and we have followed it. TECO has continued to follow
19 it and that they went to the trouble of an RFP, and they
20 actually came out with an amount lower than the benchmark. The
21 difficulty I have with that is that, as staff has indicated,
22 they raised this as an issue two years ago, in 2002,
23 questioning the adequacy of the benchmark, indicating a desire
24 to have an RFP. So I think the parties have been put on
25 notice, particularly TECO, that we thought there was some

1 problems in that there needs to be an adjustment made at this
2 point. So those are kind of my thoughts. I know that they're
3 rambling thoughts, but at least I wanted to kind of get them
4 out there and just see from fellow Commissioners where we think
5 we are.

6 CHAIRMAN BAEZ: Commissioner Davidson.

7 COMMISSIONER DAVIDSON: I second that motion. No.

8 I agree, Commissioner Deason, with everything you've
9 said just in terms of sort of going through the
10 recommendations. My problem with the primary is, as staff
11 indicated, there's no record support for it, and the record
12 would have to be reopened to address that. That's my concern
13 with the primary.

14 I share Commissioners Deason's concerns with the
15 third alternative. And something about that recommendation
16 also seems to be really much more of a substitute of our
17 decision for TECO's in terms of the modes of transportation.
18 And it may very well be that in some future case that proves
19 itself to be right, but I just -- it seems to go too far in
20 going beyond some specific adjustments and saying this is how
21 it should be done.

22 I agree with Commissioner Deason on the fourth
23 alternative staff rec. I do think that regulatory certainty
24 and reliability sort of instructs us to stick to the rules and
25 procedures, and had no notice been given to a party in this

1 case and had this not been an issue for two years and really
2 been out there for discussion I might have a different view.
3 So I would in terms of discussion, both the second and third
4 alternates have merit to them.

5 On the various factors, the river barge
6 transportation, I've been back and forth between the -- the
7 first alternate makes sense; the second alternate makes sense.
8 What I do like about the second alternate on that is that it's
9 really based upon sort of what's out there, what exists in the
10 market now, but as Commissioner Deason pointed out, that may
11 not be the right approach. River barge transportation in
12 alternate one is also supported on the record, and I could
13 support an adjustment reflecting first alternate one.

14 Terminal service, I'm comfortable with no adjustment
15 for that based on staff's pointing out evidence in the record
16 that no adjustment was based upon a nonaffiliated bid on this
17 contract. And ocean barge transportations, both the first and
18 second alternates are supported, seem to be based on the
19 evidence and are well reasoned. So in terms of narrowing the
20 debate, my focus is on the first and second alternates.

21 COMMISSIONER DEASON: Let me ask a question. Do you
22 have a -- I have a concern about under the second alternative,
23 the adjustment is made for terminal service, and I understand
24 staff's rationale for that and it's a combination of reasons.
25 But I noticed the primary -- I mean, the first alternative

1 staff made no adjustment for terminal service based upon the
2 fact that there was a bid received from a competent provider of
3 that service that could have provided the service and that TECO
4 adopted that as an indicator of the market. I'm certainly not
5 defending all of the other aspects of the RFP that TECO went
6 through because I think the record is replete with the fact
7 that there are some deficiencies. I'm just not sure at this
8 point that we need to make an adjustment for terminal service.

9 COMMISSIONER DAVIDSON: And I agree with that. That
10 would sort of be -- if I had to rank them on that issue, that
11 would be --

12 COMMISSIONER DEASON: Let me ask staff a question at
13 this point. If we were inclined to adopt the second
14 alternative staff recommendation but decline to make an
15 adjustment for terminal service but adopt all other aspects of
16 that recommendation, could that be done, or does that create
17 some type of inherent inconsistency or some problem that's not
18 consistent with the record?

19 MR. WINDHAM: It doesn't create any kind of problem
20 that I'm aware of. The calculations, the computations are
21 easy. It's very straightforward.

22 CHAIRMAN BAEZ: Mr. Keating.

23 MR. KEATING: I would just agree with that. I wanted
24 to make sure staff didn't believe there was any inconsistency,
25 but I don't see any problem with you choosing which adjustments

1 to make based on the record regardless of where they are in the
2 first, second, or third alternatives.

3 CHAIRMAN BAEZ: For the benefit of the Commissioners,
4 is there a number that can get associated with the suggestion
5 that Commissioner Deason just made?

6 MR. WINDHAM: The amount -- there's a number in the
7 record already regarding how much the adjustment for the
8 terminal part of the second alternative is, and so it's
9 actually in the document there. I don't have the full document
10 in front of me, but they have it down here.

11 CHAIRMAN BAEZ: Can you point us -- well.

12 COMMISSIONER DAVIDSON: This 981,000, is that the
13 annual adjustment, Page 35?

14 MR. WINDHAM: Yes.

15 MR. BOHRMANN: Yes.

16 COMMISSIONER DEASON: Under second alternative staff,
17 then that would leave the adjustment for inland river barge
18 service and the adjustment for cross-Gulf transportation
19 service; is that correct? And those are the two largest
20 adjustments, by far the largest.

21 Mr. Chairman, you know, I can make a motion, and we
22 certainly can discuss it a lot more as we go along. But if --

23 CHAIRMAN BAEZ: Before you do what I -- I mean, and
24 what I'm anticipating because I think the flexibility between
25 alternatives that I think staff has afforded us is very

1 comforting to me at least. I don't have a problem with the
2 terminal service adjustment or lack of.

3 I guess my lament in all of this, and there are many,
4 is that I was -- I think I'm also interested, Commissioners,
5 in -- and if you remember a couple of questions that I asked
6 staff in terms of either -- I wouldn't exactly call them
7 preferences, but in terms of factors that we would likely give
8 importance to and so forth that I think need to be stated with
9 some level of explicitness, that concerning backhaul so that
10 the arguments over backhaul opportunities don't take place in
11 the future. I don't know how we get there. I recognize fully
12 that the backhaul opportunities are sort of embedded in
13 whatever adjustments are included in the second alternate
14 staff. So from a calculation standpoint, I don't have a
15 problem with that.

16 My point is merely this. To the extent that we can
17 offer further guidance to the extent that the recommendation is
18 perhaps lacking in some specifics on guidance, I wondered how
19 you felt about actually saying -- you know, having some
20 acknowledgment that backhaul has a proper place in all of this
21 so that we can sort of short-circuit these debates whether
22 they're appropriate or not in the future. Likewise, whatever
23 implied preference for bimodal or the opportunity or the
24 consideration of bimodal contracts, I think that may get
25 covered by the suggestion that the recommendation makes in

1 terms of less than full requirements contracts, but perhaps
2 some consideration to making the statement, although in this
3 case we are -- and I guess I'm crystal balling here, I'm trying
4 to anticipate where we might be reaching consensus, but to the
5 extent that the alternative that we choose or that we fashion
6 here doesn't include what was suggested in the third
7 alternative in terms of rail transport, that we not leave any
8 doubt but that it is important to consider alternative modes,
9 you know, beyond that which a subsidiary provides.

10 COMMISSIONER DEASON: Well, let me address your
11 second concern first, and then I'll maybe get to the first.

12 In terms of staff's third alternative, which is
13 basically a look at the potential for a rail alternative and
14 the impacts that it has, the fact that we're -- if we do not
15 accept staff's third alternate, in no way should that be
16 interpreted that this Commission is making a finding that rail
17 somehow should not be considered in the mix. Obviously I would
18 say that if there is to be another RFP -- and it's just a
19 question of when. We know there will be. It's either going to
20 be another RFP for this contract period or another RFP after
21 this contract expires -- that it needs to be open to all
22 reasonable and reliable means of transporting coal. And we
23 know that rail certainly historically has shown that it can
24 transport coal economically and reliably. So that needs to be
25 considered.

1 Now, that's not a statement from this Commission that
2 we must see an RFP that is going to ensure that a portion of it
3 is rail, only that it has to be considered, along with the
4 strategic benefits that it may provide, along with the costs
5 that it will require as well because there are costs of having
6 bimodal. There are certainly efficiencies that can be obtained
7 by having just one type of transportation.

8 CHAIRMAN BAEZ: Absolutely.

9 COMMISSIONER DEASON: So all those have to be
10 weighed.

11 CHAIRMAN BAEZ: I think by your words, I get the
12 comfort certainly that I needed, and I'm hoping that that
13 message gets taken to heart. I don't want any decision by the
14 Commission to be interpreted as a preference of one or the
15 other and likewise, as you've stated, Commissioner Deason, as a
16 requirement of one over another or both over one or the other.
17 So with that said, I'm comfortable.

18 COMMISSIONER DEASON: And the other concern you
19 raised about backhaul, you know, I'm comfortable saying that to
20 the extent that a market considers backhaul, and I think it's
21 fair to assume that a market would consider backhaul, that by
22 us adopting adjustments consistent with those found in the
23 second alternate, that we're -- we are indirectly adjusting for
24 backhaul because we're making the determination that this is
25 the best surrogate for market and we do recognize that market

1 rates would be impacted by consideration of backhaul.

2 CHAIRMAN BAEZ: And I think some kind of statement
3 along -- perhaps we're restating the obvious, but --

4 COMMISSIONER DEASON: I mean, is that fair? Does
5 staff agree with that?

6 MR. DEVLIN: Yes.

7 CHAIRMAN BAEZ: I'm good then I think on those
8 fronts.

9 COMMISSIONER DEASON: Well, as we've discussed and
10 here clarified, Mr. Chairman, your concerns, I would move that
11 we would adopt staff's second alternate recommendation with the
12 exclusion of an adjustment for terminal service.

13 CHAIRMAN BAEZ: And the numbers to fallout, I guess
14 if we actually have to have one, that's a fallout number based
15 on the adjustments. Okay.

16 COMMISSIONER DAVIDSON: Second.

17 CHAIRMAN BAEZ: There's a motion and a second. All
18 those in favor say, "aye."

19 (Unanimous affirmative vote.)

20 CHAIRMAN BAEZ: Staff, thank you. This has been a
21 very, very difficult, very long-lasting docket. I want to
22 thank you all. I want to thank all the parties.

23 Oh, there's issues. Can you tell I don't want to
24 deal with this anymore?

25 COMMISSION STAFF: I think we have an Issue 3.

1 CHAIRMAN BAEZ: There is an Issue 3.

2 MR. KEATING: And please vote on Issue 4.

3 CHAIRMAN BAEZ: And please vote on Issue 4.

4 Commissioners, Issue 3.

5 COMMISSIONER DEASON: I can move staff's

6 recommendation on Issue 3.

7 CHAIRMAN BAEZ: There is a motion to move -- accept

8 staff's recommendation. Is there a second?

9 COMMISSIONER DEASON: Let me clarify though. We're
10 not -- even though staff's recommendation in Issue 3 addresses
11 what would be required for an RFP subsequent to the existing
12 contract, as we've already indicated, TECO is free, if they see
13 fit, to come up with an RFP in the meantime and that they could
14 present it to the Commission and it would be reviewed based
15 upon its merits.

16 MR. FLOYD: That's correct.

17 COMMISSIONER DEASON: With that clarification, I move
18 staff on Issue 3.

19 CHAIRMAN BAEZ: There's a motion on Issue 3. Is
20 there a second?

21 COMMISSIONER DAVIDSON: Second.

22 CHAIRMAN BAEZ: And a second. All those in favor
23 say, "aye."

24 (Unanimous affirmative vote.)

25 CHAIRMAN BAEZ: And Issue 4, Commissioners.

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COMMISSIONER DEASON: Move staff.

CHAIRMAN BAEZ: A motion. And a second?

COMMISSIONER DAVIDSON: Second.

CHAIRMAN BAEZ: All those in favor say, "aye."

(Unanimous affirmative vote.)

CHAIRMAN BAEZ: Staff, what I said before, thank you.

(Agenda Item Number 19 concluded.)

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1 STATE OF FLORIDA)
 : CERTIFICATE OF REPORTER
 2 COUNTY OF LEON)

3

4 WE, LINDA BOLES, RPR, and TRICIA DeMARTE, RPR,
 Official Commission Reporters, do hereby certify that the
 5 foregoing proceeding were heard at the time and place herein
 stated.

6

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

9

10 WE FURTHER CERTIFY that we are not a relative,
 employee, attorney or counsel of any of the parties, nor are we
 11 a relative or employee of any of the parties' attorneys or
 counsel connected with the action, nor are we financially
 interested in the action.

12

DATED THIS 28th DAY OF SEPTEMBER, 2004.

13

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Linda Boles

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