

ORIGINAL

LANDERS & PARSONS, P.A.

ATTORNEYS AT LAW

310 WEST COLLEGE AVENUE  
TALLAHASSEE, FL 32301

MAILING ADDRESS:  
POST OFFICE BOX 271  
TALLAHASSEE, FL 32302-0271

DAVID S. DEE  
RONALD A. LABASKY  
JOSEPH W. LANDERS, JR.  
JOHN T. LAVIA, III  
FRED A. McCORMACK  
PHILIP S. PARSONS  
ROBERT SCHEFFEL WRIGHT

TELEPHONE (850) 681-0311  
TELECOPY (850) 224-5595  
www.landersondparsons.com

October 27, 2004

BY HAND DELIVERY

Blanca Bayo, Director  
Division of the Commission Clerk  
and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

RECEIVED - PSC  
OCT 27 PM 4:32  
COMMISSION  
CLERK

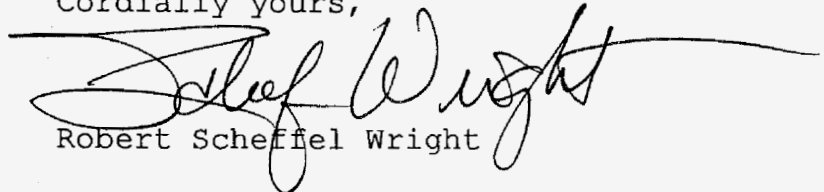
Re: Review of Tampa Electric Company's Waterborne  
Transportation Contract and Related Benchmark, PSC Docket  
No. 031033-EI

Dear Ms. Bayo:


Enclosed for filing are the original and fifteen copies of CSX  
Transportation's Motion for Clarification Or Alternative Motion for  
Reconsideration. Also enclosed is a 3.5" diskette with CSXT's  
motion in WORD format. I will appreciate your confirming receipt  
of this filing by stamping the attached copy thereof and returning  
same to my attention.

As always, my thanks to you and to your professional Staff for  
their kind and courteous assistance. If you have any questions,  
please give me a call at (850) 681-0311.

Cordially yours,

  
Robert Scheffel Wright

- CMP \_\_\_\_\_
- COM 5 \_\_\_\_\_
- CTR \_\_\_\_\_
- ECR \_\_\_\_\_
- GCL \_\_\_\_\_
- OPC \_\_\_\_\_ Enclosures
- MMS \_\_\_\_\_
- RCA \_\_\_\_\_
- SCR \_\_\_\_\_
- SEC 1 \_\_\_\_\_
- OTH Kim P. \_\_\_\_\_

RECEIVED & FILED  
  
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE  
11631 OCT 27 04  
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Review of Tampa Electric )  
Company's 2004-2008 Waterborne ) DOCKET NO. 031033-EI  
Transportation Contract with TECO )  
Transport and Associated Benchmark ) FILED: October 27, 2004  
\_\_\_\_\_ )

**CSX TRANSPORTATION'S MOTION FOR CLARIFICATION  
OR ALTERNATIVE MOTION FOR RECONSIDERATION**

CSX Transportation ("CSXT") pursuant to Rule 25-22.060, Florida Administrative Code ("F.A.C."), and consistent with Commission precedent, hereby respectfully moves the Commission to clarify its Order No. 04-0999-FOF-EI, Final Order Terminating Benchmark for Affiliate Coal Transportation Transactions, Finding Request for Proposals Insufficient for Determining Market Price, and Disallowing Recovery of Specified Costs Incurred Under Affiliate Coal Transportation Contract ("Order No. 04-0999"), to precisely reflect the Commission's vote on Issue 3 relating to specific requirements that the Commission voted to impose on Tampa Electric Company's ("TECO" or "Tampa Electric") future coal transportation procurement processes.

Specifically, CSXT asks the Commission to clarify Order No. 04-0999 to include the following requirement that was specifically stated and reflected as "APPROVED" in the Commission's Vote Sheet from the September 21, 2004 Agenda Conference:

The Commission should order Tampa Electric to conduct fair, open, and reasonable RFP processes for solid fuel procurement for 2009 and beyond. The Commission should evaluate Tampa Electric's request for recovery of costs for 2009 and beyond based on the results of the RFP.

CSXT believes that its motion for clarification is the appropriate vehicle for the relief requested; however, in an abundance of caution, CSXT also moves, in the alternative, for reconsideration of Order No. 04-0999 to grant the same relief.

**Background**

In rendering its decisions in this case, the Commission voted on three issues, including the following Issue 3:

Issue 3: Should the Commission modify or eliminate the waterborne coal transportation benchmark that was reaffirmed for Tampa Electric by Order No. PSC-93-0443-FOF-EI, issued March 23, 1993, in Docket No. 930001-EI?

As reflected on the Commission's signed Vote Sheet (PSC Document No. 04-10189, dated September 21, 2004, a copy of which is attached to this Motion), the Staff's recommendation was "APPROVED" in its entirety, with the handwritten notation "with clarification that TECO is free to come up [with] another RFP." The Vote Sheet reflects this with the standard "APPROVED" stamp, and the above-noted annotation, immediately below the following:

Recommendation: Yes. Staff recommends:

- 1) The benchmark that the Commission approved by Order No. 20298 and reaffirmed for Tampa Electric Company by Order No. PSC-93-0443-FOF-EI, issued March 23, 1993, in Docket No. 930001-EI, is no longer relevant. The Commission should eliminate the benchmark.
- 2) The Commission should not require Tampa Electric to rebid for coal transportation services for the current contract period of 2004 through 2008. Tampa Electric's cost recovery for the 2004 through 2008 period should be governed by the Commission's vote on Issue 2. At its own discretion, Tampa Electric may choose to re-bid part or all of its existing coal transportation requirements to mitigate the impact of the

adjustments, if any, the Commission votes on in Issue 2. Should Tampa Electric decide to re-bid, the company may petition the Commission for an alternate regulatory treatment of its coal transportation costs based on the results of the re-bid.

- 3) The Commission should order Tampa Electric to conduct fair, open, and reasonable RFP processes for solid fuel procurement for 2009 and beyond. The Commission should evaluate Tampa Electric's requests for recovery of costs for 2009 and beyond based on the results of the RFP.
- 4) The Commission should require Tampa Electric to perform a separate feasibility analysis of using rail accessible coal supplies and rail transportation, in whole or in part, to supply solid fuel to its Big Bend and Polk Stations. The results of the study should be provided to the Commission within 180 days of the final order.

#### Relevant Commission Order and Vote Sheet Language

The subject Issue 3 addressed what the Commission would require of TECO regarding future coal supply and coal transportation procurement processes. CSXT litigated this issue. The Commission made it abundantly clear that it favors fair, open, competitive requests for proposals ("RFP") processes as the best means to determine the market price for such services, which in turn is the best measure for the reasonableness of payments made to any vendor, affiliate or otherwise. For example, at page 15 of Order No. 04-0999, the Commission stated the following:

We believe that the best tool for determining a market rate for coal transportation services is an open competitive RFP process. A market rate established in this fashion will necessarily take into account all elements that comprise a true market rate, whereas price models, such as those offered in this proceeding, must make assumptions as to what elements comprise a true market rate.

Similarly, at page 19, the Commission stated:

We believe that the best tool for determining a market rate for coal transportation services is an open, competitive RFP process, but, having found that Tampa Electric's RFP was insufficient for this purposes, we do not have that tool at our disposal in this instance.

Again, at page 20 of Order No. 04-0999, the Commission stated:

As noted above, we believe that the best tool for determining a market rate for coal transportation services is an open, competitive RFP process.

At pages 7 through 15 of Order No. 04-0999, the Commission discussed extensively the defects in TECO's 2003 RFP process. At page 7, the Commission listed seven specific defects in TECO's 2003 RFP process. At pages 20-21 of Order No. 04-0999, the Commission stated the following:

We note that Tampa Electric, at its own discretion, may choose to rebid all or any portion of its existing coal transportation requirements to attempt to mitigate the impact of the cost recovery disallowance discussed above. Should Tampa Electric decide to rebid, the company may petition this Commission for an alternate regulatory treatment of its coal transportation costs based on the results of the rebid.

As noted above, we believe that the best tool for determining a market rate for coal transportation services is an open, competitive RFP process. Thus, whether Tampa Electric chooses to rebid all or any portion of its existing coal transportation requirements prior to, or in connection with, the termination of its current contract with TECO Transport, we believe that Tampa Electric must conduct any such rebid through an open competitive RFP process. We believe that our findings in part III of this order should provide Tampa Electric guidance in shaping such a process. In particular, we find that Tampa Electric shall, at a minimum, incorporate the following in establishing a competitive bid process:

[list omitted].

As stated above, the Commission's vote on this matter included the following specific requirement:

- 3) The Commission should order Tampa Electric to conduct fair, open and reasonable RFP processes for solid fuel procurement for 2009 and beyond. The Commission should evaluate Tampa Electric's requests for recovery of costs for 2009 and beyond based on the results of the RFP.

Vote Sheet at 4.

**Clarification Requested**

As shown by the above language, the Commission has made it abundantly clear that it believes that a fair, open, competitive RFP process is the best tool for determining a market rate for coal transportation services. The Commission has also made it clear that, if TECO elects to rebid part or all of its coal transportation service requirements for the current 2004-2008 contract period, TECO is required to do so consistent with the specific requirements set forth at pages 20-21 of Order No. 04-0999. The Commission's signed Vote Sheet (copy attached) also makes clear that the Commission voted to require Tampa Electric to conduct fair, open, and reasonable RFP processes for its solid fuel (coal and petroleum coke) procurement activities for 2009 and beyond.

However, nothing in the specific words of the Commission's Order No. 04-0999 imposes the requirement that Tampa Electric conduct fair, open, and reasonable RFP processes for its solid fuel (coal) procurements for 2009 and beyond. Because the Commission specifically voted to impose this requirement on Tampa

Electric, CSX Transportation respectfully moves and requests that Order No. 04-0999 be clarified to clearly state this requirement as voted by the Commission.

CSXT would suggest that this be accomplished by adding the following underlined language into the second full paragraph of Section V of Order No. 04-0999, together with conforming changes appropriate to the context, as indicated:

As noted above, we believe that the best tool for determining a market rate for coal transportation services is an open, competitive RFP process. Accordingly, we order Tampa Electric to conduct fair, open and reasonable RFP processes for solid fuel transportation services for 2009 and beyond, and we shall evaluate Tampa Electric's requests for recovery of costs for 2009 and beyond based on the results of the RFP processes conducted pursuant to the requirements of this order. Additionally, if ~~Thus,~~ whether Tampa Electric chooses to rebid all or any portion of its existing coal transportation requirements prior to, or in connection with, the termination of its current contract with TECO Transport, we believe that Tampa Electric must conduct any such rebid through an open competitive RFP process.

Alternately, or in combination, this could be accomplished by incorporating the following into the "ordering" paragraphs of Order No. 04-0999:

ORDERED that Tampa Electric shall conduct fair, open and reasonable RFP processes for solid fuel transportation services for 2009 and beyond, consistent with the specific requirements for such competitive bid processes articulated in the body of this order.

CSXT believes that, as a matter of law, as a party that litigated this issue, it is entitled to have the Commission's Order precisely reflect the Commissioners' unanimous vote thereon. The Commission has previously recognized that



clarification is appropriate for exactly this purpose.<sup>1</sup>

**CERTIFICATE OF COMPLIANCE WITH RULE 28-106.303, F.A.C.**

Pursuant to Rule 28-106.303(2), F.A.C., the undersigned states that he has contacted, or attempted to contact, counsel for all parties of record to this proceeding, and that they have the following positions with regard to this motion for clarification. The Citizens of the State of Florida, the Florida Industrial Power Users Group, and the Residential Customers do not oppose the substance of the motion. The undersigned attempted, but was unable, to reach counsel for the Commission Staff, and accordingly is unable to state the Staff's position with regard to the motion. The undersigned also attempted unsuccessfully to reach counsel for Tampa Electric Company, and accordingly is unable to state Tampa Electric's position with regard to the motion.

---

<sup>1</sup> See In Re: Fuel and Purchase Power Cost Recovery Clause, Docket No. 040001-EI, Order No. PSC-04-0411-FOF-EI, Order Disposing of Motions for Reconsideration/Clarification of Final Order (Fla. Pub. Serv. Comm'n, April 21, 2004) (granting "FPL's motion to clarify Order No. PSC-03-1461-FOF-EI to more precisely reflect our vote").



**RELIEF REQUESTED**

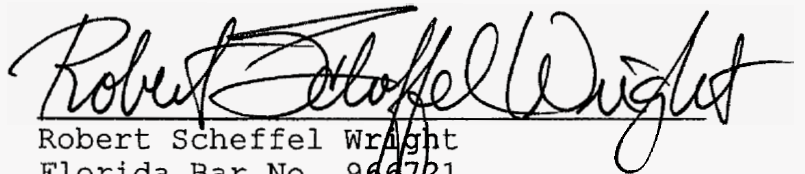
**WHEREFORE**, CSX Transportation respectfully moves the Commission to clarify its Order No. PSC-04-0999 to precisely reflect its vote that

The Commission should order Tampa Electric to conduct fair, open, and reasonable RFP processes for solid fuel procurement for 2009 and beyond. The Commission should evaluate Tampa Electric's requests for recovery of costs for 2009 and beyond based on the results of the RFP.

In the alternative, and while CSXT believes that clarification is the appropriate legal means for the Commission to make its Order No. 04-0999 precisely consistent with its vote, CSXT respectfully moves the Commission to reconsider its Order No. 04-0999 and grant the same relief as requested above.

Respectfully submitted this 27th day of October, 2004.

LANDERS & PARSONS



Robert Scheffel Wright  
Florida Bar No. 966721  
John T. LaVia, III  
Florida Bar No. 853666  
310 West College Avenue (32301)  
Post Office Box 271  
Tallahassee, Florida 32302  
Phone: 850/681-0311  
FAX: 850/224-5595

Counsel for CSX Transportation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by U.S. Mail or hand delivery (\*) this 27th day of October, 2004, on the following:

Wm. Cochran Keating, Esq.\*  
Jennifer Rodan, Esq.  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Robert Vandiver, Esq.  
Associate Public Counsel  
Office of Public Counsel  
111 West Madison Street, Room 812  
Tallahassee, FL 32399-1400

Lee L. Willis, Esq.\*  
James D. Beasley, Esq.  
Ausley & McMullen  
227 South Calhoun Street  
Tallahassee, FL 32301

Vicki Gordon Kaufman, Esq.  
Timothy J. Perry, Esq.  
McWhirter, Reeves, McGlothlin, Davidson  
Decker, Kaufman, Arnold & Steen, P.A.  
117 South Gadsden Street  
Tallahassee, FL 32301

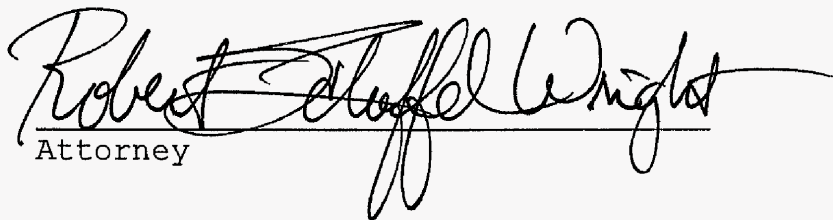
Florida Industrial Power Users Group  
c/o John W. McWhirter, Jr., Esq.  
McWhirter Reeves  
400 North Tampa Street, Suite 2450  
Tampa, FL 33602

Florida Retail Federation  
John Rogers, Esq.  
227 South Adams Street  
Tallahassee, FL 32301

Ms. Angela Llewellyn  
Regulatory Affairs  
P.O. Box 111  
Tampa, FL 33601-0111

Michael B. Twomey, Esq.  
P.O. Box 5256  
Tallahassee, FL 32314-5256

TECO Transport Company  
c/o Benjamin Hill III/Landis Curry III  
Hill Ward Law Firm  
P.O. Box 2231  
Tampa, FL 33601-2231

  
Attorney