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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In Re: Review of Tampa Electric)
 Company's 2004-2008 Waterborne) DOCKET NO. 031033-EI
 Transportation Contract with TECO)
 Transport and Associated Benchmark) FILED: November 8, 2004
)

COMMISSION CLERK

**CSX TRANSPORTATION'S RESPONSE TO TAMPA ELECTRIC COMPANY'S
 REQUEST FOR OFFICIAL RECOGNITION AND
MOTION TO REOPEN THE RECORD**

CSX Transportation ("CSXT") pursuant to Rule 28-106.204, Florida Administrative Code ("F.A.C."), hereby respectfully submits its response to Tampa Electric Company's ("TECO" or "Tampa Electric") Request for Official Recognition and Motion to Reopen the Record. In summary, it is clear that the Commission can take official recognition of its own orders, but CSXT believes, however, that the information contained in Order No. PSC-04-0713-AS-EI ("Order No. 04-0713") is not relevant here. Accordingly, CSXT opposes TECO's motion to reopen the record.

TECO asserts that the Commission, in Order No. 04-0999, "relies upon confidential and undisclosed historical PEF [Progress Energy Florida, Inc.] rates for waterborne coal

CMP _____ transportation services." TECO's Motion to Reopen at 2. It
 COM 5 appears that the Commission considered the costs incurred by
 CTR _____ Progress, apparently as a contextual reference point along with
 ECR _____ the costs incurred by other Florida utilities for waterborne coal
 GCL _____ transport in the overall trans-Gulf coal transportation markets
 OPC _____ between 2001 and 2003 (i.e., when TECO was making its decisions
 MMS _____ for 2004 through 2008). However, it is facially clear -- from
 RCA _____
 SCR _____
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 OTH _____

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the language of Order No. 04-0999 describing how the adjustments are to be made and from Appendix 7 to the Staff's Recommendation -- that the Commission did not use the Progress cost value to determine TECO's rates. Accordingly, there is no need for the Commission to receive the information into the record. (As CSXT has pointed out in its response to TECO's Motion for Reconsideration And/Or Clarification, the Commission could, on its own motion, simply amend Order No. 04-0999 to delete the references to the Progress number and to Progress's trans-Gulf barge costs, because that number was not used in setting TECO's rates and is therefore not needed by the Commission to support its Order No. 04-0999.)

Further, the values in Order No. 04-0713 were arrived at through settlement negotiations among the parties to that docket, and accordingly reflect the normal give-and-take that occurs in such negotiations. Significantly, the stipulation, which was incorporated into Order No. 04-0713, specifically states that:

This Stipulation and Settlement is based on the unique factual circumstances of this case and shall have no precedential value in proceedings involving other utilities or in other proceedings involving PEF before this Commission.

Order No. 04-0713 at 9. The record in this case also contains explanations of how and why the Progress coal movements are different from TECO's coal movements, at least as to the cost and efficiency of those movements. Accordingly, the values therein are not probative as to what TECO's allowable costs and resulting

fuel charges should be. Thus, there is no reason to receive the Progress information into the record of this case.¹

TECO further argues that "the recently approved rates for PEF are the best evidence of the appropriate waterborne coal transportation costs to be recovered by Tampa Electric for similar movements of coal [that] this Commission in Order No. 0999 held were comparable." CSXT strongly disagrees: the most relevant and best evidence of the appropriate coal transportation costs to be used for setting TECO's rates is the evidence regarding the costs and capabilities of the various transportation options that TECO had available to it when, in 2002 and 2003, it made the decisions that the Commission has reviewed in this docket. The Commission has received and reviewed a large body of such evidence, including clear-cut evidence that CSXT made viable offers to transport TECO's coal at rates that (as reflected in the Staff's recommendation) would

¹ More significantly, TECO's argument here -- that the Progress coal transportation cost numbers are relevant to TECO as a "similarly-situated" utility (TECO's Motion at 3)-- highlights a gross inconsistency in TECO's own position, namely the fact that Progress transports approximately two-thirds of its coal by rail. If TECO wishes to be compared to Progress, then it is more than appropriate for the Commission to consider (and perhaps to reconsider, on its own motion) its decision in light of the fact that Progress transports the substantial majority -- approximately two-thirds -- of its coal via rail, to the cost-effective benefit of Progress's customers. The Staff's Recommendation indicates that transporting 1 to 2 million tons of coal per year by rail would save TECO's captive customers an additional \$4 million to \$5 million per year above the reductions voted by the Commission on September 21; it is obvious that transporting even more coal by rail, say the same percentage as Progress, would save TECO's customers even more.

have produced rates even lower -- \$4 million to \$5 million per year lower, even based on the conservative assumption that less than half of TECO's coal would be transported by rail -- than those voted by the Commission and reflected in Order No. 04-0999.

TECO's argument here is similar to its arguments in its Motion for Reconsideration And/Or Clarification that the Commission should use "more recent" data in evaluating TECO's costs. This is fallacious reasoning, because the relevant context is what options TECO had available to it when it made the decisions under review. TECO cannot be allowed to escape the consequences of its decisions reviewed in light of the options that were available to it when it made them. As Commissioner Davidson stated in the Agenda Conference discussions,

[A] future RFP would be acceptable in general, but it wouldn't be acceptable to me if the number comes in even higher than where we should have been had we done this process correctly. . . . So go through a perfect open process, if market conditions have changed, the ratepayers shouldn't have to pay the price of the mistake of not doing it right in the first instance.

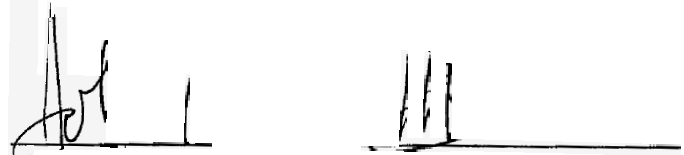
Agenda Conference Transcript, PSC Document No. 10456-04 at 34 (emphasis supplied). Here, even if Progress's rates were higher than those approved for TECO, and even if there were a clear showing that the movements are actually similar in cost, technology, and efficiency, the relevant framework for comparison is defined by the options available to TECO in 2002 and 2003. Accordingly, TECO's "best evidence" argument is fallacious, and its motion to reopen the record should be denied.

CONCLUSION

WHEREFORE, for the reasons set forth above, the Commission should deny TECO's Motion to Reopen the Record.

Respectfully submitted this 8th day of November, 2004.

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