State of Florida

Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: February 17, 2005

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Economic Regulation (Bohrmann, Floyd, Trapp, Windham)
Office of the General Counsel (C. Keating, Rodan)

RE: Docket No. 031033-EI – Review of Tampa Electric Company's 2004-2008 waterborne transportation contract with TECO Transport and associated benchmark.

AGENDA: 03/01/05 – Regular Agenda – Decision on Motions for Reconsideration/Clarification of Final Order – Oral Argument Requested

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: Recommendation should be addressed by Commissioners Baez, Deason, Bradley, and Davidson

FILE NAME AND LOCATION: S:\PSC\GCL\GCO\WP\2003\031033\031033.RCM.DOC

Case Background

This docket was opened in late 2003 to address three issues: (1) whether to modify or eliminate the benchmark mechanism previously established to determine the reasonableness of amounts paid by Tampa Electric Company ("Tampa Electric") to its affiliate, TECO Transport, for waterborne coal transportation service; (2) whether a request for proposals ("RFP") initiated by Tampa Electric on June 27, 2003, was sufficient to determine the market price for coal transportation service; and (3) whether Tampa Electric's projected coal transportation costs under the winning bid to the RFP were reasonable for cost recovery purposes. Along with Tampa Electric, the Office of Public Counsel ("OPC"), Florida Industrial Power Users Group ("FIPUG"), CSX Transportation ("CSX"), and a group of nine Tampa Electric residential customers ("Residential Customers") participated as parties to the proceeding, with each submitting prefiled testimony and exhibits for the Commission's consideration. The

Commission heard extensive evidence on these issues during a formal administrative hearing that spanned three full days.

Upon consideration of the evidence presented and the parties' post-hearing briefs, the Commission disposed of these issues by vote at its September 21, 2004, Agenda Conference. On October 12, 2004, the Commission memorialized its vote in Order No. PSC-04-0999-FOF-EI ("Final Order").[1] By its Final Order on these issues, the Commission: (1) eliminated the benchmark for Tampa Electric's affiliate coal transportation transactions; (2) found that Tampa Electric's June 27, 2003, RFP was insufficient for determining market price for the coal transportation services sought; and (3) limited Tampa Electric's recovery of costs incurred under the contract it signed with TECO Transport as a result of the RFP process. The Commission also specified certain minimum criteria for future competitive bidding processes for coal transportation service, required the filing of the schedule under which any future competitive bidding processes for such services would be conducted, and required the filing of an alternative regulatory mechanism to be adopted if a future bidding process did not produce competitive bids. Finally, the Commission required Tampa Electric to perform a study to determine the feasibility of procuring coal from rail-origin mines.

On October 27, 2004, Tampa Electric filed a motion for reconsideration and/or clarification of the Final Order and a request for official recognition and motion to reopen the record. At the same time, Tampa Electric filed a request for oral argument on its motions. On November 4, 2004, OPC filed a response in opposition to Tampa Electric's post-hearing motions. On November 8, 2004, FIPUG, CSX, and the Residential Customers each filed responses in opposition to Tampa Electric's motions.

On October 27, 2004, CSX filed a motion for clarification or, in the alternative, reconsideration of the Final Order. No party filed a response to CSX's motion.

This recommendation addresses Tampa Electric's post-hearing motions and CSX's motion for clarification/reconsideration. The Commission has jurisdiction over this matter pursuant to Chapter 366, Florida Statutes, including Sections 366.04, 366.05, and 366.06, Florida Statutes.

[1] Order No. PSC-04-0999-FOF-EI is attached to this recommendation for reference as Attachment A.

Discussion of Issues

Issue 1: Should the Commission grant Tampa Electric Company's request for oral argument?

Recommendation: Yes. Oral argument may aid the Commission in its understanding and disposition of the underlying motion. (C. Keating, Rodan)

Staff Analysis: In its request for oral argument, Tampa Electric asserts that oral argument on the matters raised in its motion for reconsideration and/or clarification and request for official recognition and motion to reopen record will assist the Commission in its deliberations by providing a more complete presentation of the relevant facts. Tampa Electric further states that oral argument would provide the Commission the opportunity to request clarification of the arguments presented, as necessary.

In its response to Tampa Electric's request for oral argument, FIPUG states that Tampa Electric has raised no points that merit additional argument in this docket. FIPUG contends that the Commission thoroughly discussed the matters at issue before making a final decision. In its response to Tampa Electric's request, CSX states that the request for oral argument is deficient in that it does not explain with particularity why oral argument would aid the Commission in comprehending and evaluating the issues. CSX contends that Tampa Electric's request appears to be an invitation to engage the Commission in rearguing and re-weighing factual matters.

Rule 25-22.060, Florida Administrative Code, provides that the Commission, at its discretion, may grant a request for oral argument on a motion for reconsideration of a final order. The Commission has traditionally granted oral argument upon a finding that oral argument would aid the Commission in its understanding and disposition of the underlying motion. Given the complexity of the matters at issue and given that approximately five months have passed since the Commission's original vote on these matters, staff believes that oral argument on Tampa Electric's motions may assist the Commission in its understanding and disposition of the motions. Thus, staff recommends that the Commission grant Tampa Electric's request for oral argument on its motions.

Issue 2: Should the Commission grant Tampa Electric Company's motion for reconsideration and/or clarification of Order No. PSC-04-0999-FOF-EI?

Recommendation: No. In its request for reconsideration, Tampa Electric does not identify a point of fact or law that the Commission overlooked or failed to consider in rendering its Final Order. Further, Tampa Electric's request for reconsideration improperly asks the Commission to reweigh the evidence considered by the Commission in rendering its Final Order. Tampa Electric's request for clarification should be denied because it asks the Commission to make findings inconsistent with the Commission's decision and clear intent. (C. Keating, Rodan)

Staff Analysis:

Request for Reconsideration

Tampa Electric asks the Commission to reconsider only that portion of its Final Order finding that the rates in Tampa Electric's current contract with TECO Transport are unreasonable for cost recovery purposes and limiting Tampa Electric's cost recovery to a rate determined by reference to rates paid by other utilities for comparable services.

The standard of review for reconsideration of a Commission order is whether the motion identifies a point of fact or law that the Commission overlooked or failed to consider in rendering the order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 162 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing State ex.rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc. vs. Bevis.

Tampa Electric's request for reconsideration fails this standard of review. Tampa Electric does not identify a point of fact or law that the Commission overlooked or failed to consider, but instead makes unsupported assertions that it was denied due process and equal protection of the law and asks the Commission to improperly engage in reweighing the extensive evidentiary record it considered in rendering its Final Order.

No Mistake of Law

Tampa Electric first argues that it was denied "both procedural and substantive due process and equal protection of the law" because the market price determined by the Commission is: (1) below any of the rates that the Commission found reasonable for Tampa Electric over the last 15 years; and (2) suspected by Tampa Electric to be below the market price that the Commission found reasonable for PEF.

As to the first point, the Commission's obligation is to set reasonable rates on a going-forward basis. In doing so, the Commission determines the reasonableness, or prudence, of costs that a utility wishes to recover in its rates. That determination is by no means limited to or bound

by the Commission's past determinations of what may have been reasonable, particularly where costs for a particular item change with a changing market, as the record in this proceeding demonstrated to be the case. For the last 15 years identified by Tampa Electric, the Commission used a benchmark mechanism established in 1988 to help gauge the reasonableness of the amounts paid by Tampa Electric to its affiliate for coal transportation services. In this proceeding, the Commission eliminated that benchmark, having explicitly found that it was obsolete. The Commission also found that Tampa Electric's RFP process was insufficient to establish a market rate for coal transportation services. Tampa Electric does not seek reconsideration of either of those portions of the Final Order. The Commission was then left with determining a fair market rate for purposes of cost recovery. In reaching its decision, the Commission heard extensive testimony on the subject from all parties and was presented with five alternative recommendations from staff concerning how best to determine a market rate. The Commission certainly did not deny Tampa Electric due process or equal protection under the law simply because it determined a market rate below the rate previously approved for cost recovery.

As to the second point, Tampa Electric glosses over the obvious distinction that the coal transportation rates approved for PEF in 2004 were the result of a confidential stipulation[2] between PEF, OPC, and FIPUG in a separate docket and that the stipulation was not part of the record in this proceeding. In Docket No. 031057-EI, which proceeded in approximately the same time period as this docket, the Commission was presented with a stipulation of the parties addressing the two issues in that case: (1) how to establish the appropriate recovery by PEF for each waterborne coal transportation service provided to it by its affiliate, Progress Fuels Corporation, for 2004; and (2) how to establish the appropriate recovery by PEF for each waterborne coal transportation service provided to it by Progress Fuels Corporation for 2005 and beyond. The stipulation establishes recoverable rates for 2004 and establishes a competitive bidding process to be followed by PEF for services rendered in 2005 and beyond. Notably, the stipulation, which was approved in its entirety, provides that it "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." A stipulation, by its nature, typically represents a compromise among the parties to a proceeding based on the specific facts and circumstances of the proceeding, including the information at each party's disposal and each party's evaluation of the risks of going to hearing. It would very likely chill the incentive of parties to enter into stipulations if the terms of those agreements – particularly confidential terms - are given precedential value in other cases in spite of explicit language in the stipulation to the contrary.[3]

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[2] By Order No. PSC-04-0705-CFO-EI, issued July 20, 2004, the Commission granted confidential classification for the rates specified in the stipulation, finding that the rates constituted "information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms" which is entitled to confidential classification pursuant to Section 366.093, Florida Statutes. That order has not been challenged.

[3] As FIPUG points out, Tampa Electric has itself recognized that the facts and issues related to the PEF and Tampa Electric coal transportation dockets are different. At the time that these issues were spun out of the 2003 fuel cost recovery docket, Tampa Electric argued against consolidating the PEF and Tampa Electric issues into one docket:

> While the issues are waterborne coal transportation, **the parties, their circumstances are completely different and the issues are different**, and we think it would be – on top of that, **it**

Further, the stipulation is not part of the record established in this proceeding. By a separate motion addressed in Issue 3, Tampa Electric asks the Commission to reopen the record of this proceeding to consider the stipulation. For purposes of its request for reconsideration, Tampa Electric must demonstrate that the Commission made a mistake of fact or law by overlooking or failing to consider the stipulation. The Commission could not have made such a mistake because the stipulation was not part of the record before the Commission and, for many of the reasons discussed above and in Issue 3, should not be. In fact, it would have been a mistake of law for the Commission to consider such a matter outside of the record. The Commission certainly did not deny Tampa Electric due process or equal protection of the law by determining a market rate that *may* have been lower than the confidential rates provided in a stipulation involving another utility that was not a part of the record before the Commission.

Tampa Electric next argues that it was denied due process because the Commission, in determining a market rate for ocean barge service, relied upon rates paid by PEF that Tampa Electric believes were taken from the confidential portion of a PEF audit response which was withheld from Tampa Electric and was not part of the record. The basis for Tampa Electric's argument is entirely incorrect. In determining the market rate for ocean barge service, the Commission relied on data in the record concerning rates paid by JEA, PEF, and Gulf Power Company for comparable services. The data from which the PEF rates were determined was made part of the record as Hearing Exhibit 65. Exhibit 65 contains a redacted version of PEF's response to two disclosures made in staff's Waterborne Transportation Audit Report for PEF. As part of its response to the first disclosure, PEF provided a table showing Progress Fuels' weighted average contractual cost per ton for coal shipped by water from the mine to Crystal River. The "$/Ton" column of the table was redacted, thus Tampa Electric assumes that the Commission relied upon the confidential version of this document to obtain the rate information. The Commission did not. The Commission calculated a rate based on the information presented in the redacted version of the document that was provided to every party at the hearing, including Tampa Electric. This calculation was explained in detail in Appendix 7 to staff's post-hearing recommendation in this docket, which also was provided to every party. Thus, Tampa Electric should have been aware that the calculation was based on non-confidential information that Tampa Electric was provided at hearing. As OPC points out, Tampa Electric's failure to fully comprehend the evidence in the record does not constitute a failure on the Commission's part.

No Mistake of Fact

Having argued throughout this proceeding that no adjustment was necessary based on the market rates derived from computer models that the Commission rejected, Tampa Electric now contends that the Commission did not do as well as it should have in its attempt to determine a market rate based on rates paid by other utilities. Tampa Electric asserts that once the Commission chose to use comparable rates paid by other utilities as the basis for determining a market rate for ocean barge service, it was then obligated to use only the best available data concerning such comparable rates. Tampa Electric contends that the Commission gave undue

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would be an administrative nightmare for you to handle confidential information pertaining to competing interests in the same docket. So we would urge that you find that be ill-advised and not do that.

Hearing Transcript in Docket No. 030001-EI at 1109. (Emphasis added.)

weight to data concerning the rates paid by JEA and PEF for ocean barge service. In doing so, Tampa Electric asks the Commission to improperly engage in reweighing the extensive evidentiary record it considered in rendering its Final Order.

Ironically, it was the shortcomings of Tampa Electric's RFP process that put the Commission in the position of determining a market rate for Tampa Electric's coal transportation service with less than what it considered to be the best information. At page 16 of its Final Order, the Commission stated:

> Having found that Tampa Electric's RFP was insufficient for gauging a market rate and recognizing that it would be impractical to require Tampa Electric to issues a new RFP for coal transportation services given our lack of authority to rescind the current contract, we do not have at our disposal the one tool – an open, competitive RFP process – that we believe best allows us to determine a reasonable rate. Rather, we are faced with determining what a market rate would have been based on computer models of the market for inland river barge and ocean barge services, a single *bona fide* bid for terminal services, comparable rates paid by other utilities for these services, and analysis of rail rates offered by CSXT to transport certain tonnages. While we believe that each alternative view of the relevant markets has advantages and disadvantages in establishing a proxy for the results of competitive bidding, we find that the best alternative is to rely upon actual rates paid by other utilities to non-affiliates for inland river barge and ocean barge service and the one *bona fide* bid for terminal services.

As noted above, the Commission was presented with several alternative recommendations from staff. Three of those alternatives offered different methodologies by which the Commission could establish a market rate for Tampa Electric's coal transportation service. After a long discussion with staff at agenda concerning the relative merits of each approach, the Commission chose to use record evidence concerning rates paid by JEA, PEF, and Gulf Power Company to arrive at a market rate proxy for ocean barge service.

Use of PEF Rate

Tampa Electric asks the Commission to reweigh the evidentiary value it placed on rates paid by PEF as comparable market rates for ocean barge service, asserting that such rates were not truly comparable. Tampa Electric notes that PEF's audit response, which served as the basis for calculation of the PEF rate, claims that there were non-contractual costs not fully recovered by the contract and which were not considered in the audit findings. Yet Tampa Electric also recognizes that the Commission took this into account when evaluating the PEF rates. At page 19 of its Final Order, the Commission stated:

> We note that in response to the audit, Progress Energy Florida suggested that there might be non-contractual costs not fully covered by the contract. For comparative purposes, however, we believe that any implied understatement of the rate paid by Progress Energy Florida is offset by the efficiency of the TECO Transport ocean fleet. Both Mr. Dibner and Dr. Hochstein testified that TECO

> Transport's tug/barge units were significantly more efficient than those used to serve Progress Energy Florida's ocean barge shipping needs.

Appendix 7 of the staff recommendation provided further explanation, noting: (1) that Tampa Electric's witness Dibner had indicated that the cost per ton for barges similar in size to those used to serve PEF's ocean barge needs would be higher than the rate he estimated for TECO Transport's tug/barge units; and (2) that Residential Customers' witness Hochstein supported the same conclusion by providing data from the U.S. Corps of Engineers showing that daily capital and operating costs of vessels the size of the units used to serve PEF are 30% higher than units of the size used by TECO Transport. Clearly, the Commission considered this matter, and Tampa Electric's request for reconsideration on this point is improper reargument.

Tampa Electric also asserts that the Commission erred in its reasoning that because TECO Transport barges are more efficient than those used by PEF, the market price to deliver coal to Tampa Electric is less than the market price to deliver coal to PEF. Tampa Electric claims that the fact that TECO Transport is an efficient carrier is irrelevant to the question of market price. Again, this reflects an attempt by Tampa Electric to improperly reargue use of the PEF rate as part of the basis for the Commission's decision.

Beyond the fact that Tampa Electric's complaints about use of the PEF rate amount to improper reargument, Tampa Electric ignores the fact that the Commission did not base its decision to limit Tampa Electric's recovery of costs for ocean barge service solely on the PEF rate. In fact, Appendix 7 to staff's recommendation makes clear that *PEF's rate was not used as the basis for the specific adjustment to Tampa Electric's cost recovery for ocean barge service.* Thus, reconsideration on this point would do nothing to change the final result that Tampa Electric disagrees with.

Use of JEA Rate

Tampa Electric also asks the Commission to improperly reweigh the evidentiary value it placed on rates paid by JEA as comparable market rates for ocean barge service, asserting that such rates were not truly comparable. First, Tampa Electric contends that the Commission erred in failing to distinguish the JEA coal movements as isolated spot movement rather than Tampa Electric's long-term contract movements. However, the nature of the JEA coal movements in comparison to Tampa Electric's coal movements was discussed in the direct testimony, and during the cross-examination, of several witnesses and was the subject of several hearing exhibits.

Second, Tampa Electric contends that the Commission overlooked market information in the record showing increased costs of waterborne coal transportation provided by TECO Transport to JEA in 2004. What Tampa Electric fails to mention is that the record indicates that the 2004 rate paid by JEA was for a single transaction with no backhaul and that the contract was signed after the time period in which Tampa Electric tested the market with its RFP. Further, Tampa Electric fails to mention that the Commission relied, to Tampa Electric's benefit, on the higher priced 2002 JEA transactions rather than the lower priced 2003 transactions.

The Commission considered each of these concerns and rejected them when it chose to use the rates paid by JEA as comparable market rates for ocean barge service.

The Big Picture

In this docket, the Commission heard extensive evidence on the issues – three days of testimony and over 100 exhibits. In its post-hearing recommendation, staff presented the Commission with five alternative recommendations concerning the appropriate amount to allow Tampa Electric to recover in its rates. Those alternatives ranged from no reduction in the costs that Tampa Electric would incur under its 2004-2008 contract with TECO Transport to reductions anywhere between $13.8 million per year and $20.3 million per year. Each of the alternative recommendations was supported by competent, substantial evidence of record. At its post-hearing Agenda Conference, the Commission concluded, based on the record, that the costs incurred by Tampa Electric under its contract with TECO Transport were not reasonable for purposes of cost recovery. Then, recognizing that each of the alternatives that proposed a reduction was aimed at establishing a market-based rate, the Commission questioned staff concerning the basis for each alternative. The Commission ultimately adopted portions of two alternative recommendations and determined that a reduction of $15.3 million per year was appropriate based on the actual rates paid by other utilities to non-affiliates for inland river barge and ocean barge service. The Commission's decision was well within the range of possible adjustments that were supported by the record.

As discussed above, Tampa Electric has not identified a point of fact or law that the Commission overlooked or failed to consider in rendering its Final Order. Instead, Tampa Electric has asked the Commission to improperly engage in reweighing the extensive evidentiary record it considered in rendering its Final Order. Tampa Electric's request for reconsideration should thus be denied.

Request for Clarification

Tampa Electric requests clarification of Section V of the Final Order, at page 20, which provides that:

> Tampa Electric, at its own discretion, may choose to rebid all or any portion of its existing coal transportation requirements in an attempt to mitigate the impact of the cost recovery disallowance discussed above.

Tampa Electric states that the Commission should clarify that it will accept the results of an open, competitive RFP process regardless of whether the rate determined in that process is above or below the existing contract price. Tampa Electric contends that once the reasonableness of the process is established on the front-end, the Commission should accept the results of the process. According to Tampa Electric, statements made during the September 2, 2004, Agenda Conference leave doubt as to whether it would only incur downside risks in a rebid and would not be able to mitigate the results of the Final Order by establishing market rates via a new bid process which is open and fair.

In response to Tampa Electric's request for clarification of the Final Order, the intervenors argue that Tampa Electric is requesting that the Commission reword its order to essentially pre-approve its RFP process. OPC contends that Tampa Electric does not really want clarification, but seeks to be relieved of any risk if it chooses to rebid. CSX asserts that Tampa Electric's request for clarification appears to be an attempt to induce the Commission to ratify Tampa Electric's offer of settlement put forth in Tampa Electric's Motion to Hold Proceedings in Abeyance and Offer of Settlement, filed August 31, 2004, which was denied by the Commission. Further, Residential Customers contend that Tampa Electric's request is contradictory to the statements by one or more Commissioners during the Agenda Conference that the customers should not be caused to pay more now or later for Tampa Electric's failure to get the RFP right the first time.

The Commission's decision on this point was clear: if Tampa Electric deems it appropriate, it may attempt to mitigate the impact of the Final Order by rebidding all or any part of its existing coal transportation requirements. It is within Tampa Electric's discretion as to whether it takes that step.

Tampa Electric's requested clarification goes well beyond clarifying the Commission's decision by asking the Commission to tie its hands by pre-approving cost recovery for rates developed through a new RFP process. As Tampa Electric states in its motion: "The Commission should clearly and unequivocally state that it will accept without reservation the results of a new RFP . . .." In deliberations at its post-hearing Agenda Conference, at least one Commissioner made clear that it was not his intention to create such a situation:

> [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 [Tampa Electric] 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.

(Commissioner Davidson, Agenda Conference Transcript at 34.)

In conclusion, Tampa Electric's requested clarification goes well beyond clarifying the Commission's decision, is inconsistent with the Commission's decision, and is at odds with the Commission's intent in rendering its Final Order.

Issue 3: Should the Commission grant Tampa Electric Company's request for official recognition and motion to reopen record?

Recommendation: No. (C. Keating, Rodan)

Staff Analysis: In its request for official recognition and motion to reopen record, Tampa Electric requests that the Commission take official notice of its decision in Order No. PSC-04-0713-AS-EI, issued July 20, 2004, Docket No. 031057-EI, In Re: Review of Progress Energy Florida, Inc.'s Benchmark for Waterborne Transportation Transactions with Progress Fuels, and the unredacted stipulation and settlement approved by that order ("PEF stipulation"). Tampa Electric notes that this order was entered subsequent to the close of the record in this proceeding but prior to the Commission's consideration and ultimate decision with respect to the appropriate rate for Tampa Electric to pay for waterborne coal transportation costs in 2004. According to Tampa Electric, the PEF stipulation represents the best contemporaneous evidence of what the Commission considers to be the appropriate rates for waterborne coal transportation provided to both PEF and Tampa Electric. Tampa Electric argues that the Commission should take official recognition of the PEF stipulation because it relied upon historical PEF waterborne coal transportation rates in considering and deciding this proceeding. Tampa Electric contends that official recognition of the order will further the goals of fairness, uniformity, and even-handed regulation of two similarly situated Commission-regulated electric utilities. Tampa Electric requests that the Commission reopen the record of this proceeding for the limited purpose of including the order and the PEF stipulation.

Tampa Electric does not offer any legal authority in support of its motion to reopen the record, and the courts have held that the specific relief sought by Tampa Electric is prohibited. In Lawnwood Medical Center, Inc., v. Agency for Health Care Administration, 678 So. 2d 421 (Fla. 1st DCA 1996), the court found that AHCA erred by reopening the record of an administrative proceeding to take selective official recognition for the purpose of making additional findings of fact. In that case, AHCA reopened the record of a proceeding to take official recognition of three specific documents after an administrative law judge had issued a proposed recommended order but before the agency took final action. In this case, Tampa Electric asks the Commission to go even further than AHCA by reopening the record to take selective official recognition of a single document after the Commission has issued its Final Order in this proceeding.

If the Commission wishes to reopen the record of this proceeding for purposes of considering the PEF stipulation, it must first determine that the PEF stipulation represents a change in circumstances so significant that its Final Order is no longer in the public interest.[4] To afford due process, the Commission would then be required to allow all parties the opportunity to present evidence concerning the relevance of the PEF stipulation and the weight to be afforded it. The PEF stipulation contains nothing so significant as to merit further proceedings in this case. Indeed, it would be inconsistent with the stipulation itself, and thus the order approving the stipulation, to allow it to be given any precedential value in this case.

[4] McCaw Communications of Florida, Inc, v. Clark, 679 So. 2d 1177 (Fla. 1996), citing Peoples Gas System, Inc. v. Mason, 187 So. 2d 335 (Fla. 1966).

As noted in Issue 2, above, it would be inappropriate to take official recognition of the PEF stipulation in this docket. The stipulation, which was approved in its entirety, provides that it "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." A stipulation, by its nature, typically represents a compromise among the parties to a proceeding based on the specific facts and circumstances of the proceeding, including the information at each party's disposal and each party's evaluation of the risks of going to hearing. It would very likely chill the incentive of parties to enter into stipulations if the terms of those agreements – particularly confidential terms - are given precedential value in other cases in spite of explicit language in the stipulation to the contrary. Further, taking official recognition of the PEF stipulation in this docket would likely involve disclosing the stipulated rates from that document to Tampa Electric[5], in conflict with the Commission's finding in Order No. PSC-04-0705-CFO-EI[6] that those rates constitute "information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms" which is entitled to confidential classification pursuant to Section 366.093, Florida Statutes.

Further, as CSX notes, the stipulation was signed April 29, 2004, based on information available to the parties at that time. The Commission's duty in this case, however, was to determine whether Tampa Electric's contract rates were prudent based on what Tampa Electric knew or reasonably should have known at the time it tested the market. Tampa Electric's RFP process took place in the summer of 2003, well before the PEF stipulation was signed. Thus, Tampa Electric, by asking the Commission to officially recognize the PEF stipulation, is asking the Commission to inappropriately exercise hindsight in making its prudence determination.

Reopening the record of this proceeding to officially recognize the PEF stipulation would do little beyond adding an untimely piece of data for the Commission to review in determining the prudence of the rates paid by Tampa Electric to TECO Transport. As discussed in Issue 2, the Commission was presented with a substantial amount of timely market data at hearing that supported reductions of $13.8 million to $20.3 million in annual cost recovery, and the Commission acted on that data by finding that a reduction of $15.3 million was appropriate.

In sum, the Commission should deny Tampa Electric's request for official recognition and motion to reopen the record.

[5] If the confidential rates are not disclosed to Tampa Electric, Tampa Electric could argue that it was denied due process by not being provided access to information made a part of the record.
[6] See footnote 2.

Issue 4: Should the Commission grant CSX Transportation's motion for clarification of Order No. PSC-04-0999-FOF-EI?

Recommendation: Yes. (C. Keating, Rodan)

Staff Analysis: In its motion for clarification, CSX requests that the Commission clarify the Final Order to precisely reflect the Commission's vote on Issue 3 of Staff's Recommendation relating to specific requirements imposed on Tampa Electric's future coal transportation procurement processes. CSX requests that the Final Order 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.

CSX requests that the Final Order be clarified to clearly state this requirement as voted by the Commission. CSX suggests that this language be added to the second full paragraph of Section V and/or incorporating the language into the ordering paragraphs of the Final Order.

CSX states that in an abundance of caution, it also moves, in the alternative, for reconsideration of the Final Order to grant the same relief.

Staff believes that the clarification sought by CSX is implied in the Commission's Final Order. Nonetheless, noting no opposition to CSX's motion, staff sees no harm in the Commission clarifying its Final Order to more explicitly confirm the nature of its vote. Thus, staff recommends that the Commission grant CSX's motion. If the Commission approves this recommendation, it does not need to address CSX's alternative motion for reconsideration.

Issue 5: Should this docket be closed?

Recommendation: The docket should be closed after the time for filing an appeal has run.

Staff Analysis: The docket should be closed 32 days after issuance of the order, to allow the time for filing an appeal to run.

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Review of Tampa Electric Company's 2004-2008 waterborne transportation contract with TECO Transport and associated benchmark.	DOCKET NO. 031033-EI ORDER NO. PSC-04-0999-FOF-EI ISSUED: October 12, 2004

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

FINAL ORDER ELIMINATING 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

APPEARANCES:

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On behalf of CSX Transportation.

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On behalf of the Florida Public Service Commission.

BY THE COMMISSION:

I. CASE BACKGROUND

Beginning in the 1950s, Tampa Electric Company ("Tampa Electric") established a system for the waterborne delivery of coal from Midwestern coal sources to its generating plants in Tampa, Florida. This system was the beginning of what is now known as TECO Transport, an affiliate of Tampa Electric that provides inland river barge transportation of dry bulk commodities (including coal and petcoke); terminalling services for the unloading, blending, and loading of such commodities; and ocean barge shipping of such commodities. This system was established to provide Tampa Electric a cost-effective alternative to the railroad transportation rates that prevailed at the time.

Prior to 1988, this Commission determined the reasonableness of the rates paid by Tampa Electric to TECO Transport (then known as TECO Trade and Transport) based on TECO Transport's cost to provide service to Tampa Electric. On November 10, 1988, in Docket No. 870001-EI-A, the Commission issued Order No. 20298 (referenced herein as Order No. 20298), replacing the "cost-plus" methodology with a policy favoring the use of competitive market rates, where market information is available, as the basis for determining the reasonableness of the rates paid by Tampa Electric to its affiliates. In that Order, the Commission approved a stipulation between Tampa Electric and the Office of Public Counsel ("OPC" or "Public Counsel") which established a benchmark by which the reasonableness of the rates paid by Tampa Electric to TECO Transport would be measured. The benchmark, which has remained unchanged since 1988, is calculated based on the average of the two lowest publicly-available rail transportation rates in Florida and the cost of private rail cars. Rates paid by Tampa Electric to its affiliate at or below the benchmark would be presumed reasonable for purposes of cost recovery. Rates above the benchmark would require justification by Tampa Electric if it wished to recover such rates.

In 2002, in Docket No. 020001-EI, our staff raised an issue as to whether the benchmark approved in Order No. 20298 is still an appropriate means of determining the reasonableness of

on behalf of each of the intervenors. A formal administrative hearing was held May 27 and 28, 2004, and June 10, 2004. Based on the evidence presented at this hearing and in consideration of the parties' post-hearing briefs, we disposed of these issues by vote at our September 21, 2004, Agenda Conference. This Order memorializes our vote on these matters.

We have jurisdiction over these matters pursuant to Chapter 366, Florida Statutes, including Sections 366.04, 366.05, and 366.06, Florida Statutes.

II. ELIMINATION OF BENCHMARK

As noted above, this Commission approved in 1988 a stipulation between Tampa Electric and OPC which established the existing benchmark for Tampa Electric's affiliate waterborne coal transportation transactions. The intent of the benchmark was to approximate a market price by which to judge the reasonableness of the price paid by Tampa Electric to its affiliate. As set forth in Order No. 20298, the stipulation provides that the following formula would be implemented on a prospective basis to determine the benchmark price for waterborne coal transportation services:

> the average of the two-lowest comparable publicly available rail rates for coal to other utilities in Florida. The rail rate will be stated on a cents/ton-mile basis representing the comparable total elements (*i.e.*, maintenance, train size, distance, ownership, etc.) for transportation. The average cents/ton-mile multiplied by the average rail miles from all coal sources to Tampa Electric's power plants yields a price per ton of transportation.

Moreover, the Commission approved a stipulation that reaffirmed the benchmark by Order No. PSC-93-0443-FOF-EI, in Docket No. 930001-EI, issued March 23, 1993.

Pursuant to the stipulation approved in Order No. 20298, Tampa Electric compares, on an annual basis, its actual waterborne coal transportation costs paid to TECO Transport to the benchmark value then submits this comparison to the Commission for review and analysis. Rates paid by Tampa Electric to its affiliate at or below the benchmark are presumed reasonable for purposes of cost recovery. Rates above the benchmark require justification by Tampa Electric if it wishes to recover such rates. Since 1988, as Tampa Electric's witness Joann T. Wehle testified, this Commission has made specific findings each year that the actual prices Tampa Electric paid to its affiliate, TECO Transport, were less than the benchmark price. Based on the record established in this proceeding, we find that the benchmark mechanism should be eliminated.

As noted by OPC's witness Michael J. Majoros, a wide disparity exists between actual costs recovered by Tampa Electric and the benchmark price. The rail benchmark has clearly not served as a market price indicator as originally hoped. From 1992 through 2000, the benchmark has exceeded the actual charges by amounts ranging from $5.15 to $9.44 per ton. In percentage

the rates paid by Tampa Electric to TECO Transport. The parties to that docket stipulated that the issue would not be heard in the 2002 fuel and purchased power cost recovery clause ("fuel clause") hearings, but that the issue would continue to be reviewed as part of this Commission's ongoing fuel clause proceedings. By Order No. PSC-02-1761-FOF-EI issued December 13, 2002, we approved this stipulation.

Tampa Electric's then-existing contract with TECO Transport was set to terminate at the end of 2003. In the 2003 fuel clause proceeding, the parties met informally to discuss, among other things, the issue concerning the benchmark and Tampa Electric's intentions as to how it would procure solid fuel transportation service beginning in 2004, including whether it would issue a request for proposals ("RFP") for such service. Tampa Electric issued an RFP for such service on June 27, 2003, for the five-year term from 2004 through 2008. On July 29, 2003, our staff notified the parties in writing of the preliminary issues it had identified for Docket No. 030001-EI, which included issues concerning (1) whether the RFP was sufficient to determine the market rate for solid fuel transportation services and (2) whether the costs to be incurred by Tampa Electric under the resulting contract were reasonable for cost recovery purposes.

On September 9, 2003, Tampa Electric filed testimony addressing these issues in Docket No. 030001-EI. Tampa Electric supplemented its testimony on September 22, 2003. On October 6, 2003, Tampa Electric signed a new contract with TECO Transport under which TECO Transport would serve all of Tampa Electric's domestic coal transportation requirements between 2004 and 2008. Upon motion by OPC, we deferred these issues to a separate docket, determining that the intervenors to the docket did not have adequate time to conduct discovery and prepare for hearing on the issues. Prior to the issues being deferred, the issues were identified in Order No. PSC-03-1264-PHO-EI, issued November 7, 2003, as follows:

> ISSUE 17E: Is Tampa Electric's June 27, 2003, request for proposals sufficient to determine the current market price for coal transportation?
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> ISSUE 17F: Are Tampa Electric's projected coal transportation costs for 2004 through 2008 under the winning bid to its June 27, 2003, request for proposals for coal transportation reasonable for cost recovery purposes?
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> ISSUE 17G: Should the Commission modify or eliminate the waterborne coal transportation benchmark that was established for Tampa Electric by Order No. PSC-93-0443-FOF-EI, issued March 23, 1993, in Docket No. 930001-EI?

This docket was opened to address the three issues listed above. The prehearing officer subsequently acknowledged OPC as an intervenor and granted intervenor status to the Florida Industrial Power Users Group ("FIPUG"), CSX Transportation ("CSXT"), and a group of nine Tampa Electric residential customers ("TECO Residential Customers" or "Residential Customers"). Prefiled testimony and exhibits were submitted on behalf of Tampa Electric and

terms, the benchmark has exceeded actual charges by amounts ranging from 24.9% to 51.9%. While we recognize that the benchmark has represented only an "upper limit" in determining the reasonableness of the rate paid by Tampa Electric to its affiliate, as opposed to an absolute judge of reasonableness, we find that the great disparity between the benchmark and actual costs demonstrates that the benchmark is no longer useful as a means to determine reasonableness. We do not believe the public interest is served by allowing a mechanism to remain in place that would permit Tampa Electric to potentially recover costs that exceed current costs by as much as 50%.

In sum, we find that the benchmark, which may have once served a useful purpose, is now obsolete. Although this benchmark is not currently necessary, a benchmark of some kind may again be appropriate at some future time. For example, if future competitive bidding processes for coal transportation services do not yield valid market information, we may choose to establish a benchmark or proxy for cost recovery purposes at that time.

III. SUFFICIENCY OF REQUEST FOR PROPOSALS

On June 27, 2003, Tampa Electric issued an RFP for waterborne solid fuel transportation service for the five-year term from 2004 through 2008. Tampa Electric's witness Wehle questioned the scrutiny given to the RFP in this case, testifying that Tampa Electric was not required to issue an RFP. Based on her understanding of Commission orders, she testified that TECO Transport and Tampa Electric can establish a contract transportation rate through any reasonable market price assessment. While we agree that Tampa Electric was not necessarily required to issue an RFP, we find that once the utility decided to issue an RFP, it had complete control over the RFP's content and implementation and an obligation to ensure that the RFP obtained the lowest cost transportation rate possible for the benefit of ratepayers.

This Commission has historically provided investor-owned electric utilities deference and flexibility with respect to how each utility procures fuel. By Order No. 12645, issued November 3, 1983, in Docket No. 830001-EU ("Order No. 12645"), the Commission set forth policies regarding how a utility procures fuel and fuel-related services. At page 12, the order states in pertinent part:

> The Commission fully recognizes that differing fuel mixes and plant locations will necessarily result in vastly different fuel procurement strategies . . .. [T]he utility's management has sole responsibility to procure fuel in the most cost efficient manner possible and therefore it should have the flexibility to employ any means to achieve this result . . .. [D]epartures from Commission policy are authorized when such departures can be justified and shown to be in the best interests of the utility and its ratepayers . . .. The burden of proof rests solely with the utility to document the reasonableness of its procurement practices and the resultant expenses from such practices . . .. Departures from Commission policy which through Commission audit, investigation, and hearing can be shown to

> have resulted in unjustified additional fuel expense are inappropriate for recovery through the Fuel Adjustment Clause and such expense shall be disallowed.

At pages 13-14 of the same order, this Commission also provided the following guidance to utilities that purchase fuel or fuel-related services from an affiliate:

> All utility transactions with affiliated companies which provide fuel or fuel related services should be based on costs which are consistent with or lower than the costs a utility would incur if the utility received the fuel or services from an independent supplier in the competitive market obtained through competitive bidding . . .. The Commission expects that any utility which has a contract with an affiliated organization shall administer that contract in a manner identical to the administration of a contract with an independent organization.
>
> The Commission recommends that, to the extent practicable, such long-term contracts be negotiated in a competitive environment. It is recommended that the primary method employed should be an open competitive bidding process or some comparable alternative which produces the same result . . ..
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> Vendors should be selected on the basis of a formal evaluation system which is neutral in its application and capable of producing quantifiable ratings of individual suppliers. Considerations other than delivered price, fuel quality, and vendor performance should be thoroughly documented.

By Order No. 20298, this Commission approved a stipulation that established the current rail-based benchmark for judging the reasonableness of amounts paid by Tampa Electric to TECO Transport for coal transportation services. At page 11 of that order, the Commission stated:

> We have concluded that it is desirable, where possible, to gauge the reasonableness of fuel costs sought to be recovered through a utility's fuel adjustment clause by comparison to a standard that attempts to measure what a given product or service would cost had it been obtained in the competitive market through an arms-length contract with an unaffiliated third party. We believe that limiting cost recovery in this manner will best serve the interests of Tampa Electric's customers by insuring that they are not required to pay more than a market price for the fuel component of their electricity because of an affiliation between the utility and a fuel supplier.

To implement these findings, the Commission approved the stipulation of Public Counsel and Tampa Electric establishing the benchmark. Order No. 20298 did not, however, relieve Tampa Electric of the obligation to procure services at a competitive market rate for the benefit of its ratepayers. In fact, the portion of Order No. 20298 quoted above indicates that this

Commission's policy – consistent with Order No. 12645 – is that affiliate fuel transactions reflect competitive market rates. As stated above, we believe that once Tampa Electric chose to conduct an RFP to solicit market rates, Tampa Electric was responsible for ensuring that the RFP was a valid mechanism to determine such rates. This expectation is especially true where the rates offered in response to the RFP would be offered to TECO Transport to "meet or beat."

Based on the record established in this proceeding, we find that Tampa Electric's June 27, 2003, RFP was not sufficient to determine the market price for coal transportation for the following reasons:

1. Tampa Electric's preference for an integrated bid, as set forth in its RFP, may have limited the potential response from those carriers who could not provide integrated service to Tampa Electric;

2. Tampa Electric's full requirements mandate, as set forth in its RFP, may have limited the potential response from those carriers who could provide for part, but not all, of Tampa Electric's throughput requirements;

3. A perception exists in the marketplace that responding to Tampa Electric's RFP would be an "exercise in futility" due to TECO Transport's historic right of first refusal;

4. Tampa Electric provided a reasonable mechanism for potential respondents to contact Tampa Electric to clarify any non-standard provisions in the RFP, however they did not provide reasonable post-bid follow-up to clarify bids received;

5. Tampa Electric sought to limit the scope of responses to its RFP to waterborne transportation only;

6. Tampa Electric does not appear to maintain appropriate policies to encourage or promote competition from any carrier other than TECO Transport for the transportation of coal to its Big Bend and Polk Stations; and

7. Tampa Electric limited responses to its RFP to those carriers that could deliver coal from domestic sources only.

Preference for an Integrated Bid

In its RFP, Tampa Electric stated a preference for an integrated bid, i.e., a single bid to provide all of the services requested in the RFP, including inland river barge transportation service, terminalling and transloading services, and ocean barge transportation service. Tampa Electric witnesses Wehle and Brent Dibner stated that an integrated service provider would offer several benefits: (1) priority scheduling and access to loading and unloading facilities to ensure an uninterrupted, reliable supply of coal; (2) a single responsible party, with absolute control and

responsibility and no basis to transfer blame or responsibility, that can delay or even prevent remedial action to resolve long-term or short-term problems, crises, or disruptions; (3) a single point of contact for contract administration that eliminates the need to maintain relationships with one or more providers in each of the three major elements of the supply chain (inland river, terminal, and ocean bulk transportation) and the associated costs; (4) a single point for payment; and (5) elimination of complex claims among and between the supply chain providers for interference, delay, damage to key facilities, demurrage, dispatch, slow payment of freight or claims, expediting of late or time-critical shipments, and other operational factors.

We find that while there may be some administrative efficiencies gained by Tampa Electric in obtaining integrated carrier services, the record demonstrates that this preference may have limited the potential response to the RFP from those carriers who could not provide integrated service. The preference for an integrated bid tilted the "playing field" toward one large, integrated company that could serve Tampa Electric's full requirements for all three segments. TECO Transport is currently the only waterborne transportation company that satisfies this integration preference. Smaller, more efficient carriers on a given segment may have been discouraged from bidding because of this preference. In addition, Tampa Electric did not disclose the weight assigned to this preference during the bid evaluation process, which had the further effect of discouraging partial bid responses. Tampa Electric's witness Wehle testified that two or more carriers could have submitted a joint bid for the three segments, but it appears that Tampa Electric did little to encourage such bids. Even if a river barge carrier and terminal could agree to submit a joint bid, the record indicates that carriers who could have arranged such a joint bid for integrated service would have needed to establish an additional management and coordination organization which would increase costs even at the proposal stage.

Full Requirements Mandate

In its RFP, Tampa Electric required that bidders submit bids to serve Tampa Electric's full coal transportation requirements for any given segment set forth in the RFP: 5 million annual tons for inland river barge service from specified upriver terminals; 5 million annual tons for terminalling service; and 5.5 million annual tons for ocean barge service. Dr. Anatoly Hochstein, witness for the Residential Customers, testified that this requirement is non-standard and unreasonable. For the inland river barge segment, Dr. Hochstein testified that the "entire requirements" provision discouraged carriers that may have a cost advantage at some, but not all, river terminals listed in the RFP from submitting a bid for less than Tampa Electric's entire requirements. One inland river barge carrier did submit a bid for one million annual tons of inland river barge service that included rates 8.7 percent less at one river terminal than the comparable rates produced by a pricing model offered by Tampa Electric witness Dibner, but witness Dibner disqualified the bid.

For the ocean barge segment, the record indicates that no operator of U.S.-flag vessels has sufficient capacity to transport up to 5.5 million tons annually during the contract period, except for TECO Transport. In his testimony, Dr. Hochstein identified two ocean barge

operators - GATX/AmShip and International Shipholding - with vessels that could have transported approximately 1 million tons annually.

Dr. Hochstein concluded that if Tampa Electric had not included the full requirements provision in its RFP, it could have obtained additional bids and market data as a result of its RFP. Based on the record, we agree with Dr. Hochstein and find that the full requirements provision, as set forth in its RFP, may have limited the potential response from those carriers who could provide for part, but not all, of Tampa Electric's throughput requirements.

According to Dr. Hochstein, a prudent shipper would divide its transportation needs into two parts – long-term contracts to cover its basic requirements and spot purchases for its incremental requirements. We agree and believe that Tampa Electric could have structured its RFP to allow carriers with available capacity less than Tampa Electric's entire throughput requirements an opportunity to submit a bid and potentially provide savings to Tampa Electric; to communicate more certainty about Tampa Electric's coal transportation requirements to the marketplace; and to provide flexibility in matching economic supply options with economic transportation options as advocated by CSXT witness Robert L. Sansom.

Right of First Refusal Clause

Section 2.2 of Tampa Electric's prior contract with TECO Transport provided TECO Transport three opportunities to match the prevailing market prices presented to it by Tampa Electric for the services to be provided before Tampa Electric could enter into an agreement with a carrier other than TECO Transport. This provision has been referred to as a "right of first refusal" or "meet or beat" clause. In its RFP, Tampa Electric did not disclose the existence of this provision in the prior contract between itself and TECO Transport. According to witness Wehle, if Tampa Electric had disclosed this information, potential respondents would have either submitted an inappropriate, very low bid, or not submitted a bid at all.

Although this provision was not disclosed in the RFP, the record indicates that the existence of the right of first refusal appears to have become common knowledge. Approximately ten days after Tampa Electric issued its RFP, Platts Coal, an internet site for a coal industry publication, included the RFP as one of several recent newsworthy events. Platts Coal quoted an unnamed source with the following perception about the RFP:

> Industry sources, however, downplayed the solicitation as "an exercise in futility." "We went through the same process six years ago," said one industry executive. "They'll take bids and then award the contract to their sister company, TECO Transport. It's all a game to keep the Public Service Commission happy." TECO solicited in 1997 for a five-year contract and awarded it to TECO Transport.

Further, one qualified river barge carrier, instead of submitting a bid in response to the RFP, submitted a letter to Tampa Electric which included the following statement:

> I can assure you that if TECO had proceeded to divest itself of the barge line, our response would be different. However, our impression from bidding on this business in the past is that our response, along with others, does nothing more than establish the rate structure at which your in-house carrier will continue to move your tonnage.

Tampa Electric did not require TECO Transport to submit a sealed bid along with the other RFP respondents. Instead, TECO Transport merely had to "meet or beat" the otherwise best bid (or the price Tampa Electric presented to TECO Transport) to win the new contract. As such, we believe that Tampa Electric's RFP failed to encourage prospective bidders due to the perception of TECO Transport having an extraordinary advantage over any prospective bidders.

Other RFP Provisions

Tampa Electric's witness Dibner testified that the terminology, requirements, conditions, rates of cargo handling, and other operating specifications in the RFP are common in the industry. He further testified that the RFP's language represented the distinctive requirements of the movements necessary to meet Tampa Electric's needs – inland barge, inland barge to ocean vessel, and U.S.-flag Jones Act ocean bulk vessel. Mr. Dibner contended that prospective bidders would recognize and understand such language.

Dr. Hochstein testified that many provisions within the RFP are non-standard and unreasonable, including provisions addressing the following: demurrage requirements; maximum inventory level required at the terminal; number of coal piles required at the terminal; payment schedule; liability for cargo loss; requirement to provide expedited fuel shipments upon request at no additional charge; and weight measurements as a basis for payments. Dr. Hochstein attributed these provisions to increasing the uncertainty about the business relationship between Tampa Electric and a carrier. He testified that this greater uncertainty may translate into the carrier needlessly including additional costs into a bid, ultimately to its disadvantage in the evaluation process.

We find that the record is inconclusive as to whether the provisions criticized by Dr. Hochstein are reasonable or unreasonable. Still, we are concerned that the provisions may reflect inflexibility on Tampa Electric's part in preparing the RFP. While it appears that Tampa Electric provided a reasonable mechanism for potential respondents to contact the company to clarify any non-standard provisions in the RFP, the record indicates that Tampa Electric did not negotiate with the respondents on either price or non-price factors. We believe that the apparent lack of flexibility for Tampa Electric to negotiate price and non-price factors with potential bidders may have discouraged some potential respondents from submitting a bid.

Intermodal Competition

The record indicates that CSXT, a rail carrier, is willing to and could, in a short period of time, provide coal deliveries by rail to Tampa Electric. Based on the record, however, we find that Tampa Electric sought to limit the scope of RFP responses to waterborne carriers only.

The record demonstrates the following with respect to CSXT's efforts to provide coal transportation to Tampa Electric by rail:

> On May 9, 2002, representatives of CSXT met with Tampa Electric to discuss how CSXT and Tampa Electric could convert a portion of Tampa Electric's coal transportation requirements to rail. CSXT contended that Tampa Electric would derive value from lower transportation costs, access to more diverse coal resources, decreased transit time, less handling, and less product loss.
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> CSXT spent five months developing its proposal to Tampa Electric for the delivery of coal to the Big Bend and Polk Stations. CSXT's witness Robert F. White and Richard Schumann of RAS Engineering proposed to address several engineering and operational issues regarding the design of rail unloading equipment by touring the two plants, asking specific questions to plant personnel, and examining "as-built" drawings of the two plants. During this period, Tampa Electric provided minimal assistance. While touring the Big Bend Station, Martin Duff, an employee of Tampa Electric, provided Mr. White and Mr. Schumann a general interest brochure about the Big Bend Station. This brochure was intended for the general public, and did not contain specific technical information required for an engineering analysis.
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> On October 23, 2002, CSXT made a proposal to Tampa Electric to deliver coal by rail from the MGA, West Kentucky, and Big Sandy rate districts to the Big Bend Station and the Polk Station at specific rates at two ranges of annual throughput. Tampa Electric witness Wehle described these rates as "aggressive." In addition, CSXT offered to fund construction of the necessary facilities at the Big Bend and Polk Stations to unload coal by rail. Tampa Electric did not seriously evaluate CSXT's October 2002 proposal. Rather, Tampa Electric characterized this proposal as not being a solicited, serious, *bona fide* proposal. There is no indication in the record that Tampa Electric did any economic or engineering analysis of the CSXT proposal between October 2002 and July 2003.
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> After submitting its proposal, CSXT expressed its desire to meet with Tampa Electric to discuss its proposal. CSXT was informed that Ms. Wehle and her staff were busy and needed time to review the proposal. Ms. Wehle testified that entering any serious discussions with CSXT in October and November 2002 would have been neither practical nor prudent. CSXT persistently requested a meeting, and a meeting did take place on March 12, 2003. At this meeting, CSXT described its proposal in great detail. Also, CSXT requested a meeting with Tampa Electric's engineering and operations staff .

to better understand any physical constraints and logistics issues at each plant. At the meeting's conclusion, Tampa Electric indicated that such meetings would occur after Tampa Electric had more time to digest CSXT's proposal. Despite repeated attempts to set up these subsequent meetings, CSXT did not receive a response from Tampa Electric. CSXT memorialized these requests in written correspondence to Ms. Wehle.

On June 27, 2003, Tampa Electric issued a request for proposals for transporting coal to 24 vendors of waterborne transportation services. The initial sentence of the RFP states: "[T]he Wholesale Marketing and Fuels Department of Tampa Electric Company is inviting proposals to provide waterborne transportation services for the movement of solid fuel (defined as coal, synfuel, and petroleum coke) from Midwest supply sources convenient to the Mississippi River and Ohio River systems for final delivery to Tampa Electric's generating stations near Tampa, Florida." Tampa Electric did not provide CSXT with the RFP until July 16, 2003, after CSXT had learned of the RFP and requested a copy in writing. In her testimony, Ms. Wehle characterized the CSXT bid as non-conforming because the bid did not conform to the waterborne requirements.

Tampa Electric hired Brent Dibner of Dibner Maritime Associates, an expert in maritime transportation but not railroad transportation, to analyze the bid responses to the RFP. Tampa Electric did not consider hiring a railroad consultant that could have assisted Tampa Electric in evaluating the rates contained in CSXT's proposal. Tampa Electric itself evaluated the two bids that CSXT submitted and determined that neither bid was lower than the market price for waterborne transportation that Witness Dibner estimated. However, in her testimony, Ms. Wehle admitted that neither she nor her staff had the necessary expertise to evaluate materials handling systems, blending systems, and rail shipping.

Tampa Electric did utilize the engineering firm of Sargent and Lundy (S&L) to evaluate CSXT's estimate of capital expenditures necessary to construct rail unloading facilities at the Big Bend and Polk Stations. Tampa Electric hired S&L to provide an independent technology screening analysis, including cost estimates, of CSXT's July 2003 proposal, not its October 2002 proposal to retrofit the Big Bend and Polk Stations to accept coal deliveries by rail.

Tampa Electric did not present the CSXT proposal to TECO Transport to provide TECO Transport an opportunity to match the rates set forth in the proposal. Instead, Tampa Electric provided TECO Transport an opportunity to match the rates derived from Mr. Dibner's inland river barge and ocean barge pricing models in addition to the single *bona fide* bid for terminal service. However, in response to discovery, Tampa Electric performed a comparison of mines with barge and rail access which indicated that CSXT's July 2003 proposal was more cost-effective for 1 million tons from one river terminal than the rates derived from Mr. Dibner's pricing models.

Upon review of the record, we find that that CSXT's proposal was a sincere, good-faith effort to transport at least part of Tampa Electric's coal requirements with the opportunity for, but not the guarantee of, subsequent contracts in the future. Further, it appears that the CSXT proposal may have been cost-effective to Tampa Electric. However, Tampa Electric failed to take advantage of the opportunity to pursue additional evaluations of the CSXT proposal. Instead, Tampa Electric kept its focus solely on utilizing a waterborne transportation provider.

Competition from Alternate Carriers

We further find that Tampa Electric does not maintain policies that would encourage or promote competition from any carrier other than TECO Transport for the transportation of coal to its Big Bend and Polk Stations.

Upon cross-examination, Ms. Wehle could not adequately explain why Tampa Electric does not negotiate with its RFP respondents on price factors. She indicated that Tampa Electric takes each respondent's bid as its best offer on face value. She contends that, otherwise, no respondent would submit its best offer first, and Tampa Electric would always need to negotiate that price down. Ms. Wehle described this process as arduous and belaboring, because Tampa Electric would need to ask each respondent to "sharpen their pencil." We believe that Tampa Electric's ratepayers expect Tampa Electric to be vigilant, aggressive negotiators on their behalf. Tampa Electric's "no negotiations" policy appears to be antithetical to this expectation.

Further, the record shows that Tampa Electric accepted the results of Mr. Dibner's pricing models as establishing the market rates it would present to TECO Transport to "meet or beat" but did not question those results. We believe that Tampa Electric knew or should have known of the availability of public information that it could have utilized to gauge the reasonableness of the assumptions that Mr. Dibner used in his models. Tampa Electric did no such analysis. Tampa Electric should have explored this publicly available information, especially information created within TECO Energy, to extract additional value for its ratepayers in arms-length negotiations with TECO Transport.

Finally, the record shows that Tampa Electric did not adequately evaluate its options beyond its existing coal transportation network to create value for its ratepayers. For example, Tampa Electric's Polk Station uses a blend of petroleum coke, foreign coal, and domestic coal. Dr. Hochstein testified that annual savings would be significant for the direct shipment of coal and petroleum coke to the Big Bend Station, instead of the Davant, Louisiana, terminal currently operated by TECO Transport and used by Tampa Electric.

Foreign Coal

Tampa Electric's RFP states that "proposals should represent the entire requirements stated herein of Tampa Electric's domestic waterborne solid fuel transportation services" (emphasis added) for the period 2004-2008. However, as CSXT witness Sansom testified,

Tampa Electric had not committed to a specific coal source for a large percentage of its coal purchases for the 2004-2008 period at the time its RFP was released. Based on the record, we believe that Tampa Electric had the flexibility to seek out ocean barge carriers who could deliver coal from offshore sources, but chose not to do so.

Foreign coal delivered by ships has been by far the cheapest coal option for the last three years for most Florida utilities with port access. Florida utilities other than Tampa Electric have used large amounts of foreign coal. In spite of the apparent cost advantage, Tampa Electric has used very little foreign coal for its Big Bend units. Dr. Hochstein and OPC witness Majoros testified that this has been to the detriment of the Tampa Electric ratepayers, but to the advantage to Tampa Electric's affiliate, TECO Transport.

Ms. Wehle suggested that concern over high ash fusion temperatures of South American coal, especially Columbian, was a reason that Tampa Electric has not used much South American coal. Big Bend Units 1, 2, and 3 are wet bottom boilers with combustion properties different from most coal boilers. However, Big Bend Unit 4 is not a wet bottom boiler and is similar to units at other utilities that burn Columbian coal. Tampa Electric conducted a test burn of Columbian coal at the Big Bend units in 2003, and experienced no problems when a fuel blend of 30 percent Columbian coal was burned in Units 1, 2, and 3. In addition, Tampa Electric experienced no problems when a blend of 60 percent Columbian coal was burned in Unit 4. Based on the volume of coal burned by Tampa Electric in these units, the test burn results appear to indicate that Tampa Electric could burn at least 1.5 million tons of foreign coal at its Big Bend Station.

According to Dr. Hochstein, the savings of burning foreign coal delivered directly to Tampa instead of being routed through the Davant terminal would have been over $14 million annually. Ms. Wehle testified that there are several reasons why Tampa Electric does not have foreign coal delivered directly to Tampa. First, she testified that the Big Bend Station does not have deep draft access to accept a foreign Panamax-sized vessel. Second, she testified that Tampa Electric requires the use of a terminal facility for blending and coal storage. She stated that no other facilities in Tampa have the permits or facilities to store and blend coal. Last, she testified that because Tampa Electric's carrier must blend Tampa Electric's domestic coal at a terminal prior to ocean barge transportation, the carrier can cost effectively transport the foreign coal to the terminal facility prior to ocean barge transportation to Tampa.

The record indicates that the Big Bend Station can handle Handy-sized foreign vessels which are comparable in size to the TECO Transport vessels that can transport approximately 35,000 tons. The record also indicates that the marginal shipping cost using a Handy-sized vessel compared with a larger Panamax-sized vessel would be less than $2 per ton, which is less than the transloading fee at the terminal used by Tampa Electric in Davant, Louisiana. This difference is consistent with the rate in a bid Tampa Electric received from Drummond Coal Company in December 2003, for foreign coal shipped directly to the Port of Tampa. In January

2004, the Drummond terminal in Tampa could accept Panamax-sized vessels and ship the coal the additional 12 miles to the Big Bend Station by barge for an additional $2 per ton. Thus, Tampa Electric could have chosen other delivery options with similar costs.

Ms. Wehle acknowledged that only the coal that Tampa Electric gasifies at the Polk Station is blended at the Davant terminal. The coal that Tampa Electric burns at the Big Bend Station is blended at the Big Bend Station. For the Polk Station, Tampa Electric also blends petroleum coke with foreign coal, domestic coal, or both. Depending on how many types of coal are involved, blending is a process that requires two or three conveyors that move the fuel from separate piles to one pile or hopper at most coal terminals. As stated above, the Drummond facility in Tampa had the necessary permits and was operational prior to January 2004. Further, Dr. Hochstein and CSXT witnesses Samson and John B. Stamberg testified that they conducted analyses concluding that Big Bend has sufficient storage and equipment to blend for the Big Bend and Polk Stations. Thus, Tampa Electric appears to not have explored at least two viable options for blending coal for the Polk Station in Tampa. For these reasons, we believe that Tampa Electric had the flexibility to seek out ocean barge carriers from foreign sources but chose not to do so.

Conclusion

In summary, we find, for the reasons set forth above, that Tampa Electric's RFP was not sufficient to determine the market price for coal transportation.

IV. REASONABLENESS OF COSTS INCURRED UNDER CURRENT CONTRACT

Having found that the benchmark is no longer a viable test for determining the reasonableness of costs incurred by Tampa Electric in transactions with TECO Transport and having found that Tampa Electric's RFP leading to its current contract with TECO Transport was not sufficient for determining the market price for coal transportation, we are left with the question of determining whether the costs incurred by Tampa Electric under the current contract are reasonable for purposes of cost recovery. Based on the extensive record developed in this proceeding, we conclude that the costs incurred by Tampa Electric under the current contract are not reasonable for purposes of cost recovery as set forth below.

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. For instance, any consideration of backhaul opportunities for carriers would be reflected in those carriers' bids in an open, competitive RFP process rather than being subject to debate as to whether and to what extent such opportunities should be reflected in a price model, as was the case in this proceeding.

Having found that Tampa Electric's RFP was insufficient for gauging a market rate and recognizing that it would be impractical to require Tampa Electric to issue a new RFP for coal transportation services given our lack of authority to rescind the current contract, we do not have at our disposal the one tool - an open, competitive RFP process - that we believe best allows us to determine a reasonable rate. Rather, we are faced with determining what a market rate would have been based on computer models of the market for inland river barge and ocean barge services, a single *bona fide* bid for terminal services, comparable rates paid by other utilities for these services, and analysis of rail rates offered by CSXT to transport certain tonnages. While we believe that each alternative view of the relevant markets has advantages and disadvantages in establishing a proxy for the results of competitive bidding, we find that the best alternative is to rely upon actual rates paid by other utilities to non-affiliates for inland river barge and ocean barge service and the one *bona fide* bid for terminal services.

Inland River Barge Service

In determining what a market rate would have been for inland river barge service, we look to the actual rates paid by other utilities for such service in the record of this proceeding. The record provides this information for inland river barge service provided among the following entities: (1) by Ingram Barge Company to Gulf Power Company; (2) by Memco Barge Company to Progress Energy Florida; and (3) by a non-affiliated barge company to Tampa Electric. Each of these actual cases, as discussed below, supports a market price for shipment on the river system that is, conservatively, at least $1 per ton less than the rates derived by Mr. Dibner's pricing model on a weighted average basis. The results of Mr. Dibner's model served as the basis for the inland river barge rates in Tampa Electric's current contract with TECO Transport. Thus, for cost recovery purposes, we believe the weighted average of the inland river barge rates specified in Tampa Electric's current contract with TECO Transport, based on projected shipments for 2004, should be reduced by $1 per ton. The specific reduction to apply to the rate for shipments from each upriver terminal shall be calculated as follows, using projected shipments from each terminal in 2004 for purposes of calculating a weighted average:

$$\frac{\text{(Weighted average rate per ton for all upriver terminals - \$1/ton)}}{\text{Weighted average rate per ton for all upriver terminals}} \times \text{Contract rate for specific upriver terminal}$$

Tampa Electric shall be permitted to recover only amounts reflecting the adjusted rates per ton for each upriver terminal as calculated above and escalated subject to the escalation provisions in its current contract with TECO Transport. The annual impact of this adjustment is a cost recovery disallowance of approximately $3,993,000.

Gulf Power/Ingram Transactions

Both Gulf Power Company and Tampa Electric purchase and transport domestic coal from the Illinois Basin region. Both utilities transport coal down the Ohio and Mississippi

Rivers to a point near New Orleans by inland river barge. Tampa Electric utilizes TECO Transport to transport coal to Davant, Louisiana, where it is unloaded to TECO Transport's terminal and then reloaded to ocean going barges for the trip to Tampa. In contrast, Gulf Power utilizes Ingram Barge Company, a non-affiliated carrier to move coal from the Mississippi River directly to its Crist Plant in Pensacola without unloading and reloading at a terminal. The coal remains on Ingram's river barges which traverse the protected Gulf Intracoastal Waterway through a system of locks, canals, and bays.

In 2001, Gulf Power used the IMT Terminal, which is located just across the Mississippi River from the Davant terminal used by TECO Transport, to receive foreign coal shipments. According to Florida Public Service Commission ("FPSC") Form 423s, Gulf Power's cost of shipping that coal from the IMT Terminal to its Crist Plant was $5.17 per ton. According to those same FPSC Form 423s, Gulf Power's total transportation cost for shipping coal from the Cook Terminal in Illinois to its Crist Plant was $8.77 per ton. We believe the difference of $3.60 per ton, or 41% of total trip cost, represents an estimate of the rate provided by the Gulf Power/Ingram contract for shipping coal between the Cook Terminal in Illinois and the IMT Terminal near New Orleans. Because Tampa Electric uses the terminal at Davant for transloading river barge coal but Gulf Power does not, we have assumed a percentage ratio of 50%, as opposed to the 41% established above, to adjust for the slight (35 mile) additional trip experienced by Tampa Electric and to ensure a fair comparison.

According to Gulf Power's FPSC Form 423s for January 2004, its total transportation cost of shipping coal from the Cook terminal in Illinois to its Crist Plant was $9.25 per ton. Applying the 50% ratio to this total trip cost, we estimate a market rate of $4.62 per ton for river barge transportation from the Cook terminal to the Davant terminal. We note that $4.62 per ton is significantly lower than the current TECO Transport rates that resulted from Mr. Dibner's pricing model.

Progress Energy/Memco Transactions

Progress Energy Florida obtains all of its domestic, waterborne-delivered coal from the West Virginia area. River shipments are delivered to the IMT Terminal. The average price during 2003 for shipment of this coal from the West Virginia area to the IMT Terminal is reported in a Commission audit report for Progress Energy Florida's affiliate, Progress Fuels Corporation. A review of this information shows that the price paid for such shipments by Progress Energy Florida to Memco Barge Company is materially less than the price derived by Mr. Dibner's pricing model for delivery of coal from Powhatten Point. The trip from the Kanawha River Terminal in West Virginia to the IMT Terminal for Progress Energy Florida is comparable to the trip from Powhatten Point to the Davant terminal for Tampa Electric. In addition, the price paid by Progress Fuels Corporation for these deliveries is also materially less than the price derived by Mr. Dibner's pricing model for deliveries from other docks along the Ohio River that are downriver from Powhatten Point.

Tampa Electric/Non-Affiliate Transactions

Finally, we consider a contract rate charged to Tampa Electric by a non-affiliate barge company for inland river transportation of coal from Pennsylvania to the New Orleans area from October to December, 2002. The rates charged to Tampa Electric for service under this contract were materially less than what Tampa Electric proposes to pay TECO Transport for comparable *movements* of coal under its current contract.

Terminal Service

We find that no adjustment should be made to Tampa Electric's recoverable costs for terminal services under its current contract with TECO Transport. In response to its RFP, Tampa Electric received a bid for terminal service that Mr. Dibner found to meet Tampa Electric's requirements. Mr. Dibner evaluated the bid for terminal service with respect to its terms, conditions, facility features, performance, conformance, and capacity and found the bid to be *bona fide*. TECO Transport was allowed to "meet" this bid. Although this bid represents only one data point, it appears, based on our review of the record, to represent a fair market price for terminal service.

Ocean Barge Service

In determining what a market rate would have been for ocean barge service, we look to the rates paid by other utilities for such service in the record of this proceeding. The record provides this information for ocean barge service provided to JEA, Progress Energy Florida, and Gulf Power Company. We have considered the pricing models used by Mr. Dibner and Dr. Hochstein to calculate a market rate. While the models share numerous similarities in both structure and use of cost data, the two models produced widely different results. Due to the disparity in these results, we believe that the actual rates paid by other utilities will provide a more accurate reflection of the market than the models. Based on our review of the actual rates in the record, we find that, for cost recovery purposes, the rates for ocean barge service in Tampa Electric's current contract with TECO Transport should be reduced by $2.41 per ton for shipments from the Davant terminal to Big Bend Station and by $4.08 per ton for shipments from Port Arthur, Texas, to Big Bend Station to reflect a market price. Tampa Electric shall be permitted to recover only amounts reflecting the adjusted rates per ton for shipments from these locations as escalated subject to the escalation provisions in its current contract with TECO Transport. The annual impact of this adjustment is a cost recovery disallowance of $11,322,000.

JEA

TECO Transport carries petroleum coke for JEA from Port Arthur, Texas, to Jacksonville, Florida. For the year 2003, the rate for this service was $9.00 per ton. The record indicates that the highest price paid by JEA for the same trip between 2001 and 2003 was $11.00

per ton. Using the methodology from Dr. Hochstein's ocean barge pricing model to prorate this maximum price of $11.00 per ton to be reflective of the ocean barge service required by Tampa Electric, we calculated rates of $5.57 per ton for shipments from the Davant terminal to Big Bend Station and $6.80 per ton for shipments from Port Arthur, Texas, to Big Bend Station.

PEF

We have also reviewed the rate paid by Progress Energy Florida for shipment of coal from the IMT Terminal to the Crystal River Power Station on Florida's Gulf coast, which is reported in a Commission audit report for Progress Energy Florida's affiliate, Progress Fuels Corporation. This rate is significantly lower than the rate in Tampa Electric's current contract. We note that in response to the audit, Progress Energy Florida suggested that there might be non-contractual costs not fully covered by the contract. For comparative purposes, however, we believe that any implied understatement of the rate paid by Progress Energy Florida is offset by the efficiency of the TECO Transport ocean fleet. Both Mr. Dibner and Dr. Hochstein testified that TECO Transport's tug/barge units were significantly more efficient than those used to serve Progress Energy Florida's ocean barge shipping needs.

Gulf Power

Finally, we used the rate paid by Gulf Power for transport of coal from the IMT Terminal to Pensacola to develop a comparable rate for shipments by TECO Transport from the Davant terminal to Big Bend Station in Tampa. We considered the relative speed, efficiency, and economy of scale of the tug/barge equipment that TECO Transport uses to transport coal to Tampa versus the tug/barge equipment used to transport coal to Pensacola for Gulf Power. Starting with the rate for shipment from the IMT Terminal to Pensacola, we developed a comparable per mile estimate for shipping by TECO Transport from the Davant terminal to the Big Bend Station. The result of this analysis was an estimated market rate of $5.45 per ton for shipment from the Davant terminal to Big Bend Station and $6.65 per ton for shipment from Port Arthur, Texas, to Big Bend Station.

Conclusion

In summary, we conclude that the costs incurred by Tampa Electric under its current contract with TECO Transport are not reasonable for purposes of cost recovery. 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 purpose, we do not have that tool at our disposal in this instance. Based on rates paid by other utilities for inland river barge service, we find that the weighted average of the inland river barge rates reflected in Tampa Electric's current contract with TECO Transport overstates a fair market rate by $1 per ton. Accordingly, we disallow cost recovery based on reductions applicable to the contract rate for shipments from each upriver terminal, to be calculated as set forth above.

Further, based on rates paid by other utilities for ocean barge service, we find that the rates for ocean barge service under Tampa Electric's current contract with TECO Transport overstate a fair market rate by $2.41 per ton for shipments from the Davant terminal to Big Bend Station and by $4.08 per ton for shipments from Port Arthur, Texas, to Big Bend Station. Accordingly, we disallow cost recovery for these differences. We also find that no adjustment should be made to Tampa Electric's recoverable costs for terminal service during the current contract's term.

V. ADDITIONAL MATTERS

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:

1. Consider all sources of coal, both foreign and domestic;

2. Consider all practical modes of transportation, including rail;

3. State neutrality regarding a preference for integrated bids;

4. State that less than full requirements bids are acceptable;

5. Provide parties to the fuel and purchased power cost recovery clause docket and Commission staff a copy of the RFP at least six weeks prior to its release to potential respondents to provide an opportunity for review and comment;

6. Conduct a pre-bid meeting with potential respondents;

7. Allow a minimum of eight weeks for filing a bid response to the RFP;

8. Require the incumbent carrier(s) to submit a bid response to the RFP under the same rules as all other respondents;

9. Indicate how Tampa Electric will grade and evaluate the bid responses; and

10. Justify any deviation from the above guidelines.

If we determine after such a process is conducted that the process did not produce any competitive bids or did not result in a valid market price for coal transportation services, Tampa Electric shall petition us for approval of an alternative regulatory mechanism. At this point, we believe it is premature to specify precisely how such alternatives should be structured.

In addition, we find that Tampa Electric shall, in advance of any future RFP, file with this Commission the following:

1. Its schedule for procuring coal transportation services, from drafting the RFP to signing an agreement or agreements for coal transportation services; and

2. A proposal on an alternative regulatory mechanism to be adopted if the RFP process does not produce competitive bids.

As noted above, the record indicates that Tampa Electric did not fully or aggressively explore its options regarding the delivery of coal by rail. Tampa Electric did not solicit coal transportation from all feasible coal supply basins by all feasible transportation modes. Instead, Tampa Electric limited responses to its RFP to waterborne carriers which could transport coal from Midwestern domestic sources to the Big Bend Station. Specifically, Tampa Electric did not solicit coal, deliverable by rail or barge, from Northern Appalachia, or coal, deliverable by rail, from the Illinois Basin. As a result, we find that Tampa Electric shall perform a study to determine whether procuring coal from rail-origin mines is feasible for Tampa Electric. Such feasibility study shall include the following components:

1. Determine, by mine location, which types of coal Tampa Electric can burn or gasify at its Big Bend and Polk Stations, respectively;

2. For each mine location, determine whether the mine is accessible to Tampa Electric by barge, rail, or both;

3. Estimate the additional costs associated with transporting coal by barge as described in CSXT witness Sansom's testimony;

4. For each mine identified in item 1 which Tampa Electric can access by both barge and rail, compare the comprehensive costs (including those costs identified in item 3) to transport coal for each mode from the mine to Big Bend Station and Polk Station;

5. Determine the costs associated with rail unloading equipment necessary at the Big Bend and Polk Stations for Tampa Electric to accept up to 50 percent of its annual coal requirements by rail; and

6. Determine the costs associated with rail unloading equipment necessary at the Big Bend and Polk Stations for Tampa Electric to accept up to 100 percent of its annual coal requirements by rail.

Tampa Electric shall file this feasibility study in our fuel and purchased power cost recovery clause docket no later than 180 days after the date of this order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the benchmark for Tampa Electric Company's affiliate coal transportation transactions, approved by Order No. 20298, is hereby eliminated. It is further

ORDERED that this Commission finds that Tampa Electric Company's June 27, 2003, request for proposals for coal transportation service was insufficient to determine the market price for such service. It is further

ORDERED that Tampa Electric Company's recovery of costs incurred under its current contract with TECO Transport shall be limited as set forth in the body of this Order.

By ORDER of the Florida Public Service Commission this 12th day of October, 2004.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(SEAL)

WCK

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.