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-05-0312-FOF-EI ISSUED: March 21, 2005

The following Commissioners participated in the disposition of this matter:

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

ORDER ADDRESSING POST-HEARING MOTIONS

BY THE COMMISSION:

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 our consideration. We 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, we disposed of these issues by vote at our September 21, 2004, Agenda Conference. On October 12, 2004, our vote was memorialized in Order No. PSC-04-0999-FOF-EI ("Final Order"). By our Final Order on these issues, we took the following actions: (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. We 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, we required Tampa Electric to perform a study to determine the feasibility of procuring coal from rail-origin mines.

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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.

At our March 1, 2005, Agenda Conference, we granted Tampa Electric's request for oral argument on its motions and heard argument from each of the parties. This order addresses Tampa Electric's post-hearing motions and CSX's motion for clarification/reconsideration. We have jurisdiction over this matter pursuant to Chapter 366, Florida Statutes, including Sections 366.04, 366.05, and 366.06, Florida Statutes.

I. Tampa Electric's Motion for Reconsideration

Tampa Electric asks us to reconsider only that portion of our 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 we overlooked or failed to consider, but instead makes unsubstantiated assertions that it was denied due process and equal protection of the law and asks this Commission to improperly engage in reweighing the extensive evidentiary record we considered in rendering our 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 we determined is: (1) below any of the rates that this Commission found reasonable for Tampa Electric over the last 15 years;

and (2) suspected by Tampa Electric to be below the market price that this Commission found reasonable for PEF.

As to the first point, our obligation is to set reasonable rates on a going-forward basis. In doing so, we determine 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 our 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, this 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, we eliminated that benchmark, having explicitly found that it was obsolete. We 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. We were then left with determining a fair market rate for purposes of cost recovery. In reaching our decision, we heard extensive testimony on the subject from all parties and were presented with five alternative recommendations from our staff concerning how best to determine a market rate. We did not deny Tampa Electric due process or equal protection under the law simply because we determined a market rate below the rate previously approved for cost recovery.

As to the second point, Tampa Electric glosses over the fact that the coal transportation rates approved for PEF in 2004 were the result of a confidential stipulation[1] 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, we were 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 through 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 through 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 we 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

[1] By Order No. PSC-04-0705-CFO-EI, issued July 20, 2004, we 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 was not challenged.

- are given precedential value in other cases in spite of explicit language in the stipulation to the contrary.[2]

Further, the stipulation is not part of the record established in this proceeding. In its motion for clarification, addressed below, Tampa Electric asks us to reopen the record of this proceeding to consider the stipulation. For purposes of its request for reconsideration, Tampa Electric must demonstrate that we made a mistake of fact or law by overlooking or failing to consider the stipulation. We could not have made such a mistake because the stipulation was not part of the record before us and, for many of the reasons discussed in this order, should not be. In fact, it would have been a mistake of law for us to consider such a matter outside of the record. In conclusion, we 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 us.

Tampa Electric next argues that it was denied due process because, in determining a market rate for ocean barge service, we 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 incorrect. In determining the market rate for ocean barge service, we 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 our 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 we relied upon the confidential version of this document to obtain the rate information. We did not. We calculated a rate based on the information presented in the redacted version of the document together with other record information that was provided to each party at the hearing. Thus, we did not deny Tampa Electric due process in this regard.

No Mistake of Fact

Having argued throughout this proceeding that no adjustment was necessary based on the market rates derived from computer models that we rejected, Tampa Electric now contends that we did not do as well as we should have in our attempt to determine a market rate based on rates paid by other utilities. Tampa Electric asserts that once we chose to use comparable rates paid

[2] 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 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.)

by other utilities as the basis for determining a market rate for ocean barge service, we were then obligated to use only the best available data concerning such comparable rates. Tampa Electric contends that we gave undue weight to data concerning the rates paid by JEA and PEF for ocean barge service. In doing so, Tampa Electric asks us to improperly engage in reweighing the extensive evidentiary record we considered in rendering our Final Order.

It is important to note that it was the shortcomings of Tampa Electric's RFP process that put us in the position of determining a market rate for Tampa Electric's coal transportation service with less than what we considered to be the best information. At page 16 of our Final Order, we 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, we were presented with several alternative recommendations from our staff. Three of those alternatives offered different methodologies by which we could establish a market rate for Tampa Electric's coal transportation service. After a long discussion with our staff at agenda concerning the relative merits of each approach, we 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 us to reweigh the evidentiary value we 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 we took this into account when evaluating the PEF rates. At page 19 of our Final Order, we 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 our staff's 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, we considered this matter, and Tampa Electric's request for reconsideration on this point is improper reargument.

Tampa Electric also asserts that we erred in 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 our decision.

Use of JEA Rate

Tampa Electric also asks us to improperly reweigh the evidentiary value we 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 we erred in failing to distinguish the JEA coal movements as isolated spot movements 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 we overlooked market information in the record showing increased costs of waterborne coal transportation provided by TECO Transport to JEA in 2004. What Tampa Electric does not 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 we relied, to Tampa Electric's benefit, on the higher priced 2002 JEA transactions rather than the lower priced 2003 transactions.

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

Conclusion

In this docket, we heard extensive evidence on the issues – three days of testimony and over 100 exhibits. In its post-hearing recommendation, our staff presented us 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 our post-hearing Agenda Conference, we 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, we questioned our staff concerning the basis for each alternative. We 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. Our decision was well within the range of possible adjustments that were supported by the record.

As discussed above, we find that Tampa Electric has not identified a point of fact or law that we overlooked or failed to consider in rendering our Final Order. Instead, Tampa Electric has asked us to improperly engage in reweighing the extensive evidentiary record we considered in rendering our Final Order. Therefore, Tampa Electric's request for reconsideration is denied.

II. Tampa Electric's Motion 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 we should clarify that we 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, we should accept the results of the process. According to Tampa Electric, statements made during our 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 we reword our 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 this 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 we denied. 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.

We believe our 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. We find that Tampa Electric's requested clarification goes beyond clarifying our decision by asking us to pre-approve 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 . . .." We believe that our Final Order accurately reflects our decision, and the clarification sought by Tampa Electric goes beyond what is provided in our Final Order. Thus, we deny Tampa Electric's motion for clarification.

III. Tampa Electric's Request for Official Recognition and Motion to Reopen Record

In its request for official recognition and motion to reopen record, Tampa Electric requests that we take official notice of our 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 our 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 we consider to be the appropriate rates for waterborne coal transportation provided to both PEF and Tampa Electric. Tampa Electric argues that we 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 we 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 us to go even further than AHCA by reopening the record to take selective official recognition of a single document after we have issued our Final Order.

If we wished to reopen the record of this proceeding for purposes of considering the PEF stipulation, we would first need to determine that the PEF stipulation represented a change in

circumstances so significant that our Final Order was no longer in the public interest.[3] To afford due process, we 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. We believe that 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 our order approving the stipulation, to allow it to be given any precedential value in this case.

As we have previously noted, we believe it would be inappropriate to take official recognition of the PEF stipulation in this docket. The stipulation, which we 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[4], in conflict with our finding in Order No. PSC-04-0705-CFO-EI[5] 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. Our 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 us to officially recognize the PEF stipulation, is asking us to inappropriately exercise hindsight in making our 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 us to review in determining the prudence of the rates paid by Tampa Electric to TECO Transport. As previously discussed, we were 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 we acted on that data by finding that a reduction of $15.3 million was appropriate.

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[3] 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).

[4] 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.

[5] See footnote 1.

In conclusion, we deny Tampa Electric's request for official recognition and motion to reopen the record.

IV. CSX's Motion for Clarification or Reconsideration

In its motion for clarification, CSX requests that we clarify our Final Order to precisely reflect our vote relating to specific requirements imposed on Tampa Electric's future coal transportation procurement processes. CSX requests that our Final Order include the following requirement that was specifically stated and reflected as approved in our 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 our Final Order be clarified to clearly state this requirement. 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 our Final Order to grant the same relief.

We believe that the clarification sought by CSX is implied in our Final Order. Nonetheless, noting no opposition to CSX's motion, we see no harm in clarifying our Final Order to more explicitly confirm the nature of our vote. Thus, we grant CSX's motion for clarification and find it unnecessary to address CSX's alternative motion for reconsideration.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Tampa Electric Company's motion for reconsideration and/or clarification of Order No. PSC-04-0999-FOF-EI is denied. It is further

ORDERED that Tampa Electric Company's request for official recognition and motion to reopen the record is denied. It is further

ORDERED that CSX Transportation's motion for clarification of Order No. PSC-04-0999-FOF-EI is granted. It is further

ORDERED that this docket shall be closed if no person timely files a notice of appeal.

By ORDER of the Florida Public Service Commission this 21st day of March, 2005.

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

By: _____
Kay Flynn, Chief
Bureau of Records

(SEAL)

WCK

NOTICE OF 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 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 or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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.