ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Tampa Electric Company's waterborne transportation contract with TECO Transport and associated benchmark	)	**Docket No. 031033-EI**
	)	**Filed April 26, 2004**

RESIDENTIAL ELECTRIC CUSTOMERS' RESPONSE TO MOTION TO COMPEL AND REQUEST FOR PROCTECTIVE ORDER

Catherine L. Claypool, Helen Fisher, William Page, Edward A. Wilson, Sue E. Strohm, Mary Jane Williamson, Betty J. Wise, Carlos Lissabet, and Lesly A. Diaz (the "Residential Electric customers"), by and through their undersigned attorney, respond to Tampa Electric Company's (TECO) Motion To Compel Residential Customers, filed April 19, 2004, and, pursuant to Rule 1.280(c), Fla.R.Civ.P, seek a Protective Order to protect the Residential Electric Customers from annoyance, embarrassment, oppression, and undue burden and expense.

Preliminary Statement

1. This Commission and TECO should keep a keen focus on what the central issues for consideration are before the Commission here. First, the Commission has jurisdiction over only one party to this case, namely TECO, as a regulated electric utility. Second, the focus of this inquiry is on, and must remain on, the reasonableness of the charges TECO pays to its affiliated transportation company for the waterborne transportation of coal, which it, in turn, seeks to charge to its customers through its fuel adjustment clause. This determination necessarily involves a review of the correctness of the methodology this Commission has utilized for many years, a methodology some, if not all, customer parties to the case believe has necessarily resulted in overcharges for many years. The nature of this inquiry may, as well,

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necessarily involve questioning the reasonableness of the cost of the coal being transported, if it appears the selection of the coal was mandated by the need to utilize the assets of the affiliated waterborne transportation company.

2. As will be pointed out again below, the issues at hearing in this case are specific, narrow and, necessarily, address the rates and charges of the regulated utility, TECO. They were deferred from last year's fuel adjustment proceeding to this separate docket and are listed in Order No. PSC-03-1359-PCO-EI, which established this docket. They are:

Issue 17E: Is Tampa Electric's June 27, 2003, request for proposals sufficient to determine the current market price for coal transportation?

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 proposal for coal transportation reasonable for cost recovery purposes?

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?

The reasonableness of TECO's coal transportation charges should be especially critical to the utility's customers, and this Commission, because TECO's rates, as evidenced by the charges for 1,000 kwh consumption per month are by far the highest of any Commission-regulated utility. As shown on Attachment 1, "Total Cost For 1,000 Kilowatt Hours – Residential Electric Service," effective April 15, 2004 – December 31, 2004, TECO's monthly total of $99.01 is $9.90 or 11 percent higher than the next highest utility, Progress Energy; $18.93 or 24 percent more than the lowest generating utility, Gulf Power; and fully $43.68 or 79 percent higher than the lowest cost electric utility regulated by this Commission, the Fernandina Beach Division of Florida Public Utilities Company. How can TECO, and this Commission, explain this huge

variance for a fungible, essentially generic product, especially when TECO has the most dense service territory of any regulated electric utility (read as low-cost of service for transmission and distribution) and no risk associated with nuclear generation?

3. TECO's rates and charges and why they are so inexplicably high are what this case is about. What this case is not about is the customers and how their participation in a case involving their regulated electric company is funded. Those questions about customers are not relevant to the issues in this proceeding, are not admissible, nor are they reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Aside from idle speculation, these questions and the answers to them have no proper place in this proceeding. TECO's questions are inappropriate, distracting and serve to harass the Residential Electric Customers. Clearly, they also attempt to distract attention from TECO's affiliate self-dealing, its burdensome high rates and the question why the Commission has allowed this level of rates for so long.

4. Furthermore, and importantly, too much of the text of the Motion to Compel is not specifically related to the actual discovery sought and consists of statements, assertions or suggestions that are, at best, misleading, or, at their worse, dishonest. To the extent time allows, the undersigned will address some of the more egregious of TECO's assertions.

Deposition of Dr. Anatoly Hochstein and Late-filed Exhibits Thereto

5. On April 22, 2004, subsequent to it filing the instant Motion to Compel, TECO took the deposition of the Residential Electric Customers' only expert witness to have filed prefiled written testimony in this case. The very lengthy deposition resulted in a request from TECO for 15 late-filed exhibits to the deposition, all of which, or substantially all of which (one request involves a document subject to a confidentiality agreement which Dr. Hochstein's client

for which it was produced may not allowed it to be provided to TECO) will be provided to TECO's attorneys on April 27, 2004. The undersigned would submit that many, but clearly not all, of the outstanding discovery requests TECO seeks the production of by its motion will be met by the late-filed exhibits. The Residential Electric Customers will attempt to indicate which outstanding discovery requests will be met by each of the late-filed exhibits. TECO's description of the late-filed exhibits is attached as Attachment 2.

RESPONSE AND MOTION FOR PROTECTIVE ORDER

Response to Motion to Compel

6. Residential Customers hereby respond to the Motion to Compel filed April 19, 2004 by TECO. The motion seeks discovery of privileged material from Residential Electric Customers' attorney and/or materials that are admissible or reasonably calculated to lead to admissible evidence. Furthermore, the motion contains scandalous and irrelevant accusations that are made for no legitimate purpose other than to harass and prejudice the Residential Electric Customers.

7. TECO seeks to compel discovery of the following information from the Residential Customers' attorney: the sources of payment of his attorney's fees; the identity of "clients" other than those listed in these proceedings; sources of information "used in the media;" documents or reports obtained by the attorney but not listed as exhibits in the case; documents exchanged with a potential expert witness who is not being called to testify in the case; instructions as to litigation strategy; and, contacts between the attorney and other parties or advocacy groups opposing TECO's coal transportation arrangements and the news media.

8. TECO complains that Residential Electric Customers have not produced a "privilege log," yet concedes on page 12 of the motion that preparation of such a privilege log would defeat the purpose of the privilege and result in disclosure of the desired privileged information.

9. TECO's motion should be denied. TECO has sought a variety of documents that appear on their face to fall within either attorney-client or work-product privilege. When

communications appear on their face to be privileged, the party seeking disclosure bears burden of proving that they are not. First Union Nat. Bank v. Turney, 824 So. 2d 172 (Fla. 1st DCA 2001). Additionally, much of the discovery (actually all of the discovery was initially and generally objected to on this basis) was protested on the basis that it was neither relevant to the subject matter of the case nor admissible or reasonably calculated to lead to admissible evidence. While much of the requested discovery may be provided in the late-filed exhibits, one request that is not, and which is one of the clearly most objectionable, is that related to attorneys' fees.

Request for Litigation Funding Information

10. Communications between attorney and client concerning payment of fees is confidential, as are all attorney-client communications if not intended to be disclosed to third persons, other than those to whom disclosure is necessary in furtherance of rendition of legal services. Cunningham v. Appel, 831 So. 2d 214 (Fla. 5th DCA 2002). The attorney-client privilege is widely recognized and applies to all communications made in the rendition of legal services, unless the communication falls within a statutory exception to the privilege. Butler, Pappas, Weihmuller, Katz, Craig, LLP v. Coral Reef of Key Biscayne Developers, Inc., _____ 2003 WL 22800190 (Fla. 3d DCA Nov. 26 2003).

11. In a case directly on point, Estate of McPherson ex rel. Liebreich v. Church of Scientology Flag Service Organization, Inc., 815 So. 2d 678 (Fla. 2d DCA 2002), which involved a long running battle between the Church of Scientology and the estate of Lisa McPherson (a Scientology practitioner who died in the church's custody under suspicious circumstances), the appellate court quashed a discovery order requiring the estate to produce all documents showing the source of its litigation funding. Earlier discovery had confirmed that a former church member had provided one million dollars to the estate attorney to aid in the funding the case. The trial court granted a motion to compel the discovery request, but the Second District quashed the order stating:

> "we agree with the estate that if the challenged discovery is allowed, it will create irreparable harm that cannot be remedied on plenary appeal. Here, the defendant in a wrongful death case is seeking information from the plaintiff and its counsel regarding the source of significant contributions to fund the litigation. As the estate contends, this will create a chilling effect on receiving future funding. Furthermore, the estate points out that if it is forced to disclose how much money it has to spend on litigation prior to the conclusion of the case, the church will know how long the estate "can last before it has to throw in the towel due to lack of funds."

Id. at 679.

12. The court further expressed concern that "the church will litigate until the estate can no longer afford to continue." Id. at 679-80. With this in mind, the court held that the production of the requested documents will cause the estate to suffer irreparable harm.

13. Next, the court considered whether the trial court departed from the essential requirements of law in finding the information relevant. The court stated, "Discovery in civil cases must be relevant to the subject matter of the case and must be admissible or reasonably calculated to lead to admissible evidence." citing Allstate Ins. Co. v. Langston, 655 So. 2d 91, 94 (Fla.1995) and Fla.R.Civ.P. 1.280(b)(1). The court found the information sought was not reasonably calculated to lead to the discovery of admissible evidence in the trial of the wrongful death. Id.

14. The court did not find persuasive any need to discover "the real party in interest" as TECO asserts here. Rather, the case was over the wrongful death of a young woman, and her estate had standing to pursue that claim regardless of who funded the litigation.

15. It is undisputed by TECO that the named Residential Electric Customers have been granted standing as parties in this case based upon them being residential customers of the utility. As noted by TECO in its Motion to Compel, the undersigned has acknowledged in response to discovery requests, although it was not required and without any waiver, obtaining some third-party litigation assistance. Such assistance was clearly recognized by Estate of McPherson, supra., and is

contemplated by the Rules of Professional Conduct. The disclosure of any funding assistance benefiting the Residential Electric Customers will have the same "chilling effect" as described in Estate of McPherson on receiving future funding assistance, is subject to the attorney-client privilege, and is likewise not relevant to TECO's rate reasonableness issues in this case, or admissible evidence or reasonably calculated to lead to admissible evidence.

TECO Has Not Established An Exception to the Privilege

16. Under section 90.502, Florida Statutes, the following are the exceptions to attorney client privilege:

> (4) There is no lawyer-client privilege under this section when:
>
> > (a) The services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew was a crime or fraud.
> >
> > (b) A communication is relevant to an issue between parties who claim through the same deceased client.
> >
> > (c) A communication is relevant to an issue of breach of duty by the lawyer to the client or by the client to the lawyer, arising from the lawyer-client relationship.
> >
> > (d) A communication is relevant to an issue concerning the intention or competence of a client executing an attested document to which the lawyer is an attesting witness, or concerning the execution or attestation of the document.
> >
> > (e) A communication is relevant to a matter of common interest between two or more clients, or their successors in interest, if the communication was made by any of them to a lawyer retained or consulted in common when offered in a civil action between the clients or their successors in interest.

Obviously, none of these exceptions come anywhere close to applying in the present case.

Work Product Privilege Applies to Attorney's Documents Not Offered as Evidence

17. The work-product privilege attaches to other documents in the hands of Residential

Electric Customers' attorney which he prepared, gathered or compiled in contemplation of litigation and has not listed as exhibits. Allstate Indem. Co. v. Ruiz, 780 So. 2d 239 (Fla. 4th DCA 2001). His contacts with third parties in preparation for trial, and his notes and documents related to those contacts, also constitute work product that is protected during the pendency of a case. State v. Rabin, 495 So. 2d 257 (Fla. 3d DCA 1986).

18. Florida Rule of Civil Procedure 1.280(b)(3) states that materials prepared in anticipation of litigation by or for a party or its representative are protected from discovery, unless the party seeking discovery has need of the material and is unable to obtain the substantial equivalent without undue hardship. The rationale supporting the work product doctrine is that "one party is not entitled to prepare his case through the investigative work product of his adversary where the same or similar information is available through ordinary investigative techniques and discovery procedures." Dodson v. Persell, 390 So. 2d 704, 708 (Fla.1980).

19. As the Supreme Court pointed out in Southern Bell Tel. & Tel. Co. v. Deason, 632 So. 2d 1377, 1384 (Fla.,1994):

> Fact work product traditionally protects that information which relates to the case and is gathered in anticipation of litigation. *State v. Rabin*, 495 So. 2d 257 (Fla. 3d DCA 1986). Opinion work product consists primarily of the attorney's mental impressions, conclusions, opinions, and theories. *Id.* Whereas fact work product is subject to discovery upon a showing of "need" and "undue hardship," opinion work product generally remains protected from disclosure."

In Southern Bell Tel. & Tel. Co. v. Deason, 632 So. 2d at 1384 , the Florida Supreme Court held that Southern Bell reports prepared at the request of its attorney were privileged work-product, but ultimately allowed discovery of them based on an extraordinary showing of need, i.e., that neither the Commission staff nor Public Counsel had access to the information which was stored on Southern Bell's computer system from any other source, and it was critical to the issues in the case. Id. However, the statements gathered by the attorneys and records of their activities were not

discoverable.

20. Our supreme court recently readdressed the work product privilege and held that it applies to all documents collect by an attorney but not planned for introduction into evidence in Northup v. Acken, 865 So.2d 1267, 1269 -1272 (Fla.2004). The court discussed the history and the purpose of the privilege in language that is helpful in consideration of TECO's motion:

> In its 1947 opinion in *Hickman v. Taylor*, 329 U.S. 495, 67 S.Ct. 385, 91 L.Ed. 451 (1947), the United States Supreme Court originated what has become known as the "attorney work product privilege." With words which have not lost their poignancy, the Court concluded:
>
> > In performing his various duties, ... it is essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel. Proper preparation of a client's case demands that he assemble information, sift what he considers to be the relevant from the irrelevant facts, prepare his legal theories and plan his strategy without undue and needless interference. That is the historical and the necessary way in which lawyers act within the framework of our system of jurisprudence to promote justice and to protect their clients' interests. This work is reflected, of course, in interviews, statements, memoranda, correspondence, briefs, mental impressions, personal beliefs, and countless other tangible and intangible ways--aptly though roughly termed ... the "work product of the lawyer." Were such materials open to opposing counsel on mere demand, much of what is now put down in writing would remain unwritten. An attorney's thoughts, heretofore inviolate, would not be his own. Inefficiency, unfairness and sharp practices would inevitably develop in the giving of legal advice and in the preparation of cases for trial. The effect on the legal profession would be demoralizing. And the interests of the clients and the cause of justice would be poorly served. *Id.* at 510-11, 67 S.Ct. 385.
>
> In accordance with this reasoning, the United States Supreme Court established the "privacy of [an attorney's] professional activities," *id.* at 513, 67 S.Ct. 385, and foreclosed discovery of materials created by an attorney in preparation for litigation absent "adequate reasons to justify production." *Id.*

at 512, 67 S.Ct. 385.

21. Florida had earlier adopted these principles in Surf Drugs, Inc. v. Vermette, 236 So.2d 108 (Fla.1970), and defined "work product" as follows:

> What constitutes "work product" is incapable of concise definition adequate for all occasions. Generally, those documents, pictures, statements and diagrams which are to be presented as evidence are not work products anticipated by the rule for exemption from discovery. Personal views of the attorneys as to how and when to present evidence, his evaluation of its relative importance, his knowledge of which witness will give certain testimony, personal notes and records as to witnesses, jurors, legal citations, proposed arguments, jury instructions, diagrams and charts he may refer to at trial for his convenience, but not to be used as evidence, come within the general category of work product. Id. at 112 (emphasis supplied).

22. Later, in Dodson v. Persell, 390 So.2d 704 (Fla.1980), in addressing whether surveillance recordings were discoverable, the Court stated: Any work product privilege that existed ... ceases once the materials or testimony are intended for trial use. More simply, if the materials are only to aid counsel in trying the case, they are work product. But, if they will be used as evidence, the materials ... cease to be work product and become subject to an adversary's discovery. *Id.* at 707.

23. Thus, in Northup, the court reiterated that when a party reasonably expects or intends to utilize an item before the court at trial, for impeachment or otherwise, the video recording, document, exhibit, or other piece of evidence is fully discoverable and is not privileged work product. Under the particular facts of the Northup case, the items sought to be discovered were past depositions that were to be used for impeachment of a medical expert witness. The court found these to be discoverable because, "We conclude and specifically announce today that all materials reasonably expected or intended to be used at trial, including documents intended solely for witness impeachment, are subject to proper discovery requests under Surf Drugs, Dodson, and a host of lower court decisions, and are not protected by the work product privilege. Florida's dedication to the prevention of "surprise, trickery, bluff and legal gymnastics, at trial holds no exception for

impeachment materials." However, the court did not approve the broad sweep of the Fourth District Court of Appeal's decision in Gardner v. Manor Care of Boca Raton, Inc. which required "counsel to 'cull' through various surveys and personnel files to determine which ones are relevant," Gardner, 831 So.2d at 678, an action which the court admitted "may indicate counsel's strategy." Id. " The overriding touchstone in this area of civil discovery is that an attorney may not be compelled to disclose the mental impressions resulting from his or her investigations, labor, or legal analysis unless the product of such investigation itself is reasonably expected or intended to be presented to the court or before a jury at trial. Only at such time as the attorney should reasonably ascertain in good faith that the material may be used or disclosed at trial is he or she expected to reveal it to the opposing party."

24. As will be described below, much of the discovery sought by TECO is protected by either the attorney-client or work product privileges. Where it is not, or where the information is not relevant to the issues in the case and neither admissible or reasonably calculated to lead to admissible evidence, it has either been provided, or will be provided in the late-filed exhibits, if the information or evidence, in fact, exists.

Preface to Additional Specific Responses

25. The undersigned and the Residential Electric Customers have no contractual relationships with any of the many named persons or corporations discussed by TECO in its Motion that would allow obtaining the third-party information sought by TECO even if it were legally discoverable.

Specific Discovery Responses

26. Interrogatory No. 1 regarding contact with providers of bulk commodity transportation services was answered partially in the initial discovery response, was more fully answered in the course of the April 22 deposition and may be further supplemented by the late-filed

exhibits.

27. The answer to Interrogatory No. 2 regarding contacts with other electric utilities was fully supplemented during the April 22 deposition.

28. The answer to Interrogatory No. 3 regarding submissions of documents and reports remains unchanged from the initial response.

29. The answer to Interrogatory No. 4 regarding receipt of documents or reports was supplemented during the course of the deposition and will be fully answered by responses to several of the late-filed exhibits.

30. The initial answer to Interrogatory No. 5 was supplemented during the course of the April 22 deposition and will be further supplemented by late-filed exhibits, including the submission to TECO of Dr. Hochstein's most recent book.

31. The initial answer to Interrogatory No. 6 related to Dr. Tim Lynch remains unchanged.

32. The answer to Interrogatory No. 7 regarding a form letter from Walter Dartland is now "yes" since TECO included one such letter in its Motion to Compel.

33. The answer to Interrogatory No. 8 regarding funding assistance remains the same.

34. The response to Request for Production 1 was modified prior to and during the April 22 deposition and will be further supplemented by a number of the late-filed exhibits.

35. The response to Request for Production 2 was modified prior to and during the April 22 deposition and will be further supplemented by a number of the late-filed exhibits.

36. A copy of the consultant engagement agreement with Dr. Hochstein has been produced.

37. In addition to his actual prefiled written testimony, which has since been filed, copies

of various "reports, analyses and evaluations" requested by Request for Production No. 4 will be provided in several of the late-filed exhibits, to the extent that they exist and are not protected by the work product privilege.

38. "Source documents, data and inputs to any report or evaluations" as requested in Request for Production No. 5 have either been provided prior to the April 22 deposition or will be provided in several of the late-filed exhibits, to the extent that they exist.

39. All documents responsive to Request for Production No. 6 were either described in the initial response, were provided prior to the April 22 deposition or will be provided in the late-filed exhibits.

40. Unless included in one or more of the late-filed exhibits or other discovery or pleadings or correspondence in this docket, the Residential Electric Customers are not aware of other materials meeting the definition of Request for Production No. 7.

41. The answers to Requests for Production Nos. 8, 9, 10, 11 and 12 regarding testimony and orders in prior cases remain the same.

42. Request for Production No. 13 will be supplemented by a copy of Dr. Hochstein's most recent book, which was requested during the April 22 deposition.

43. With the exception of the new book being provided, the initial response to Request for Production No. 14 remains the same, which is that a "list" of papers and other writings can be had from the resumes of Dr. Hochstein and Ashar.

44. The Residential Electric Customers believe that the initial response to Request for Production No. 15 will be somewhat supplemented by the late-filed exhibits, but that copies of "all" papers, etc. of major projects are clearly not relevant to the subject matter of this proceeding.

45. The initial responses to Requests for Production Nos. 16 and 17 were correct and complete when made and remain unchanged.

Request for Protective Order

46. Rule 1.280(c), Fla.R.Civ.P. provides that the Commission may issue a protective order to protect the Residential Electric Customers from annoyance, embarrassment, oppression, and undue burden and expense by limiting the discovery that may be had. The Residential Electric Customers would respectfully request that this Commission issue a protective order prohibiting TECO from seeking or compelling the discovery sought in its Motion to Compel, to the extent that such discovery was not already provided to it prior to the April 22 deposition, was provided during that deposition, or will be provided in the agreed upon late-filed exhibits.

WHEREFORE, the Residential Electric Customers respectfully request that the Florida Public Service Commission deny TECO' Motion to Compel and enter a protective order protecting them from further harassment and undue expense.

Respectfully submitted.

/s/ Michael B. Twomey

Michael B. Twomey
Attorney for Petitioner Residential
Customers of Tampa Electric Company
Post Office Box 5256
Tallahassee, Florida 32314-5256
Telephone: 850-421-9530

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this petition has been served by U.S. Mail and email this 26th day of April, 2004 on the following:

Wm. Cochran Keating, Esq.
Senior Attorney
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

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

Joseph A. McGlothlin, Esq.
Vicki Gordon Kaufman
McWhirter, Reeves
117 South Gadsden Street
Tallahassee, Florida 32301

Lee L. Willis, Esq.
James D. Beasley, Esq.
Ausley & McMullen
Post Office Box 391
Tallahassee, Florida 32302

Robert Scheffel Wright, Esq.
Landers and Parsons
Post Office Box 271
Tallahassee, Florida 32302

s/ Michael B. Twomey
Attorney

TOTAL COST FOR 1,000 KILOWATT HOURS - RESIDENTIAL ELECTRIC SERVICE

Effective April 15, 2004 - December 31, 2004

	Florida Power & Light Company	Progress Energy Florida, Inc.	Tampa Electric Company	Gulf Power Company	Florida Public Utilities Co.	
					Marianna	Fernandina Beach
Base Rate	$40 22	$41 18	$51.92	$49.30	$23.73	$23 73
Fuel Cost Recovery	$37 50	$34.58	$39 39	$24 72	$40.56	$29 68
Energy Conservation Cost Recovery	$1 45	$1.74	$1.11	$0.76	$0.54	$0.54
Environmental Cost Recovery	$0 13	$0 61	$1 44	$1 36	N/A	N/A
Capacity Cost Recovery	$6.25	$8 77	$2 67	$1.94	N/A	N/A
Gross Receipts Tax	$0 88	$2.23	$2 48	$2 00	$1 66	$1 38
Total Monthly Bill	**$86.43**	**$89.11**	**$99.01**	**$80.08**	**$66.49**	$55.33

MEMORANDUM

TO: Michael B. Twomey

FROM: James D. Beasley

DATE: April 23, 2004

RE: Dr. Hochstein's Deposition

Attached is a list of Dr. Hochstein's deposition exhibits. Note there is no Late-Filed Exhibit 3. Exhibit 7 was furnished to the court reporter at the deposition as was Exhibit 15. Late-Filed Exhibit 12 (the Economic Guidance Memorandum) is duplicated in Exhibit 15. By my count that leaves the following Late-Filed Exhibits to address:

1, 2, 4, 5, 6, 8, 9, 10, 11, 13, 14, 16

Please let me know if you have any questions regarding the list or descriptions.

Attachment

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DR. ANATOLY HOCHSTEIN
LATE-FILED EXHIBITS
DEPOSITION, APRIL 22, 2004

- Late-Filed Exhibit No. 1: Evaluation of Shipping and Costs – Gulf of Mexico.

- Late-Filed Exhibit No. 2: Handwritten or typed Notes or other documentation of interviews with various carriers, staff, other consultants, terminal personnel, etc. (This was a wrap around exhibit designed to cover all notes, etc. pertaining to any discussions Dr. Hochstein or Dr. Ashar had with anyone about this case.)

- Late-Filed Exhibit 3: (There was no Late-Filed Exhibit 3.)

- Late-Filed Exhibit 4. References, dates of publications, etc. (publication excerpts) – the reference was to page 8, lines 13-17 of his testimony.

- Late-Filed Exhibit 5: Hochstein's Presentations (any presentation comparing rail and waterborne transportation, including the Kyoto presentation).

- Late-Filed Exhibit 6: Notes regarding the properties of coal he believes Tampa Electric can purchase from foreign sources and use as boiler fuel.

- Late-Filed Exhibit 7: Information Dr. Hochstein provided to Jim Beasley on 4/21/04 – U.S. Coal Supply & Demand 2002 Review (note – this exhibit is duplicated as part of Exhibit 15, which is a copy of all of the information he provided to JDB on 4 21 04).

- Late-Filed Exhibit 8: Dr. Hochstein's work papers supporting 30-45 day supply of coal being common in the industry.

- Late-Filed Exhibit 9: List of terminals with only 3 or 4 coal piles.

- Late-Filed Exhibit 10: All work papers supporting study of delivery to coal to Davant, La.

- Late-Filed Exhibit 11: Dr. Ashar's notes on his visit to Tampa.

- Late-Filed Exhibit 12: Economic Guidance Memo (Doc. No. 2 to the information he faxed to JDB on 4/21/04 – duplicated in Exhibit 15).

- Late-Filed Exhibit 13: Notes regarding Drummond Terminal Capacity (his notes and any other documents)
- Late-Filed Exhibit 14: Explanation of whether his Exhibit AH-9 shows the price for shipments for Tampa Electric only to Davant.
- Late-Filed Exhibit 15: Packet of documents Dr. Hochstein faxed to Jim Beasley on 4/21/04 (note: this exhibit includes Exhibits 7 and 12).
- Late-Filed Exhibit 16: Description of sources for each input in his Exhibit AH-5.

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