State of Florida

Public Service Commission

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

DATE: August 26, 2004

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

FROM: Division of Economic Regulation (Bohrmann, Devlin, Jenkins, Trapp, Maurey, Windham, Von Fossen, Floyd, Matlock)
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: 09/07/2004 -- Post-Hearing Agenda–Commissioners and Staff May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\031033.RCM.DOC

Case Background

Beginning in the 1950s, Tampa Electric Company (referenced herein as "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, the 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. 970001-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

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 (referenced herein as "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 for municipal utilities in Florida and the cost of private rail cars. Rates paid by Tampa Electric to its affiliate 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, staff raised an issue as to whether the benchmark approved in Order No. 20298 is still a reasonable means of determining the reasonableness of 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 the Commission's ongoing fuel clause proceedings. By Order No. PSC-02-1761-FOF-EI issued December 13, 2002, the Commission 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 proceedings, 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, 2004, 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. Staff witness William B. McNulty also filed testimony on these issues. 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, the Commission deferred the 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 prehearing officer identified those issues by 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?

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?

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, and the prehearing officer subsequently acknowledged OPC as an intervenor in this docket, and granted intervenor status to the Florida Industrial Power Users Group (referenced herein as "FIPUG"), CSX Transportation (CSXT), and a group of nine Tampa Electric residential customers (referenced herein as "TECO Residential Customers" or "Residential Customers"). Staff has re-numbered the preceding issues as Issues 1, 2, and 3, respectively.

Testimony and exhibits were submitted on behalf of Tampa Electric and each of the intervenors. A formal administrative hearing was held May 27 and 28, 2004, and June 10, 2004.

The Commission has jurisdiction over this matter pursuant to Chapter 366, Florida Statutes, including Sections 366.04, 366.05, and 366.06, Florida Statutes.

AUTHORITY OF THE COMMISSION

In their brief, the parties to this proceeding have proposed a number of outcomes. The following table presents a summary of these proposed resolutions:

Party	Proposed Resolution
Tampa Electric	• Retain existing benchmark. • Allow recovery of all costs incurred by Tampa Electric under current contract with TECO Transport.
OPC/FIPUG	• Eliminate existing benchmark. • Disallow cost recovery for specified amounts incurred by Tampa Electric under current contract with TECO Transport. • Require Tampa Electric to alter waterborne solid fuel transportation solicitation practices on a going-forward basis.
CSXT	• Eliminate existing benchmark. • Disallow cost recovery for specified amounts incurred by Tampa Electric under current contract with TECO Transport. • Prescribe and referee "new, impartial RFP process." • Require Tampa Electric to negotiate with CSXT for installation of rail delivery and handling facilities and manage rail and barge delivery options in an "optimizing, competitive manner."
Residential Customers	• Eliminate existing benchmark. • Require Tampa Electric to rebid its coal transportation services to include option for rail transportation, and referee results of the rebidding. • Alternatively, disallow cost recovery for specified amounts incurred by Tampa Electric under current contract with TECO Transport and require Tampa Electric to publish an overall "least-cost" coal and coal transportation policy and work with staff and the parties to draft an RFP for services to be rendered upon conclusion of the current contract.

As discussed below, staff believes that the Commission has the authority to accept any of these proposed outcomes. However, requiring Tampa Electric to rebid for coal transportation services to be rendered during the term of the current contract would require either that the Commission rescind the current contract (which, as discussed below, the Commission does not have the authority to do) or that the Commission impose additional costs on Tampa Electric's ratepayers by virtue of requiring Tampa Electric to take bids and contract for services for which it has already contracted.

Authority to Disallow Recovery of Costs

The Commission's governing statutes provide it the authority, in setting rates for Tampa Electric, to approve recovery of costs prudently incurred (or reasonable) or to deny recovery for costs it finds to have been imprudently incurred (or unreasonable):

> In the exercise of its jurisdiction, the commission shall have the power to prescribe fair and reasonable rates and charges . . . to be observed by each public utility. . . .

Section 366.05(1), Florida Statutes.

> Whenever the Commission, after public hearing . . . shall find the rates, rentals, charges or classifications, or any of them, proposed, demanded, observed, charged or collected by any public utility for any service, or in connection therewith, or the rules, regulations, measurements, practices or contracts, or any of them, relating thereto, are unjust, unreasonable, insufficient, excessive, or unjustly discriminatory or preferential, or in anywise in violation of law, or any service is inadequate or cannot be obtained, the commission shall determine and by order fix the fair and reasonable rates, rentals, charges or classifications, and reasonable rules, regulations, measurements, practices, contracts or service, to be imposed, observed, furnished or followed in the future.

Section 366.07, Florida Statutes.

In making a determination of prudence, the Commission must base its decision on what the utility and its management knew or should reasonably have known at the time the action under review was taken. Florida Power Corporation v. Public Service Commission, 456 So. 2d 451 (Fla. 1984).

Tampa Electric has suggested during this proceeding that the rates in its new contract with TECO Transport should be deemed reasonable because its solicitation process and transaction with TECO Transport were conducted in a manner consistent with the benchmark mechanism that was in place at the time, and is still in place, and because the rates in its resulting contract with TECO Transport do not exceed the benchmark. While Tampa Electric does not raise this argument in its brief, each of the intervenors addresses this concept in its brief. The intervenors assert that Order No. 20298, which approved the stipulation that established the current benchmark mechanism, does not limit the Commission's ability to act in this proceeding.

OPC and FIPUG assert that the Commission clearly articulated in Order No. PSC-92-1048-FOF-EI (discussed below) its ability and obligation to adjust rates found to be unfair, unjust, or unreasonable. OPC and FIPUG contend that the Commission must reject any assertion that Order No. 20298 requires it to pass through rates it finds to be imprudent.

Staff believes that the Commission has the authority, if it finds in Issue 3 that the benchmark is no longer an adequate measure of reasonableness, to disallow recovery of any costs incurred by Tampa Electric pursuant to its contract with TECO Transport that the Commission finds unreasonable. The Commission is empowered and obligated by Chapter 366, Florida Statutes, to fix fair and reasonable rates upon a finding that rates proposed or charged by a public utility are unjust, unreasonable, or excessive. Further, Tampa Electric could not reasonably have relied on the benchmark approved in Order No. 20298 as it conducted its solicitation for transportation services and entered into its current contract with TECO Transport. As noted in the Case Background, an issue concerning the continuing validity of the benchmark was raised in the 2002 fuel clause proceeding, and the parties to that proceeding stipulated that the issue would continue to be reviewed in 2003 fuel clause proceedings. Thus, the issue was raised well before Tampa Electric issued its RFP or signed its contract with TECO Transport in 2003. In addition, Issue 2 in this proceeding, which explicitly asks whether the costs to be incurred under Tampa Electric's new contract with TECO Transport are reasonable, was raised in July 2003 in the 2003 fuel clause proceeding, was addressed extensively in testimony by Tampa Electric in that docket, was deferred to this docket, and has been addressed extensively by the testimony and other evidence presented by all the parties to this docket.

In addition, staff believes a disallowance of cost recovery would not constitute retroactive ratemaking. The prohibition against retroactive ratemaking generally does not apply to the Commission's fuel cost recovery proceedings. Gulf Power Company v. Florida Public Service Commission 487 So. 2d 1036 (Fla. 1986). Regardless, a disallowance would not constitute retroactive ratemaking because Tampa Electric and the intervenors have been on notice since 2002 -- when the issue was first raised in the 2002 fuel clause proceeding, and well before Tampa Electric issued its RFP or signed its contract with TECO Transport - that the Commission intended to review the benchmark mechanism. See Sugarmill Woods Civic Association v. Florida Water Services Corporation, 785 So. 2d 720, 726 (Fla. 1st DCA 2001) (stating that notice is crucial in a retroactive ratemaking analysis); Citizens v. Florida Public Service Commission, 415 So. 2d 1268 (Fla. 1982) (finding that Commission did not engage in retroactive ratemaking because parties knew or should have known that Commission's rate case order would be affected by subsequent decisions concerning depreciation rate); GTE Florida, Inc. v. Clark, 668 So. 2d 971 (Fla. 1996) (finding that Commission-approved surcharge did not constitute retroactive ratemaking because customers were not subjected to unexpected charges).

Authority to Prescribe Reasonable Practices

Section 366.07, cited above, authorizes the Commission to establish reasonable practices to be observed or followed by a public utility in the future. Further, Sections 366.05(9) and 366.093(1), Florida Statutes, reflect the Legislature's intent that the Commission ensure that utility ratepayers do not subsidize nonutility activities. Thus, to satisfy its obligation under Chapter 366, Florida Statutes, to establish fair and reasonable rates, staff believes the Commission has the authority to establish the framework for future solicitations of solid fuel transportation services by Tampa Electric and to require Tampa Electric to establish a new solid fuel transportation procurement policy, which may include provision for rail service facilities, consistent with the Commission's findings in this case.

Authority to Require Rebidding/Rescind Contract

As noted above, the Residential Customers propose that the Commission require Tampa Electric to rebid the transportation contract to include the rail option and referee the results. CSXT also proposes that the Commission require Tampa Electric "to conduct a new, impartial RFP process." While CSXT concedes, as Tampa Electric argues, that the Commission does not have authority to rescind the current contract, it nonetheless suggests that, pursuant to Section 366.07, the Commission can and should require Tampa Electric to conduct a new RFP process to remedy the alleged failures of the RFP at issue in this case. CSXT contends that Tampa Electric and TECO Transport executed the contract at their peril, without prior Commission approval, and that any losses to either, due to the Commission's actions in this docket or in any potential contract action brought by TECO Transport against Tampa Electric, are "clearly and solely only for the account of TECO and TECO Transport." (Emphasis by CSXT.) CSXT asserts that Tampa Electric's ratepayers cannot be held liable for any such costs. In their brief, the Residential Customers adopted CSXT's arguments on this point.

Staff agrees with both Tampa Electric and CSXT that the Commission lacks authority to rescind the current contract. In United Telephone Company of Florida v. Public Service Commission, 492 So. 2d 116 (Fla. 1986), the Florida Supreme Court quashed two orders of the Commission that modified revenue distribution contracts between regulated telecommunications companies. The Commission had argued that its jurisdiction under Section 364.14, Florida Statutes (1983), which empowered it to alter telephone rates, charges, or practices which it found to be unjust, unreasonable, or unduly preferential, permitted it to modify the contracts at issue. In rejecting this argument, the Court adopted the federal courts' interpretation of a similar provision in section 206(a) of the Federal Power Act. The Court noted that the federal courts had consistently held, in interpreting that section, that the government is without authority to remedy discriminatory practices or contracts as between utility companies, and that the section only empowered federal regulatory commissions to alter those practices which are unjust, unreasonable, or discriminatory to ratepayers. The Court found no other statutory authority that would permit the Commission to interfere with a contract between private parties. With respect to this case, staff notes that the language of Section 366.07 is nearly identical to the language at issue in United Telephone. Further, staff can find no other provision in Chapter 366 authorizing the Commission to abrogate the contract at issue.

While Section 366.07 clearly authorizes the Commission to fix reasonable practices to be followed by a utility on a prospective basis, staff does not agree with the Residential Customers' and CSXT's suggestions that the Commission should require Tampa Electric to issue a new solicitation for coal transportation services during the term of its current contract with TECO Transport. Although somewhat vague in its brief, CSXT appears to envision a situation where the Commission requires Tampa Electric to rebid for coal transportation services and enter into a new contract for such services, then Tampa Electric breaches its current contract with TECO Transport and suffers the consequences of the breach. CSXT emphasizes that Tampa Electric executed the contract at its own risk because it did not receive the Commission's approval of the contract. However, CSXT ignores the fact that no statute or Commission rule or order requires Commission approval of such contracts. CSXT also suggests that ratepayers would not be liable for the additional costs that would result from this scenario. Yet, if the Commission determines that Tampa Electric should, as a prudent course of action, rebid for coal transportation services, the Commission would be hard-pressed to disallow recovery of the costs that result from this "prudent" course of action.

Standard of Review

The parties spend much time in their briefs arguing who has the burden of proof in this proceeding. As the intervenors note, the burden of proof in cost recovery proceedings lies with the utility seeking cost recovery, who must show by a preponderance of the evidence that its proposed rates are fair, just, reasonable, and not unduly discriminatory. Florida Power Corporation v. Cresse, 413 So. 2d 1187 (Fla. 1982); Section 120.57(1)(j), Florida Statutes. However, as Tampa Electric notes, the benchmark mechanism approved in Order No. 20298 establishes the current methodology used by the Commission to determine the reasonableness of costs incurred by Tampa Electric under its contract with TECO Transport. Tampa Electric asserts that it meets its burden by showing that its contractual rates are lower than the benchmark. Citing Florida Department of Transportation v. JWC Company, Inc., 392 So. 2d 778 (Fla. 1st DCA 1997), Tampa Electric asserts that the burden of proof is on the party asserting the affirmative of an issue before an administrative tribunal and, therefore, the burden of proof rests with those parties challenging the benchmark.

The Commission has previously addressed the standard by which it may modify the benchmark, finding that it is required to review and modify its rate decisions on a continuing and prospective basis by virtue of its duty to regulate the rates and service of electric utilities. Order No. PSC-92-1048-FOF-EI, issued September 23, 1992, in Docket No. 920041-EI, In Re: Petition for Clarification and Guidance on Appropriate Market Based Pricing Methodology for Coal Purchased from Gatliff Coal Company by Tampa Electric Company, pp. 10-12. In that Order, the Commission noted that ratemaking is an ongoing, legislative function intended to be responsive to changing economic conditions. The Commission determined that where the public interest requires the modification of an order or part of an order that adopted a stipulation, such as the one establishing the benchmark mechanism, the Commission would have the obligation to make such a modification.

Based on the foregoing, staff believes that the proper standard of review in determining whether to retain, modify, or eliminate the benchmark is whether any party has demonstrated by a preponderance of the evidence that the benchmark serves, or no longer serves, the public interest as a useful or fair means of determining the reasonableness of the rates Tampa Electric pays to TECO Transport. If the Commission determines that the benchmark no longer serves the public interest as a test for reasonableness, Tampa Electric must show, by a preponderance of the evidence, that the costs it seeks to recover through the fuel cost recovery clause are reasonable.

Recommendation Summary

ISSUE 1: Is Tampa Electric's June 27, 2003, request for proposals sufficient to determine the current market price for coal transportation?

RECOMMENDATION: No. By its restrictive terms and conditions, Tampa Electric's June 27, 2003 request for proposals (RFP) was not sufficient to determine the market price for coal transportation. (Bohrmann, C. Keating)

- Tampa Electric's preference for an integrated carrier may have limited the potential response from those carriers which can not provide integrated service to Tampa Electric.
- Tampa Electric's full requirements mandate may have limited the potential response from those carriers which can provide for part, but not all, of Tampa Electric's throughput requirements.
- 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.
- 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 negotiate price and non-price factors.
- Tampa Electric appears to have sought to limit the scope of responses to its RFP to waterborne transportation only.
- Tampa Electric does not appear to systemically possess the appropriate 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.
- Tampa Electric appears to have limited responses to its RFP to those carriers which could deliver coal from domestic sources only.

ISSUE 2: 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?

PRIMARY RECOMMENDATION: No. Cost recovery should be limited, effective January 1, 2004, to a competitive rate based on the rates charged by TECO Transport to non-affiliated companies.

FIRST ALTERNATE STAFF RECOMMENDATION: No. Cost recovery should be limited, effective January 1, 2004, as follows:

- River Barge Transportation: Reflect backhaul opportunities that occur in a competitive market.
- Terminal Service: No adjustment.
- Ocean Barge Transportation:

  (a) Eliminate Witness Dibner's preference trade adjustment.

  (b) Reflect backhaul opportunities that occur in a competitive market.

  (c) Adopt capitalization ratios that more closely reflect actual conditions for the industry.

  (d) Reflect expected annual throughput (from 5.5 million tons per year to 5.0 million tons per year).

The effect of these adjustments is to reduce Tampa Electric's cost recovery by an estimated $13.8 million dollars annually.

SECOND ALTERNATE STAFF RECOMMENDATION: No. Cost recovery should be limited, effective January 1, 2004, as follows:

- River Barge Transportation: Reduce market price estimate by $1.00 per ton to be consistent with non-affiliate market rates paid by Gulf Power, Progress Energy Florida, and a non-affiliated shipper for Tampa Electric.

- Terminal Service:

  (a) Reduce market price estimate to a point between what IMT charged Progress Energy Florida for terminal service and the bona-fide terminal bid received in the RFP.

  (b) Reflect a more reasonable amount of coal needed to be terminaled (from 1.4 million tons per year to 1.0 million tons per year).

- Ocean Barge Transportation: Reduce market price estimate to the highest of the rates paid by JEA, Progress Energy Florida, and Gulf Power for transportation service from non-affiliated companies.

The effect of these adjustments is to reduce Tampa Electric's cost recovery by an estimated $16.3 million dollars annually.

THIRD ALTERNATE STAFF RECOMMENDATION: No. Cost recovery should be limited, effective January 1, 2004, as follows:

- Rail delivery of 1 million tons of coal in 2004 and 2 million tons annually from 2005 through 2008.

- Remaining coal transportation requirements satisfied by waterborne transportation at the market rates proposed by either first alternate staff or second alternate staff.

The effect of these adjustments is to reduce Tampa Electric's cost recovery by an estimated $19.3 or $20.3 million dollars annually based on waterborne transportation rates recommended by first alternate staff or second alternate staff, respectively

FOURTH ALTERNATE STAFF RECOMMENDATION: Yes.

ISSUE 3: 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?

RECOMMENDATION: Yes.

- The benchmark is no longer relevant and should be eliminated.
- Tampa Electric should not be required to rebid for coal transportation services for the current 2004through 2008 contract period.
- Should Tampa Electric, on its own election, decide to rebid for coal transportation services to mitigate the impact of the adjustments, if any, made by the Commission in Issue 2, the company may petition the Commission for alternate regulatory treatment of its coal transportation costs based on the results of the re-bid.
- The Commission should require Tampa Electric to conduct a fair, open, and reasonable RFP process for 2009 and beyond. Requests for recovery of costs for 2009 and beyond should be based on the results of the RFP.
- The Commission should require Tampa Electric to perform a separate feasibility analysis of using rail accessible coal supplies and rail transportation, in whole or in part, to supply solid fuel to its Big Bend and Polk Stations.

ISSUE 4: Should this docket be closed?

RECOMMENDATION: If the Commission approves the primary staff recommendation in Issue 2, this docket should remain open for the Commission to determine the appropriate rate for cost recovery purposes. Otherwise, this docket should be closed after time for filing an appeal has expired. (C. Keating)

DISCUSSION OF ISSUES

ISSUE 1: Is Tampa Electric's June 27, 2003, request for proposals sufficient to determine the current market price for coal transportation?

RECOMMENDATION: No. By its restrictive terms and conditions, Tampa Electric's June 27, 2003, request for proposals (RFP) was not sufficient to determine the market price for coal transportation. (Bohrmann, C. Keating)

POSITION OF THE PARTIES

Tampa Electric: Yes. The RFP was administered in a manner clearly articulating Tampa Electric's needs. Bids received were carefully and fairly evaluated. Taken together with the market price analysis performed by Witness Dibner, they provided a clear picture of the then-current market rates for coal transportation services.

CSX Transportation: No. Tampa Electric's RFP was defective in many respects, including Tampa Electric's failure to solicit bids from CSXT and Tampa Electric's failure to accurately evaluate the bids that CSXT provided. Moreover, Tampa Electric's related practices of willfully avoiding negotiations with CSXT were grossly imprudent.

Residential Customers: No. The RFP was flawed in numerous respects as was the evaluation of the few bids received. Thus, it cannot be used to determine the current market price for transportation.

OPC/FIPUG: No. The RFP was flawed in numerous respects, as was the evaluation of the few bids received. The RFP cannot be used to determine the current market price for coal transportation.

STAFF ANALYSIS:

Tampa Electric's Witness Wehle testified 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. Staff believes that while Witness Wehle may be correct, once Tampa Electric decided to issue an RFP, Tampa Electric had complete control over its content and implementation and an obligation to ensure that it obtained the lowest cost transportation rate possible for the benefit of its ratepayers. (TR 367)

The Commission has historically provided its jurisdictional utilities deference and flexibility with respect to how each utility procures fuel. By Order No. 12645, in Docket No. 830001-EU, issued November 3, 1983 (referenced herein as Order No. 12645), the Commission set forth its policies regarding how a utility procures fuel and fuel-related services. In pertinent part, the Commission stated:

> 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. (Order No. 12645 at 12)

In the same order, the Commission also provided the following guidance to utilities which 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 . . .
>
> 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. (Order No. 12645 at 13-14)

By Order No. 20298, the Commission approved a stipulation that established the current municipal rail-based benchmark for judging the reasonableness of amounts paid by Tampa Electric to TECO Transport for coal transportation services. Among other things, the Commission stated in Order No. 20298:

> 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. (Order No. 20298 at 11)

To implement these findings, the Commission approved the stipulation of Public Counsel and Tampa Electric establishing the current municipal rail-based 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 the Commission's policy – consistent with Order No. 12645 – states that affiliate fuel transactions reflect competitive market rates. As stated above, staff believes 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."

Staff believes that Tampa Electric's June 27, 2003 request for proposals was not sufficient to determine the market price for coal transportation. The record indicates the following:

1. Tampa Electric's preference for an integrated carrier 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 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 appears to have sought to limit the scope of responses to its RFP to waterborne transportation only.

6. Tampa Electric does not appear to systemically possess the appropriate 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.

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

For these reasons, staff does not believe that the RFP was a valid exercise to determine the market price for coal transportation.

Preference for an Integrated Carrier

Tampa Electric's RFP indicated a preference for an integrated bid. Tampa Electric Witnesses Dibner and Wehle, outlined the following reasons for this preference: (TR 73-74, 370, 476, 511, 684)

1. Priority scheduling and access to loading and unloading facilities to ensure an uninterrupted, reliable supply of coal;

2. 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. 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. 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.

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 from those carriers who could not provide integrated service.

Staff agrees with Public Counsel/FIPUG's and Tampa Electric Residential Customers' assertion that this requirement tilted the "playing field" toward one, large, integrated company which could serve Tampa Electric's full requirements for all three segments. TECO Transport is currently the only waterborne transportation company that meets this criterion. Smaller, more efficient carriers on a given segment may have been discouraged from bidding because of this integration 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 that submitted a joint bid for integrated service would need to establish an additional management and coordination organization which would increase costs even at the proposal stage. (TR 510, 862-863, TR 1416-1417, TR 476-477, EXH 4, TR 735, TR 735)

Full Requirements Mandate

Tampa Electric indicated that a bid should represent the entire requirements for a given segment set forth in the RFP. Dr. Hochstein testified that this requirement is non-standard and unreasonable. For the inland river barge segment, staff agrees with Dr. Hochstein 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 Witness Dibner's model, but Witness Dibner disqualified this bidder. (EXH 4, TR 734)

For the ocean barge segment, the record indicates that no U.S.-flag vessel has sufficient capacity to transport up to 5.5 million tons annually during the contract period, except for TECO Transport. However, Dr. Hochstein identified two ocean barge operators (*i.e.*, GATX/AmShip and International Shipholding) with vessels that could have transported approximately 1 million tons annually. Staff agrees with Dr. Hochstein that Tampa Electric, had it not included the full requirements provision in its RFP, could have obtained additional bids – and market data – as a result of its RFP. (TR 98, 108, TR 727, 731)

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. Staff agrees and believes that Tampa Electric could have structured its RFP to: 1) allow carriers with available capacity less than Tampa Electric's entire requirements an opportunity to submit a bid and potentially provide savings to Tampa Electric; 2) communicate more certainty about Tampa Electric's coal transportation requirements to the marketplace; and 3) provide flexibility in matching economic supply options with economic transportation options as Witness Sansom advocated. (TR 721)

Right of First Refusal Clause

Section 2.2 of the prior contract provided TECO Transport three opportunities to match the prevailing market prices Tampa Electric presented for the services provided before Tampa Electric could enter into an agreement with a non-incumbent carrier. Parties and staff have referred to this provision 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. If Tampa Electric had disclosed this information, Witness Wehle alleges that potential respondents would have either submitted an inappropriate, very low bid, or not submitted a bid at all. (EXH 3, EXH 4, TR 375, 410, TR 376, 710, TR 472, 682).

Although not disclosed in the RFP, the existence of this right of first refused appears to have become common knowledge. Approximately 10 days after Tampa Electric issued its RFP, Platts Coal, an internet site, included the RFP as one of several recent newsworthy events. Platts Coal quoted an unnamed source with the following perception about the RFP (TR 411):

> 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. (TR 161-162, EXH 10)

Instead of submitting a response, one qualified river barge carrier submitted a letter to Tampa Electric which includes 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. (TR 201, EXH 67)

Tampa Electric did not require TECO Transport to submit a sealed bid along with the other respondents. Instead, TECO Transport merely had to "meet or beat" the otherwise best bid (or the price Tampa Electric presented) to win the new contract. Based on the foregoing, staff believes that Tampa Electric's RFP failed to encourage prospective bidders due to the perception of the incumbent carrier's (*i.e.*, TECO Transport) extraordinary advantage over any prospective bidders. (TR 414, TR 375-376, TR 866)

Other RFP Provisions

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 necessary movements for Tampa Electric's needs – inland barge, inland barge to ocean vessel, and U.S.-flag Jones Act ocean bulk vessel. Witness Dibner contends that prospective bidders would recognize and understand such language. (TR 68, 107, 116, 153, 412, TR 79-80)

Dr. Hochstein describes many provisions within the RFP as non-standard and unreasonable, such as: 1) demurrage requirements; 2) maximum inventory level at terminal; 3) number of coal piles at terminal; 4) payment schedule; 5) liability for cargo loss; 6) expedited fuel shipments; and 7) weight measurements as a basis for payments. Dr. Hochstein attributes 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 including additional costs needlessly into a bid which may disadvantage the carrier in the evaluation process. (TR 736)

Staff believes that the record is inconclusive as to whether the provisions criticized by Dr. Hochstein are reasonable or unreasonable. However, staff is 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, Tampa Electric did not negotiate with the respondents on either price or non-price factors. Staff believes 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. (TR 482, 518-520)

Intermodal Competition

The record indicates that CSXT is willing and could, in a short period of time, be able to provide coal deliveries by rail to Tampa Electric. However, as discussed below, staff believes that Tampa Electric limited the scope of RFP responses to waterborne transportation only. (TR 439, 710)

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: a) lower transportation costs b) access to more diverse coal resources c) decreased transit time d) less handling and e) less product loss. (TR 417-418, 905-906)

CSXT spent five months developing its proposal to Tampa Electric for the delivery of coal to the Big Bend and Polk Stations. Witness White and Richard Schumann of RAS Engineering proposed to address several engineering and operational issues regarding the design of rail unloading equipment by: a) touring the two plants b) asking specific questions to plant personnel and c) 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. (TR 906-908, 1171, 1177, EXH 80)

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. 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 declared this proposal to not be a solicited, serious, *bona fide* proposal. Staff agrees with Witness Sansom that the record is devoid of any evidence suggesting that Tampa Electric did any economic or engineering analysis of the CSXT proposal between October 2002 and July 2003. (TR 418, TR 593, TR 909, TR 427, TR 418-419, 427, 551, 552, TR 1046)

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. However, Witness 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 Witness Wehle. Witness White testified that CSXT felt ignored. (TR 914, 920, TR 551, 914, TR 421, TR 551, TR 914-915, 920, TR 915, 920, EXH 27, TR 915, 920)

On June 27, 2003, Tampa Electric issued a request for proposals for transporting coal to 24 vendors of waterborne (emphasis added) 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 requested a copy in writing. Tampa Electric did not initially provide CSXT with its RFP, because Tampa Electric didn't realize that CSXT had wanted...to provide a waterborne transportation bid. Witness Wehle characterized the CSXT bid as non-conforming because the bid did not conform to the waterborne requirements. Tampa Electric clearly intended to limit the responses to its RFP to waterborne carriers. (TR 377, 509-510, 798, TR 321, 415, 548, 685, EXH 27, TR 509, 548, 655, 798, EXH 4, TR 369, 513, TR 409, 439, TR 863)

Tampa Electric hired Brent Dibner of Dibner Maritime Associates, who holds himself to be 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, Witness Wehle admitted that neither she nor her staff had the necessary expertise to evaluate materials handling systems, blending systems, and rail shipping. (TR 368, 385-386, 409, 416, TR 55-60, 198, 222, 656, TR 536, TR 426, 465, 535, 1052,TR 529)

Tampa Electric did utilize the engineering firm, 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. (TR 369, 378-379, 426, 466, 1283, TR 1282-1283)

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 Witness Dibner's inland river and ocean barge models in addition to the single *bona fide* bid for terminal service. However, Tampa Electric performed a comparison of mines with barge and rail access that indicated that the CSXT July 2003 proposal was more cost-effective for 1 million tons from one river terminal than Witness Dibner's waterborne rates. (TR 541, 655-656, 867, TR 375, 387-390, EXH 83)

Staff believes 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. (TR 940-941)

Competition from Alternate Carriers

The record indicates that Tampa Electric does not systemically possess the appropriate 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.

Witness 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. Witness Wehle describes this process as arduous and belaboring, because Tampa Electric would need to ask each respondent to "sharpen their pencil." Staff believes 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. (TR 516-520, 525, 584)

Tampa Electric accepted Witness Dibner's report at face value. As staff discusses more completely in Issue 2, Tampa Electric knew or should have known of the availability of public information that could have been utilized to gauge the reasonableness of the assumptions that Witness Dibner used in his report. Tampa Electric did no such analysis. Tampa Electric should have explored publicly available information, especially information created within TECO Energy. Tampa Electric was not aware that such information existed. Tampa Electric should have used this information to extract additional value for its ratepayers in arms-length negotiations with TECO Transport. (TR 656-661)

Tampa Electric does 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. Witness Hochstein's 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. (See Appendix 6)

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." However, as Witness Sansom indicates, 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. Staff believes that Tampa Electric had the flexibility to seek out ocean barge carriers which could deliver coal from offshore sources, but chose not to do so. (See Appendix 6) (EXH 4, EXH 95, TR 1056)

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. Witnesses Hochstein and 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. Witness Wehle suggested that concern over high ash fusion temperatures of South American coal, especially Columbian, was a reason for not using 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 wet bottom 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. These results would 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 on foreign ships would have been over $14 million annually. (EXH 60, TR 766-768, TR 425, 627, TR 663, TR 773)

Tampa Electric Witness Wehle testified that there are several other reasons why Tampa Electric does not have foreign coal delivered directly to Tampa, Florida:

1) Big Bend does not have deep draft access to accept a foreign Panamax-sized vessel (TR 469);

2) Tampa Electric requires the use of a terminal facility for blending and coal storage. No other facilities in Tampa have the permits or facilities to store and blend coal (TR 424, 431, 470, 532, 627); and

3) 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, Florida. (TR 373)

Staff agrees with Dr. Hochstein that the Big Bend Station can handle Handy-sized foreign vessels which are comparable to the TECO Transport vessels which can transport approximately 35,000 tons. Staff also concurs with Dr. Hochstein that the marginal shipping cost compared with a larger Panamax-sized vessel would be less than $2 per ton, which is less than the transloading fee at the TECO Bulk Terminal 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 by barge for an additional $2 per ton. Tampa Electric could have chosen other delivery options with similar costs. (TR 773, EXH 58, EXH 88, 95, TR 775, EXH 58, 95, TR 775)

Witness Wehle acknowledged that only the coal that Tampa Electric gasifies at the Polk Station is blended at the Davant, Louisiana terminal. Tampa Electric blends the coal that it burns for the Big Bend Station at Big Bend. 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, Florida had the necessary permits and was operational prior to January 2004. Further, Witnesses Hochstein, Samson, and Stamberg testified that their analyses concluded 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, staff believes that Tampa Electric had the flexibility to seek out ocean barge carriers from foreign sources, but chose not to do so. (TR 532, 679, EXH 2, EXH 97, TR 768-770, 1067, 1068; 1211, 1212)

Conclusion

Based on the above discussion, staff believes that Tampa Electric's RFP was not valid to determine the market price for coal transportation.

ISSUE 2: 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?

PRIMARY RECOMMENDATION: No. Although a competitive market for coal transportation services does likely exist, the wide disparity in the estimated rates for such services recommended by the parties and the staff suggests that a consensus definition of the market can not be reached based on the record in this case. Primary staff recommends that the Commission review the books and records of TECO Transport to determine an appropriate level of cost recovery for Tampa Electric based on what TECO Transport charges non-affiliated companies for waterborne transportation. (Devlin, Trapp, Helton)

FIRST ALTERNATE RECOMMENDATION: No. The rate proposed by Tampa Electric for inland river barge service should be reduced by $0.34 per ton to reflect backhaul opportunities. The rate proposed by Tampa Electric for ocean barge service should be reduced by $2.69 per ton. This adjustment is based on (1) removing Witness Dibner's preference trade adjustment, (2) accepting Witness Majoros' adjustment to reflect backhaul opportunities, (3) using capitalization ratios that more closely reflect actual conditions for the industry, and (4) adjusting annual throughput to expected annual levels. (Bohrmann, Maurey, C. Keating)

SECOND ALTERNATE RECOMMENDATION: No. The rate proposed by Tampa Electric for inland river barge service should be reduced by $1.00 per ton. The rate proposed for terminal service should be reduced by $0.23 per ton. The rate proposed for ocean barge service should be reduced by $2.41 per ton. These adjustments are based on comparisons of waterborne transportation rates paid by other Florida utilities to non-affiliated carriers. (Windham, C. Keating)

THIRD ALTERNATE RECOMMENDATION: No. The overall rates for waterborne transportation should be reduced to reflect delivery of 1 million tons of coal in 2004 and 2 million tons annually from 2005 through 2008 by rail with the remainder of Tampa Electric's coal transportation requirements satisfied by waterborne transportation at the market rates proposed by either (a) first alternate staff or (b) second alternate staff. (Windham, Von Fossen, C. Keating)

FOURTH ALTERNATE RECOMMENDATION: Yes. (Jenkins. Rodan)

POSITION OF THE PARTIES

Tampa Electric: Yes. Pricing under the current contract is four percent lower than under the contract it replaced; is lower than CSXT's proposal when properly evaluated; is shown by Witness Dibner to be below the comparable maritime market; is significantly below the most recent transportation benchmark price; and should be approved.

CSX Transportation: No. TECO's projected costs are excessive and imprudent. The PSC should limit TECO's cost recovery to what TECO would have incurred had TECO negotiated in good faith with CSXT beginning in 2002. The PSC should also investigate potential past overrecoveries due to TECO's understating its true transportation costs.

Residential Customers: No. Tampa Electric's proposed charges are excessive and inflated as compared to "market" rates as established through customer party testimony and rates paid for comparable services by other regulated and municipal electric utilities.

OPC/FIPUG: No. The rates TECO seeks to collect from ratepayers do not reflect competitive market rates; they are thus excessive and inflated. The Commission should make Witness Majoros' recommended adjustments, which will result in a competitive rate.

PRIMARY STAFF ANALYSIS: Primary staff believes that a relevant market for coal transportation does likely exist for Tampa Electric. However, the wide disparity in the estimated rates for such services recommended by the parties and the staff, as discussed in the first, second, and third alternate staff recommendations, suggests that a consensus definition of the market can not be reached. Tampa Electric Witness Dibner testified that TECO Transport is the most efficient and cost-effective provider of waterborne transportation services to Tampa Electric. Witness Wehle contends that there is no cross-subsidization between Tampa Electric and TECO Transport. If this is true, then the rates TECO Transport charges non-affiliated companies should be comparable to the rates it charges its affiliate, Tampa Electric. The best way for Tampa Electric to demonstrate that no cross-subsidization exists and to establish a market rate is to provide the Commission access to TECO Transport's books and records. Approximately 60% of TECO Transport's business is with non-affiliate entities. Market information from this business should be the most comparable to affiliate transactions with Tampa Electric. (TR 356-397)

Reviewing TECO Transport non-affiliate rates would serve a dual purpose. Both Order No. 20298 and GTE Florida v. Deason, 645 So.2d 545(Fla. 1994) contemplate a cost-based methodology for affiliate transactions if the Commission can not determine the appropriate market price for cost recovery purposes. In GTE Florida v. Deason, the Florida Supreme Court determined that the Commission erred by disallowing cost recovery for rates paid by GTE to a non-regulated affiliate when the evidence showed that the rate paid by GTE was no higher than the rate paid by non-affiliates for the same service. In that case there was evidence of what GTE's non-regulated affiliate charged customers other than GTE, clearly establishing a market rate. Here, there is very limited evidence of what TECO Transport charges customers other than Tampa Electric. In the discovery phase of this docket, OPC, FIPUG, and staff requested access to TECO Transport's books and records. Tampa Electric argued that the Commission had determined in Order No. 20298 that a market for mine-to-plant transportation does exist, and the Commission should not consider a cost-based regulatory solution to this docket based on the precedents set by that order and GTE Florida v. Deason. Tampa Electric subsequently proposed in its February 19, 2004, Response to Office of Public Counsel's Motion for Revision to Order Establishing Procedure or Continuance that the Commission could consider a cost-based regulatory solution if and only if the Commission determined that a market no longer exists for such service to Tampa Electric. OPC and FIPUG dropped their discovery requests pursuant to a procedural stipulation with Tampa Electric which the prehearing officer approved by Order No. PSC-04-0289-PCO-EI, issued March 15, 2004. In the interest of moving the case forward, Staff dropped its discovery request shortly thereafter.

Tampa Electric should provide access to TECO Transport's books and records for the specific purpose of determining a market waterborne transportation rate for Tampa Electric

based on the rates TECO Transport charges other non-affiliated companies. Failing this, the Commission should establish a cost based rate for Tampa Electric's waterborne coal transportation.

FIRST ALTERNATE STAFF ANALYSIS:

Inland River Barge Service

First alternate staff recommends that the rate for inland river barge service be adjusted for backhaul opportunities. Witness Dibner did not consider backhaul on the Mississippi and Ohio Rivers in his inland river barge model. During the hearing, however, Witness Dibner did testify that a backhaul rate up to 26% existed for the inland river segment. Staff tested the effect of adjusting the proposed river rate derived from Witness Dibner's inland river barge model for 26% backhaul. The result reduced the inland river rate to a level below that of the single bid which was received for inland river barge service but rejected as not being *bone fide* by Witness Dibner. To reflect backhaul opportunities, first alternate staff recommends that for terminals for which the inland river barge carrier submitted a bid, the Commission should accept the bid rates as the appropriate market price for inland river barge service. (See Appendix 2)

The annual impact of this adjustment is approximately $1,358,000.

Terminal Service

First alternate staff recommends that no adjustment be made to Tampa Electric's recoverable costs for terminal service during the current contract's term. In response to its RFP, Tampa Electric received a bid for terminal service that Witness Dibner found to meet Tampa Electric's requirements. Witness 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 first alternate staff is somewhat concerned about drawing conclusions about market conditions from only one data point, the bid does appear to represent a market price for terminal service. (See Appendix 3) (TR 83, 152, 185, 296, 388, TR 92, 100, 151)

Ocean Barge Service

First alternate staff believes that at least four adjustments should be made to Witness Dibner's estimated market rates for ocean barge service. (See Appendix 3)

1) Elimination of Witness Dibner's preference trade adjustment in total;

2) Allocation of 34.67 percent of TECO Transport's common costs to non-Tampa Electric customers in recognition of backhaul opportunities that occur in a competitive environment;

3) Use of capitalization ratios that more closely reflect actual conditions for the industry; and

4) A market price estimate based on expected annual throughput.

Preference Trades Adjustment

First alternate staff recommends eliminating the impact of preference trade voyages on the fixed cost associated with owning TECO Transport's ocean barges. As stated by Witness Majoros, in a competitive market, a shipper would have discounted the number, type, and value of such voyages if a carrier had introduced this subject during negotiations. In its negotiations with TECO Transport, Tampa Electric could have taken the position that the rates received for, length of, and frequency of (*i.e.*, spot prices, trans-ocean and seasonal) preference trade voyages do not compare well with the characteristics (*i.e.*, five year contract, cross-Gulf, and year-round) of transporting coal for Tampa Electric. Only three of the seven barges that TECO Transport utilizes to transport coal for Tampa Electric could fully participate in preference trade voyages. Witness Dibner and Hochstein disagree about alternate employment opportunities available to the TECO Transport fleet if those barges were not transporting coal for Tampa Electric. However, in an arms-length negotiation with its affiliate, Tampa Electric should have presented a picture of limited alternate opportunities available to TECO Transport to extract maximum value from these negotiations for its ratepayers' benefit. However, Tampa Electric conceded this argument without question before negotiations even began. (TR 810-812, TR 189-190, 754, 757, 758, TR 755, TR 138-141, 752-761, TR 660)

The annual impact of this adjustment is approximately $3,101,000.

Allocation of backhaul opportunities

Witness Dibner testified that a carrier does not consider backhaul opportunities when proposing a rate to the headhaul customer unless a competitive reason exists to do so. He further opined that TECO Transport's backhaul customers have driven their rates down to the carrier's marginal cost. Therefore, the headhaul customer (*i.e.*, Tampa Electric) is responsible for the carrier's common costs, because the carrier can not rely upon the backhaul customers for any contribution to those costs. Witness Dibner stated that ". . . consideration of backhaul is not for outside conjecture, interference, confiscation, or reallocation in setting market rates." Tampa Electric's brief indicates that the Commission has only considered backhaul when contracts were based on cost-plus, and is not appropriate under the market-based regulatory mechanism set forth by Order No. 20298. (TR 122, 154, 217, 219, 303, TR 167, 209, TR 209-212, TR 110, 211, Tampa Electric Brief at 22-23)

Witness Majoros believes that a model for competitive market conditions should consider backhaul opportunities available to the carrier (*i.e.*, TECO Transport). Witness Majoros adjusted Witness Dibner's ocean barge model using the following data and methodology. Witness Majoros analyzed publicly available data on TECO Transport shipments in and out of the Port of Tampa. He calculated a backhaul ratio of 69.34 tons of backhaul for every 100 tons of Tampa Electric cargo transported by TECO Transport's ocean barges. Witness Majoros then multiplied this backhaul ratio by 50 percent to determine the proportion of common costs to allocate to TECO Transport's non-Tampa Electric customers. Thus, Witness Majoros calculated that TECO

Transport should allocate 34.67 percent of its common costs to these customers. The effect of Witness Majoros' adjustment for backhaul would be to reduce cost recovery by $11,698,000. (TR 809, TR 807, EXH 16, EXH 18)

Dr. Hochstein used Witness Dibner's data to estimate two market rates for ocean barge service -- $3.67 per ton without backhaul and $2.30 per ton with backhaul. For round-trip shipments with backhaul, Dr. Hochstein assigned the additional cost of the backhaul cargo to the non-Tampa Electric customer. In addition, Dr. Hochstein allocated 50 percent of the common costs while the ocean barge is at sea during the round-trip voyage to the non-Tampa Electric customer. The effect of Witness Hochstein's adjustment for backhaul would be to reduce cost recovery by $6,436,000. (See Appendix 8) (TR 763)

OPC/FIPUG's brief cites Bluefield Waterworks and Improvement v. Public Service Commission of West Virginia, 262 U.S. 679, (U.S. 1923) in which the U.S. Supreme Court discussed confiscatory rates. The Court found that fair rates must be paid for assets "being used for the public." OPC and FIPUC argue that the TECO Transport tug-barges, when carrying backhaul, are not being used to benefit the public, and that it would be confiscatory from the ratepayers' perspective if the Commission did not consider backhaul. (OPC/FIPUG Brief at 20)

First alternate staff believes that the Commission can and should consider backhaul to simulate a competitive market when establishing a market rate for ocean barge service. Tampa Electric's Witness Dibner agreed that a shipper in a competitive market would not accept a scenario in which the carrier assigned all of the common costs, as Witness Dibner assumed in his model, to that one shipper. First alternate staff recommends a backhaul adjustment for ocean barge service which will reduce cost recovery by $8,300,000. This recommended adjustment falls between that recommended by Witnesses Majoros and Hochstein. Staff believes that this adjustment is reflective of what Tampa Electric might have expected at the negotiating table with TECO Transport had they sought to negotiate. (TR 217)

First alternate staff expects Tampa Electric to be as aggressive with TECO Transport when negotiating an ocean barge rate as TECO Transport's backhaul customers are when they negotiate their respective rates. In a competitive market, as Witness Majoros' suggested, a shipper would have used the publicly available data from the Port of Tampa to assert that the carrier should allocate its common costs among all shippers. Witness Wehle did not know those data existed and did not attempt to persuade TECO Transport through negotiations to reduce the percentage of common costs Tampa Electric would pay. (TR 808, TR 657-658)

Cost of Capital and Components

Based on the record, the cost of capital assumptions included in Witness Dibner's ocean barge and inland river models do not appear to be reasonable. Staff believes that Witness Dibner used excessive, and for the most part unsupported, cost of capital inputs. As such, the results of both Witness Dibner's ocean barge and inland river models overstate the true market rates for waterborne transportation.

Tampa Electric requested, and the Commission granted, confidential treatment for the cost of capital inputs used in the ocean barge model and the implied cost of capital included in the inland river model. Witness Dibner testified that he based the cost of capital used in his models on the typical objectives and financing positions of the industry and the costs of capital that are incurred and expected by companies that would bid on the contract. Witness Dibner also testified that he went to great lengths to ensure that his study was thorough and reflective of the market with respect to the actual vessels TECO Transport employed to serve Tampa Electric. However, Witness Dibner expressly avoided relying on any actual financial information for TECO Transport in developing the cost of capital inputs he used in his models. (EXH 2, EXH 3, TR 326, TR 143, TR 131, TR 98)

Tampa Electric refused to provide actual cost of capital data for TECO Transport to compare with the cost of capital assumptions included in the ocean and inland river models. However, by comparing publicly available financial information for Tampa Electric and TECO Energy contained in the 2003 10K Report filed with the Securities and Exchange Commission and the 2003 Annual Report to Shareholders, it appears that TECO Energy does not capitalize its non-regulated businesses with anywhere near the level of equity witness Dibner assumed in his models. (EXH 2, EXH 3)

The limited documentation provided by Witness Dibner to support his assumptions supports a relative capital structure quite different from the relative ratios of debt and equity he included in his models. Of particular interest is the information provided from RMA (formerly known as Robert Morris Associates). RMA compiles financial information from hundreds of companies and publishes financial statements for numerous industries based on the average results for companies in any particular industry. For the industry "Transportation – Water Transportation of Freight," the average capital structure reported by RMA is 38% equity and 62% debt. In addition, two articles were provided that indicate typical financing terms for new ships of 70% to 75% debt financing "and a touch less" for vessels up to 10 years old. Based on the evidence in the record, the capital structure ratios Witness Dibner assumed in his models are not representative of the ratios one would expect to see in this industry. (EXH 73, EXH 72, TR 329)

Witness Dibner based his cost rate for debt on "high yield rates applicable to U.S. marine companies engaged in towing and coastal/dry bulk barging operations" published in the September 2003 issue of Marine Money. Presumably, based on this limited survey of six debt issues for five companies, Witness Dibner used a cost rate for debt in his ocean model that is approximately half way between the average of the coupon rates and the average of the yields to maturity. However, since he was attempting to estimate a forward-looking market rate, he should have used the average of the yields to maturity for representative debt issues. This concern is in addition to the question of whether reliance on such a small sample of debt issues is actually representative of the forward-looking cost of debt for the industry. (EXH 73, TR 334-336, TR 305)

Witness Dibner did not conduct any form of cost of equity analysis to determine the cost rate for equity he assumed in his models. Witness Dibner did not conduct any analysis to determine the minimum earnings that would induce a non-affiliate carrier to bid on the ocean

transportation segment. As with his assumed capital structure ratios, it appears witness Dibner relied extensively on his personal experience to determine the cost of equity he used in his models. Witness Dibner recounted a conversation he had with an unnamed client and provided a schedule of annualized rates of return over various holding periods to support his contention that the industry expects equity returns of 20% to 43%. (TR 334, EXH 2, EXH 73)

Staff believes Witness Dibner has overstated the required return on equity for purposes of estimating a market rate for waterborne transportation. While the 1 year annualized return data for U.S. public equity ranged from 5.3% to 24.0%, the 5 year annualized return data ranged from negative 4.9% to 3.5%. This type of dramatic variation is precisely why earned returns are seldom, if ever, relied upon to estimate expected returns. It is a generally recognized tenet of finance that earned returns are extremely volatile and can vary significantly from expected returns. Simply because a company earned a negative 5% return in one year but had a return of 24% the next year does not mean either return is appropriate for purposes of a forward-looking cost model. Witness Dibner should have relied on expected returns for companies engaged in the line of business he was attempting to model to develop his cost of capital assumptions. It is apparent he relied on something else entirely to arrive at his cost of equity input. (EXH 73)

Witness Dibner testified that staff and intervenors in this proceeding have been free to make changes to the assumptions to test results of the models and their sensitivities. He also testified that parties could edit the input values that drove the calculations in the models. While this is true with respect to the cost of capital assumptions Witness Dibner made in his ocean model, it is not accurate with respect to the cost of capital assumptions included in his inland river model. While the ocean model does contain explicit cost of capital inputs that can be changed, the cost of capital assumptions in the inland river model are included in "a daily barge hire or time charter" rate. Embedded in the model in this manner, staff and intervenors in this proceeding were unable to change the cost of capital assumptions in the inland river model. The "implied cost of capital" utilized in the inland river model is comparable to the cost of capital used in the ocean model. (TR 111, EXH 2, EXH 3)

Staff believes Witness Dibner populated his models with cost of capital inputs, both explicit and implied, that result in a cost of capital that is excessive. His capital structure assumptions are not supported by the record. First alternate staff recommends an adjustment to the ocean model to change the capital structure ratios to reflect an equity ratio of 38% and a debt ratio of 62%. These ratios are consistent with the RMA data for companies engaged in the business of water transportation of freight. The cost of debt is too high because he relied on an average of coupon rates and yields to maturity instead of yields to maturity exclusively. A cost of equity 800 basis points greater than the assumed cost of debt also appears to be excessive. In addition, there is nothing in the record to suggest witness Dibner's assumed cost of equity is representative of an expected return on equity for this industry. (EXH 73)

Since the cost of capital is embedded in the daily barge hire rate, the record does not address and staff is unable to make adjustments to the inland river model. Nevertheless, to the extent Witness Dibner used excessive, and for the most part unsupported, cost of capital inputs, staff believes the results of both the ocean and inland river models overstate the true market rates for waterborne transportation.

The annual impact of this adjustment is approximately $705,000.

Annual Throughput

First alternate staff adjusted the throughput that TECO Transport would transport by ocean barge to five million tons annually. In the RFP, Tampa Electric identified the maximum throughput for ocean barge service as 5.5 million tons of solid fuel annually. However, pursuant to Section 186.801, F.S., and Rule 25-17.0852, Florida Administrative Code, Tampa Electric provides a planning document titled, "Ten Year Site Plan," to the Commission on or about every April 1. On page II-9 of its 2003 Ten Year Site Plan, Tampa Electric provides a history and forecast of its fuel requirements, including coal and petroleum coke, for the years 2001 through 2012. Primary staff reviewed this specific page, and calculated an average consumption of coal and petroleum coke of 5 million tons annually for the period 2004 through 2008. (TR 648, 654, EXH 2, EXH 4)

Witness Dibner calculated his estimate of the market price for ocean barge service based on the marginal rate of each TECO Transport ocean barge utilized to transport coal for Tampa Electric. As can be seen in Witness Dibner's ocean barge model output and confidential Appendix 4 to this recommendation, the marginal rate to deliver the 5.5 millionth ton of coal is greater than the marginal rate to deliver the 5.0 millionth ton of coal. As shown in Appendix 4, first alternate staff calculates the marginal rate to be over 15 percent higher to deliver the 5.5 millionth ton of coal as compared with the 5.0 millionth ton of coal. Witness Dibner calculates the marginal rate to deliver the higher throughput to be approximately ten percent higher than the lower throughput. (TR 193, 339, 347, TR 342, EXH 4, 72 74)

Tampa Electric distributed its Ten Year Site Plan approximately six months prior to receiving Witness Dibner's report. In a competitive market, Tampa Electric would have utilized this smaller, more realistic, throughput information. Using Witness Dibner's model output, first alternate staff calculates that Tampa Electric would have reduced its transportation costs by over $2 million during the contract if the negotiated rate was based upon the smaller throughput. However, Tampa Electric conceded this point before negotiations commenced. (See Appendix 3)

The annual impact of this adjustment is approximately $564,000.

Market Rate Adjustment Methodology

Based on the analysis above, first alternate staff recommends that, effective January 1, 2004, the Commission reduce Tampa Electric's recoverable costs for ocean barge transportation during the current contract's term by $3.42 for each ton of solid fuel transported from Davant, Louisiana, and by $4.66 for each ton of solid fuel transported from Port Arthur, Texas. First alternate staff derived these amounts by calculating the difference between the current contract rate and first alternate staff's estimate of market prices for ocean barge transportation to the Big Bend Station in Tampa, Florida from Davant, Louisiana and Port Arthur, Texas. Staff has provided these values in confidential Appendix 3.

SECOND ALTERNATE STAFF ANALYSIS: Second alternate staff recommends adjustments to all three segments of waterborne coal transportation service – inland river barge, terminal, and ocean barge service. These adjustments are based on an analysis of the market rates paid by other utilities to non-affiliated transportation companies.

Inland River Barge Service

Second alternate staff primarily analyzed and compared the non-affiliate contract rates for river barge service provided by (1) Ingram Barge Company (Ingram) for Gulf Power Company (Gulf Power), (2) Memco Barge Company (Memco) for Progress Energy Florida (PEF), and (3) a non-affiliated barge company for Tampa Electric. Each of these actual cases support a market price for shipment on the river system which is, conservatively, at least $1 per ton less than that derived from the Dibner model. Second alternate staff would reduce the inland river barge rate proposed by Tampa Electric by $1 per ton. (See Appendix 2).

The annual impact of this adjustment is approximately $3,993,000.

Gulf Power/Ingram

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 New Orleans by inland river barge. Tampa Electric utilizes TECO Transport to transport coal to New Orleans where it is unloaded to a terminal and then reloaded to ocean going barges for the trip to Tampa Bay. In contrast, Gulf Power utilizes a non-affiliated carrier to move coal from the Mississippi River to its Crist Plant directly without unloading and reloading at a terminal. The coal remains on the river barges which traverse the protected Gulf Intracoastal Waterway through a system of locks, canals, and bays. (EXH 4, EXH 97)

In 2001, Gulf was using the IMT terminal across the river from the Davant terminal used by TECO Transport. According to 423 Forms filed with the Commission, the cost of shipping coal from IMT to the Crist Plant was $5.17 per ton. The total transportation cost of shipping from the Cook Terminal in Illinois to the Crist Plant was $8.77 per ton. The difference of $3.60 per ton, or 41% of total trip cost, appears to represent an estimate of the river transportation cost for the Gulf/Ingram contract. According to the 423 Forms for January, 2004, the total transportation cost of shipping coal from the Cook terminal in Illinois to the Crist Plant was $9.25 per ton. Applying the same percentage ratio results in an estimate of $3.79.

For comparative purposes, however, since Tampa Electric uses the terminal at Davant for transloading river barge coal, but Gulf Power does not, staff assumed a percent ratio of 50% (as opposed to 41%) to adjust for the slight (35 mile) additional trip experienced by Tampa Electric. Using a 50% ratio increases the estimate to $4.62 per ton for river barge transportation from the up-river Cook Terminal to the mouth-of-the-river Davant area terminal. Even after this adjustment, $4.62 per ton is significantly lower than either the current TECO Transport rates that resulted from the Dibner model or the bid received in the RFP. (EXH 4, EXH 92)

PEF/Memco

Progress Energy Florida (PEF) 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 PEF waterborne coal from the West Virginia area to IMT is reported in the FPSC audit report for PEF-affiliate, Progress Fuels Corporation. A review of this information shows that the price paid by PEF is materially less than the price derived by Witness Dibner's inland river model for delivery of coal from Powhatten Point. The trip from the West Virginia area to the IMT Terminal for PEF is comparable to the trip from Powhatten Point to the Davant Terminal for Tampa Electric. In addition, the price paid by PEF for these deliveries is also materially less than the price indicated by Witness Dibner's inland river model for other docks along the Ohio River that are closer. (EXH 4, EXH 60, EXH 65)

Tampa Electric/non-affiliate

Finally, second alternate staff compared the rate charged by a non-affiliate barge company for a contract under which coal from Pennsylvania was shipped to New Orleans for Tampa Electric. It appears that the rates charged Tampa Electric for river barge service under this contract were materially less than what Tampa Electric proposes to pay it affiliate, TECO Transport for comparable movements of coal. (EXH 89)

Terminal Service

Tampa Electric received and ultimately accepted one bid for terminal service. However, first alternate staff believes that Tampa Electric miscalculated its inventory requirements at the ocean terminal, thus, increasing the cost to the terminal to provide service to Tampa Electric. Staff recommends that the rate proposed by Tampa Electric for terminal service should be reduced by $0.23 per ton. This adjustment will result in a terminal rate which is between what IMT charged Progress Energy Florida for terminal service and the terminal bid submitted and accepted as "bona fide" by Tampa Electric. (See Appendix 3) (EXH 4, EXH 65, TR 183, TR 519-520, TR 723)

By Order No. PSC-93-0165-FOF-EI, in Docket No. 920324-EI, issued February 2, 1993, the Commission allowed Tampa Electric to include an amount equal to 98 days burn of coal inventory as part of working capital. Staff calculates the average daily coal burn for the Big Bend and Polk Stations for June through September of 2001, 2002, and 2003 to be approximately 13,351 tons. In consideration of fluctuations in demand, staff increased the average daily coal burn by ten percent. Staff then re-calculated the amount of coal inventory needed at the ocean terminal, after subtracting out coal inventory at the Big Bend and Polk Stations and inventory in transit on inland river and ocean barges. This calculation results in approximately 1 million tons of required terminal storage capacity, instead of 1.4 million tons as stated in the RFP. Dr. Hochstein testified that these additional 400,000 tons of storage needlessly added costs to the market rate for the terminal due to increased costs for land, equipment, electricity, and personnel. The record reflects that PEF paid IMT $1.97 per tone for terminal service in 2003. (EXH 93, EXH 65, TR 643)

The annual impact of this adjustment is approximately $981,000.

Ocean Barge Service

Staff analyzed the models of Witness Dibner and Dr. Hochstein. Although both Witness Dibner and Dr. Hochstein's ocean transportation models shared numerous similarities in both structure and use of cost data, the two models resulted in widely different results. A comparison of the two models is shown in Appendix 8. Due to the disparity in the model results using very similar data, second alternate staff also analyzed data in the record for three actual utility coal transportation contracts: those of JEA, PEF, and Gulf Power. Based on this analysis, second alternate staff recommends that the rate proposed by Tampa Electric for ocean barge service should be reduced by $2.41 per ton. This adjustment is based on using the highest rate calculated from the three comparative examples discussed below. (See Appendix 7)

The annual impact of this adjustment is $11,322,000.

JEA

TECO Transport provides shipping of petroleum coke from Port Arthur, Texas to Jacksonville for JEA. For the year 2003, the transportation rate was $9.00 per ton. Based on an interview of the JEA fuel director placed into the record by Witness Hochstein, the highest price for the same trip between 2001 and 2003 was $11.00 per ton. Using Witness Hochstein's cross-Gulf transportation model, second alternate staff prorated this maximum price of $11.00 per ton to a comparable rate for the trip from Davant terminal to Big Bend. The resulting rates are $5.57 per ton from Davant to Big Bend and $6.80 per ton from Port Arthur to Big Bend. (See Appendix 7)

PEF

Based on the PSC audit of Progress Fuels Corporation, the contract price for shipping coal from the IMT terminal to the Crystal River Power Station is shown in Appendix 7. In response to the audit, PEF suggested that there might be non-contractual costs not fully covered by the contract. However, staff believes that, for comparative purposes, any implied understatement of the PEF rate is offset by the efficiency of the TECO Transport ocean fleet. Both Witness Dibner and Dr. Hochstein testified that TECO Transport's tug/barge units were significantly more efficient than those of Progress Fuels. (EXH 65, EXH 66,TR 729).

Gulf Power

Second alternate staff compared the speed, efficiency and economy of scale of the tug/barge equipment that TECO Transport uses to transport coal to Tampa with the tug/barge equipment that a non-affiliated carrier uses to transport coal for Gulf Power to Pensacola. Starting with the price charged to ship from the IMT terminal to the Crist Plant in Pensacola, data in the record was used to develop a comparable per mile estimate for shipping by TECO Transport from the Davant terminal to Big Bend. The result of this analysis was $5.45 per ton

from the Davant terminal to Big Bend and $6.65 for the trip from Port Arthur Texas to Big Bend. The details of these estimates are given in Appendix 7.

THIRD ALTERNATE STAFF ANALYSIS: Whereas the other staff recommendations assume that waterborne carriers would provide for all of Tampa Electric's coal transportation needs, third alternate staff assumes that CSXT would provide for part of Tampa Electric's coal transportation needs. Third alternative staff assumes that Tampa Electric would purchase one million tons of coal from CSXT direct mines in 2004 and 2 million tons of coal for years 2005 through 2008. Third alternate staff also assumes that Tampa Electric would utilize a waterborne carrier for the balance of its coal transportation needs at the rates set forth in either first alternate staff or second alternate staff. Staff estimates the rail savings Tampa Electric could have realized to be approximately $11.3 million. (See Appendices 1 and 5)

The annual impact of this adjustment is approximately $19.3 million when combined with first alternate staff waterbourne component and $20.3 million when combined with second alternate staff waterborne component..

Comparison of Tampa Electric's and CSXT's Estimates for Rail Unloading Equipment

CSXT made a previous proposal to Tampa Electric for rail coal delivery in Oct 2002 with estimates of rail delivery cost to Big Bend from regions with suitable coal CSXT also made estimates of capital improvements for on-site Big Bend unloading and handling equipment and offered to pay up to 120% of the estimated installation cost for these capital improvements. This proposal was not taken seriously or followed up on by Tampa Electric. (TR908-911, TR 914, 915, TR 909)

When CSXT heard about the 2003 RFP it requested a bid package and submitted two bids- one for from 1 to 2 million tons of coal and the other for over 2 million tons of coal. (EXH 28) For the CSXT primary bid, for 1 to 2 million tons of coal by rail, CSXT proposed to pay to upgrade the existing inactive Big Bend rail tracks and rail limestone unloading pit to handle coal. The largest cost for on-site development for this plan would be for construction of conveyors and hoppers to move the coal to the appropriate coal pile locations. CSXT staff developed estimates of the cost required to upgrade the existing equipment and add conveyor equipment, as well as estimates for a system that would handle over 2 million tons of coal. CSXT staff and a consultant got vender quotes for needed equipment and consulted permitting and tax officials about costs relevant to the project. CSXT Witness Stamberg, an engineer with previous experience at evaluating and estimating the cost of coal handling equipment, was hired by CSXT to evaluate the viability and accuracy of the CSXT estimates. He concluded that the CSXT plans were viable, but not optimum, since CSXT was provided an inaccurate plot map of Big Bend by Tampa Electric staff and not allowed to have on-site access or to ask questions to plant personnel about operations. (TR 1175, 1176)

After a site visit Witness Stamberg found that some changes would be required and estimated those cost changes as less than $2 million. (TR1180) The total cost was estimated to be less than $10 million. With the advantage of being allowed a site visit, Witness Stamberg also

developed an alternative independent plan for a rapid load system capable of handling over 2 million tons of coal. He estimated the cost of implementing this "cooperative" plan as approximately $5 million, less than the CSXT plan for upgrading the existing rail equipment. (TR 1191)

Tampa Electric hired the engineering firm Sargent and Lundy (S&L) to do an independent estimate of the on-site Tampa Electric capital costs for the CSXT plans. The project lead, Witness Guletsky, recommended against using the existing limestone pit unloading system and proposed an alternative rapid load design that was much more expensive. However no one from S&L visited the site and no vender quotes were obtained. The S&L estimates were 4 to 5 times larger than the CSXT estimates. This cost also included the cost for a Polk station shuttle train loading facility that is not being considered here. Witness Guletsky indicated that there were several errors and omissions from the CSXT estimates After seeing Witness Guletsky's rebuttal testimony, Witness Stamberg obtained additional vender quotes incorporating some of Witness Guletsky's recommended equipment upgrades, though he argued that the original plans met industry standards. The new quotes for the upgrade changes to the main conveyor system added approximately 15% to the Stamberg estimate. However Witness Stamberg stated that the increase was much less than the S&L estimate cost implied. (EXH 50, TR1268, TR 1289, TR1293,1294, TR1291,1302)

In any case, any additional cost beyond the cost CSXT had offered to pay would appear to be much less than the rail option transportation savings estimated in Staff Alternative 3, as compared to the original or current TECO Transport waterborne rates.

Tampa Electric Witness Murrell stated that he thought the CSXT proposal should be pursued further as it would be "nice to have flexibility and some alternatives". He stated that he had never seen "CSXT do what they propose they would do in this instance". The S&L screening study does not appear to have resolved the issue of whether the existing rail pit for limestone can be upgraded for a reliable and cost effective coal delivery system. It also appears that Witness Stamberg's lower cost "cooperative" plan for a rapid dump system adequate for either bid was not assessed. A new study to resolve these issues appears to be warranted. The plans for a Polk shuttle loading facility could also be more fully evaluated. Such a facility might also allow for consideration of shipment by TECO Transport of foreign or domestic waterborne coal to inland coal facilities of other utilities by rail if a method of proper compensation for use of Tampa Electric rate base expenses could be developed. (TR1421,1422)

FOURTH ALTERNATE STAFF ANALYSIS: Regulated utilities should be able to rely on Commission Orders and Rules when making long-term investment decisions. In the 1950s, Tampa Electric made investments in a coal transportation system that virtually eliminated the company's use of residual oil to generate electricity. The investment decisions were made with known regulatory treatment expressed in Commission Orders. This policy of giving deference to prior Commission Orders should remain in effect until it can be demonstrated that the costs recovered from customers are clearly excessive. Fourth Alternate Staff believes this demonstration has not been made. There is too much conflicting evidence in the record to conclude that coal transportation costs are excessive or should be lower than what TECO is proposing for the 2004-2009 time period.

While the municipal railroad benchmark may have outlived its usefulness, it nonetheless was relied on by Tampa Electric. Tampa Electric receives the lower of contract cost or benchmark in contrast to PEF where the benchmark was the cost recovered. For Tampa Electric, the lower of cost or the municipal railroad benchmark does not appear to have resulted in unreasonable cost recovery.

There is wide disparity in the results obtained between TECO Witness Dibner and Residential Customers' Witness Hochstein computer models. If the TECO Transport unaudited net income number for 2003 is even approximately correct, some of the recommendations from the expert witnesses, if implemented, translate to TECO Transport's earnings being eliminated or made negative. (TR-401)

The problem with both computer models is they are cost models and inherently cannot predict what costs could be obtained in a competitive market. A tacit assumption embodied in these models is that market prices equal cost. The two computer costing models and their inputs appear plausible with a major difference being the inclusion or exclusion of preference trade and backhaul revenues.

A difficult question is whether TECO Transport fixed costs should be allocated between the affiliated and non-affiliated shipments on a mileage or tons per mile basis or whether all of the fixed costs should be allocated to TECO coal shipments. With this latter full allocation of costs to utility coal shipments, any revenues above variable costs that contribute to fixed costs is extra profit. The question is whether this extra profit should enure to stockholders or customers. In the 1980s, the Commission grappled with this issue and resolved it by adopting the railroad based benchmark.

Another question is, would TECO Transport remain in business if TECO cost recovery for coal transportation were significantly lowered. If not, would another company step in and transport coal for TECO and do so at what price. The record is silent on this question because the only way it can be answered is pursuant to a fair RFP. Unfortunately, without a fair RFP, the Commission has no unassailable information on which to disallow cost recovery.

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

RECOMMENDATION: Yes. Staff recommends:

1) The benchmark that the Commission approved by Order No. 20298 and reaffirmed for Tampa Electric Company by Order No. PSC-93-0443-FOF-EI, issued March 23, 1993, in Docket No. 930001-EI, is no longer relevant. The Commission should eliminate the benchmark.

2) The Commission should not require Tampa Electric to rebid for coal transportation services for the current contract period of 2004 through 2008. Tampa Electric's cost recovery for the 2004 through 2008 period should be governed by the Commission's vote on Issue 2. At its own discretion, Tampa Electric may choose to re-bid part or all of its existing coal transportation requirements to mitigate the impact of the adjustments, if any, the Commission votes on in Issue 2. Should Tampa Electric decide to re-bid, the company may petition the Commission for an alternate regulatory treatment of its coal transportation costs based on the results of the re-bid.

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

4) The Commission should require Tampa Electric to perform a separate feasibility analysis of using rail accessible coal supplies and rail transportation , in whole or in part, to supply solid fuel to its Big Bend and Polk Stations. The results of the study should be provided to the Commission within 180 days of the final order. (Floyd, Matlock, Bohrmann, C. Keating, Windham)

POSITION OF THE PARTIES

Tampa Electric: No. No party has demonstrated the need for a policy change. The benchmark serves as a useful price cap, as opposed to the former Progress Energy benchmark that set the recoverable amount. It continues to provide the same valid and useful information as it did when it was adopted.

CSX Transportation: Yes. The benchmark is utterly worthless, as demonstrated by the gross disparity between the benchmark and actual, historical rail transportation costs to TECO's Gannon Station. The benchmark is also invalid because it is based on inaccurate data, erroneously ignores rail transportation volume discounts, and erroneously includes private rail car costs.

Residential Customers: Yes. The benchmark allows for unreasonable and excessive cost recovery and should be eliminated. TECO should be compelled in the future to fairly and openly bid for transportation services. Any transportation leg not receiving adequate bids should be

returned to cost of service regulation. Otherwise, services should be awarded to the lowest qualified bidder.

OPC/FIPUG: Yes. The waterborne coal transportation benchmark is outdated and does not provide information to judge the reasonableness of transportation prices. To continue to use the benchmark would result in inflated rates.

STAFF ANALYSIS

Tampa Electric and OPC agreed to, and the Commission approved, the existing transportation benchmark by Order No. 20298, in Docket No. 870001-EI-A, issued November 10, 1988. 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 Commission would calculate:

> 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.

On an annual basis, Tampa Electric compares its actual waterborne coal transportation costs paid to TECO Transport to the benchmark value, and submits this comparison to the Commission for review and analysis. If Tampa Electric's costs are less than or equal to the benchmark value, then the Commission approves those costs as reasonable. If Tampa Electric's costs are greater than the benchmark value, then the Commission would disallow any unjustified costs above the benchmark. Since 1988, as TECO Witness Wehle testified, the Commission has made specific findings each year that the actual prices Tampa Electric has paid to its affiliate, TECO Transport, were less than the benchmark price.

Staff agrees with Witness Majoros that a wide disparity between actual costs recovered by Tampa Electric and the benchmark exists. 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 waterborne charges by amounts ranging from $5.15 to $9.44 per ton. In percentage terms, the benchmark has exceeded actual charges by amounts ranging from 24.9% to 51.9%. (EXH 96, TR 815)

Staff agrees with Witness Wehle that no witness offered an alternative benchmark *per se*. Dr. Sansom has proposed that the CSXT bid establishes the "price to beat" and a cap on the amount that TECO should recover for coal transportation costs for the 2004 through 2008 contract period. He also states that a *bona fide* rail bid, such as the one TECO received from CSXT in 2002, should be the "benchmark." However, Witness Sansom did not offer any details on precisely how such a benchmark would be used on a going forward basis. It appears that Dr.

Sansom was not proposing a new benchmark, but was emphasizing that the Commission should consider the CSXT bid in deciding the appropriate level of recoverable costs for the current contract period. (EXH 73, TR 670-672, TR 1034, TR 1074)

Staff agrees with Witness Wehle that determination of a fair and reasonable market rate should be based on bid proposals or perhaps a market rate analysis when bids are not valid or not available. We also agree that the benchmark has only been an "upper limit" for reasonableness, not an absolute determination of reasonableness. However, staff believes that the wider the disparity between a benchmark and actual costs, the less useful such a benchmark will be to determine reasonableness. (TR 402, 458-459, 466, 669)

Staff believes that the benchmark, which may have once served a useful purpose, is obsolete on a going-forward basis. Although this benchmark is not currently necessary, a benchmark of some kind may again be appropriate at some future time. For example, if future bidding processes do not yield valid market information, the Commission may want to establish a benchmark or proxy for cost recovery purposes.

Witness Wehle quoted from a Commission staff document that was complimentary of Tampa Electric for incurring costs that are well below the benchmark. In that document, a staff member commended Tampa Electric for managing its coal transportation costs well below the benchmark. However, staff does 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%. (TR 461)

Instead of a benchmark, staff believes that Tampa Electric should conduct competitive bid processes which are open, fair, and non-discriminatory. Such competitive bid processes should include, but not be limited to, the following elements:

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

2. Consider all practical modes of transportation;

3. State its 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 the Commission determines 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 should petition the Commission for approval of an alternative regulatory mechanism. Staff believes that it is premature to specify precisely how such alternatives should be structured.

Staff further believes that, no later than July 1, 2007, Tampa Electric should file with the Commission a plan for procuring coal transportation services for the period beginning January 1, 2009. This plan would include the following:

1. A schedule for procuring coal transportation services, from drafting the RFP to signing an agreement or agreements for coal transportation services, for 2009 and beyond; and

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

The recommended issuance of an RFP, in time for results to be implemented no later than 2009, should not preclude the possibility of parties establishing a new benchmark based on coal barge rates paid by utilities to non-affiliated shippers. What Gulf Power pays for river open barge shipments and what Florida Progress rates pays for covered ocean barge shipments may be a good starting point.

Rail Feasibility Study

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 Big Bend. Specifically, Tampa Electric did not solicit coal, deliverable by rail or barge, from Northern Appalachia, or coal, deliverable by rail, from the Illinois Basin.

Tampa Electric did not synchronize the procurement of coal supply with the procurement of coal transportation services. Witness Sansom states that coordination of coal supply with coal transportation is a well-established practice in the utility industry. Otherwise, the utility may encounter a transportation obligation coupled with uneconomical coal supply sources, or a coal supply source that is not coupled with an economical transportation method. (TR 631)

As a result, staff recommends that Tampa Electric perform a study to determine whether procuring coal from rail-origin mines is feasible for Tampa Electric. Such feasibility study should 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 Witness Sansom's testimony;

4. For each mine identified in part 1, that Tampa Electric can access by both barge **and** rail, compare the comprehensive costs (including those costs identified in part 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 should submit this feasibility study to the Commission no later than 180 days after the date of a final order from the Commission in this docket for filing in the fuel and purchased power cost recovery clause docket.

ISSUE 4: Should this docket be closed?

RECOMMENDATION: If the Commission approves the primary staff recommendation in Issue 2, this docket should remain open for the Commission to determine the appropriate rate for cost recovery purposes. Otherwise, this docket should be closed after time for filing an appeal has expired. (C. Keating)

STAFF ANALYSIS: If the Commission approves the primary staff recommendation in Issue 2, this docket should remain open for the Commission to determine the appropriate rate for cost recovery purposes. Otherwise, this docket should be closed after time for filing an appeal has expired.

Appendix 1 – CONFIDENTIAL

Summary of Issue 2

Parties' Positions and Staff Recommendations

ISSUE 2: 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?

	Average of River Terminals[1]				
	River $/ton	Terminal $/ton	Ocean $/ton	Total $/ton	Annual $ Million
Prior Contract	[redacted]				$3.7
Tampa Electric	[redacted]				($0)
CSXT					($11.3)
OPC/FIPUG					($22.3)
Residential Customers					($38.6)
Primary Staff	Competitive rate based on Commission audit of TECO Transport's rates charged to non-affiliate companies.				
First Alternate Staff	[redacted]				($13.8)[3]
Second Alternate Staff					($16.3)[3]
Third Alternate Staff :					
(a) Rail Component					($11.3)
(b) Waterborne Component (1st Alt.)					($8.0)
Total (a+b)					($19.3)
(a) Rail Component					($11.3)
(b) Waterborne Component (2nd Alt.)					($ 9.0)
Total (a+b)					($20.3)
Fourth Alternate Staff					($0)

(EXH 3)

[1] All Waterborne Rates are FOB Barge (from upriver dock)
Prices are FOB mine and not directly comparable to FOB Barge rates; Comparison details are given in Confidential Appendix 5 assuming 1 million tons in 2004 and 2 million tons annually thereafter.

[3] Difference between annual savings for first and second alternate staff is attributed to different rates for the three segments.

Appendix 2 - CONFIDENTIAL

TECO Transport's Inland River Barge Transportation Rates by River Terminal

River Terminal	Prior Contract 1999 Price	Prior Contract 2003 Price	Current Contract 2004 Price	First Alternate Staff 2004 Price	Second Alternate Staff 2004 Price
Green 11	NA				
Patriot	$7.29				
Sebree	$7.29				
Pyramid	$7.81				
Ken Mine	$7.81				
Powhatan Point	$7.29				
TTI	$7.14				
Jefferson River Port	$6.52				
New Hope	$6.41				
Owensboro	$6.41				
Yankeetown	$6.26				
Southern Indiana	$6.16				
Mt. Vernon	$6.00				
Overland	$6.00				
Hamilton	$6.21				
Shawneetown	$6.00				
DeKoven	$5.74				
Caseyville	$5.74				
Rigsby & Barnard	$5.74				
Empire	$5.74				
Cook	$4.38				
Mound City	$5.23				
GRT	$6.00				
Kentucky Lakes Dock	$6.00				
Cora	$6.19				

(EXH 3, 4, 69)

Appendix 3 – CONFIDENTIAL

TECO Transport's Terminal and Ocean Barge Transportation Rates ($/ton)

	Prior Contract 1999 Price	Prior Contract 2003 Price	Current Contract 2004 Price	First Alternate Staff 2004 Price	Second Alternate Staff 2004 Price
Terminal – Domestic Coal	$1.75 - $2.69	[redacted]	[redacted]	[redacted]	[redacted]
Terminal – Offshore Coal	$4.25	[redacted]	[redacted]	[redacted]	[redacted]
Ocean – Davant, Louisiana to Big Bend	$7.00	[redacted]	[redacted]	[redacted]	[redacted]
Ocean – Texas to Big Bend	NA	[redacted]	[redacted]	[redacted]	[redacted]

Appendix 4 – CONFIDENTIAL

Derivation of First Alternate Staff's Rate for Ocean Barge Service

Barge	Capacity (1000 tons)	Tons/yr (1000)	Cumulative Tons/yr (1000)	Rate ($/ton)	Average Rate ($/ton)
Peggy Palmer	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
D Ludwig					
Doris Guenther					
Mary Turner					
Gayle Eustace					
Barbara Vaught			-		
Diana T			-		

(EXH 2, 4, 72, 74)

Assumptions:

1. Eliminate impact of preference trade voyages;
2. Reflect backhaul opportunities that occur in a competitive market;
3. Adjust debt ratio to 62 percent in consideration of industry conditions;
4. Adjust annual throughput to five million tons in consideration of Tampa Electric's 2003 Ten Year Site Plan's forecast of solid fuel consumption during contract period; and
5. All other aspects of Witness Dibner's ocean barge model remain unchanged.

Appendix 5

Projected CSXT Rail Transportation Cost Savings Versus Prior TECO Transport Waterborne Rates

CSXT Based Savings	Tons	2004 Differential $/Ton	Savings	Tons	2005-2009 Differential $/Ton	Savings	Total Savings
Pitt-8 Coal	400,000	$6.51	$2,604,000	400,000	$6.51	$10,416,000	
Illinois Basin Coal	600,000	$5.10	$3,060,000	1,600,000	$5.10	$32,640,000	
Volume Discount				1,000,000	$2.00	$8,000,000	
Total			$5,664,000			$51,056,000	$56,720,000

(EXH 4, 7, 24, 25, 28, TR 1059, 1394)

Appendix 6 – Confidential

Comparison of Delivery of Polk Fuel Directly to Tampa, Florida
Versus Delivery to Davant, Louisiana

	Tons	Direct to Tampa, Florida	Delivered to Davant, Louisiana	Savings	
		$/ton	$/ton	$/ton	Dollars
Foreign Coal Transloading Cross-Gulf	214,000	[redacted]	[redacted]		
Total Foreign	214,000			$10.20	$2,182,800
Domestic Coal	183,000			$5.98	$1,094,340
Petcoke	270,000			$2.69	$726,300
TOTAL	667,000			$5.97	$4,003,440

(TR 772, 1067, 1211-1213, EXH 60, EXH 88)

Appendix 7 - Confidential

Development of Cross-Gulf Shipping Market Rates
Based on JEA, Progress Energy Florida, and Gulf Power Company Rates

JEA

Second alternate staff used the data and methodology from Witness Hochstein's ocean transportation model to allocate the 2003 JEA-TECO Transport shipping rate to transport petroleum coke from Port Arthur, Texas to Jacksonville, Florida to comparable rates from Port Arthur, Texas and Davant, Louisiana to Big Bend in Tampa, Florida. Dr. Hochstein's model was used rather than Witness Dibner's model because the two models are comparable in structure but Dr. Hochstein's model is not confidential. (EXH 56, TR 316,EXH 4,72)

During the period of 2001 to 2003, the highest price paid by JEA to TECO Transport to transport petroleum coke from Port Arthur, Texas to Jacksonville was $11.00 per ton. (JEA was charged $9.00 in 2003) The following table illustrates the basic data for distance, port days, and average trip speed used to allocate the maximum rate of $11.00 per ton to comparable rates for Tampa Electric. (EXH 17, EXH 97, Late file 15)

Shipment Round Trip	Davant to Big Bend	Port Arthur to Big Bend(4)	Port Arthur to Jacksonville(4)
One way Nautical Miles(1)	456	624	1202
Days at Sea(2)	[redacted]	[redacted]	10.12
Days in Port(2)			3.00
Delay days(3)			1.53
Total Trip Days			14.65
2003 Market rate	[redacted]/ton	[redacted]/ton	$11/ton

(1) EXH 4, TR813
(2) EXH 56 - using average vessel speed of 9.9 knots based on Dibner testimony. Days in Port for loading and unloading are assumed to be the same for each of these trips.
(3) Assumes delay days for unforeseen delays = 15% of days at sea
(4) Days at Sea and Delay Days augmented by multiplying the days for Davant to Big Bend by the ratio of nautical miles for this trip divided by the nautical miles from Davant to Big Bend.

Progress Energy Florida (PEF)

According to the 2003 FERC 423 forms, PEF obtains all of its domestic coal shipped by water to the IMT terminal across from Davant. On cross-examination, OPC counsel provided Witness Dibner the redacted version of PEF's response to a Commission audit, conducted in Docket No. 013057-EI, of the waterborne transportation operations of Progress Fuels Corporation which manages coal procurement and transportation for PEF. The text of the document points out that the Commission auditor erroneously calculated the rate Dixie Fuels charged PEF as [redacted]/ton, because the auditor divided total waterborne transportation cost for 2003 by the number of tons purchased at IMT in 2003, instead of dividing by the number of tons transported by ocean barge in 2003. After correcting for the auditor's error, first and Second alternate staff recalculated the ocean barge rate as being [redacted] per ton. (EXH 60, EXH 66)

In PEF's response to the Commission audit, PEF states that they believe that the costs that the auditor considered do not include non-contractual costs, such as a normal return on investment in barge equipment and additional capital and recurring costs for major maintenance projects. However, Witness Dibner indicated that the cost per ton for barges, similar in size to Dixie Fuels', would be more than [redacted] per ton higher than the rate that he estimated for TECO Transport's tug/barge units. 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 of the size of the Dixie units are 30% higher than units of the size used by TECO Transport.. Although additional non-contractual costs are not included in the redacted version, both first and second alternate staff believe that these two factors would approximately offset each other allowing a valid comparison between the tow carriers' tug/barge units. (EXH 65, EXH 66, EXH 97, TR 729, Late file 12)

Gulf Power Company

Both Gulf Power and Tampa Electric purchase and transport domestic coal from the Illinois Basin region. Both utilities transport coal down the Ohio and Mississippi Rivers to New Orleans by inland river barge. However, whereas Tampa Electric utilizes TECO Transport to transport the coal, Gulf Power utilizes a non-affiliated carrier. According to Tampa Electric Witness Dibner [redacted]. (EXH 4, EXH 92).

Second alternate staff compared the speed, efficiency and economy of scale of the tug/barge equipment that TECO Transport uses to transport coal to Tampa, FL with the tug/barge equipment that a non-affiliated carrier, Ingram Barge Company, uses to transport coal for Gulf Power to Pensacola. For the reasons set forth below, second alternate staff believes that the cost of shipping from Davant, La to the Tampa Electric Big Bend facility is no more than the rate that Gulf Power incurs to transport coal from the International Marine Terminal near Davant to the Crist Plant in Pensacola, FL.

Gulf Power's carrier moves the coal from the Mississippi River to the Gulf Intracoastal through an antiquated lock system at the Inner Harbor Lock which adds substantial delays and costs to the transit trip according to Witness Dibner. Frequently, a carrier will experience delays

on the Gulf Intracoastal due to traffic and weather which increases shipping costs. Moreover, due to maritime conditions, a tug can push [redacted] (EXH 4)

By comparison, the average TECO Transport ocean barge can transport more than 30,000 tons at any given time. Thus, Gulf Power's carrier requires five trips to transport the same amount of coal to Pensacola through the Gulf Intracoastal. According to vessel operating data supplied by the U.S. Corps of Engineers, the daily capital and variable operating cost for a vessel that hauls 5 times more bulk cargo than a smaller one is no more than twice that of the smaller vessel, due to economies of scale. Conservatively, Second alternate staff assumes that the total daily operating cost of a TECO Transport tug/barge unit is twice that of a tug/barge tow taking coal to Crist Plant. (EXH 4, EXH 97, Hochstein Late file 12)

Witness Dibner states that the distance to Big Bend Station in Tampa, FL from TECO Bulk Terminal in Davant, LA is 456 nautical miles, and he estimates the average speed of a typical TECO Transport tug/barge unit is [redacted]. Witness Dibner calculated the days at sea from TECO Bulk Terminal to Big Bend Station as being approximately [redacted] According to Witness Dibner, an inland river barge would take four to six days to transport coal from IMT to Pensacola through the Gulf Intracoastal. Second alternate staff estimates the days at sea to transport 30,000 tons by inland river barge for Gulf Power would be at least 20 days (*i.e.*, 5 separate tug/barge trips), or approximately 10 times longer than TECO Transport requires to transport the same amount. Thus, it is appears that the cost of shipping to the Crist Plant from Davant using the Intracoastal waterway is at least as much in dollars per ton as the cost of shipping from Davant to Big Bend using the larger and more efficient TECO Transport tug/barge units. (EXH 4) (TR 315-316) (TR 320)

In 2001 Gulf Power Company began bringing foreign coal to Mobile rather than to a New Orleans area terminal, thus the cost of shipping from Davant to the Gulf Crist plant will be updated from their 2001 cost data. From the January 2001 FPSC 423 form, the cost of shipping coal from the IMT terminal which is across from the TECO Transport Davant terminal to the Gulf Power Crist Power Plant in January 2001 was $5.17 per ton. From the same January 2001 FPSC 423 form and the corresponding January 2004 FPSC 423 form, the cost of shipping coal to the Crist Plant from the Cook Terminal in Illinois was $9.24 per ton in 2004 and $8.77 in January 2001. Using the same cost ratio of 1.053, the corresponding price for shipping from IMT to the Crist plant in Jan 2004 would be approximately [redacted] per ton in 2004. As previously explained this could also be taken as a market rate for shipping from Davant to Big Bend using the more efficient TECO Transport vessels. (Composite Exh 92)

For a market rate for shipping from Port Arthur Texas to Big Bend, Second Alternative Staff would use the ratio of "the total trip days from Texas to Big Bend" to "the total trip days from Davant to Big Bend" in the table on the first page of this appendix to prorate the previously derived [redacted] to a price for the trip from Texas to Big Bend. This results in a market price of [redacted] per ton.

Appendix 8 – Confidential

Comparison of Witness Dibner and Witness Hochstein Ocean Transportation Models

Witness Hochstein's ocean transportation cost model used for his estimate of the total capital and operating cost of shipping coal from the Davant Louisiana terminal to Big Bend has a similar structure and similar assumptions for total capital and variable cost to the model of Witness Dibner. Both models estimate the per ton revenue requirement based on costs for a round trip between the 2 facilities. Witness Hochstein used the preference trade cost provided by Witness Dibner as the basic capital and variable cost input. Like Witness Dibner's model, the Hochstein model is also consistent with the Tampa Electric RFP requiring a minimum(i.e. three) number of demurrage free days in port for loading and unloading. The Hochstein model also assumes that the 2 days allotted to unloading in Tampa has sufficient slack time to allow for a buffer to account for delays that can occur in operations. The record supports this assumption since the Tampa Port Authority trip log data for TECO Transport vessels shows that both unloading of coal and loading of backhaul cargo is usually accomplished within 2 days For fuel cost at sea the Hochstein model used survey data from the U.S. Corps of Engineers for comparably sized ships, but assumed that the TECO Transport vessels were 25% less efficient than the ships. (EXH 4, EXH 56, EXH 111, EXH15)

While the Dibner model daily capital and operating cost appear to be less than those used in the Hochstein model, the Dibner model produces a significantly higher total revenue requirement estimate than the $3.67 per ton without backhaul of the Hochstein model and the $2.30 per ton estimate including backhaul. The additional cost added to the Hochstein model for backhaul appear to be generous. The Dibner model produced a higher cost estimate due mainly to three factors: 1) [redacted] 2)Witness Dibner did not allocate any common round trip costs to backhaul customers; and 3) [redacted] Witness Hochstein supported his testimony that backhaul should be taken into account in market based transportation contract rates with statements by 2 potential shippers in the Gulf and one on the river that stated that backhaul makes a difference in bids for such contracts. (EXH 97, Late file 15, (EXH 4, 56)

Witness Hochstein calculated days at sea using the distance between facilities and average operating speed of the TECO Transport vessels based on Witness Dibner's testimony. Witness Hochstein assumed that the average operating speed was [redacted] of the vessels maximum speed provided by Witness Dibner. This is consistent with Witness Dibner's testimony regarding the vessels average operational speeds. However Witness Dibner assumed a trip operating speed significantly less than the average operating speed given in his testimony. Additionally Witness Dibner assumed additional delay days of [redacted] of the number of days at sea, plus an additional [redacted] in port for maneuvering and docking. Witness Dibner's additional days at sea appear to account for the large percentage difference in the 2 models cost estimates, along with the fact that the Hochstein model takes backhauls into account and the Dibner model doesn't. (TR 316, EXH 4, p53, EXH 72)

Although Witness Dibner had several criticisms of the Hochstein model in his rebuttal testimony he did not appear to understand that Witness Hochstein used the Dibner preference trade data for TECO Transport vessels. The criticisms were related to the Hochstein model applied to ships rather than the model for the TECO Transport vessels and do not appear to be relevant in this case. Also although the grade of diesel fuel is not specified, the first page of the U.S. Corps of Engineers data used by Hochstein in his model for fuel cost notes that the ships whose operating cost were surveyed were diesel ships.. The only criticism and suggested adjustment that appears to have some relevancy for this case is regarding port cost. While it does not appear that the Hochstein model included cost for port fees in Tampa, the entir[redacted]per ton adjustment suggested by Witness Dibner is likely too much since there was agreement among witnesses in the record that pilot tugs and pilots are usually not required on these trips. (EXH 97, Late file 12, TR 145-146, TR305)