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ORIGINAL

May 16, 2002

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COMMISSION  
CLERK

Ms. Blanca S. Bayo, Director  
Division of Commission Clerk  
and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Petition of Tampa Electric Company for Expedited Approval  
of Energy Charge Treatment under Optional Provision Contract  
FPSC Docket No. 020414-EI

Dear Ms. Bayo:

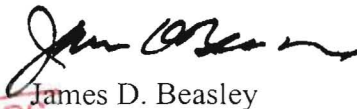
Enclosed are the original and fifteen (15) copies of a facsimile version of a revised Contract of Tampa Electric Company and IMC to Facilitate Optional Provision Purchases of Electric Power. Paragraphs 2 and 3 of this version of the Contract reflect revisions from the original Contract accompanying our May 10, 2002 petition for expedited approval. These revisions make clear the limited term of this Contract. We would appreciate your distributing copies of this revised Contract to the recipients of the Optional Provision Contract that accompanied our May 10, 2002 Petition.

The original of this Contract is being overnighted to Tallahassee and will be provided to the Commission tomorrow.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,

  
James D. Beasley

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MAY  
FPSC-BUREAU OF RECORDS

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CAF  
CMP  
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JDB/pp  
Enclosures

cc: Harold McLean (w/enc.)  
Todd Bohrmann (w/enc.)  
Connie Kummer (w/enc.)

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

**CONTRACT OF TAMPA ELECTRIC COMPANY AND IMC TO  
FACILITATE OPTIONAL PROVISION PURCHASES OF ELECTRIC POWER**

This contract ("Contract") is made and entered into this 16<sup>th</sup> day of May 2002, by and between Tampa Electric Company, a corporation organized and existing under the laws of the state of Florida, hereinafter referred to as "Tampa Electric," and IMC Phosphates MP Inc., a corporation organized and existing under the laws of the state of Delaware, hereinafter referred to as "IMC".

**WITNESSETH:**

WHEREAS, on April 19, 2002 IMC suffered a failure of its IMC/New Wales electric generator and the resultant loss of approximately 58 megawatts of generating capacity normally relied upon by IMC in the conduct of its business, and

WHEREAS, IMC estimates its IMC/New Wales generator will not be repaired and returned to service until on or about June 20, 2002, and

WHEREAS, Tampa Electric and IMC have discussed ways in which Tampa Electric might attempt to assist IMC, one of Tampa Electric's largest industrial customers, to firm up the availability of optional provision power for its New Wales facility while IMC's generator is being repaired.

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable considerations, the receipt and adequacy of which is hereby acknowledged by both parties to this Contract, including the mutual benefits to be obtained from the covenants herein set forth, the parties hereto agree as follows:

## **Definitions**

1. For purposes of this Contract, the following terms have the following meanings:

1.1 "Capacity Charge" means that portion of the cost of a Wholesale Contract that compensates a third party provider for making a certain level of generating capacity available, without regard to the units of energy that are actually provided pursuant to the Wholesale Contract. A Capacity Charge is variously referred to in other contexts as the "fixed costs of capacity" or "call premium."

1.2 "Energy Charge" means that portion of the cost of a Wholesale Contract that compensates the third party provider for actual units of energy delivered to Tampa Electric pursuant to the Wholesale Contract. Energy Charges are variously referred to in other contexts as "per KWH" or "per MWH" charges, a "variable cost component" or a "strike price."

1.3 "Wholesale Contract" means a wholesale power contract entered into by Tampa Electric with a third party provider for the express purpose of providing IMC with optional provision power pursuant to this Contract.

1.4 "Optional Provision or Interruption" means a circumstance where Tampa Electric, in the course of events, would either interrupt electric service to IMC's New Wales facility or secure optional provision of electric power for that facility from a third party as provided in the interruptible tariff pursuant to which Tampa Electric serves the New Wales facility.

## **Term of Contract**

2. The initial term of this Contract expires at midnight on May 31, 2002, and may be extended for one additional term if requested in writing by IMC prior to the expiration of said initial term. If this Contract is extended, the additional term shall expire on the earlier of (a) the

date on which IMC's New Wales generator is repaired and returned to reliable active service, or  
(b) midnight on July 31, 2002.

### **Market Solicitation**

3. As soon as practicable after the execution of this Contract, Tampa Electric will solicit the wholesale power market to determine the availability and price for a 50 megawatt block of firm power under its optional provision clause in its retail tariff to be secured exclusively for the IMC/New Wales load. In its solicitation Tampa Electric will seek alternative options for daily hour length and number of days per week, as well as availability of take (call option with day ahead confirmation versus confirmed must-take). Tampa Electric does not guarantee that any offers will be provided or secured for the benefit of IMC as a result of this Contract, nor that multiple offers will be provided, nor that offers under any or all requested parameters will be provided.

### **Wholesale Contracts**

4. After soliciting the wholesale power market as described above, Tampa Electric will report the results to IMC. IMC may then request in writing that Tampa Electric accept one or more offers from third party wholesale power providers for use in supplying optional provision service to IMC. If the particular third party wholesale power supply offers are acceptable to Tampa Electric, Tampa Electric will negotiate a Wholesale Contract with the third party suppliers for purposes of supplying optional provision power to IMC. Each Wholesale Contract entered into pursuant to this Contract shall be attached as an appendix to and shall become part of this Contract for reference purposes.

5. In each case where Tampa Electric enters into a Wholesale Contract to secure optional provision power for IMC pursuant to this Contract, IMC will pay Tampa Electric the

Capacity Charge portion of any Wholesale Contract immediately upon Tampa Electric's execution of such Wholesale Contract. IMC will pay Tampa Electric the Energy Charges of any such Wholesale Contract through the normal billing process on the normal retail energy bill Tampa Electric sends to IMC.

6. IMC will pay the Energy Charge nominated by IMC of any Wholesale Contract secured by Tampa Electric for purpose of providing optional provision service to IMC pursuant to this Contract as follows:

(a) Unless and until Tampa Electric seeks and obtains the regulatory approval contemplated in subparagraph 6(b) below, IMC will pay for all Energy Charges for energy delivered by the wholesale supplier to Tampa Electric pursuant to this Contract for the benefit of IMC and that energy will be applied in the normal manner optional provision energy is applied to energy use at IMC/New Wales, regardless of whether Tampa Electric is applying optional provision to other interruptible customers at the same time, and IMC/New Wales is responsible for paying the total Energy Charges for the energy thus applied.

(b) IMC may request that any Wholesale Contract be restricted to IMC's use only when Optional Provision or Interruption would be in effect for IMC's New Wales facility in the course of events under Tampa Electric's retail interruptible tariffs. Under this option IMC is obligated to pay all Energy Charges incurred by Tampa Electric pursuant to a Wholesale Contract during any hour when Optional Provision or Interruption would otherwise be in effect. During any hour when an Optional Provision or Interruption would not be in effect, IMC is obligated to pay all Energy Charges incurred by Tampa Electric with respect to energy delivered to IMC during that hour pursuant to a Wholesale Contract. All energy not needed by IMC during any hour when Optional Provision or Interruption is not in effect will be made available

for Tampa Electric's system use as Tampa Electric sees fit to use it, and IMC is entitled to a credit for making such energy available to Tampa Electric. The credit for such energy is the standard rate for purchase of as-available energy from qualifying cogenerators and small power producers for the hour in question, as specified in Tampa Electric's rate schedule COG-1, not to exceed the Energy Charge applicable for the hour in question. The use of this subparagraph 6(b) in determining the Energy Charges for energy supplied to IMC pursuant to any Wholesale Contract is conditioned upon Tampa Electric requesting and receiving the approval of the Florida Public Service Commission (the "Commission"). Tampa Electric agrees to promptly petition the Commission requesting expedited approval upon the parties' execution of this Contract. IMC understands that the use of this subparagraph 6(b) is subject to the Commission's approval. IMC agrees to assist Tampa Electric in securing the Commission's approval of the use of this subparagraph 6(b), including providing informational and testimonial support if requested by Tampa Electric. IMC agrees to refrain from urging any position in any future fuel and purchased power cost recovery proceeding before the Commission that would call for Tampa Electric to absorb any costs on account of any proposed regulatory treatment relating to this Contract.

7. The parties agree to proceed with the use of subparagraph 6(a) for the determination of all Energy Charges required by this Contract and to seek Commission approval for the use of subparagraph 6(b) applicable to all Energy Charges under this Contract, commencing with the first energy delivered to IMC pursuant to this Contract. IMC shall be obligated to pay Tampa Electric for all Energy Charges calculated in accordance with subparagraph 6(a) with IMC being entitled to any Energy Charge credits calculated pursuant to subparagraph 6(b) if, and only to the extent that, the use of the Energy Charge calculations set forth in subparagraph 6(b) is approved by the Commission. It is the parties' express intent that

Tampa Electric not be made to absorb any costs on account of this Contract or any Commission decision regarding this Contract.

**Nature of this Contract**

8. This Contract is intended to facilitate Tampa Electric's provision of optional provision service to IMC. This Contract in no way supercedes or abridges any provision contained in Tampa Electric's tariffs governing the terms and conditions under which Tampa Electric provides electric service to IMC, including but not limited to those tariff provisions governing Tampa Electric's obligations in the event of a statewide energy emergency. To the extent of any conflict between this Contract and the applicable Tampa Electric tariff, the tariff shall control.

9. This Contract has been entered into in an effort to procure optional provision purchases for a single retail interruptible customer, IMC, and for only one of that customer's accounts in recognition of the extenuating circumstances of the New Wales generator failure. Accordingly, the parties agree that this Contract and any actions taken pursuant to this Contract do not constitute and shall not be referred to as precedent by either party in any future proceeding before any regulatory agency, court or other governmental body.

**Hold Harmless Provisions**

10. The parties recognize that Tampa Electric can provide no guarantee as to the firmness of any power that may be supplied to IMC under this Contract and cannot guarantee performance by any third party supplier pursuant to a Wholesale Contract. Accordingly, IMC agrees to hold harmless and not to seek damages or other relief against Tampa Electric, its subsidiaries and affiliates, and their respective employees, officers and directors, for any third

party provider's failure to perform, in whole or in part, pursuant to any Wholesale Contract entered into by Tampa Electric pursuant to this Contract.

11. Tampa Electric may, from time to time during the existence of this agreement, provide information at the request of IMC concerning Tampa Electric's day ahead or near term forecasts of power market prices, purchased power availability, the likelihood of Optional Provision or Interruption events, the extent to which optional provision power may be needed by IMC or other similar information or forecasts. IMC recognizes that Tampa Electric's day ahead and near term forecasts of these types of information are projections only and are subject to error. IMC agrees not to seek damages or other relief for faulty or inaccurate projections supplied by Tampa Electric and relied upon by IMC in making any decisions or taking any actions pursuant to this Contract or otherwise.

#### **Assignment**

12. Given the limited purpose of this agreement to accommodate IMC on a temporary basis, this Contract is not assignable.

#### **Applicable Law**

13. This Contract shall be governed by and construed and enforced in accordance with the laws, rules and regulations of the state of Florida and Tampa Electric's tariff as may be modified, changed or amended from time to time.

#### **Severability**

14. If any part of this Contract, for any reason, be declared invalid or unenforceable by a court or a public authority of appropriate jurisdiction, then such decision shall not affect the validity of the remainder of this Contract, which remainder shall remain in force and effect as if this Contract had been executed without the invalid or unenforceable provision.



**Complete Agreement and Amendments**

15. All previous communications or agreements between the parties, whether verbal or written, with reference to the subject matter of this Contract are hereby abrogated. No amendment or modification to this Contract shall be binding unless it shall be set forth in writing and duly executed by both parties to this Contract.

**Waivers**

16. Any waiver at any time by any party hereto of its rights with respect to the other party or with respect to any matter arising in connection with this Contract shall not be considered a waiver with respect to any subsequent default or matter.

**Notices**

17. Any notice, demand, or request required or authorized by the Contract shall be deemed properly given if mailed postage prepaid, to Tampa Electric Company, P. O. Box 111, Tampa, Florida 33601, Attention: Vice President, Customer Services and Marketing, in the case of Tampa Electric, and to IMC Phosphates, PO Box 2000, Mulberry, FL 33860; Attn Steve Davis Energy Engineering mgr. in the case of IMC. The designation of this person to be notified or the address of such person may be changed by Tampa Electric or IMC at any time, or from time to time, by similar notice.

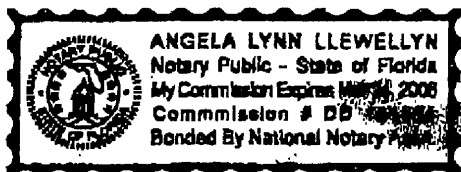
IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their fully authorized officers, and copies delivered to each party, as of the day and year first above stated.

ATTEST:

TAMPA ELECTRIC COMPANY

By: Angela Lynn Llewellyn  
Secretary

By: Dendree A. Brown  
Vice President



ATTEST:

IMC PHOSPHATES MP INC.

By: Christine H. Tadlock

By: Richard Kachowski

Secretary

Vice President

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