

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of
a special contract with IMC
Phosphates Company for provision
of interruptible electric
service by Tampa Electric
Company.

DOCKET NO. 001287-EI
ORDER NO. PSC-01-0104-PAA-EI
ISSUED: January 17, 2001

The following Commissioners participated in the disposition of
this matter:

J. TERRY DEASON, Chairman
E. LEON JACOBS, JR.
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

NOTICE OF PROPOSED AGENCY ACTION
ORDER DENYING APPROVAL OF SPECIAL CONTRACT
BETWEEN TAMPA ELECTRIC COMPANY AND IMC PHOSPHATES COMPANY

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service
Commission that the action discussed herein is preliminary in
nature and will become final unless a person whose interests are
substantially affected files a petition for a formal proceeding,
pursuant to Rule 25-22.029, Florida Administrative Code.

On August 31, 2000, Tampa Electric Company (TECO) filed for
approval of a Special Contract with IMC Phosphates Company for the
Provision of Interruptible Electric Service. On November 7, 2000,
IMC Phosphates Company filed a Petition to Intervene in this
docket. That petition was granted by Order No. PSC-00-2310-PCO-EI,
issued December 4, 2000. On November 20, 2000, TECO filed an
Emergency Motion for Authorization to Implement a Special Contract
for Interruptible Electric Service and Associated Proposed
Regulatory Treatment on an Interim Basis.

DOCUMENT NUMBER-DATE

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STATE RECORDS REPORTING

We have jurisdiction over the subject matter pursuant to Sections 366.05(1), 366.06, and 366.07, Florida Statutes.

Tampa Electric Company has proposed a Special Contract with IMC Phosphates Company for the Provision of Interruptible Electric Service ("contract" or "special contract"). IMC's 31 accounts currently receive service under TECO's IS-1, IST-1, and IS-3 ("Interruptible" or "IS") rate schedules. The majority of IMC's accounts receive non-firm service under the IST-1 rate. TECO's IS rate schedules include an optional provision under which TECO purchases energy, when available, ("optional provision" or "buy-through") on behalf of its interruptible customers in lieu of interruption. When power is not available, IS customers are interrupted. In return for allowing TECO to interrupt when power is needed to serve firm customers, IS customers pay a lower rate. Customers, however, must pay the actual cost of any purchases made by TECO on their behalf during optional provision periods. TECO states that during the past 18 months it has purchased buy-through power for IMC with greater frequency and at a higher cost than in prior years.

IMC is TECO's largest retail customer, and self-supplies a portion of its energy needs. IMC owns generating capacity and transmission, distribution, and transformation facilities. TECO asserts that IMC has stated that it requires stability with regard to the price of electricity to remain competitive.

TECO requests that the contract be approved for an initial period from August 31, 2000, through December 31, 2003. The contract includes language that allows the parties to extend the contract at the end of the initial term by mutual agreement. TECO requested confidential classification pursuant to 366.093, Florida Statutes, of the negotiated rate and certain other terms and conditions in the contract.

Contract Rate

The contract rate is shown on Page 3 of Confidential Document No. 10828-00. The contract rate is a fixed dollar per megawatt hour (\$/MWH) charge which decreases over the term of the contract and includes the following bill components:

- (a) Demand and Non-fuel Energy charges
- (b) Fuel and Purchased Power Cost Recovery Factor (fuel factor)
- (c) Purchased Power Capacity Cost Recovery Factor (capacity factor)
- (d) Environmental Cost Recovery Factor (environmental factor)
- (e) Conservation Cost Recovery Factor (conservation factor)
- (f) Customer facilities charges
- (g) Voltage level and transmission ownership discounts
- (h) Gross Receipts Tax and County Tax

Florida Sales Tax will be added to the contract rate.

The contract rate includes projections of the IS fuel factors over the term of the contract. To the extent that the Commission-approved fuel factors for the IS rates vary over the term of the contract, TECO will adjust the contract rate accordingly. TECO does not propose to adjust the contract rate for changes in the environmental, capacity, and conservation cost recovery factors. Other adjustments to the contract rate will be made if new taxes or new franchise fees are assessed to TECO.

TECO asserts that the contract rate is somewhat higher than the rates IMC currently pays under the IS rate schedules. Based on discovery responses TECO provided, there does not appear to be a significant difference between projected contract revenues and the revenues TECO would have received (excluding optional provision revenues) if IMC had continued to take service under the IS rates.

Optional Provision Purchase Credits

Under the contract, TECO will continue to purchase optional provision power for IMC. If no optional provision power is available, TECO will interrupt IMC like any other IS customer. This provision in the contract is similar to the optional provision in the IS rate schedules, however, the contract includes an "Optional Provision Purchase Credits" provision. Under this provision, IMC will not be responsible for the total optional provision cost. TECO will grant IMC a credit for each megawatt hour (MWH) of optional provision power purchased on IMC's behalf. The credit amount is shown on Page 6 of Confidential Document No. 10828-00. IMC will be responsible for paying only the cost of any optional provision power in excess of the credit amount. In the

event that the prospective purchase price is expected to exceed the credit stated in the contract, TECO will attempt to notify IMC in advance to give IMC the opportunity to curtail their usage to avoid the optional provision cost.

Rule 25-6.018, Florida Administrative Code, requires TECO to file reports with the Commission to provide information on customer interruptions and optional provision activity. These reports state the total MWHs purchased for each optional provision period and the \$/MWH cost billed to the interruptible customers. Based on these reports, for the period January 1, 1997, through October 31, 2000, the \$/MWH cost for optional provision purchases exceeded the credit stated in the contract on only two occasions.

Based on our review of the historical data and the level of the credit in the contract, we believe that IMC will rarely incur any cost for optional provision purchases under the special contract.

Regulatory Treatment of the Contract Revenues

TECO proposes in its petition to make a monthly comparison between the revenues received from IMC under the contract rate and the revenues TECO would have received under the otherwise applicable IS rate schedules. TECO then proposes the following regulatory treatment for the contract revenues:

- (1) Credit the capacity, environmental, and conservation cost recovery clauses with revenues equal to those that would have been collected had IMC continued to take service under the IS rate;
- (2) Credit operating revenues with base rate revenues equal to those that would have been collected had IMC continued to take service under the IS rate;
- (3) Credit the remaining balance to the fuel clause.

Based on discovery responses TECO provided, there does not appear to be a significant difference between projected contract

revenues and the revenues TECO would have received (excluding optional provision revenues) if IMC had continued to take service under the IS rates. We therefore do not believe that any differential between the contract revenues and the otherwise applicable IS revenues will have a significant impact on the fuel clause. We do believe, however, that the regulatory treatment of the optional provision purchase credits, as discussed below, will have a significant impact on the fuel clause.

Regulatory Treatment of the Optional Provision Purchases Credits

As stated above, the contract includes an "Optional Provision Purchase Credits" provision, which grants IMC a credit for each MWH of optional provision power purchased on IMC's behalf. IMC will be responsible for paying only the cost of any optional provision power in excess of the credit amount.

TECO proposes that all revenues and expenses associated with optional provision purchases for IMC be treated as credits and debits to the fuel clause. When TECO purchases power for IMC at a cost that is lower than the credit stated in the contract, then the cost of the purchase will be recovered from the general body of ratepayers through the fuel clause, and IMC will not pay any additional charge.

In the event TECO purchases optional provision power for IMC at a price that is higher than the credit amount, then any revenues received from IMC will be credited to the fuel clause. It is important to note that IMC will only be responsible for optional provision costs that are in excess of the credit. The credit amount will be recovered from the general body of ratepayers through the fuel clause.

The proposed regulatory treatment of the IMC contract differs substantially from the treatment the Commission approved for TECO's Commercial/Industrial Service Rider (CISR) tariff. The CISR tariff was first approved for Gulf Power Company (Gulf) in Docket No. 960789-EI, Order No. PSC-96-1219-FOF-EI, issued September 24, 1996. TECO's CISR tariff was approved in Order No. PSC-98-1081-FOF-EI, issued August 10, 1998, in Docket No. 980706-EI. The two CISR tariffs are essentially the same.

The CISR tariff is designed to allow Gulf and TECO to retain or attract commercial/industrial customers who can demonstrate that they have viable alternatives to service from the utility (at-risk load). The tariff is available to new or existing firm customers. IMC, as a non-firm customer, is therefore not eligible for the CISR rate. The CISR allows the utilities to negotiate a discount on the base energy and/or base demand charges in order to retain or attract the at-risk load.

When approving the CISR tariffs, we placed specific requirements on the utilities to ensure that the rates to the general body of ratepayers did not increase as a result of the CISR tariff. The order approving TECO's CISR tariff specifically states:

The negotiated discount will only apply to base energy and/or base demand charges. The customer will pay all otherwise applicable adjustment clauses. To ensure that the other ratepayers are not being harmed through the adjustment clauses, TECO proposes to allocate all revenues received from CISR customers first to all applicable cost recovery clauses at the rate which the customer would have been charged in the absence of the CISR. (Emphasis added)

Similar language can be found in the order approving Gulf's CISR.

In summary, the CISR tariff does not have an immediate impact on ratepayers between rate cases because the CISR customer pays all the otherwise applicable adjustment clauses. Any revenue shortfall resulting from the application of the CISR tariff is borne by the utility's shareholders between rate cases through reduced earnings. The proposed IMC contract, however, has an immediate and direct impact on the general body of ratepayers through the fuel clause.

Impact of Special Contract on TECO's Ratepayers

In response to discovery requests, TECO projected the rate impact on the general body of ratepayers for the period 2001 through 2003 under the following three scenarios:

- (1) TECO provides service to IMC under the proposed contract;

- (2) TECO continues to provide service to IMC under the IS rate schedules;
- (3) TECO does not provide service to IMC.

Confidential Document No. 15756-00, Exhibit entitled *Impact of IMC Contract Rate on Jurisdictional Fuel and Purchased Power Expense*, shows that the levelized fuel factor for the years 2002 and 2003 is higher under scenario (1) than under scenario (2). The higher fuel factor under scenario (1) is attributable to the IMC optional provision costs that TECO projects to recover from all ratepayers through the fuel clause. The total IMC optional provision cost TECO projects to recover during the contract period through the fuel clause is shown on Line E, Column 4. From IMC's perspective, this amount represents the optional provision savings under the contract.

Scenario (3) evaluates the impact on the general body of ratepayers if IMC leaves TECO's system. This scenario must be considered since TECO asserts that, absent the contract, IMC may seek alternatives to taking service from TECO. The impact on the general body of ratepayers under scenario (3) is shown in confidential Document No. 15756-00, Exhibit entitled *Impact of IMC Not Taking Service from Tampa Electric*.

The amount shown on Line A, Column 4, shows the base rate revenues TECO projects to receive from IMC for the period 2001 through 2003. The analysis thus presumes that all of IMC's base rate revenues received represent a contribution to fixed costs, and that there will be no corresponding decrease in base rate expenses to TECO if IMC leaves the system.

The amount shown on Line F, Column 4, represents the effect on fuel costs. This analysis indicates that the general body of ratepayers would see a reduction in their fuel cost if IMC were to leave the system. In addition, if IMC leaves, TECO's ratepayers may experience increased reliability, fewer optional provision purchases, and more wholesale sales opportunities.

The net effect of these two components is shown on Line G, Column 4, and purports to show the benefits of retaining IMC on the system. We note, however, that the analysis treats all of IMC's base rate revenues as a contribution to fixed costs. It is not a

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RIM analysis that evaluates all the benefits and costs of retaining IMC. The analysis thus may overstate the benefits provided by IMC.

We also note that the increased cost of fuel associated with the retention of IMC results in an immediate negative rate impact on the general body of ratepayers. However, the loss of IMC's base revenues, in the absence of a rate case or earnings sharing stipulation, will not immediately affect rates.

We find that the proposed special contract with IMC should be denied. The proposed contract has an immediate and direct rate impact on the general body of ratepayers through the fuel clause while TECO's stockholders absorb none of the additional cost of the contract. In our decisions regarding the CISR load retention/load building rate, we expressly held that the general body of ratepayers should not be harmed through the adjustment clauses.

According to TECO, IMC has asserted that because of the intense competitive pressures in the market for its products, it needs to achieve stability of its electric costs. TECO contends that IMC has stated that the recent frequency and high cost of optional provision purchases has created additional economic justification for IMC to construct additional self-generation or curtail production at facilities located in TECO's service area. While TECO describes in general terms IMC's recent activities, neither TECO nor IMC have identified to us a specific viable alternative IMC would take should the contract not be approved.

The majority of IMC's 31 accounts take service under the IS-1/IST-1 rate schedules (three accounts take service under the IS-3 rate schedule). TECO's IS-1 and IST-1 rates were closed to new customers at TECO's request during its 1985 rate case in Docket No. 850050-EI because the rates were no longer cost-effective. TECO's IS-3 and IST-3 rates were closed to new customers on the basis that these rates are no longer cost-effective to its general body of ratepayers in Order No. PSC-99-1778-FOF-EI, issued September 10, 1999, in Docket No. 990037-EI. IMC therefore enjoys the benefits of rates that are no longer cost-effective.

In addition to receiving service under rates that are no longer cost-effective, we note that IMC enjoyed for many years the rate benefits of non-firm service while rarely incurring any optional provision costs or interruptions.

In addition, we are concerned about potential complaints from similarly situated customers who may view this contract as unduly discriminatory. In response to interrogatory requests, TECO stated that there are four customers in addition to IMC with the same SIC code as IMC and 31 interruptible customers in addition to IMC.

TECO asserts that it must work constructively with IMC in order to avoid unnecessary bypass which could result in the loss of a significant contribution of fixed cost. We agree that this is an appropriate objective, and we encourage TECO to pursue ways to address its customers' concerns. But we must balance this effort against appropriate public policy to protect the general body of ratepayers. Accordingly, we do not believe that the proposed contract is appropriate.

Effective Date

In its petition, TECO requested that the contract be approved for an initial period from August 31, 2000, through December 31, 2003. Because we have denied approval of the special contract, we find that its effective date is a moot question.

Emergency Motion

On November 20, 2000, TECO filed its Emergency Motion for Authorization to Implement a Special Contract for Interruptible Electric Service and Associated Proposed Regulatory Treatment on an Interim Basis. TECO alleges that in the time since its original petition was filed on August 31, 2000, TECO has purchased a significant amount of power on behalf of IMC under the Optional Provision of the applicable interruptible service rates schedules, and that the cost of these purchases has been much higher than either TECO or IMC anticipated. TECO further states that, because of the time that has passed since filing in this docket, interim relief for IMC is extremely urgent, especially in light of the continued high cost of optional provision power. TECO suggests that approval be granted to initiate the terms of the special contract for November 2000, subject to billing adjustments should the Commission disapprove the special contract.

Because we have denied approval of the special contract, use of the contract provisions for the month of November is inappropriate. The Emergency Motion is moot.

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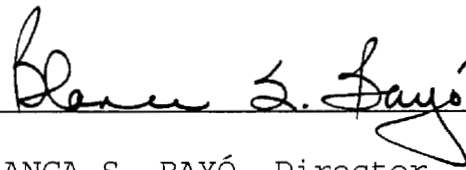
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Tampa Electric Company's Petition for Approval of a Special Contract with IMC Phosphates Company for the Provision of Interruptible Electric Service is denied. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 17th day of January, 2001.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on February 7, 2001.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.