

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition of Florida Power Corporation and Tampa Electric Company for expedited declaratory relief concerning provision of electric service to an industrial customer's facilities located in Tampa Electric Company's Commission-approved service territory.

DOCKET NO. 020105-EI
ORDER NO. PSC-02-0929-AS-EI
ISSUED: July 11, 2002

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

ORDER APPROVING SETTLEMENT AGREEMENT BETWEEN
FLORIDA POWER CORPORATION, TAMPA ELECTRIC COMPANY,
AND IMC PHOSPHATES COMPANY

BY THE COMMISSION:

Background

On February 6, 2002, Florida Power Corporation (FPC) and Tampa Electric Company (TECO) filed a joint petition for expedited declaratory relief concerning the provision of electric service to an industrial customer's facilities located in TECO's Commission-approved service territory. By Order No. 24593, issued May 29, 1991, in Docket No. 910085-EI, the Commission approved a territorial agreement between TECO and FPC. The agreement provides that TECO shall have the exclusive authority to furnish retail electric service for end use within TECO's territorial area and FPC shall have exclusive authority to furnish retail electric service for end use within the FPC territorial area. Additionally, the

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agreement states that neither party will knowingly serve or attempt to serve any new customer whose end use facilities are within the territorial area of the other party.

On June 21, 2002, IMC, TECO, and FPC filed a Joint Motion for Approval of Settlement Agreement and Closure of Docket, which resolves the joint petition. The Settlement Agreement is contained in Attachment A. The settlement is a direct result of staff mediation efforts.

We have jurisdiction pursuant to Section 366.04, Florida Statutes, and Rules 25-6.0440 and 25-6.0441, Florida Administrative Code.

Settlement

All parties have proffered the proposed Settlement Agreement (Attachment A) as a complete resolution of all matters pending in Docket No. 020105-EI. The Settlement Agreement was signed by all the parties involved in the Docket. The major elements contained in the Settlement Agreement are as follows:

- FPC will continue to bill IMC pursuant to FPC's Rate Schedule IST-1 for the entire IMC load that FPC serves, including the Disputed Load. (Paragraph 1(a))
- Prior to July 1, 2002, TECO will install, at its cost, the appropriate meter and related equipment on IMC property that will isolate and record energy consumed by the Disputed Load. (Paragraph 1(b))
- IMC will facilitate TECO's installation of the above-referenced meter and related equipment. (Paragraph 1(b))
- Beginning with the July, 2002, billing, IMC will pay to TECO the rate differential which represents the difference between TECO's IST-1 base rate and FPC's IST-1 base rate, for all such energy consumption recorded by the meter. (Paragraph 1(b))

- Gross receipts taxes, similar taxes, and franchise fees that TECO may be required by a governmental authority to collect from its electric service customers are not applicable to the amounts to be billed to IMC. (Paragraph 1(b))
- As of the July, 2002, billing cycle for IMC, FPC will pay to TECO 0.528 cents per kilowatt-hour for all energy metered. (Paragraph 2)
- TECO shall provide the metering data to FPC, who will remit the amount calculated to TECO on a quarterly basis. (Paragraph 2)
- The Disputed Load shall continue to be served by FPC through its Fort Greene No. 8 substation. (Paragraph 3)
- Representatives of the Parties shall meet quarterly to review existing and planned mining operations to determine instances where Mobile Facilities are likely to or are crossing boundaries identified in the territorial agreement. (Paragraph 4(a))
- IMC shall provide at least 10 days written notice prior to commencement of service to any Mobile Facility. (Paragraph 4(b))
- If prior notice is not practicable, then IMC shall provide written notice to the Parties of commencement of the new service within three business days following commencement. (Paragraph 4(b))
- During the term of the Settlement Agreement, IMC will not be required to operate its Mobile Facilities with split suppliers. (Paragraph 4(c))
- When FPC is providing electric service to an IMC Mobile Facility that is partially located in the TECO service area, FPC will bill IMC for the entire load. FPC will remit to TECO, on a quarterly basis, an amount equal to 50% of FPC's base rate revenues. (Paragraph 4(d))

- TECO shall also bill IMC the positive differential between the applicable interruptible service base rates of TECO and FPC. (Paragraph 4(d))
- When TECO is providing electric service to an IMC Mobile Facility that is partially located in the FPC service area, TECO will bill IMC for the entire load. TECO will remit to FPC, on a quarterly basis, an amount equal to 50% of TECO's base rate revenues. (Paragraph 4(e))
- FPC shall bill IMC the positive differential, if any, between the applicable interruptible service base rates of FPC and TECO. (Paragraph 4(e))
- The parties will jointly notify the Commission and seek its expedited review and approval of each arrangement that is placed into effect in accordance with Paragraph 4. (Paragraph 4(f))
- Parties shall promptly notify the Commission and ask for resolution of any dispute arising under this agreement. (Paragraph 4(g))
- During the pendency of any dispute, neither TECO nor FPC shall refuse to provide electric service to an IMC Mobile Facility so long as such Mobile Facility is partially located in its service area. (Paragraph 4(g))
- TECO will receive jointly from IMC and FPC a total sum of \$240,000, for consumption by the Disputed Load prior to April, 2002. (Paragraph 6)
- The Settlement Agreement shall expire three years from the date the agreement is approved by the Commission. (Paragraph 9)
- The agreement may be extended by the mutual agreement of the Parties and approved by the Commission. (Paragraph 9)

The proposed Settlement consists of nine paragraphs of agreement among the signatories to the Settlement. Most of the paragraphs are self-explanatory, but we believe that the following quoted paragraph is of importance and should be noted:

9. This Settlement Agreement, including the process set forth in paragraph 4, shall expire three years from the date that the agreement is approved by the FPSC through the entry of a final and non-appealable order, unless extended by the mutual agreement of the Parties and such extension is approved by the FPSC. Arrangements approved by the FPSC pursuant to the process set forth in paragraph 4 shall survive termination of this Settlement Agreement. The Parties agree to meet at least 120 days prior to the expiration of this Settlement Agreement to discuss an extension of or modifications to this Settlement Agreement, including the process described in paragraph 4. If the Parties cannot agree to an extension, but at least one Party desires an extension and requests mediation of that issue at least 45 days prior to the expiration of this Settlement Agreement, then the Parties agree to mediation of that issue and will schedule such mediation to occur at least 20 days prior to the expiration of this Settlement Agreement . .

We recognize that the Parties may, of necessity, implement the resolution of future situations concerning electric service to IMC's Mobile Facilities, as contemplated in paragraph 4 of the Settlement Agreement, in advance of the Parties submitting such resolutions to the Commission for our approval. However, we are satisfied that the procedures and pricing mechanism set forth in paragraph 4 to be used in addressing issues raised by future service to IMC Mobile Facilities are sufficiently clear and specific to avoid the exercise of undue discretion by the Parties and are in the public interest. We will review each resolution when filed and approve or take other appropriate action in response thereto, consistent with our statutory authority and as part of our ongoing, active supervision of this settlement and the application and implementation of territorial agreements.

Conclusion

We have reviewed the terms of the Settlement Agreement. We find that the proposed settlement completely resolves the issues in this docket. Additionally, we find that the proposed settlement will assist in avoiding future disputes involving mobile facilities that traverse utility boundaries. The proposed settlement provides a reasonable resolution of the issues regarding IMC's Mobile Facilities, the territorial boundaries, and the service providers. The agreement is in the public interest and is hereby approved.

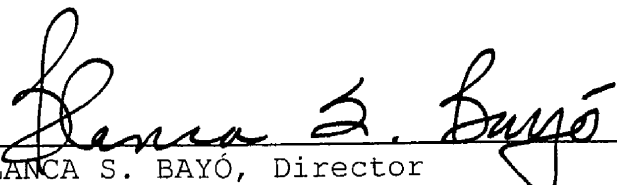
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Joint Settlement filed by Florida Power Corporation, Tampa Electric Company, and IMC Phosphates Company on July, 2002, attached hereto as Attachment A, is approved in its entirety. It is further

ORDERED that Attachment A is incorporated herein by reference. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 11th day of July, 2002.



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

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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 or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

ATTACHMENT A

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into this th 20 day of June, 2002 by and between Florida Power Corporation (Florida Power), Tampa Electric Company (Tampa Electric) and IMC Phosphates Company (IMC) (collectively, the Parties).

WHEREAS, Florida Power and Tampa Electric have filed a Joint Petition for Expedited Declaratory Relief, denominated Docket No. 020105-EI at the Florida Public Service Commission (FPSC), in which they seek a declaration that the territorial agreement entered into between Florida Power and Tampa Electric, dated December 13, 1990, is applicable to all electric load located in Tampa Electric's service area, served by Florida Power's Ft. Greene No. 8 Substation in Hardee County, Florida (the Disputed Load);

WHEREAS, IMC has contested the substance of Florida Power and Tampa Electric's request, has stated that the Disputed Load is part of an integrated mobile facility operating south of the old Payne Creek Plant, with the dragline located in Florida Power's service territory, and has asserted that the territorial agreement does not apply to IMC's mobile facilities;

WHEREAS, the Parties wish to amicably resolve the disputed issues involved in the above-referenced proceeding and to avoid the time and expense of further litigation and the uncertainties of such litigation;

WHEREAS, in recognition of the issues involved with providing electric power to dragline/slurry systems and other facilities that are mobile in nature, the parties also wish to establish a process through which future issues related to the provision of electric service to IMC's mobile facilities may be identified and resolved in a manner that is consistent with the objectives stated in the territorial agreement and that facilitates the ability of the FPSC to actively supervise the administration of such process; and

WHEREAS, the Parties agree to dismiss the above-referenced proceeding on the terms set forth herein.

NOW, THEREFORE in consideration of the foregoing, said Parties do mutually agree as follows:

Billing

1. Beginning on the date of approval of this Settlement Agreement by the FPSC, IMC will be billed for electric service to the Disputed Load as follows:

(a) Florida Power will continue to bill IMC pursuant to Florida Power's Rate Schedule IST-1 for the entire IMC load that Florida Power serves, including the Disputed Load.

(b) Prior to July 1, 2002, Tampa Electric will install, at its cost, the appropriate meter and related equipment at a location on IMC's property that will isolate and record

the energy consumed by the Disputed Load. IMC shall facilitate Tampa Electric's installation of the above-mentioned meter and related equipment. Beginning with the July 2002 billing, IMC will pay to Tampa Electric the rate differential which represents the difference between Tampa Electric's IST-1 base rate and Florida Power's IST-1 base rate, adjusted to reflect its interruptible service billing credit, for all such energy consumption recorded by the meter. That differential currently is 0.559 cents per kilowatt-hour. A bill calculated in this manner will be rendered monthly by Tampa Electric and paid by IMC to Tampa Electric. For the April, May and June 2002 billing cycles for IMC, IMC will pay Tampa Electric the above-mentioned rate differential multiplied by 2/3 of all energy metered by Florida Power at its Ft. Greene No. 8 substation. The Parties agree that gross receipts taxes, similar taxes and franchise fees that Tampa Electric may be required by a governmental authority to collect from its electric service customers are not applicable to the amounts to be billed to IMC under this subparagraph 1(b). If, however, a governmental authority with jurisdiction determines that such pass-through taxes or franchise fees do apply, then Tampa Electric shall collect such taxes and/or franchise fees from IMC on the amounts billed, together with any associated interest or penalties assessed or imposed by such governmental authority. The Parties shall coordinate in addressing or defending this issue before any relevant taxing authority.

2. As of the July 2002 billing cycle for IMC, Florida Power will pay to Tampa Electric 0.528 cents per kilowatt-hour (i.e., 50% of Florida Power's IST-1 base rate, adjusted to reflect its interruptible service billing credit) for all energy metered as set forth in subparagraph 1(b). Tampa Electric shall provide the metering data to Florida Power, who will remit the amount calculated to Tampa Electric on a quarterly basis. For the April, May and June 2002 billing cycles for IMC, Florida Power shall pay to Tampa Electric 0.528 cents per kilowatt-hour for 2/3 of all energy metered by Florida Power at its Ft. Greene No. 8 substation.

3. The Disputed Load shall continue to be served by Florida Power through its Fort Greene No. 8 Substation.

Dispute Resolution

4. The Parties agree to resolve future issues that may arise related to the interconnection and supply of Mobile Facilities that cross the service territory boundary between Tampa Electric and Florida Power established in the service territory agreement approved by the FPSC during the term of this Settlement Agreement as follows:

(a) Designated representatives of the Parties shall meet quarterly to review IMC's existing and planned mining operations to determine those instances where Mobile Facilities are likely to or are crossing boundaries identified in the territorial agreement, with the first such meeting to be scheduled within 10 business days following the date on which an order issued by the FPSC approving this Settlement Agreement becomes final and non-appealable;

(b) IMC shall provide written notice to the Parties at least ten (10) days prior to the commencement of service to any Mobile Facility pursuant to this paragraph 4, other

than the Disputed Load, to the extent practicable. If prior notice is not practicable, then IMC shall, in any event, provide written notice to the Parties of the commencement of such new service within three (3) business days following the commencement of such service. The required notice shall specify the date on which the new service commenced ("Commencement Date") and shall specifically describe the location, nature and magnitude of the load being served. When Florida Power is providing electric service to an IMC Mobile Facility that crosses a boundary set forth in the territorial agreement and is partially located in the service area of Tampa Electric, should IMC fail to provide notice of such new service as required pursuant to this paragraph 4, then the billing provisions of subparagraph 4(d) below shall apply to such load except that IMC shall pay Tampa Electric an amount equal to twice the positive differential, if any, between its IST-1 base rate and Florida Power's IST-1 base rate, adjusted to reflect Florida Power's interruptible service billing credit, for the period that starts on the date that the relevant Mobile Facility began taking electric service from Florida Power and ends on the date that IMC notified the parties in writing, as provided above, that such service had commenced. When Tampa Electric is providing electric service to an IMC Mobile Facility that crosses a boundary set forth in the territorial agreement and is partially located in the service area of Florida Power, should IMC fail to provide notice of such new service as required pursuant to this paragraph 4, then the billing provisions of subparagraph 4(e) below shall apply to such load except that IMC shall pay Florida Power an amount equal to twice the positive differential, if any, between its IST-1 base rate and Tampa Electric's IST-1 base rate, adjusted to reflect Florida Power's interruptible service billing credit, for the period that starts on the date that the relevant Mobile Facility began taking electric service from Tampa Electric and ends on the date that IMC notified the Parties in writing, as provided above, that such service had commenced;

(c) The Parties recognize that Mobile Facilities move from place to place and that IMC would prefer to have a single electric supplier for such a facility for safety and other reasons. During the term of this Settlement Agreement, IMC will not be required to operate its Mobile Facilities with split suppliers;

(d) When Florida Power is providing electric service to an IMC Mobile Facility that crosses a boundary set forth in the territorial agreement and is partially located in the service area of Tampa Electric, Florida Power will bill IMC at its then applicable interruptible service rates for the entire load of IMC's Mobile Facility, including the load located in Tampa Electric's service area. Florida Power will remit to Tampa Electric, on a quarterly basis, an amount equal to 50% of Florida Power's base rate revenues, adjusted to reflect its interruptible service billing credit and based on the applicable billing determinants, as set forth in Attachment A hereto, for all energy recorded on a meter installed by Tampa Electric, at its cost, at a point that isolates and records the energy consumed by that portion of the Mobile Facility located in the service area of Tampa Electric. IMC shall facilitate the installation of all such metering equipment by Tampa Electric. In the event that such metering equipment is installed after the Commencement Date, the average of the first three months of metered usage shall be proportionately imputed to the period from the Commencement Date to the date of meter installation for billing purposes. Tampa Electric shall also bill IMC the positive differential, if any, between the applicable interruptible service base rates of Tampa Electric and Florida

Power (currently IST-1), adjusted in Florida Power's case to reflect its interruptible service billing credit and based on the applicable billing determinants, from the Commencement Date, as set forth in Attachment A, hereto. As an alternative to the forgoing, Tampa Electric may, at its option, request that Florida Power temporarily provide service to the portion of IMC's Mobile Facility located in Tampa Electric's service area in accordance with the temporary service provisions in Section 2.3 of the territorial agreement. However, nothing in this Settlement Agreement shall be deemed to modify, limit or amend in any way Section 2.3 of the territorial agreement;

(e) When Tampa Electric is providing electric service to an IMC Mobile Facility that crosses a boundary set forth in the territorial agreement and is partially located in the service area of Florida Power, Tampa Electric will bill IMC at its then applicable interruptible service rates for the entire load of IMC's Mobile Facility, including the load located in Florida Power's service area. Tampa Electric will remit to Florida Power on a quarterly basis an amount equal to 50% of Tampa Electric's base rate revenues, based on the applicable billing determinants, as set forth in Attachment A, hereto for all energy recorded on a meter installed by Florida Power, at its cost, at a point that isolates and records the energy consumed by that portion of the Mobile Facility located in the service area of Florida Power. IMC shall facilitate the installation of all such metering equipment by Florida Power. In the event that such metering equipment is installed after the Commencement Date, the average of the first three months of metered usage shall be proportionately imputed to the period from the Commencement Date to the date of meter installation for billing purposes. Florida Power shall also bill IMC the positive differential, if any, (none currently) between the applicable interruptible service base rates of Florida Power and Tampa Electric (currently IST-1), adjusted in Florida Power's case to reflect its interruptible service billing credit and based on the applicable billing determinants, as set forth in Attachment A, hereto, from the Commencement Date. As an alternative to the forgoing, Florida Power may, at its option, request that Tampa Electric temporarily provide service to the portion of IMC's Mobile Facility located in Florida Power's service area in accordance with the temporary service provisions in Section 2.3 of the territorial agreement. However, nothing in this Settlement Agreement shall be deemed to modify, limit or amend in any way Section 2.3 of the territorial agreement;

(f) The Parties will jointly notify the FPSC and seek its expedited review and approval of each arrangement that is placed into effect in accordance with this paragraph 4. The Parties agree to support before the Commission, both formally and informally, any arrangement for which approval is jointly sought pursuant to this subparagraph;

(g) The Parties shall promptly notify the FPSC and ask for resolution of any dispute arising under this agreement. During the pendency of the dispute, neither Tampa Electric nor Florida Power shall refuse, based on the existence of such a dispute, to provide electric service to an IMC Mobile Facility so long as such Mobile Facility is partially located in its service area and receiving service through a point of interconnection that is located in its service area. During any such dispute, the billing arrangements described above shall apply to any Mobile Facility served by either Florida Power or Tampa Electric that crosses a boundary identified in the territorial agreement and is partially located in the service area of the other, non-serving utility.

5. For purposes of the process described in paragraph 4, "Mobile Facility" or "Mobile Facilities" shall mean (i) a mobile, integrated phosphate dragline together with the associated slurry pipeline, electric pumps, electric lights, telemetry equipment and related ancillary equipment (such ancillary equipment to be less than a total of 50 kilowatts for any given Mobile Facility) used to enable phosphate ore to be transported via pipeline from the dragline work site to the washer facility, (ii) tailings pipelines, or clay slurry pipelines, associated electric pumps, electric lights, and telemetry equipment used to transport sand, clay and other waste material from a washer facility or beneficiation plant to the mining site, and (iii) water jacks or water retention return pumps and associated electric lights and dewatering equipment that is installed in conjunction with such a dragline or tailings pipeline, whether in place before or after the dragline or tailings pipeline is placed in operation at the site. The Parties explicitly agree that this Settlement Agreement shall apply only to Mobile Facilities as defined herein.

Payment

6. In recognition of consumption by the Disputed Load prior to April 2002, Tampa Electric shall receive jointly from IMC and Florida Power a total sum of \$240,000.00, with payment to be received from Florida Power, within ten business days following the date on which an order issued by the FPSC approving this Settlement Agreement becomes final and non-appealable.

General

7. The Parties agree that they waive no arguments or rights by virtue of entering into this Settlement Agreement. The Parties reserve the right to take any position or make any argument in this docket on these matters if this Settlement Agreement is not accepted by the FPSC in its entirety. Subject to the provisions of subparagraphs 4(f) and 4(g) above, the Parties further reserve the right to take any position and make any argument in any future dockets. This Settlement Agreement shall not be read as an admission by any Party on the applicability or nonapplicability of the territorial agreement to IMC's mobile facilities and shall have no precedential significance in any other proceeding.

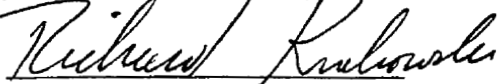
8. The Parties will present this Settlement Agreement to the FPSC for approval as quickly as possible. If the Settlement Agreement is not approved by the FPSC in its entirety through a final non-appealable order, then the Parties agree to return to mediation and this Settlement Agreement shall cease to be of any further force or effect.

9. This Settlement Agreement, including the process set forth in paragraph 4, shall expire three years from the date that this agreement is approved by the FPSC through the entry of a final and non-appealable order, unless extended by mutual agreement of the Parties and such extension is approved by the FPSC. Arrangements approved by the FPSC pursuant to the process set forth in paragraph 4 shall survive termination of this Settlement Agreement. The Parties agree to meet at least 120 days

prior to the expiration of this Settlement Agreement to discuss an extension of or modifications to this Settlement Agreement, including the process described in paragraph 4. If the Parties cannot agree to an extension, but at least one Party desires such an extension and requests mediation of that issue at least 45 days prior to the expiration of this Settlement Agreement, then the Parties agree to mediation of that issue and will schedule such mediation to occur at least 20 days prior to expiration of the Settlement Agreement. If the Parties cannot agree to a mediator, a mediator from the Commission Staff shall be appointed by the General Counsel of the Commission to mediate such issue. The discussion/mediation process specified in this paragraph shall not extend the term of this Settlement Agreement, absent mutual agreement of the Parties and approval of the FPSC.

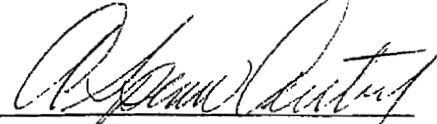
DATED this 20th day of June 2002.

IMC PHOSPHATES COMPANY

By: 

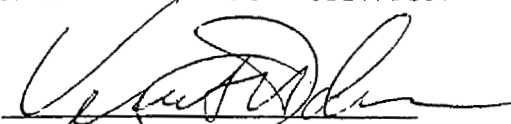
Richard J. Krakowski
Vice President and General Manager
IMC Phosphates Company

TAMPA ELECTRIC COMPANY

By: 

A. Spencer Autry
Vice President
Tampa Electric Company

FLORIDA POWER CORPORATION

By: 

Vincent M. Dolan
Vice President
Florida Power Corporation