State of Florida

Public Service Commission

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DATE: DECEMBER 12, 2000

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF ECONOMIC REGULATION (E. DRAPER, WHEELER) EJD CSW DRW RJ RHT
DIVISION OF SAFETY AND ELECTRIC RELIABILITY (BOHRMANN, BREMAN, FUTRELL) TB WBM SDJ MF
DIVISION OF LEGAL SERVICES (HART) DH RVE

RE: DOCKET NO. 001287-EI - PETITION FOR APPROVAL OF A SPECIAL CONTRACT WITH IMC PHOSPHATES COMPANY FOR PROVISION OF INTERRUPTIBLE ELECTRIC SERVICE BY TAMPA ELECTRIC COMPANY.

AGENDA: 12/19/00 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\ECR\WP\001287.RCM

CASE BACKGROUND

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.

The Commission has jurisdiction over the subject matter pursuant to Sections 366.05(1), 366.06, and 366.07, Florida Statutes.

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission approve Tampa Electric Company's Petition for Approval of a Special Contract with IMC Phosphates Company for the Provision of Interruptible Electric Service?

RECOMMENDATION: No, the proposed contract should not be approved. [E. DRAPER, WHEELER, BOHRMANN, BREMAN, FUTRELL]

STAFF ANALYSIS:

The Proposed Contract

On August 31, 2000, Tampa Electric Company (TECO) filed for approval of a Special Contract with IMC Phosphates Company (IMC) for the Provision of Interruptible Electric Service (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 petitioned that the contract be approved for an initial period 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. The contract rate is a fixed $/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 MWH of optional provision power purchased on IMC's behalf. The credit amount is shown on Page 6 of Confidential Document No. 10828. 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. TECO's response to Staff Interrogatory No. 6a, Attachment No. 2, confidential Document No. 14315, contains the monthly optional provision MWHs purchased and the average $/MWH charged to IMC for the period January 1997 through August 2000.

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

Other Provisions in the Contract

The contract includes several requirements regarding IMC's load profile and power factor maintenance. IMC must meet specific standards with regard to on- and off-peak energy used, coincident peak load factor, and power factor. TECO is permitted under the terms of the contract to terminate the contract if IMC fails to meet the standards specified. The contract also imposes a monetary penalty if IMC does not maintain a minimum monthly coincident peak load factor.

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. Staff does therefore not believe that any differential between the contract revenues and the otherwise applicable IS revenues will have a significant impact on the fuel clause. Staff does 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 does 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 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. TECO's CISR tariff was approved in Order No. PSC-98-1081-FOF-EI, issued August 10, 1998. 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, the Commission 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 <u>all</u> 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 <u>all</u> 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, as discussed below.

<u>Impact of Special Contract on TECO's Ratepayers</u>

In response to staff's discovery request, 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, 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, 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. Staff would note, however, that the analysis treats all of IMC's base rate revenues as a contribution to fixed costs. It is not a RIM analysis that evaluates all the benefits and costs of retaining IMC. The analysis thus may overstate the benefits provided by IMC.

Staff would 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.

IMC's Alternatives

TECO states in its petition that IMC has represented that it has actively explored alternatives to continuing to take service from TECO. IMC issued a Request for Proposals (RFP) in May 1996 seeking alternatives to supply electricity for its operations in Florida. TECO submitted a proposal; however, IMC announced in October 1997 that it had signed a letter of intent with Duke Energy. In Docket No. 971313-EU, IMC petitioned the Commission for a declaratory statement that its proposed purchase from Duke was non-jurisdictional in nature. IMC withdrew its petition following the issuance of Order No. PSC-98-0074-FOF-EU, which set the matter for hearing and granted intervention to TECO, Florida Power Corporation, and Peace River Electric Cooperative.

In May 1998, IMC issued another RFP for the construction of a combined cycle facility. This RFP has not resulted in the selection of an alternative provider to TECO. According to TECO, IMC has continued in 1999 and 2000 to pursue various alternatives. While it appears that IMC has been pursuing several alternatives to taking service from TECO in recent years, TECO has not identified in its petition a specific alternative IMC would seek should the contract not materialize.

Conclusion

Staff recommends that the proposed special contract with IMC 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 its decisions regarding the CISR load retention/load building rate, the Commission expressly held that the general body of ratepayers should not be harmed through the adjustment clauses.

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. Staff agrees that this is an appropriate objective, but does not believe that the proposed contract is appropriate. 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 this Commission a specific viable alternative IMC would take should the contract not materialize.

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. 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, staff notes that IMC enjoyed for many years the rate benefits of non-firm service while rarely incurring any optional provision costs or interruptions.

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

For the above stated reasons, staff recommends that the proposed contract be denied.

ISSUE 2: Should TECO's request that the special contract be made effective as of August 31, 2000, be granted?

RECOMMENDATION: No. If the Commission approves staff's recommendation on Issue 1, this issue is moot. However, if the Commission approves the special contract, it should take effect no earlier than the date of the Commission vote and should be subject to renewal only with Commission approval. [HART]

STAFF ANALYSIS: Rule 25-9.034, Florida Administrative Code, states:

> (1) Wherever a special contract is entered into by a utility for the sales of its product or services in a manner or subject to the provisions not specifically covered by its filed regulations and standard approved rate schedules, such contract must be approved by the Commission **prior to its execution**...If such special contracts are approved by the Commission, a conformed copy of the contract shall be placed on file with the Commission **before its effective date.** [Emphasis added]

If the Commission approves the special contract, it would be contrary to applicable law to allow retroactive application of the special contract. Sections 366.06 and 366.07, Florida Statutes, are clear that the Commission's authority to approve or adjust rates is prospective only. As stated in Section 366.07,

> ...the commission shall determined 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.** [Emphasis added]

In its Memorandum of Fact and Law filed on December 6, 2000, IMC argues that retroactive application is not precluded because this matter is one of cost recovery rather than ratemaking. Staff disagrees with IMC's characterization of the terms of the special contract. Simply put, the contract indeed proposes a change in the rate to be paid by IMC, and that change in rate will impact TECO's other ratepayers. The cases cited in IMC's memorandum in support of retroactivity relate to cost recovery for costs incurred before Commission approval, and are distinguishable from and irrelevant to this docket.

The special contract also includes a renewal option that may be exercised at the end of the term of the contract in December 2003. In its answers to staff interrogatories, TECO indicated that if the parties agree to extend the contract, TECO plans to "update" the Commission on its intent, but only seek Commission approval depending upon whether any proposed changes require it. Staff believes that any renewal of the special contract should be subject to Commission review and approval.

ISSUE 3: Should TECO's emergency motion for interim implementation of the special contract with IMC for interruptible service be granted?

RECOMMENDATION: No. TECO's motion is moot because the primary case to which is relates is being heard at this agenda. [HART]

STAFF ANALYSIS: 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.

Staff believes that interim relief is not necessary, because the docket is being taken up at this Agenda Conference. If the special contract were to be approved, then granting the Motion for application of the contract to November's billings would result in retroactive implementation of the special contract. Such retroactive application is contrary to the Commission's Rule 25-9.034, Florida Administrative Code, regarding special contracts, as discussed in Issue 2 above. If the special contract is denied as recommended by staff, then use of the contract provisions for the month of November is inappropriate.

ISSUE 4: Should this docket be closed?

RECOMMENDATION: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a Consummating Order.

STAFF ANALYSIS: If no protest is filed within 21 days of the issuance of the order, this docket should be closed upon the issuance of the Consummating Order.