BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

IN 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.

BEFORE: CHAIRMAN J. TERRY DEASON
COMMISSIONER E. LEON JACOBS, JR.
COMMISSIONER LILA A. JABER
COMMISSIONER BRAULIO L. BAEZ
COMMISSIONER MICHAEL A. PALECKI

PROCEEDINGS: AGENDA CONFERENCE

ITEM NUMBER: 27

DATE: Tuesday, December 19, 2000

PLACE: 4075 Esplanade Way, Room 148
Tallahassee, Florida

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PARTICIPANTS:

ELISABETH DRAPER, Commission Staff.
RICHARD KRAKOWSKI, IMC Phosphates Company.
HARRY LONG, on behalf of Tampa Electric Company.
HUGH SMITH, Tampa Electric Company.
JOHN MCWHIRTER, on behalf of FIPUG.

STAFF RECOMMENDATION

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.

Issue 2: Should TECO's request that the special contract be made effective as of August 21, 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.

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 it relates is being heard at this agenda.

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.

CHAIRMAN DEASON: Item 27.

MS. DRAPER: Commissioners, Item 27 is staff's recommendation concerning a proposed contract between TECO and IMC. I think the parties are here to address the Commission.

CHAIRMAN DEASON: Okay. Mr. Long?

MR. LONG: Thank you, Chairman Deason. I think it might be appropriate for the Commission to hear first directly from the customer, IMC.

CHAIRMAN DEASON: Very well. Mr. McWhirter?

MR. McWHIRTER: Mr. Chairman, I would like to pass out an outline.

Commissioners, as you walk down the halls to lunch in a few minutes, if you go down the left corridor you'll see a poster that says "Utility problems" and then a silhouette of a stamp, and it says, "Call this 800 number and it's solved."

Tampa Electric Company's largest customer has a very serious problem. It has been working with Tampa Electric Company for many months to figure out a way to resolve the issue without impacting significantly adversely other customers, and we came up with a solution in the form of a contract. In order to understand what this contract is and what it's supposed to do, the two principals that have been negotiating are here to talk to you about it today. From Tampa Electric we have Mr. Hugh Smith, and from IMC we have its chief of operations for the mining operations throughout the United States, Mr. Rich Krakowski. And Mr. Krakowski is going to give you the customer's view of a temporary condition that is occurring now that this contract before you is attempting to solve. I would like to introduce to you Mr. Richard J. Krakowski.

MR. KRAKOWSKI: Thank you, John.

I appreciate the opportunity to come before you today on behalf of IMC. Just very quickly, my responsibility is VP and general manager for the phosphate business for IMC. My responsibilities include all the operations in Florida, as well as Louisiana.

As a little background, we operate four mines in Florida and two chemical plants which convert our mined phosphate to the final product that goes into animal nutrition and fertilizers. We cover about 300 square miles, and within Florida we employ over 3,000 people.

We are somewhat unique in the Tampa Electric system. We basically have 30 TECO accounts, and we have well over 100 miles of our own transmission lines. We have a unique load profile. Due to our maintenance schedules, we basically have lower usage during normal peak periods. We do have our own self-generation capabilities. We now have the ability to generate on the order of 100 megawatts of energy.

Approximately 15 to 20% of our costs in our mining operations, which by far is our largest operations in Florida, are costs of purchasing electrical energy. We are in current market conditions that for our industry are very grave. This is a cyclical business that right now is in a low portion of that cycle. And in addition -- I won't belabor the facts -- we've also been impacted negatively by raw materials, specifically natural gas. And it comes at also a unique time in the electrical supply, in that currently, due to shortages of generating capability on the TECO system, we are subject to significant buy-through power purchases.

We are in a global marketplace, so much of our competition is offshore. But much of our competition is also in Florida. We have already in the Florida area seen two of our competitors shut down due to the economic conditions in that marketplace. We also have competition that's in Florida, but does not -- is not in the TECO system to the extent we are, so they are not subject to the same generating shortfall that we are.

Hopefully, I've been able to give you the picture for -- just roughly for our business and our current situation.

We have limited options when it comes to supply of our energy. Our first choice was to sit with Tampa Electric, identify what our problems were, and concerns, and try and work to a solution. And I will tell you, based on history, that hasn't typically been the first choice. Many times both parties have come before you to argue different views and to have you make the decision on behalf of one or the other. We felt it was imperative that we try and work out a solution jointly.

The biggest issue for us is price stability. And if we look back at the performance of 2000, with the substantial amount of buy-through energy, the volatility in the cost to us was enormous. Our business is basically run off of bid business. We take a subscription for supplying a product, and we may supply that for a one-time situation or over an extended period of time. When we get significant swings in our costs, especially in a down market, it is very problematic for us. So our primary objective was to get some stability.

And through significant discussions with Tampa Electric, which I was involved with because of the significance this has to our company, we were able to come up with a special contract that's before you now that gives us that stability. There is an opportunity should buy-through power requirements be less than projected in that contract where we could economically benefit. But we also realize that if those buy-through purchases are less than are forecasted, we would actually not benefit, but pay more. But the ability to hedge and to get that stability is so important for us in making decisions on what business we take and how we operate our plants that we feel that that is a prudent decision for us.

Our alternatives are very limited. Our first choice in all our efforts went into identifying a solution and coming up with a special contract. On a long-term basis, certainly one of our options is self-generation. We've demonstrated that that's an option we've taken advantage of in the past, and approximately 50% of our current capabilities are handled by self-generation. As I understand it, we've also been before this Commission in the past on trying to develop some joint relationships to get that generating capability and supply energy for our operations. And if we're not able to have this contract go into effect, we're going to have to go back and seriously look at those options.

And the part that was very surprising in the staff's recommendation was the conclusion that we really provide no value to the rate base. And certainly from a long-term viewpoint, that doesn't seem plausible. We contribute a substantial amount of money to the fixed costs of Tampa Electric, and over a long period of time, the absence of that just does not appear to be beneficial to that rate base. But nonetheless, that is one of our few options if we can't get an improvement through this contract.

The other options near term are probably more onerous for us. We have unfortunately had to face shutdowns of operations in Florida. We've shut down two of our operating mines in late '99, which affected several hundred employees. In the summer of 2000 we shut down our mining operations for two weeks and furloughed all the employees, and the primary driver for that shutdown was the high energy costs due to buy-through energy during that period.

In summary, we have a short-term situation that we are looking for help, and we've gotten cooperation from Tampa Electric to work out a special contract that will help us in this short-term period when buy-through energy continues to be unpredictable and volatile, and it is our preference to work out a solution and continue to be a customer of Tampa Electric. Absent that possibility, we will then look at the few options that we have. And we're basically in a situation that really requires us to buy from Tampa Electric or be a self-generator. Those ultimately are the only choices we have in front of us.

We believe we are unique. We believe we don't have the same bundled service requirements as other customers. And for that reason, we believe that the special contract not only makes sense for us, but makes sense in light of the entire customer base of Tampa Electric.

CHAIRMAN DEASON: Thank you.

MR. McWHIRTER: Mr. Chairman, if I may sum up from a regulatory perspective. Mr. Krakowski has tried to identify for you the very serious problem that's faced. I would like to spend just a minute or two talking about regulatory policy and how changing conditions play into your existing regulatory policy and create the need for this contract.

Typically over the years we've had general cases. They happened very frequently in the '70s and the early part of the '80s. When you had a general rate case, you looked at the circumstances of all the classes of customers, and you came up with solutions that were generally applicable. Since the middle '80s, we've had very few rate cases. The last Tampa Electric case, general rate case, was in 1993. But since 1993, conditions have changed very dramatically.

Attached to the 1993 order was a cost of service study that presumed -- that showed that the interruptible class of customers paid a 12.34% return on equity. That was 150% higher than the average return paid by all customers. These companies do make a contribution, a significant contribution to the utility system. IMC is so large that it consumes the same amount of electricity that 60,000 residential customers consume, 60,000 residential consumers. Its demand, because it can be interrupted in peak periods when the power is needed, its demand is less than the impact of one residential customer. That customer gets preference over IMC.

What does IMC contribute to the system? One thing it does is -- if you look at the residential and small commercial load, they operate during the day in the peak period of time. Their system load factor is something like 28%. So that means that 73% of the time, the plant is standing by waiting to serve those customers. The high load factor customer, IMC, is there 70% of the time. What it's doing is operating in the off-peak period.

Based on the findings that you had based upon Tampa Electric's system when you set rates last time, you required this customer to pay a demand charge and a non-fuel energy charge, and that's one of 14 components of the bill. With those and the current environmental charge, for each megawatt-hour that operates 100% of the time, there will be a contribution to the customers -- to Tampa Electric's fixed costs of around $10,000.

I'm not privy to the confidential information that was supplied to this Commission by Tampa Electric. I can only guess what it said, because it is confidential. But our calculation is that IMC's contribution to fixed costs over and above the variable costs of operating, fuel and so forth, is more than 8 million, probably closer to $10 million a year. So we think that IMC, being fully interruptible, helping the system load factor, is beneficial.

The staff's memorandum studied this circumstance, and they came to this conclusion. They said, "The amount shown on Line F, Column 4 of Tampa Electric's confidential exhibit 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 opportunity."

What Mr. Krakowski and what I see in that is that this customer is a burden on the utility system, and yet it's obligated to buy only from Tampa Electric. We don't think this customer is a burden on the utility system. We think the staff's analysis is based on a short-term proposition.

You see, if the contract is not approved and if IMC took one of the other alternatives that were available to it, it would take time for this to happen. And what would happen during that period of time, the sum -- the 8 to $10 million a year would still be paid, and the customers would give up nothing, because there wouldn't be a general rate case in the interim, and there's no rate cap on Tampa Electric's earnings at the present time. If IMC was able to leave the system earlier, Tampa Electric would suffer the loss, because it would be a reduction in base rates, and the other customers would be no better off.

But the problem with that is that when you normally do a study, you don't use a short-term time horizon. You look at the big picture. And this customer has been there now for some 75 years. This customer is projected to be there for another 25 to 30 years. So when you do your analysis, instead of ignoring that 8 to $10 million a year that's paid every year, you should take that into consideration, and the likelihood that a high load factor customer would be lost, the likelihood that somebody that's being served only from the reserve margin would be lost, and the likelihood that in the future, if there is a rate case, customers are going to have to make up that deficit if that's the earnings that Tampa Electric is entitled to receive.

So we think that there is a need for a solution. We know what the problem is. The problem is that during peak periods for the last three years, because of a variety of reasons I won't go into, Tampa Electric hasn't been able to meet the demands of this customer based on its own generating facilities. They have to go out and buy in the open market, and they buy when it's very expensive.

Well, since the 1993 rate case passed, FERC has done some dramatic things, and we now have a very volatile market-based wholesale market. So when Tampa Electric goes to the marketplace, it's not buying power that's based on the cost to provide that power, but based upon what the market will bear.

And the way the rates are set up, right now IMC is the first in the line of defense, if they want to stay in business. They can send their employees, 3,000 employees home, or they can stay open. And if they stay open, what they have to do is purchase power. Last summer they elected to close some and send the people home, and other times they elected to purchase power.

So what happens under this contract, IMC says, "Look, we will pay more than the current base rates. We will pay -- we'll not take the advantage of off-peak incremental fuel cost that we take. 60% of our power now comes in at a lower price than average price because we take it off-peak. We will not take advantage of that. We will take average price."

So they're going to pay more on base rates. They're going to pay more on average fuel cost. And the only relief they ask is that they have some price stability. It may be that during the next -- the remainder of this contract, Tampa Electric won't have to go out into the market. This is an insurance policy. If it doesn't, all the customers are going to be a lot better off by the additional money that's paid and will flow directly into the fuel cost.

It may be that there will be a reduction -- I mean, Tampa Electric may have to continue to go out into the market. We think after March the 15th of next year, things are going to improve a lot because the FMPA contract will expire, and that capacity will become available. We think that the Gannon Plant is going to get operating. And we think that Tampa Electric's system is improving, and they'll be able to meet us from their own resources. But if they're not, this insurance policy says, "Okay. We will protect you up to a certain limit, and if the cost is really exorbitant, then you're either going to have to elect to pay that cost or go off the system."

We thought that it was a reasonable and fair compromise for the benefit of all customers. It's a sharing of the risk.

If there were a rate case and we could come in and explain the circumstances, if we had time, we could demonstrate with clarity, with great specificity. But now what we're dealing with is a projection of capacity availability and a projection of future fuel costs and a projection of wholesale market conditions. None of those circumstances existed in the last rate case. None of those circumstances should exist after the year 2004 when the reserve margin is restored to its former viability or other things happen. This contract is a short-term modicum.

And that brings us to the second aspect of this case. When does the contract take effect? Of course, we would like it -- since it's a short-term modicum, we would like to have it take effect as early in the contract period as possible. It was negotiated last August. We would like it to become effective as of the negotiation date.

It's not ratemaking. It's dealing with cost recovery. And there are a number of cases -- I won't go into that at this juncture.

But we humbly and respectfully plead with you that you will enable this customer, which is the largest customer of this utility, which has been a benefit for 75 years and hopes to continue to be a benefit in the future, that you will give it the opportunity to get some relief during this very scary period. We don't think it's unreasonable, and we don't think it's unfair to other customers. If we did, we wouldn't be here.

CHAIRMAN DEASON: TECO?

MR. LONG: Commissioners, good afternoon. My name is Harry Long, and I'm representing Tampa Electric Company. With me is our Vice President of Energy Services, Hugh Smith, and he would like to make some comments to the Commission in connection with the staff recommendation.

MR. SMITH: Good afternoon, Commissioners. As Mr. Long introduced me, I'm Hugh Smith. I'm the Vice President of Energy Services and Marketing.

And as you're hearing today, I know that you've heard over the last couple of years often from our interruptible customers that their situation is significant. And the factors that contribute to it we agree on, and we understand that their situation is severe.

On multiple occasions, this Commission has asked us to work with our customers to the extent possible to resolve outstanding issues and not have those issues to come before you. And this is an example of that type of situation where we actually have worked with the customer to address some critical issues that they have from their perspective. And although I think going in, we can agree with the staff that this is not a perfect solution, we believe that it does strike the appropriate balance between providing an incentive to a customer to retain them and keep them on our system versus the consequences to the rest of our retail customer base of losing that fixed cost contribution that they provide.

In the negotiations, we did not view that we were offering IMC a discount or an incentive that was inappropriate, but really only seeking to find a fair compromise that would be just enough to be able to keep them on our system and continue to provide that benefit.

Staff has done a credible job in describing the agreement, and I will not go back and go over all of that. We do believe that it's important for you as the Commissioners to understand that the contract goes two ways. It is not a contract that offers a discount necessarily to IMC, but rather, in the eventuality that we enter into this agreement, they will actually pay more than they currently pay under their current rate tariff if you exclude the optional provision portions of that. And so it is an increase in their so-called base rate that they would pay on a regular basis.

It does go so far as to require them to continue to have a load profile similar to what Mr. Krakowski described, one that peaks in the evening hours, and therefore provides those additional cost/benefits under this scenario. The rationale of why Tampa Electric would enter into an agreement like this I hope has become clear, and that is to resolve the customer's concern for having a stable environment in which they can predict their electric costs and be able to perform their business in a manner which they deem critical.

Just to reiterate one last time, to the extent that they spend money on this amount that is above the current IS rate that they are paying, those dollars would be to the benefit of the customers as a whole, and Tampa Electric stands to gain nor lose under this agreement the way that it has been proposed.

As IMC stated earlier and I hope that you all acknowledge and know, they are our largest customer.

CHAIRMAN DEASON: Let me interrupt for a second.

MR. SMITH: Yes.

CHAIRMAN DEASON: Could you repeat that about how TECO does not stand to gain or lose anything in this contract?

MR. SMITH: The way we structured the

regulatory treatment of the agreement would be to charge them a rate that is currently higher than the tariff that they are under. To the extent that the optional provision purchases are made for their benefit, then we would propose to absorb that into our overall fuel and purchased power clause. The amount that they have paid in addition to their current rate structure could be viewed as being an estimate of those costs. And to the extent that the amount of power purchased under the fuel and purchased power clause exceeded, if you want to call it that premium, then those would go to the debit of our customers. And to the extent that the amount of money that we spent on dollars, if they were less than what that premium is, then that would go to the benefit of our customers, all credited through the fuel and purchased power clause portion of our rates.

CHAIRMAN DEASON: So is it your position that every -- purchases and the net effect of the credit in comparison to base rates, all that's going to flow through the clause?

MR. SMITH: Yes, that's the way the regulatory treatment was proposed with respect to this agreement, with the exception that was mentioned earlier, and that is that if rates in the wholesale market exceed $500 a megawatt-hour, then at that point we would cease to bear the responsibility of those purchases to the detriment of our customers, and IMC would be back in the position of being just as they are today, choosing to purchase or to be interrupted under that scenario.

CHAIRMAN DEASON: Aren't you shifting cost to the other ratepayers?

MR. SMITH: As Mr. McWhirter tried to explain, and I think he did a good job, we're not shifting cost necessarily. I think that there is a scenario that if things were to continue on as they had for the past two summers, then there would be some incremental cost shifting that would occur through the fuel and purchased power clause. If our purchases are less on a going-forward basis, then in fact there could be benefits shifted onto the rest of the customers.

CHAIRMAN DEASON: And those are the benefits that you say you will flow through the clause? Those are the benefits you say you will flow through the clause?

MR. SMITH: Yes. In the event that IMC were to leave our system, then no matter what would have happened through the short-term effects on our fuel and purchased power clause, the contribution to fixed costs that they currently make would disappear under that scenario in any case.

In the event that fuel or purchased power expenses were either borne by the rest of the ratepayers or credited to the ratepayers, on a relative basis, we believe that those would be small in comparison to the fixed cost contribution that those retail ratepayers would lose in the event that IMC were to leave our system.

The staff suggests that ratepayers may see reductions in fuel costs and increased reliability if IMC were to leave our system. They make that determination in part based on the fact that Tampa Electric's incremental cost to serve any customer today is higher than its average cost on a fuel basis. And using that same logic, it would lead us to believe that we should not only not accept new customers onto our system, but we should discourage anybody from coming to our system, because carrying that logic to its end would tell us that any new customer is going to add cost to every other customer on our system. And I think that's a -- it defies logic instead of incorporates good logic in terms of deducing how to handle these costs.

The issue on reliability I think is one that does not have much merit either. From a reliability standpoint, IMC under this agreement will remain an interruptible customer and will be interrupted in the event that we cannot go out and secure power, and therefore, customers would not be affected by this contract one way or the other with respect to its reliability.

COMMISSIONER PALECKI: Let me ask you a question. I'm trying to figure out what the effects will be if IMC uses less than they are now consuming. Then IMC pays more in base rates, the ratepayers pay more in purchased power costs, and IMC pays less in purchased power costs, based upon less consumption. No?

MR. MCWHIRTER: Can I answer that?

COMMISSIONER PALECKI: Yes.

MR. MCWHIRTER: It doesn't make any difference whether IMC consumes more or less. They still pay the same base rates. The thing that will change is if Tampa Electric purchases less power from the wholesale market at high prices. If it purchases wholesale power at low prices, all customers will benefit, because IMC is now paying more than it formerly did. If it purchases more at high prices during peak periods, then IMC will benefit, because presumably its stabilized rate may be lower than those prices.

So the whole thing is based upon projections of Tampa Electric's capacity and fuel costs for the next three years. And as you might have recognized in the past, there is some volatility in those projections. The only thing we know is that they're wrong. But these people have tried to work together. IMC says, "We can stay in business if we can get a stabilized rate that enables us to know what our costs are going to be, but we have difficulty when we don't know what this major component of our cost is going to be."

COMMISSIONER PALECKI: Initially I'm

favoring -- favorably inclined to approve this sort of a contract. I know that the gas industry has tariffs that will allow the gas industry to flex their rates down when customers are threatening to bypass, and it has benefited many of the gas companies. But each of those tariffs provide that the rate must cover the incremental cost to serve the customer, and I guess that's the hitch that I have, the bother that I have. Is it possible under this contract that the rate paid by IMC will not cover the incremental cost to serve?

MR. McWHIRTER: Well, there are 14 components to the bill, and it may not -- what may happen is that if they have to purchase power during a peak period at a very expensive rate, but less than the ceiling, then that price would be shared like an insurance premium among all of the customers. If they don't have to do that, then IMC will pay more than it would otherwise pay. But it will always cover the incremental cost in base rates. It will always cover Tampa Electric's average fuel cost as it's determined from year to year. It will always cover all taxes that are imposed. What it does is, it eliminates the volatility for purchased power in the wholesale market, which is an entirely different deal than it was in 1993 when base rates were set.

COMMISSIONER PALECKI: Well, I know that, for example, Central Florida Gas Company recently had a rate case, and it was driven by phosphate mines being shut down. I think some of those mines were IMC mines. That's a large concern that I have. I'm just trying to get a better handle of how the risk is shared between Tampa Electric Company, the ratepayers, and IMC. And I can see that there is a possibility of the ratepayers being injured under this plan. What is the risk that Tampa Electric Company is imposing under the plan?

MR. McWHIRTER: Well, the question is which potential injury is greater. And I think this is what the staff has focused on. It says in the kind of flex rate contracts in the gas industry and Gulf Power's special contracts, the relief to the customer came from base rates rather than cost recovery. This case is different, in that the relief is coming from cost recovery, and therefore, it will flow through the cost recovery clauses, if it occurs, rather than base rates.

The thing that the staff didn't really address is -- they said, "Well, you'll either continue to collect the full base rates or you'll lose them altogether. And since there's no rate case pending, that isn't going to affect other customers." But our point is that those base rates that are paid for the -- to cover the system's operating and fixed costs are greater than any potential additional costs that the customers might see because Tampa Electric during certain peak periods had to go out and buy in the open market.

Now, the question is: What is that amount of money? Let's take a worst case scenario, and let's say over the three-year period, customers had to pay $8 million more. The projections don't show anything like that, but say that happened. Well, in the three-year period, IMC would have paid 24 to $30 million in base rates. So the customers will benefit from that base rate contribution.

However, staff says, "That's no problem, because customers don't get hit with that additional benefit unless there's a rate case." What I'm suggesting to you is that's shortsighted. If IMC has to go to other alternatives, that 8 to $10 million a year goes away, and it goes away not for the three-year period, but it goes away for the next 30 years, and that's a big impact. And in order to -- and that's what you're weighing against this potential that the purchased power cost during the next three years may be high. Nobody projects that it's going to happen like that.

But that's a serious -- and he talked to you about what has happened in this industry, and it's appalling what has happened in the phosphate industry in the last ten years. IMC would today be consuming twice as much electricity as it does if it hadn't gone to self-generation, twice as much electricity.

Now, if the theory is, and your theory supports this, that conservation clauses encouraging people to go into cogeneration is beneficial, IMC has been a great benefit to the customers of Tampa Electric by building cogeneration. And that cogeneration is available on an as-available basis to all customers. There has been a mutuality over the years of working with this very large and very unusual type load. And all we're asking for is temporary relief for a three-year period to stabilize prices.

CHAIRMAN DEASON: Further questions?

MR. SMITH: I wasn't -- I'm sorry.

CHAIRMAN DEASON: I'm sorry. You're not finished?

MR. SMITH: I wasn't finished with my remarks yet. I'm sorry.

CHAIRMAN DEASON: I was just hoping. Please continue.

MR. SMITH: If you don't want me to finish --

CHAIRMAN DEASON: No.

MR. SMITH: -- I'll stop right there.

CHAIRMAN DEASON: No, no. You go right ahead.

MR. SMITH: Commissioner Palecki, I think when you look and do an analysis of all of the costs, when you looked at both the fixed cost contributions and the potential fuel impacts, it demonstrates clearly that maintaining this customer on our system has value. We have to ask ourselves, and we did ask ourselves within Tampa Electric, what are the real risks that we would lose this load from our system. And that's very difficult for us to assess as an electric utility, and I hope that Mr. Krakowski has convinced you today of some of those issues.

We don't have access to their proprietary business information. However, we do know that electricity is a significant element of their costs. We do know that in other areas of the country and in Florida that IMC has shut down operations that were deemed to be not cost-effective. We know that IMC has invested large amounts of capital in the past to self-generate electricity. We know that IMC is under heavy pressure with their product based on stepped-up international competition. And we do know that IMC on at least two occasions in the past several years has attempted to develop alternatives with outside suppliers of electricity through a solicitation process.

With those facts in mind, we know that IMC is a significant customer threatening to leave our system. If they do either leave our system or develop self-generation alternatives, it will be a significant loss of fixed revenues to our system that would impact other customers, and that when you take a balanced view of both the long-term and the short-term aspects of this issue that it dictates that the only prudent response is to try to negotiate something to keep this customer on our system, and we believe that we've made a good effort to do that.

The contract that we've put before the Commission is the best vehicle we believe that we have available, and I would encourage you all to consider approving that today. And in the landscape of developing -- that's developing in our business, we feel like it's going to become more and more critical for electric utilities such as Tampa Electric to have the flexibility to deal with customers on a case-by-case basis as we see significant threats from competition in our business and the ability to maintain and retain customers on our system in the future.

Thank you for your consideration.

COMMISSIONER JABER: I have a question with respect to what you said, that IMC was going through the RFP process and was trying to solicit another source of supply.

Let's say something happens in the next year or year and a half that would allow IMC to enter into a different contract with a different supplier. Does your proposal, which contemplates a three-year commitment, prevent IMC from looking for another source that might be even cheaper?

MR. SMITH: There are certain provisions within the agreement that allow IMC to exit the agreement within that three-year period. I don't believe that it allows them to solicit and provide an alternative supply. Even in the event that it did, Commissioner Jaber, I believe that the process by which it would take them to go through the process of developing a significant alternative would probably take most of that time period in any event.

COMMISSIONER JABER: Well, let's just say that Duke in the next 18 months -- I notice that the recommendation mentions Duke -- in the next 18 months can actually provide a source of supply to IMC. Under your proposal, IMC would be contractually obligated to remain with TECO during the three-year duration.

MR. SMITH: Yes, ma'am.

COMMISSIONER JACOBS: Why not waive the buy-through?

MR. McWHIRTER: I didn't understand the question.

COMMISSIONER JACOBS: Why not waive the buy-through?

MR. McWHIRTER: Well, if we waive the buy-through, that means we would be interrupted, and the 3,000 --

COMMISSIONER JACOBS: No, what I'm saying is, can you go out -- particularly you, because you have substantial infrastructure, can you go out on the market and maybe find better deals?

MR. McWHIRTER: No. We're obligated only to buy electricity from Tampa Electric.

COMMISSIONER JACOBS: What I'm suggesting to Tampa Electric is that if you want to keep this customer, why not waive that for the limited period that you're speaking of here?

MR. SMITH: We have entered into some provisions for customers such as IMC to be able to go out into the marketplace and do their own buying. Unfortunately, I believe that, first of all, with the size they are versus the size of

Tampa Electric and sophistication that we have in buying in the marketplace today, they would have a difficult time in achieving the same rates that we've achieved. And even to the extent that they did, they would be faced with the same market forces that they're facing today through purchases that we make for them.

There's no additional cost added onto the purchases that we make. And to the extent that we have indeed achieved the lowest possible alternative to be purchased in the marketplace to supply to them, they pay only that actual cost and no fees on top that, if you're specifically referring to the optional provision purchases that we make on their behalf.

COMMISSIONER JACOBS: The concern I would have is, in the event they go out and find power -- well, let me take it the other route. We're pretty much at a -- I almost did it. I was specifically trying to get away from any mention of anything.

But under the arrangements that you've engaged in, we pretty much don't have any opportunities, or incentives, actually, for someone to go below what you agree to be the cap for the credit under your agreement. I would -- an agreement like this would seem much more reasonable from a public policy standpoint if I knew there were inherent incentives out there for someone to drive this purchase to the lowest possible market price. Under the agreement I see here, I don't see incentives that would -- that there would be for someone to get in the event you have to do this, to purchase the power at this point in time to drive that price as low as possible.

Notwithstanding your considerable expertise in the marketplace -- I don't want to demean that at all. But I would feel much more comfortable when I see that there's an incentive or somebody has an incentive to go out to drive the greatest deal -- derive the greatest deal possible from the prevailing market at that point in time. That's a concern. How do we get around that concern?

MR. SMITH: Commissioner Jacobs, we don't have financial incentives for providing the lowest possible purchases at any point in time. However, as the officer in charge of dealing with customers that bear the burden of those costs as we pass them through, and dealing with those customers on a regular basis, it certainly provides an obligation on our part, and we feel like we do a valiant job in doing everything we can to purchase the absolute lowest possible cost that we can.

If you're looking for an answer as to how could we create an incentive, I don't have an answer for you today on that, other than the fact that we're in the business of providing low cost, and the competitive forces that are pushing our business to prevent customers like this from seeking other alternatives continue to drive us to always provide the lowest possible cost we can find in the marketplace.

COMMISSIONER JACOBS: Thank you.

CHAIRMAN DEASON: Further questions?

COMMISSIONER BAEZ: Yes. Mr. Smith, the credit threshold that you talk about in the contract, is that a moving threshold year over year, or it stays static for the rest of -- for the three years of the contract?

MR. SMITH: It's a fixed threshold and does not fluctuate throughout the term of the agreement.

COMMISSIONER BAEZ: And it's based on average fuel price over how long?

MR. SMITH: No. The threshold that I thought you were referring to was the cap upon which we would no longer choose to purchase above that point.

COMMISSIONER BAEZ: No, the cap that defines -- that determines whether there's a credit or a debit through the recovery.

MR. SMITH: What we sought to do with respect to establishing that was to first project out the cost of and volume of wholesale purchases over the long term, and that in itself has become an extremely difficult task with the volatility the market has experienced over the last couple of years. And so that has been a difficult task.

CHAIRMAN DEASON: But let me ask you this question. Whatever fuel costs you would incur or -- you will flow through the clause -- regardless of what you project, it's all going to be trued up; correct?

MR. SMITH: That's correct.

CHAIRMAN DEASON: Okay.

MR. SMITH: I think Commissioner Baez was just asking how we arrived at the premium, basically, that we're --

COMMISSIONER BAEZ: Yes.

MR. SMITH: -- charging on top of the current base rate. And it was a negotiated rate that attempted from our perspective to balance the benefit of the fixed costs versus a contribution that we could obtain from the customer in order to help offset any potential costs that exist.

COMMISSIONER JABER: I just have a question for staff. I know the CISR tariff comes with its own set of problems, but educate me on why the CISR tariff doesn't apply to a non-firm customer.

MS. DRAPER: I think the reason was that non-firm customers already pay a lower rate, so to give them a discount on top of that just wouldn't be beneficial to the general body of ratepayers.

COMMISSIONER JABER: Okay.

COMMISSIONER PALECKI: I have a question for staff. If the customer's usage characteristics remained exactly the same as they have been for the past year, what would the revenue impact of the new contract be? What would the difference and what would the cost shifts be?

MS. DRAPER: Staff asked TECO to project the revenues under the contract and the revenues TECO would have received under the interruptible rates if IMC continued to take service under the IS rates, and there does not appear to be a significant difference between the projected contract revenues and projected IS revenues.

Where the impact on the general body of ratepayers comes in is the buy-through cost or optional provision cost IMC will not pay due to the credit in the contract. TECO has projected that amount, which is in the confidential exhibit, which has an immediate and negative impact on the general body of ratepayers through the fuel clause.

COMMISSIONER PALECKI: Is there any reason to believe that under the new contract there would be more or less buy-through than there has been historically in the past? Is there any incentive to do more or less under the new contract?

MS. DRAPER: Well, TECO will go on the

market to purchase power if its capacity is short, so that doesn't change. Now, how the wholesale market is going to develop, that's hard to project. It has been very tight in the past year. That's what prompted this petition.

COMMISSIONER PALECKI: And the staff's concern is that the amount of this buy-through, which is a direct pass-through to the -- will be a direct pass-through to the other customers, will cause their purchased power rates to increase?

MS. DRAPER: Yes, that's what TECO's projections show, because the credit is set so high that staff believes that IMC will rarely incur any buy-through costs. And even if TECO purchases power which costs more than the credit, remember, IMC only pays the difference between the credit and the actual cost incurred by TECO, so the remaining body of ratepayers still will be responsible for the credit amount.

COMMISSIONER PALECKI: I'm generally favorably inclined to approve contracts like this. Is there anything that could be done to fix this contract that would perhaps decrease the amount of risk that the general body of ratepayers would face as far as seeing any sort of large increase in their purchased power cost?

MS. DRAPER: I think the Commission considered that when they approved the commercial/industrial service rider tariff, and that order is quoted on page 6 of the recommendation. And the Commission expressly held that between rate cases, the general body of ratepayers be held harmless for the adjustment clauses.

So I don't have a problem with the contract itself. It's the proposed regulatory treatment which will affect ratepayers beginning in 2002 that's the concern, while TECO's stockholders are being held completely harmless.

COMMISSIONER JABER: One of the concerns you bring out in the recommendation that I've also seen or we've also seen already in the CISR tariff is the allegation that this kind of contract is discriminatory, that -- you know, how do you determine the similar circumstances as it relates to a different customer, and then the application of that kind of tariff needs to be consistent. And I guess isolated to this situation, a contract like this sounds attractive, but if you take into account -- you referenced four customers that you are aware of that might be interested in something similar to this. But if you take all of that into account, then the question becomes: What is the real magnitude on the retail customer?

MS. DRAPER: It would only increase, obviously.

MR. LONG: Commissioner Jaber, could I be heard on that question, because I do think it's a very important question. We recognize that staff had a concern about possible discrimination, although that wasn't controlling, I think, in terms of their recommendation. And we found that concern troubling only because I think, first of all, the staff view of similarly situated appeared to be somewhat narrow, and I think unworkably narrow.

Special contracts are a vital tool for the utilities and for the Commission to create ratepayer benefits. And I think that the test that's traditionally applied is whether or not customers are similarly situated, and special contracts almost by definition are proposed because you have a somewhat unique situation. I think that the staff's observation, based on information that we've provided that there are customers, other customers in the same SIC code, is not at all definitive in terms of whether approval of this contract raises a discrimination issue.

I think that you've heard some things that clearly in this case make IMC somewhat unique. They're certainly by far our largest customer. They have some unique capabilities in terms of self-generation. They have the economic wherewithal to enhance that capability. I think that they do pose an immediate risk of uneconomic bypass. And I think it's those situations that special contracts are intended to address. And I think that the Commission should feel comfortable making a determination on a case-by-case basis as to whether or not a customer presents circumstances that are unique rather than worrying about whether or not discrimination is forbidden.

I think the law is very clear. This Commission's precedents are very clear. It's undue discrimination that is prohibited, not all discrimination. And I think if used to pursue to a proper regulatory policy, proper discrimination is an important tool for creating ratepayer benefits.

COMMISSIONER PALECKI: I have a little bit of difficulty approving a tariff like this for a three-year period. I think I would feel much more comfortable if this was a one-year contract that would be revisited each year by the Commission so we could see where things are going, in what direction. And if things got really far out of whack, the Commission could take some sort of action to make a correction. I'm just afraid that approving a contract like this for three years, we're going into an unknown area that could very much adversely affect the ratepayers, and I'm afraid of that.

MS. DRAPER: May I add one more point? IMC keeps stating that this is a short-term solution. However, as addressed in Issue 2 of the staff recommendation, the contract has language that allows the party to renew the contract without Commission approval, and this is of great concern to us, as addressed in Issue 2. So if it's so short-term, then why does it have that language in there?

MR. LONG: Well, to the extent that there's any confusion about that, I think we would certainly be willing to submit any renewal of the agreement to Commission review and approval.

COMMISSIONER PALECKI: Would the parties be willing to modify the contract to make it yearly contracts that would have to come back each year for approval by the Commission?

MR. MCWHIRTER: IMC would.

COMMISSIONER PALECKI: That would give me a much greater comfort level.

MR. MCWHIRTER: IMC would, Your Honor.

CHAIRMAN DEASON: Further questions? Is there a motion?

COMMISSIONER PALECKI: I would make a motion, Mr. Chairman, that the contract be approved, with the understanding that the parties will modify the contract. It will be for a one-year period, and after each one-year period, the Company will come back before the Commission so the Commission can see where things have gone with the contract and resubmit it for approval on a one-year basis.

CHAIRMAN DEASON: Commissioners, we have a motion. Is there a second?

The motion dies for lack of a second. Is there another motion?

COMMISSIONER JACOBS: If I may, I think that we do need to be clear on this. I am persuaded that this is a -- the idea of the Company pursuing a way of solving this company's particular concerns is a very viable idea, and we need to encourage that. And I hope that we can send that message today, that we do encourage the Company to pursue ways of addressing their customers' concerns.

I have to then add that we then have to take that effort and balance it against what I believe to be correct public policy. And given the volatility of the markets today, and given the idea that in this instance, there's a very high likelihood that there will be buy-throughs for this customer, and under the provisions of this agreement, those buy-throughs would likely work a detriment to the remaining body of ratepayers, then I'm of the opinion that it would not be a workable agreement from that perspective.

I would encourage the parties to go

back and look at ways that we can minimize the impact on the other body of ratepayers.

I think staff's comment is appropriate. I think the contract in and of itself is not that onerous, but the idea that in this market there will likely be buy-throughs and that those buy-throughs under the provisions of this contract could work a detriment to the entire body of ratepayers is not an acceptable result for me.

If I may be so bold, it would be -- I couldn't see doing something like this unless there was something in here to drive this credit down to some level that I know is measured by the marketplace. I couldn't see there being a flat level for that. You have to look at each individual buy-through and determine to what extent there were reasonable efforts made to meet what was the market clearing price at that point in time before anything of this nature could be even considered.

And then once you made a determination that each transaction made a very reasonable attempt to get that transaction to a market price, then I think we can begin looking at, okay, this customer is a value to the grid and those sorts of issues. But just to say there's a flat level, and every transaction that doesn't exceed that level, I think is a troubling development, and again, given the context of the market that we're in today.

So what I hope I'm saying here is that while there are some positives here, there absolutely is need for more work to look at ways of solving the concerns that this customer presents.

CHAIRMAN DEASON: Is there a motion?

MR. LONG: Mr. Chairman --

CHAIRMAN DEASON: I'm sorry. We're at the stage now where we're deliberating, and I think we've got a motion, and I'm ready to take it. Is there a motion?

COMMISSIONER JACOBS: Having said that, Mr. Chairman, I would go ahead and move staff.

CHAIRMAN DEASON: We have a motion to approve staff. Is there a second?

COMMISSIONER JABER: Second.

CHAIRMAN DEASON: Moved and seconded. All in favor say "aye."

COMMISSIONER JACOBS: Aye.

COMMISSIONER BAEZ: Aye.

COMMISSIONER JABER: Aye.

CHAIRMAN DEASON: Aye. All opposed, "nay." I'm sorry. Was there --

COMMISSIONER PALECKI: Mr. Chairman, I would say aye, with the clear understanding that the parties are encouraged to revisit this contract to make some adjustments to try to reduce the amount of risk on the general body of ratepayers.

CHAIRMAN DEASON: Very well. Show then that Item 27 is approved unanimously.

(Conclusion of consideration of Item 27.)

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, MARY ALLEN NEEL, do hereby certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter transcribed under my supervision; and that the foregoing pages numbered 1 through 51 are a true and correct transcription of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, or relative or employee of such attorney or counsel, or financially interested in the action.

DATED THIS 28th day of December, 2000.

Mary Allen Neel

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