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February 7, 2001

**ORIGINAL**

**VIA HAND DELIVERY**

Blanca S. Bayo, Director  
Division of Records and Reporting  
Betty Easley Conference Center  
4075 Esplanade Way  
Tallahassee, Florida 32399-0870

Re: Docket No.: 001287-EU

Dear Ms. Bayo:

On behalf of IMC Phosphates, enclosed for filing and distribution are the original and 15 copies of the following:

- ▶ IMC Phosphates Petition for Formal Proceeding on Proposed Action in Order No. PSC-01-0104-FOF-EI.

Please acknowledge receipt of the above on the extra copy of each and return the stamped copies to me. Thank you for your assistance.

Sincerely,

*Vicki Gordon Kaufman*

Vicki Gordon Kaufman

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McWHIRTER, REEVES, MCGLOTHLIN, DAVIDSON, DECKER, KAUFMAN, ARNOLD & STEEN, P.A.

DOCUMENT NUMBER-DATE  
 01791 FEB-7 2001  
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*Rec'd Done 2/12/01*

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition of Tampa Electric Company  
For Approval of a Special Contract With  
IMC Phosphates Company For The  
Provision of Interruptible Electric Service

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Docket No.001287-EU

Filed: February 7, 2001

**IMC Phosphates Petition for Formal Proceeding  
on Proposed Action in Order No. PSC-01-0104-FOF-EI**

The IMC Phosphates (IMC), pursuant to rule 28-106.201, Florida Administrative Code, files this Petition for Formal Proceeding on the Proposed Action in Order No. PSC-01-0104-FOF-EI. As grounds therefor, IMC states:

**Petitioner**

1. The name, address and telephone number of Petitioner is:

IMC Phosphates  
c/o Steven F. Davis  
PO Box 2000 (Pierce)  
Mulberry, Florida 33860

2. Petitioner's representatives, which shall be the address for service purposes during the course of the proceeding, are:

John W. McWhirter, Jr.  
McWhirter Reeves McGlothlin Davidson Decker Kaufman Arnold & Steen, P.A.  
Post Office Box 3350  
400 North Tampa Street  
Suite 2450  
Tampa, Florida 33601-3350

Joseph A. McGlothlin  
Vicki Gordon Kaufman  
McWhirter Reeves McGlothlin Davidson Decker Kaufman Arnold & Steen, P.A.  
117 South Gadsden Street  
Tallahassee, Florida 32301

## Substantial Interest

3. IMC is Tampa Electric's (TE) largest customer. Its electrical consumption is comparable in size to over 60,000 residential customers. IMC has been a customer of TE for 75 years. Under normal circumstances, it has an annual electric bill in excess of \$ 30,000,000.00 a year. IMC's substantial interests are affected by the action the Commission proposes to take in this docket. Current conditions unique to TE have driven the IMC electric bill substantially higher, adversely affecting IMC vis-a-vis its principal competitors, which are served by other utilities. IMC's size, load pattern, level at which it takes service, its ability to provide power to the utility at certain critical times and its off peak - non firm service characteristics place it in a unique class when compared to all other retail customers. Its non firm electric demand is greater than the demand of all of TE's wholesale customers although most receive firm service at less cost.

4. In 2000, TE purchased 2,298,3180 MWH of power in the wholesale market to meet the demands of its firm retail customers. It purchased an additional 228,764 MWH of power to meet the demands of its non firm customers, which elect to stay open during periods when TE has insufficient capacity to meet their demand. Under normal circumstances, TE is required to buy power for its non firm customers less than once a year. In 2000, IMC was charged for "premium power" 1365 hours at a cost in excess of the average price of power. The price IMC pays for premium power is nearly always higher than the average cost of fuel. The abnormal conditions are expected to persist through 2003.

5. Under all conditions, the actual real time cost of fuel to provide electricity to IMC is less than the average fuel cost that it is charged. This is because the greatest portion of IMC operations occur during the off-peak periods when fuel cost is less and the need to buy power is limited. The additional IMC payment has served to reduce the average cost of fuel to other customers since independent fuel cost recovery was instituted 29 years ago. IMC pays its ratable share of the

average fuel cost to meet the demand of all customers and also pays an additional amount for premium power purchased during buy-through periods. This price is generally higher than the charges to other customers because it generally occurs when wholesale prices are spiking. This premium power aberration is expected to mitigate during the term of the contract.

6. TE has recognized the plight of its largest customer. It proffered a short term contract as a load retention device to retain its largest customer for the long term. During the cycle of increasing rates beginning in 1975, IMC diverted a major portion of its load to self generation. Today, principally as a result of the electric rate increases in the 1970s and 1980s, IMC built and operates over 100 mw of self generation. As a result over 600,000,000 kwh of electricity is now diverted from the TE system each year. Because TE had not built generation or constructed additional wires to satisfy the now diverted load it did not add to TE's fixed production costs. The lost load did result in an annual revenue reduction to TE. This revenue contributed to TE's fixed costs to the annual benefit of other customers of over \$12,000,000. The previously diverted load is now history, but history worthy of consideration. The net present value of the revenue stream from the remaining electrical load IMC buys from TE is confidential, but it is obviously quite large and would adversely impact the system were it diverted as well.

7. The short term contract under consideration will require IMC to pay more for the power it purchases under normal conditions, but gives IMC relief during the extraordinary periods of premium purchased power by averaging in the cost of this power with the overall cost of purchased power for all customers. The Commission PAA disallows the short term contract.

#### **How Notice of Agency Action was Received**

8. Notice of the proposed agency action was received by monitoring the Commission's Open Dockets Link on the Agency's Web Page and direct mail from the Commission.

## **Disputed Issues of Material Fact**

9. Order No. PSC-01-0104-FOF-EI contains the following findings of fact which are disputed by the Petitioner:

a. The Commission's proposed order is based upon conclusions drawn from confidential information supplied to the Commission Staff, but withheld from IMC. Without the opportunity for a formal hearing and the opportunity to discover and evaluate the facts upon which the Commission bases its decision, it is difficult, if not impossible, to dispute material facts, but when an order is based on information that is denied a party to the proceeding, it is indisputable that the party is denied administrative due process.

b. Using the confidential information, the Commission erroneously determined that the "the general body of ratepayers would see a reduction in their fuel cost if IMC were to leave the system." The analysis is flawed because it is based only on admittedly unreliable fuel cost projections over a relatively short period of time.

c. Using the confidential information the Commission erroneously determined that "if IMC leaves, TECO's ratepayers may experience increased reliability, fewer optional provision purchases, and more wholesale sales opportunities." IMC disputes this finding of material fact. This cavalier conclusion ignores the fact that IMC can't leave the system if it wants to remain in business in central Florida. It is compelled to buy power only from TE because the Commission has approved non compete agreements between TE and other utilities. The Commission's primary responsibility is to protect the citizens of Florida, not to require them to go out of business or go into the electric production business.

d. The Commission PAA erroneously concluded that the short term benefits of refusing to give IMC short term purchased power cost relief out weighed the potential long term

detriment of the lost base revenues contribution to fixed costs.

e. The Commission PAA is erroneously based upon a 1985 conclusion that the IS-1 tariff is "not cost effective." In 1992, in Docket No. 920324-EI, TE rejected the cost of service study used to reach the 1985 conclusion. The rejection was approved by the Commission in Order No. PSC-93-0165-FOF.

#### **Ultimate Facts Alleged**

10. Ultimate facts alleged include, but are not limited to, the following:
- a. The IMC load is in jeopardy to TE;
  - b. The proposed contract is not discriminatory;
  - c. The proposed contract is in the long-term best interest of TE's general body of ratepayers.

#### **Constitution, Statutes and Rules Entitling Petitioner to Relief**

11. Rules and statutes entitling Petitioner to relief include, but are not limited to, the following:
- a. The Fifth Amendment to the United States Constitution;
  - b. Article 1, Section 9, of the Florida Constitution;
  - c. The Fifth Amendment to the United States Constitution;
  - d. Section 366.041, Florida Statutes;
  - e. Section 120.573 Florida Statute;
  - f. Section 366.06, Florida Statutes;
  - g. Rule 28-106.201, Florida Administrative Code;
  - h. Rule 28-106.401, *et seq* Florida Administrative Code.

**Relief Sought by the Petitioner**

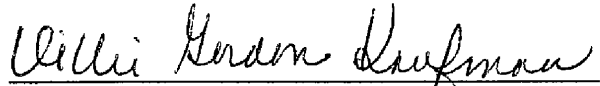
12. IMC respectfully requests the following relief:

- a. That the short term contract between IMC and TE be approved;
- b. That the contract be approved as of August 1, 2000 as intended by the parties;
- c. That the Commission determine that mediation is available in this proceeding

under the provisions of Section 120.573 Florida Statutes;

- d. That the Commission provide such other relief as it deems appropriate.

**WHEREFORE**, IMC requests that the Commission schedule a hearing on this matter and grant the relief described herein.



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Attorneys for IMC Phosphates

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing petition has been furnished by U.S. Mail or hand delivery (\*) to the following parties of record, this 7th day of February 2001:

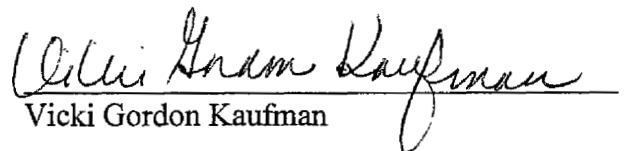
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