

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 001287-EI
ORDER NO. PSC-01-1001-PCO-EI
ISSUED: April 23, 2001

The following Commissioners participated in the disposition of
this matter:

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

ORDER ACKNOWLEDGING DISMISSAL AND
FINDING ORDER NO. PSC-01-0104-PAA-EI TO BE A NULLITY

BY THE COMMISSION:

On August 31, 2000, Tampa Electric Company (TECO) filed a petition for approval of a special contract with IMC Phosphates Company (IMC) for the provision of interruptible electric service. On November 7, 2000, IMC filed a Petition to Intervene in this docket. That petition was granted by Order No. PSC-00-2310-PCO-EI, issued December 4, 2000. By Order No. PSC-01-0104-PAA-EI, issued January 17, 2001, we denied the proposed special contract.

On February 7, 2001, IMC filed a Petition for Formal Proceeding on Proposed Action protesting Order No. PSC-01-0104-PAA-EI. In its Petition, IMC requested the following relief: (1) that the contract between IMC and TECO be approved; (2) that the contract be approved as of August 1, 2000; and (3) that the Commission determine that mediation is available in this proceeding under the provisions of Section 120.573, Florida Statutes.

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REGISTRATION/REPORTING

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An issue identification meeting was held on March 5, 2001, during which IMC restated its request for mediation. On March 6, 2001, TECO withdrew its original petition that initiated this docket.

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

Pursuant to Section 120.80(13)(b), Florida Statutes, issues in the proposed agency action which are not in dispute are deemed stipulated. However, in its February 7, 2001, protest, IMC contested PAA Order No. PSC-01-0104-PAA-EI in its entirety. Consequently, the entire order was rendered a nullity. As stated in *Florida Department of Transportation v. J.W.C. Company, Inc.*, 396 So.2d 778, 785 (Fla. 1st DCA 1981):

An agency's free-form action is regarded as preliminary, irrespective of its tenor...The petition for a formal 120.57(1) hearing, as in this case, commences a de novo proceeding...Section 120.57 proceedings "are intended to formulate final agency action, not to review action taken earlier and preliminarily." *McDonald v. Department of Banking and Finance*, 346 So.2d 569 (Fla. 1st DCA 1977).

Given that IMC protested the Order in its entirety, the findings made in PAA Order No. PSC-01-0104-PAA-EI are of no force and effect.

Because TECO withdrew the petition that was the subject of this docket, there are no pending issues for us to address. This docket should therefore be closed.

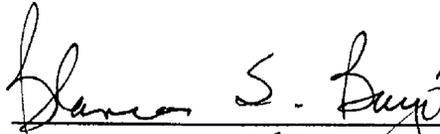
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Order No. PSC-01-0104-PAA-EI, issued January 17, 2001, is a nullity and the findings therein are of no force and effect. It is further

ORDERED that the voluntary dismissal of this proceeding filed by Tampa Electric Company is acknowledged, and this docket is therefore closed.

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By ORDER of the Florida Public Service Commission this 23rd
day of April, 2001.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

DDH

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.

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

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2)

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reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.