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**MCWHIRTER REEVES**  
ATTORNEYS AT LAW  
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TAMPA OFFICE:  
400 NORTH TAMPA STREET, SUITE 2450  
TAMPA, FLORIDA 33602  
P. O. BOX 3350 TAMPA, FL 33601-3350  
(813) 224-0866 (813) 221-1854 FAX  
222-5606 FAX

PLEASE REPLY TO:  
  
TALLAHASSEE

TALLAHASSEE OFFICE:  
117 SOUTH GADSDEN  
TALLAHASSEE, FLORIDA 32301  
(850) 222-2525 (850)

RECORDS AND  
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December 6, 2000

**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 Company, enclosed for filing and distribution are the original and 15 copies of the following:

- ▶ IMC Special Contract Memorandum of Fact and Law,
- ▶ IMC Phosphate's Request for Confidential Classification and Motion for Permanent Protective Order.

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

Sincerely,

*Vicki Gordon Kaufman*  
Vicki Gordon Kaufman

VGK/bae  
Enclosures

ASST	_____
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CNO	_____
CGM	_____
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15647 DEC-68

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*Confidential*  
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15647 DEC-68  
FPSC-RECORDS/REPORTING

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

ORIGINAL

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

Docket No.001287-EU

Filed: December 6, 2000

**IMC Special Contract Memorandum of Fact and Law.**

This memorandum contains the factual and legal justification for the approval of a special contract between IMC Phosphates Company (IMC) and Tampa Electric Company (TECo) with an effective date, the date of filing, August 31, 2000. The summary of factual circumstances is a general statement of the facts that will be placed in evidence if an evidentiary hearing is required.

The memorandum explains the need for a short term special contract; why the prices are justified as a nondiscriminatory cost recovery allocation rather than a rate modification. It further explains how service to IMC under the limited term contract will continue to be mutually beneficial to the contracting parties and TECo's general body of rate payers. The memorandum is based upon IMC generated information some of which is confidential and the facts disclosed to IMC by TECo which do not include confidential information it supplied to the Commission concerning TECo's operations and relations with other customers.

There are two main issues for consideration:

1. Is there justification for charging IMC a contract rate that imposes a simple kwh charge?
2. When should the contract begin?

**I. IS THERE JUSTIFICATION FOR THE CONTRACT?**

Today's decisions to be intelligently made must give credence to historical perspective. The phosphate industry in Florida, its employees, the taxes it pays, the large and small businesses that it supports, and its environmental impact have long been important to the economy of the state. The industry has been uniquely important to two of the state's four major investor owned utilities. Exhibit 1, which contains confidential trade secrets, gives a brief statement of the current status of some of the relevant economic issues faced by the phosphate industry and IMC Phosphates in particular.

Electricity is of momentous importance to the Phosphate industry and the phosphate industry has been of momentous importance to Tampa Electric Company (TECo). Electricity comprises approximately 15% of raw material cost in mining phosphate compared to less than half of that cost percentage for other industry. It is an essential element in the mining process. Electricity is also an essential element in the operation of the fertilizer plants that process the mined materials. Until recently, the industry purchased electricity to operate the processing plants. Today in response to rising costs, most processing plants generate their own electricity and sell the surplus to electric utilities. Exhibit 2 describes the evolution of the electrical connection between the industry and TECo. The history demonstrates why the fertilizer plants broke their connection. It portends why

the mining connection is now frayed and shows why this remaining sector of the phosphate industry is at risk for TECo.

The special contract relates only to electricity purchased for mining operations. In 1999 and 2000, IMC's competitors in Florida received lower priced electric service from other utilities for their mining operations. (See Exhibit 1) Today the price IMC pays for electricity to run its mines in the TECo service area is 23% higher than the price it pays FPC for the same service. Florida regulatory policy obligates IMC to buy only from TECo or self generate. There is no other alternative.

The price differential tarnishing IMC's competitive posture is not based on changed base rates. It is based on changed conditions. The introduction of wholesale competition in an era of short capacity has led to unexpected price spikes in the cost of peak period wholesale purchased power at a time when TECo can't provide that power from its generating equipment.

Since TECo's last general rate case, conditions have altered dramatically in the relationship between TECo and IMC due to TECo's generating deficiency. There is no general rate case in the offing where relief can be granted. The regulatory lag, if one were planned, would come too late to deal with the current transient problem. The good news is that TECo's generating deficiency is forecasted to change. The short term special contract with IMC is designed to maintain the status quo until circumstances improve.

The changed conditions creating the generation deficiency are set out below.

Conservation programs and normal system growth have reduced TECo's *installed capacity margin* from nearly 40% in 1984 to negative (11.6%) in 2000. Today the *reserve margin* is composed primarily of people not machines as the Commission recognized in its report on the utilities' Ten Year Site Plans. TECo has promised to return its capacity margin to 7% by 2004. This will be the year after the termination of the proposed contract.

Concern about stranded investment and retail competition caused TECo and other utilities to postpone new generation construction.

Wholesale competition has resulted in about 350 MW of TECo capacity formerly available to interruptible customers being sold in the wholesale market on a regular basis. The ability to produce wholesale power from generating plants burning lower cost coal had given TECo an edge in the competitive wholesale market place. TECo meets its firm load requirements during peak periods by the purchase of 550 MW of firm capacity from other utilities and the ability to interrupt its non firm customers.

Commission Order No. PSC-00-1744-PAA-EI in Docket No. 991779-EI encourages utilities to make more firm wholesale sales of power. The incentive to make more wholesale sales is based on the supposition that there will be a net benefit to retail customers. There is no benefit to retail non firm customers during periods when short term replacement power is needed because wholesale sales stripped away native generation. This has occurred extensively for the last three years without the added incentive to make the sales.

A 1996 revision to Rule 25-6.035, FAC, *Adequacy of Resources*, requires TECo's to interrupt its non firm customers to meet the emergency requirements of other utilities. The rule subordinates interruptible and commercial and residential "prime time" customers from third in line behind TECo's highest priority regular wholesale contracts and second priority firm retail customers to fourth in line behind these two types of customers and the emergency requirements of other utilities.

Seminole has first call on 149 MW of Big Bend Unit 4. Until March 2001, FMPA has first call on 1100 MW of TECo's most efficient units until its 150 MW contract commitment is met.

TECo's 485 MW Bayside (Gannon) Unit 6 has been inoperable for the better part of 20 months. 204 MW of capacity at the Hooker's point plant is obsolete and slated for deactivation in 2003

The advent of the unregulated electric utility holding company has encouraged the diversion of utility company capital from utility generating plant construction, where earnings will be regulated, to other potentially more profitable investments.

The Commission has acknowledged the reliability problem on numerous occasions. It held a non firm work shop in the winter of 2000. It had workshops on statewide reserve margin in 1998-1999. It approved a merchant plant without success in 1999, and as recently as December of 2000 the staff review and analysis of the statewide Ten Year Site Plans expresses "concern ... over the FRCC Load and Resource Plan and the amount of reserves provided by non-firm resources."

IMC joined with other nonfirm customers bringing the issues to the Commissions attention in several dockets.

Interruptible phosphate customers can avoid interruption by agreeing to purchase "buy through" power when TECo capacity is unavailable, but this power has become very expensive in a capacity constrained wholesale market.

TECo is not unmindful of the problem changed conditions have forced upon non firm customers. It has responded with concern over the problems faced by interruptible customers in its service area.

1. It established better notification procedures for interruptible customers when power shortages forebode.
2. It eliminated the requirement that customers who "buy through" must do so without any prior knowledge of the estimated cost of purchased power.
3. It allowed customers to drop their buy through option on an incident by incident basis
4. It agreed to self service wheeling for one phosphate mining customer
5. It agreed to a rate stabilization contract with IMC.

In the Spring TECo met with IMC and other non firm customers and reached the resolutions set out above before the expected summer shortages occurred. The first 3 steps of interim relief came before the summer peak. The non firm customers withdrew their adversarial demands for Commission and judicial action. The fourth resolution was achieved by September with prompt action by the Commission gratefully appreciated. The IMC special contract was the fifth step. It addressed IMC's unique problems. It was negotiated during the Spring and Summer, agreed upon in early August and filed with the Commission on August 31.

The changing conditions brought about the need for the 4 remedies described and above and the special IMC contract. The changed conditions had progressed toward the reliability predicament over a period of years that culminated into a full blown operational calamity for IMC in 1997. It is anticipated reliability will slowly improve to a manageable condition in the summer of 2004 after current wholesale commitments expire and TECo meets its new capacity improvement forecasts. The first year of short power supply was not unduly consequential. 1998 created serious financial problems, but they were spread between customers of both TECo

and FPC. 1999 and 2000 have been horrible from IMC's perspective. The short term special contract is designed to follow three bad years with a stable price for about three years

The contract is designed to benefit the contracting parties with a proper cost / benefit ratio for the general body of rate payers. The contract price to IMC will always cover the base IS-1 tariff rates. It will adjust to reflect actual fuel cost rates that exceed the **average** fuel costs set by the Commission in May, 2000. Its essential purpose is to levelize the cost of purchased power for the remaining duration of TECo's generation deficiency. Sometimes IMC will pay more than the cost of purchased power. Sometimes it will pay less, but the price it pays will always recover IST-1 and IST-3 base rates and average fuel cost. If the cost of purchased power reaches a specified ceiling, IMC will pay the price above the ceiling or terminate operations.

The general body of ratepayers will benefit because the price IMC will pay for average fuel is currently 31.39% higher than the approved off peak price. The contract rate will continue to be higher than the off peak price TECo charges for electricity. When the cost of incremental replacement purchased power is lower than average cost IMC will still pay average cost.

TECo has an economic development/ load retention tariff approved that gives it flexibility to retain the load of firm customers and attract new customers to share its limited capacity, but ironically this tariff is not applicable to existing interruptible customers who are at risk because of the changed conditions.

## **II. When should the contract begin?**

Through the device of cost recovery clauses, regulatory lag and mercurial prices have been eliminated for utilities with guaranteed cost recovery plus interest, TECo's largest customer, IMC, has not been so fortunate. The erratic prices have been passed along to it immediately. There is no wait for the annual true up when fluctuations are generally smoothed out with an annualized fuel factor.

The contract has a 40 month term. It was submitted to the Commission with a request for expedited handling, and a hope that it would get the same prompt approval that its competitor's request for self service wheeling received. That would have resulted in Commission action at the Sept 26<sup>th</sup> agenda conference. The Commission staff sought detailed information to forecast the affect of the contract before it was approved rather than an after the fact review as is conducted with economic development and load retention contracts. The contract is currently scheduled for Commission action on December 19<sup>th</sup>. If it is approved on that date, it will be February or March before administrative time periods expire, a lapse of 7 months after the principals reached agreement. If an interested party requests a hearing, the wheels of administrative justice will begin to grind at a unhurried pace and meaningful relief will be denied. Like the poet, John Milton's, "wheels of justice", it appears regulatory policy moves exceeding slow for this customer faced with volatile price fluctuations.

Each month IMC receives bills from TECo for electric service to its mines. Each bill includes base rates and cost recovery surcharges including the purchased power pass through. The IST-1 and IST-3 base rate is composed of 6 components:

1. demand charges;

2. non fuel energy charges;
3. customer charges;
4. voltage level discounts;
5. transmission ownership discounts;
6. power factor penalties or credits;

In addition to the base rate the bill includes the following 8 cost recovery charges

7. fuel cost recovery charges
8. environmental clause charges;
9. conservation clause charges;
10. capacity clause charges;
11. ad valorem tax cost recovery adjustments
12. Polk County utility tax cost recovery
13. GPIF reward penalty surcharge.
14. sales tax

The IMC short term price stability contract provides for a single kwh charge that is sufficient to cover all of the base charges listed in 1-6 above and the current cost recovery surcharges included in items 7 through 14. The kwh charge will be adjusted for changes in the average fuel factor and other charges imposed by government agencies. **There is no rate change. The only change is one of form, the manner the charges are stated on the bills. The 14 current charges are locked in at their present levels and incorporated into a single stable kwh charge. The single kwh charge will be higher than the incremental cost of fuel 60% of the time, but it will not be affected by cost recovery for purchased power unless that cost exceeds a prescribed ceiling.** This is the only relief the contract provides, but the price stability it provides is fundamentally important to IMC. The load profile requirements are designed to prevent IMC from changing its load factor to the detriment of the utility system. The contract tends to force IMC to continue to take electricity and thereby contribute to the utility's fixed costs when under the current tariff it can protect itself by shutting down some operations when other economic factors dictate such action. Customers will benefit because under the contract TECo will continue to receive the base charges for capacity that are now eliminated when replacement power is purchased.

The contract does not affect base rates except to lock them in. The contract rate is designed to stabilize the erratic price swings that occur in the purchased power cost recovery clause. The clauses which protect the utility against unstable prices and guarantee their recovery without endangering utility earnings pass volatile cost instability to customers. The cost of replacement purchased power to serve IMC in lieu of interruption is not a significant portion of TECo's \$ 400 million fuel bill. Factoring this cost in with the rest of the fuel bill will have a microscopic if any effect on a 1000 kwh/ month consumer. This customers share of fuel cost is stabilized because the fuel factor is adjusted annually. On the other hand the impact is gigantic for IMC, TECo's largest consumer, whose load approximates that of 30,000 residential customers. This customer must face the change every month capacity is short. The price of power to IMC is now unstable through no fault of its own. The problem arose because a competitive wholesale power market was born when capacity was short and got shorter when Gannon went down and Hookers Point wore out.

During the 40 month contract period it is anticipated that most months IMC will pay more under the contract rate than it would pay under the tariff. It will pay less during the summer peak period. To get the proper balance in payments during the remainder of TECo's generation deficiency it is necessary to have the contract in effect for its full term. The August effective date for consumption beginning August 1, 2000 is essential to the efficacy of the contract ratio of recovery.

If the contract is deemed to be justified under the circumstances, the legal question arises as to whether the Commission can make it effective before the expiration of the period of administrative review. The answer is clearly yes under the controlling law as it has been expressed in judicial and administrative decisions.

If review of the terms of the contract are considered to be a ratemaking endeavor it can not be implemented until after Commission approval. On the other hand if the terms of the contract deal with cost recovery it can be implemented on an appropriate date that pre dates final Commission approval. Schedule 4 to Exhibit 1 confirms that the contract rate is much higher than the 6 components of base rates. Rate making is not involved the contract. It deals with how TECo collects its purchased power recovery from this unique customer.

Two leading cases on the subject are: *City of Miami v. Florida Public Service Commission*, 208 So. 2d 249; (1968 Fla.), and *GTE Florida Inc. v. Clark*, 668 So. 2d 971 (Fla. 1996)

In the first case it took the Commission three years to examine and reach a conclusion about FPL's 1963 earnings. The Commission found that FPL was over earning based upon 1963 test year observations. It reduced FPL's rates. It ordered the general rate reduction to take effect as of November 1966. The Florida attorney general appealed the decision. He asked the Supreme Court to back date the base rate reduction to 1963 when the case began. The Supreme Court affirmed the Commission action for the benefit of FPL. It reiterated a time honored proposition. Utility rate making dealing with changes in the authorized return on utility investment is a legislative function. Laws generally take effect prospectively, therefore new rates like other legislation should be prospective in nature, it said,

"There is no basis in the statute for concluding that the Commission's orders can be retroactive to the date when the Commission's inquiry into the rates was begun"

In the second case cited above the Supreme Court reversed the Commission's refusal to let GTE retroactively recover costs and said,

"We find that the [prospective] surcharge for recovery of costs [previously] expended is not **retroactive** ratemaking ..... We note that the PSC was advised by its staff that GTE's recovery of expenses and costs would not constitute **retroactive** ratemaking. Fla. Pub. Serv. Comm'n, Staff Memorandum at 4 (Docket No. 920188-TL, March 23, 1995).

There have been a plethora of Commission and court cases on the subject.

The cases allowing retroactive cost recovery for costs incurred before Commission approval deal with many topics. Some are listed below.

1. **AFUDC:** *In re: Application of Aloha Utilities, Inc. for approval of Allowance for Funds Used During Construction (AFUDC) rates in Pasco County*, Docket No. 891113-WS, Order No. 22206 (Nov. 21, 1989); *In re: Application of Hydratech Utilities, Inc. for approval of allowance of funds used during construction (AFUDC) rates in Martin County*, Docket No. 881407-WS, Order No. 20650 (Jan. 24, 1989).
2. **Fuel Cost Recovery:** *In re: Investigation of Fuel Adjustment Clauses of Electric Utilities*, Docket No. 830001-EU, Order No. 12645 (Nov. 3, 1983). In this case the Commission set the standard it follows in cost recovery matters, it said,

**“[I]t is quite common for utilities to receive retroactive adjustments to fuel price and transportation costs well after the close of the original transaction to which they relates (sic)”**

3. **Depreciation:** *In re: Request by Florida Power & Light Company for a change in depreciation rates*, Docket No. 870085-EI, Order No. 17356 (Apr. 2, 1987).
4. **Oil Back out cost recovery:** *Citizens of the State of Florida v. Public Service Commission*, 448 So.2d 1024 (Fla. 1984)
5. **Tax Refund:** *In Re: Petition of Gulf Power Company for approval of "Tax Savings" refund for 1988*, Docket No. 890324-EI, Order No. 23536 (Sept. 27, 1990).
6. **After the fact Reallocation of revenue recovery between customer classes:** *Southern States Utilities v. Florida Public Service Commission* 704 So2d 555 (1997 1<sup>st</sup> DCA)
7. **Recovery of past disputed expenses with a prospective surcharge:** *GTE Florida Inc. v. Clark*, 668 So. 2d 971 (Fla. 1996),

In *Citizens v Florida Public Service Commission* 415 So2d 1268 (Fla 1982), the Supreme Court held that even if a change in depreciation rates resulted in the diminution of a refund customers were receiving it was not retroactive rate making. It quoted Commissioner Cresse’s analysis of the difference between rate making and cost recovery he said,

“I think the main issue is whether or not the new re prescription depreciation rate is appropriate or inappropriate. Notwithstanding what impact that has on any refunds ...”

The IMC contract is designed to give a large customer which is greatly impacted by unstable prices the same type of protection the Commission affords utilities and smaller customers. The relief requested, if given in a timely fashion, will keep the customer operating at a level that improves utility load factor and will keep the customer competitive with its industrial peers served by other utilities. The contribution that IMC’s continued operations make to TECo’s general operating expenses and profit are meaningful to other customers. They far exceed any additional fuel costs they will bear to stabilize the cost of the purchased power that keeps IMC operating when TECo lacks the capacity to serve.



The contract is not a change in base rates or utility earnings. Therefore it can be effectuated retroactively to a beginning date that will achieve the results it is intended to achieve. Not letting it take effect until the contract receives final approval after exhaustive administrative scrutiny will defeat the intent of the parties with no meaningful benefit to the general body or rate payers.

**SUMMARY:** Intervenor, IMC Phosphates, respectfully requests the Commission to approve the special rate stability contract between IMC and TECo and to allow it to be retroactively implemented beginning with consumption after August 1, 2000.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the IMC Phosphates Memorandum of Law and Fact has been furnished by U.S. Mail, hand delivery or fax transmission to the following parties of record, this 6<sup>th</sup> day of December, 2000

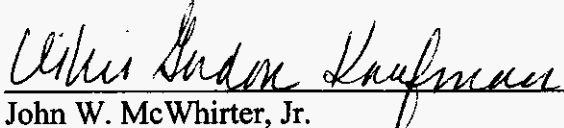
(\*)Deborah Hart  
Florida Public Service Commission  
Division of Legal Services  
2540 Shumard Oak Blvd.  
Tallahassee, Fl. 32399-0850

Tampa Electric Company  
Ms. Angela Llewellyn Regulatory Affairs  
P. O. Box 111  
Tampa, FL 33601-0111

(\*)Ausley Law Firm  
James Beasley  
P.O. Box 391  
Tallahassee, FL 32302

Stephen Burgess  
Deputy Public Counsel  
Office of Public Counsel  
111 W. Madison St  
Tallahassee, Fl

Harry Long, Esq  
P. O. Box 111  
Tampa Electric Company  
Tampa, FL 33601-0111

  
\_\_\_\_\_  
John W. McWhirter, Jr.  
McWhirter Reeves McGlothlin Davidson  
Decker Kaufman Arnold & Steen, P.A.  
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 a 32301

Attorneys for IMC Phosphates

Schedule 1.

1. A simplistic overview of the Phosphate industry in Florida
  - A. XXXXXXXX
  - B. XXXXXXXX
  - C. IMC remains. It is TECo's largest customer and the only significant mining company in TECo's service area
  - D. Competitive forces affecting phosphate industry
    - a. Exchange Rates
    - b. Foreign subsidized production
    - c. Domestic Competition closer to the domestic market
    - d. Florida competition
    - e. Agricultural economy
  
2. Matters of Particular Concern To IMC Phosphates
  - A. XXXXXXXX
  - B. The changed conditions have caused it to combine with other customers to challenge one of its principal suppliers, TECo, in adversary proceedings in spite of IMC's long standing corporate practice of forming strategic alliances with its key suppliers.
  - C. IMC is unable to accurately forecast its production costs because of electric price volatility making it difficult to offer a firm competitive price for its products
  - D. XXXXXXXX
  - E. The irony of IMC's obligation to buy at unregulated prices from an electric utility which has no corresponding obligation to sell.

Schedule 2.

The chart below compares the monthly average price per MWH TECo paid for electricity it purchased from Cogenerators (an approximation of average monthly incremental cost of purchased electricity) to the average TECo fuel cost charged IMC before purchased power is added. It is a good proxy for demonstrating the volatile swings in purchased power cost that IMC and TECo are attempting to stabilize with the special contract.

**Chart Redacted**

**Schedule 3 COMPARISON OF TEC<sub>o</sub> ELECTRIC CHARGES TO IMC MINES  
With FPC CHARGES FOR SAME SERVICE**

<b>TOTAL MINERALS</b>	<b>1999</b>	<b>2000 YTD</b>
TECO \$	XXX	XXX
FPC \$	XXX	XXX
TECO \$/MWH	XXX	XXX
FPC \$/MWH	XXX	XXX
%Difference	21.29%	23.30%

**CHART REDACTED**

Schedule 4 Comparison of Tariff IST-1 to contract rate November, 2000  
Assumption hypothetical 1 MW at 100% load factor used 25% on peak hours and 75% off peak  
Mine has a demand of 20MW (for apportioning customer charge)

	Base Charges	Contract Rate
Demand charge	\$ 1,450.00	
Non Fuel energy	7,869.40	
Customer	50.00	
Voltage level disc	(341.82)	
Transmission ownership discount	( 23.00 )	
Power factor reward/penalty		
Base Charge Total	\$9,004.58	XXXXXX
<b>Cost Recovery Charges</b>	<b>Current Rate</b>	
fuel cost recovery charge	\$ 17,091.13	
environmental charge	1,007.40	
capacity charge	109.50	
conservation charge	131.40	
GPIF	(2.92)	
Polk County Tax*		
ad valorem tax*		
Sales Tax*		
Cost Recovery total Excl. Purchased Power	\$ 18,336.5050	
<b>TOTAL CHARGE/ mwh</b>	<b>Current</b> \$ 27,341.08	<b>Contract</b> \$XXXXXX
Additional IMC payment per MWH/month	\$ XXXXXX	
Estimated annual consumption	XXXX MWH	
Contract rate exceeds current base and cost recovery charges by	XXXXXXXXX	per year

\*No entries are made for items 12,13 & 14 because IMC will continue to guarantee full cost recovery to TECo for government taxes and charges

### The History of the Electrical Tie That Binds

The phosphate industry was a major contributor to the expansion of the TECo and Florida Power Corporation (FPC) service areas. The phosphate industry began with self generation. In the 1920s when FPC and TECo determined to expand beyond the initial towns they served, they bought generating plants, hydroelectric plants, transmission lines and voltage transforming substations being operated by the phosphate companies to take them out of the power production business. The phosphate industry then began to buy rather than produce electricity.

IMC had served Mulberry and the surrounding commercial and residential areas. It turned over these assets to TECo along with a major portion of its transmission lines. Other lines were sold to FPC. Before that time electric lighting and street car operation were the principal services provided by the utilities. With the phosphate load the utilities were able to build larger and more efficient generating plants. The transmission lines connecting the phosphate customers to these plants were then used to annex additional residential and commercial customers along the way.

The utility system load factor was improved by the introduction of large phosphate customers who consumed power during the off peak daylight period to match the residential night time lighting demand. Today the situation is reversed, the twenty four hour a day operation of the phosphate mines provides an off peak balance to the heavy day time residential and commercial load. Another benefit has been added. When TECo's generating assets are unable to meet the day time load and wholesale commitments to other utilities, the phosphate mines are shut down or served with expensive replacement power. The ability to increase the incidence of interruption or replacement purchased power during summer peak periods is of great benefit to the utilities and their general body of customers, but the recent past has proved to be cataclysmic to IMC as Exhibit 1 shows. It has caused the need for the contract under consideration.

Rates to the phosphate industry have always been cost justified based upon the quality of unbundled service offered. To the general body of rate payers, TECo supplies bundled generation, transmission, distribution, voltage transformation and regulation, service drops, extensive metering, billing, customer repair, and other general services. To the phosphate industry it supplies unbundled, *as available* generation and transmission service when it is not demanded by other retail and wholesale customers. Little else is offered or requested.

Conditions have changed the nature and price of electric service provided by utilities to the phosphate industry.

Initially the phosphate industry received firm service at rates which were competitive with the rates received by phosphate's competitors in other jurisdictions.

At the advent of electric regulation in Florida there were no utility service areas like those for telephone companies. As they expanded into new territory utilities competed for customers, especially the phosphate load which they must have deemed to be profitable. To avoid regulatory delay FPC and TECo were allowed to offer cost justified flexible "favored nations" rates rather than fixed tariffs to attract or keep the phosphate business. This is similar to the market approach utilities use today to serve wholesale and economic development customers. The steadfast long term large retail customers have lost favored status. Utilities give wholesale customers firm service with a higher priority and lower rates than IMC pays for "as available" non firm service.

When utilities in Florida received statutory and regulatory authorization not to compete with one another, rates offered the phosphate industry were increased and utilities were no longer obligated to build generating plant to serve them. The phosphate industry was served from a utility "reserve margin." Utilities, then in a generation expansion mode, generally had installed capacity margins better than 20%. This substantial reserve margin was provided primarily by back up machines. Reserve margin had a different significance then. The 20% rule of thumb was used to question whether capacity in excess of that amount was really in useful service and eligible for rate base.

Inter utility competition went away when utilities were authorized by regulators to enter into non competitive agreements. The only remaining competition came from the then unlikely possibility that phosphate companies might move or revert to self generation.

In general rate cases filed during the 1970s interruptible rates were cost justified. Cost of service studies proved that interruptible rates charged phosphate companies fully recovered TECo's operating and fixed costs and provided a better than average return to the utility. In 1983 the Commission experimented with a new cost of service methodology for Tampa Electric. It adopted an "equivalent peaker" cost of service study methodology that resulted in substantial phased rate increases for TECo's large interruptible customers. The somnolent self generation competitor was awakened

Between the 1983 general rate case and the next one held in 1993, changes occurred in the phosphate industry. Most phosphate companies ceased or curtailed mining in the TECo service area. The increased cost of electricity was a major contributing factor. Other companies sold out or ceased operations altogether and approximately 300MW of cogeneration was constructed to serve the fertilizer plants remaining in the service area. Hard evidence demonstrates that the phosphate mining load is at risk for TECo.

In its 1993 rate case, TECo asked the Commission to reject the equivalent peaker cost of service methodology. It returned to a 12 CP and one 13<sup>th</sup> average demand approach. This approach resulted in lower rates to industry. The changed approach abated the flight of the phosphate load somewhat, but not completely. Today IMC is the only phosphate company with significant mining operations in the TECo service area, but the kwh per ton of rock is increasing because of the nature of the ore body. The load retention risk to TECo is increasing