

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Tampa)	DOCKET NO. 890200-EQ
Electric Company for Approval)	ORDER NO. 23572
of Construction Deferral)	ISSUED: 10-03-90
Agreement with IMC Fertilizer,)	
Inc.)	
_____)	

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
 THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER
 FRANK S. MESSERSMITH

ORDER DENYING MOTION TO DISMISS

BY THE COMMISSION:

On May 3, 1990, we issued a Notice of Proposed Agency Action approving a Construction Deferral Agreement between Tampa Electric Company (TECO) and IMC Fertilizer, Inc. (IMC).

That Order permitted any person whose substantial interests would be affected to file "a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036 7(a) and (f), Florida Administrative Code" by the close of business on May 24, 1990.

On that date, the Citizens of the State of Florida, through the Office of Public Counsel, filed a Petition on Proposed Agency Action.

On June 13, 1990, TECO filed a Motion to Dismiss the Petition on Proposed Agency Action alleging that the Citizens had failed to comply with the requirements of Rule 25-22.036 7(a) 4, Florida Administrative Code, and failed to state a cause of action.

DOCUMENT NUMBER-DATE

08879 OCT -3 1990

PSC-RECORDS/REPORTING

ORDER NO. 23572
DOCKET NO. 890200-EQ
PAGE 2

Rule 25-22.036 (7)(a) provides:

"Generally except for Orders or notices issued by the Commission, each initial pleading should contain:

A concise statement of the ultimate facts alleged as well as the rules and statutes which entitle the petitioner to relief."

Pages two and three of the Citizens' Petition contain a Prehearing Statement of Basic Position which includes the following ultimate factual allegations:

- (1) Construction of a transmission line between IMC's New Wales chemical processing plant and its Kingsford No. 2 mining operations threatened TECO with a loss of nonfuel revenues.
- (2) To protect its stockholders, TECO entered into a construction deferral agreement that offered IMC reduced rates if it would continue to receive all its electricity at the Kingsford No. 2 mine from TECO.
- (3) The negotiated rate reduction is based on the differential between TECO's marginal and average fuel cost, but there is no relationship between this adjustment mechanism and the cost of fuel for generation to support increased charges in the fuel cost recovery docket.
- (4) TECO and IMC agreed that the credits to the Kingsford No. 2 mine should be based on the number of kilowatt-hours TECO purchased (sic) from New Wales, not the kilowatt-hours TECO sold to Kingsford.
- (5) There is no relationship, however, between electricity TECO purchases from a cogenerator and the amount TECO sells to a customer that would support increasing TECO's fuel charges to all customers.

ORDER NO. 23572
DOCKET NO. 890200-EQ
PAGE 3

The Petition also indicates that "All issues of fact, law and policy cannot be identified at this time pending further analysis and discovery." Thus, the Petition contains adequate allegations of ultimate facts.

The Petition further states that the "Public Counsel is authorized pursuant to Section 350.0611, Florida Statutes (1989), to represent the utility's customers and file this pleading on their behalf." The Petition alleges that Section 366.06(2), Florida Statutes (1989), is applicable to this proceeding. Thus, petitioner has sufficiently identified the statutes which entitle the petitioner to relief.

We therefore find that the Citizens' petition comports with the requirements of Rule 25-22.036, Florida Administrative Code.

In consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that the Motion to Dismiss filed June 13, 1990, by the Tampa Electric Company is hereby denied.

By ORDER of the Florida Public Service Commission,
this 3rd day of OCTOBER, 1990.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

(8071L)MAP:bmi