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COGENERATION & ALTERNATIVE ENERGY
ENERGY REGULATORY LAW

VIA FEDERAL EXPRESS

May 4, 1999

Ms. Blanc Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Undocketed Merchant Plant Study Workshops

Dear Ms. Bayó,

This firm represents the Florida Industrial Cogeneration Association (FICA). Because it is uncertain at this juncture whether or not we will be able to participate in the Merchant Plant Study "workshops", this letter will provide comments briefly describing FICA's concerns and interests as they pertain to the subject of merchant plants. **FICA's primary interest in this proceeding is to preserve the right of its members to self-generate electricity - by means of QFs or otherwise.**

FICA's members operate qualifying cogeneration and/or qualifying small power production facilities ("Qualifying Facilities" or "QFs" - as those terms are defined by rules of this Commission and the Federal Energy Regulatory Commission), which generate electricity in conjunction with industrial operations at various locations in Florida. FICA members consume such electricity for their own needs; sell surplus electricity to Florida electric utilities; and, purchase standby and supplemental electricity from their respective electric utilities. The size of FICA's members individual generating units range from about 15,000 kW to 110,000 kW, with some members operating multiple units. FICA members have considered, are considering, or may consider the installation of even larger QFs or other form of "non-utility" self generation facilities to serve their own needs.

FICA's interest in this proceeding arises from the fact that the term "merchant plant" has only recently been applied to electric generating facilities, and its definition is less than precise. Based on FICA's observations of recent proceedings before the Commission, the defining characteristics of a "merchant plant" appear to be: (i) a relatively large electric generating facility; (ii) which is not owned by a Florida retail electric utility; and (iii), the electrical output of which is not contractually committed to any particular Florida retail electric utility. Some FICA member's QF facilities could be said to exhibit such

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characteristics and thereby be construed to fit within this broad and vague definition of merchant plant. Accordingly, FICA is concerned that its members right to self-generate may be eroded or infringed upon by an overly broad interpretation of merchant plant. FICA seeks assurance that any constraints which the Commission or the electric utilities may attempt to impose upon the merchant plant industry do not inadvertently impact upon FICA's members existing or future electric generating facilities.

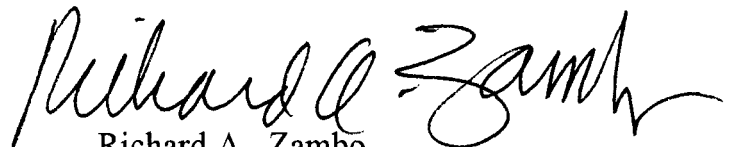
FICA simply seeks to preserve its members ability to implement, at their discretion, economic alternatives (such as self-generation) in lieu of purchasing electricity from the electric utility(ies). If an acceptable definition of "merchant plant" can be developed, which clearly distinguishes between electric generating facilities operated or contemplated by FICA's members for self-generation in conjunction with associated industrial operations, and the stand-alone merchant power plants such as the proposed Duke-New Smyrna facility, FICA would have no further interest in this matter.

It would be relatively easy to formulate a definition of "merchant plant" which is sufficiently specific to avoid inadvertently encompassing facilities of the type operated or contemplated by FICA's members, thereby shielding FICA's members from any constraints or limitations which may be imposed by the Commission or the utilities on merchant plants. FICA is agreeable to working with Staff in an effort to develop an acceptable definition.

In contrast to the "first impression" issues raised in the Duke/New Smyrna case - which we understand directly precipitated this merchant plant proceeding - the law is mature and well settled regarding the rights of electricity consumers, such as FICA's members, to own or operate QF's for self-generation. In fact, Florida law and Federal law affirmatively encourage the development of QFs. Moreover, attempts to deny an electrical consumer the right to choose to self-generate as an alternative to purchasing from a utility would raise serious constitutional issues.

We appreciate the opportunity to submit these written comments for your consideration. If you require anything further, or would like to discuss the issues presented here, please do not hesitate to call.

Sincerely



Richard A. Zambo

Florida Bar No. 312525

RAZ/sn