

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Petition of Florida Power Corporation) DOCKET NO. 020105-EI
and Tampa Electric Company for Expedited) FILED: February 15, 2002
Declaratory Relief.)
_____)

**RESPONSE OF FLORIDA POWER CORPORATION
AND TAMPA ELECTRIC COMPANY
IN OPPOSITION TO IMC'S MOTION TO DISMISS**

Florida Power Corporation ("Florida Power") and Tampa Electric Company ("Tampa Electric"), pursuant to Rule 28-106.204, Florida Administrative Code, files this their response in opposition to the Motion to Dismiss filed in this proceeding by IMC Phosphates Company ("IMC"):

1. Contrary to IMC's assertion, Florida Power and Tampa Electric did not file their Joint Petition in search of a declaratory statement under Section 120.565, Florida Statutes. Instead, the Joint Petition specifically invokes the Commission's jurisdiction to regulate and supervise each public utility with respect to its rates and service as provided in Section 366.04(1), Florida Statutes. (See Joint Petition at page 5). The Joint Petitioners' use of the term "declaratory relief" (something the Commission ultimately will have to provide if the dispute is to be resolved) does not convert this into a proceeding under Section 120.565, Florida Statutes. The Commission cannot resolve the issues presented without declaring which of the Joint Petitioners has lawful authority to serve the end use facilities identified in the Joint Petition. If the Commission concludes that a hearing is necessary to make that determination, then nothing prevents the Commission from scheduling such a hearing.

2. Florida Power and Tampa Electric do not oppose IMC's intervention in this proceeding. Instead, Joint Petitioners fully expected IMC to seek intervention once the Joint

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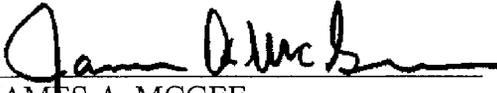
Petition was filed. IMC's participation as an intervenor negates IMC's stated ground for asking that the Joint Petition be dismissed. IMC's participation in this proceeding with full due process rights as a party distinguishes this proceeding from a declaratory statement proceeding under Section 120.565, Florida Statutes, and the citations related thereto discussed in IMC's Motion to Dismiss.

3. The Joint Petition sets forth in clear and precise terms the issues presented for Commission resolution. IMC has stated no legitimate ground for dismissing the Joint Petition.

WHEREFORE, Florida Power and Tampa Electric submit the foregoing in opposition to IMC's Motion to Dismiss.

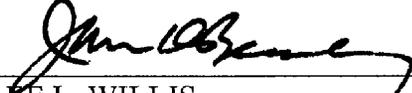
DATED this 15th day of February 2002.

Respectfully submitted,



JAMES A. MCGEE
Post Office Box 14042
St. Petersburg, FL 33733

ATTORNEY FOR FLORIDA POWER
CORPORATION



LEE L. WILLIS
JAMES D. BEASLEY
Ausley & McMullen
Post Office Box 391
Tallahassee, FL 32302

ATTORNEYS FOR TAMPA ELECTRIC
COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Reply to IMC's Motion to Dismiss, filed on behalf of Florida Power Corporation and Tampa Electric Company, has been furnished by hand delivery* or U. S. Mail on this 15th day of February 2002 to the following:

Mr. Harold McLean*
General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Mr. John W. McWhirter, Jr.
McWhirter Reeves McGlothlin Davidson
Decker Kaufman Arnold & Steen PA
400 North Tampa Street, Suite 2450
Tampa, FL 33601-3350

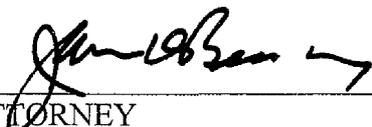
Mr. Robert V. Elias*
Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

IMC Phosphates Company
Attention: Energy Engineering Manager
Pierce Complex
5000 Old Highway 37
Mulberry, FL 33860

Mr. David Smith*
Division of Appeals
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Ms. Sarah J. Read
Sidley Austin Brown & Wood
Bank One Plaza
10 S. Dearborn Street
Chicago, IL 60603

Ms. Vicki Gordon Kaufman
McWhirter Reeves McGlothlin, Davidson
Decker Kaufman Arnold & Steen, PA
117 South Gadsden Street
Tallahassee, FL 32301



ATTORNEY