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FPSC - Records/Reporting

November 21, 1997

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Blanca S. Bayo, Director
Division of Records and Reporting
Gunter Building
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0870

Re: Docket No. 971313-EU

Dear Ms. Sayo:

Enclosed for filing and distribution are the original and fifteen copies of IMC-Agrico Company's Response in Opposition to Florida Power Corporation's Petition to Intervene in the above docket.

Please acknowledge receipt of the above on the extra copy enclosed herein and return it to me. Thank you for your assistance.

Sincerely,

Vicki Gordon Kaufman
Vicki Gordon Kaufman

VGK/pw
Encls.

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of IMC-Agrico Company)
for a Declaratory Statement Confirming)
Non-Jurisdictional Nature of Planned)
Self-Generation.)

Docket No. 971313-EU

Filed: November 21, 1997

**IMC-AGRICO COMPANY'S RESPONSE IN OPPOSITION TO
FLORIDA POWER CORPORATION'S PETITION TO INTERVENE**

Pursuant to rule 25-22.037, Florida Administrative Code, IMC-Agrico Company (IMCA), through its undersigned counsel, files its Response to Florida Power Corporation's (FPC) petition to intervene. FPC's petition to intervene should be denied for the following reasons:

1. On October 10, 1997, IMCA filed a petition under the Commission's declaratory statement rule, rule 25-22.021, Florida Administrative Code, requesting the Commission to affirm that the financing structure IMCA proposes to use to generate electricity for its own use does not constitute a retail sale of electricity. Section 120.565(3), Florida Statutes, provides that the petition be handled by the Commission within 90 days. The Commission established a schedule designed to take official action on IMCA's petition on December 16, 1997. On November 14th, FPC filed its petition to intervene in which it requests party status and the opportunity to discover IMCA's confidential business relationships.

2. FPC lacks standing to intervene in this proceeding. Therefore, its petition should be denied.

3. To gain standing to intervene FPC must demonstrate that it complies with the two-pronged test for standing set out in Agrico Chemical Co. v. Department of

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Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981); Florida Department of Offender Rehabilitation v. Jerry, 353 So.2d 1230 (Fla. 1st DCA 1978). It must show:

- 1) that [it] will suffer injury which is of sufficient immediacy to entitle [it] to a § 120.57 hearing, and
- 2) that [its] substantial injury is of a type or nature which the proceeding is designed to protect. The first aspect of the test deals with the degree of injury. The second deals with the nature of the injury.

Agrico at 482.

FPC can meet neither test.

4. To put the matter into perspective, the law is clear that IMCA does not have an obligation to purchase electricity from FPC. IMCA has the absolute right to supply its own needs. PW Ventures v. Nichols, 533 So.2d 281, 284 (Fla. 1988). Under the provisions of section 90.202(12), Florida Statutes, IMCA requests that the Commission take administrative notice of the following facts:

- a. Under ordinary circumstances, it will take a minimum of 3 to 4 years to permit and construct the proposed electric generating plant.
- b. IMCA is an interruptible customer of FPC. It is not entitled to obtain electricity from FPC if there is an emergency need for power from firm customers anywhere in the state of Florida.

5. With the matter in perspective, it becomes clear that the economic injury, if any, to FPC is neither immediate, nor is the declaratory statement rule designed to protect FPC from economic injury. No other part of Florida law requires IMCA to continue to buy electricity from FPC.

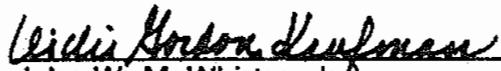
6. The issue before the Commission posed by IMCA is not whether IMCA is prohibited from additional self-generation (obviously it is not), but whether the funding mechanism for this major investment entitles FPC or any other electric utility to discover the detailed components of IMCA's private and confidential contract relations or whether the Commission's determination will be based upon the petition and its own confidential inquiry. Under Commission rule 25-22.021, Florida Administrative Code, a declaratory statement, by its very nature, can affect only the petitioner, IMCA, and no other person. It is certainly not a proceeding designed to protect FPC's economic interests.

7. Finally, FPC spends much time in its petition to intervene arguing the merits of its erroneous proposition. Its lengthy list of benchmarks, its desire to convince the Commission to postpone action on the petition until all definitive agreements have been finalized, and its request for discovery, all evince FPC's desire to delay and obstruct. In an effort to create a non-germane controversy, FPC asserts that it disputes IMCA's factual description of the project. However, nowhere does FPC take issue with IMCA's facts; indeed, FPC recites and uses them in strained attempts to differentiate IMCA's proposed structure from that reviewed by the Commission in the Seminole Fertilizer case, Docket No. 900699-EQ. Instead FPC claims there is a factual dispute only in the sense that FPC regards the facts as insufficient. This is a very different assertion, and one geared to FPC's unsupported notion that the actual agreements may differ from the description in IMCA's petition. For the reasons discussed above, the Commission should disregard the argument.

CONCLUSION

FPC has not met either prong of the Agrico standing test via its claim of economic injury and its speculation about future events. Therefore, its petition to intervene must be denied. Its arguments, which go well beyond the proper scope of a petition to intervene, are designed to delay and obstruct. More importantly, those arguments cannot convey standing to participate on FPC where none exists.

WHEREFORE, FPC'S petition to intervene should be denied.


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of IMC-Agrico Company's foregoing Response in Opposition to Florida Power Corporation's Petition to Intervene has been furnished by U.S. Mail or hand delivery(*) on this 21st day of November, 1997, to the following:

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