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ORIGINAL

October 30, 1997

BY HAND DELIVERY

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

Re: Petition of IMC-Agrico Company for a Declaratory Statement Confirming Non-Jurisdictional Nature of Planned Self-Generation; Docket No. 971313-EU

Dear Ms. Bayo:

Enclosed for filing in the above docket on behalf of Tampa Electric Company are the original and fifteen (15) copies of each of the following:

1. Tampa Electric Company's Petition for Leave to Intervene and Request for Hearing; - 11206-97
2. Tampa Electric Company's Answer and Request for Hearing; and - 11207-97
3. Tampa Electric Company's Request for an Opportunity to Address the Commission. - 11208-97

ACK _____ Please acknowledge receipt and filing of the above by stamping
AFA _____ the duplicate copy of this letter and returning the same to this
APP Bellet writer.

CAF _____ Thank you for your assistance in this matter.

CMU _____

CTR _____

EA: _____

LEC _____

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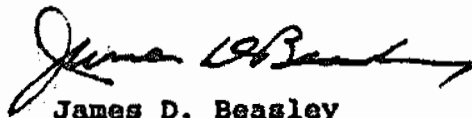
W-S _____

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Sincerely,



James D. Beasley

JDB/bjm
Enclosures
cc: All Parties of Record (w/encls.)

RECEIVED & FILED

Dry Pet to Jan

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of IMC-Agrico Company)
 for a Declaratory Statement Confirming)
 Non-Jurisdictional Nature of Planned) DOCKET NO. 971313-EU
 Self-Generation.) FILED: October 30, 1997

**TAMPA ELECTRIC COMPANY'S
PETITION FOR LEAVE TO INTERVENE AND REQUEST FOR HEARING**

I. Introduction

1. Tampa Electric Company ("Tampa Electric" or "the Company"), pursuant to Fla. Admin. Code Rule 25-22.039, petitions the Commission for leave to intervene in the above-styled cause on the ground that the power generation project and associated power sale arrangement proposed by IMC-Agrico Company ("IMCA") and its partner, Duke Energy Power Services, LLP ("Duke") will prove to be an unlawful and elaborately devised retail sale. If permitted, this IMCA/Duke project will result in the shift of significant costs to Tampa Electric's remaining customers or to Tampa Electric itself. Therefore, Tampa Electric's interest is direct, immediate and germane to this proceeding.

2. The name and address of the petitioner are:

Tampa Electric Company
 Post Office Box 111
 Tampa, Florida 33601

3. All pleadings, motions, orders and other documents directed to the petitioner are to be served on:

Lee L. Willis
 James D. Beasley
 Ausley & McMullen
 Post Office Box 391
 Tallahassee, FL 32302

Harry W. Long, Jr.
 TECO Energy, Inc.
 Post Office Box 111
 Tampa, FL 33601

DOCUMENT NUMBER-DATE
 14206 OCT 30 97
 FPSC-RECORDS/REPORTING

Angela Llewellyn
Regulatory Specialist
Tampa Electric Company
Post Office Box 111
Tampa, FL 33601

II. Background

4. IMCA has petitioned the Commission for a declaratory statement to the effect that the proposed ownership and operational structure of certain planned generation facilities and transmission facilities ("the Project") will not constitute a sale of electricity to the public at retail or subject IMCA, Duke, their affiliates or the owner of the Project to regulation as a public utility under Chapter 366, Florida Statutes.

5. By Duke and IMCA's own admission, the circumstances surrounding their Project are matters of first impression for this Commission¹. As discussed in more detail in "Tampa Electric Company's Answer And Request For Hearing", filed concurrently herewith, IMCA's proposal is substantially different from the precedents which IMCA cites as authority for the relief which it has requested. Beyond unsupported assertions with regard to the general content of crucial, project-related contracts which have yet to be negotiated, IMCA has offered no factual basis for a determination that its proposed arrangements constitute legitimate

¹See Duke Mulberry Request To Address The Commission filed in Docket No. 971337-EI, In re: Petition of Duke Mulberry Energy, L.P., and IMC-Agrico Company for a Declaratory Statement Concerning Eligibility To Obtain Determination of Need Pursuant to Section 403.519, Florida Statutes.

self-generation and not an unlawful retail sale of electricity. Indeed, without an examination of IMCA's proposed partnership, lease and O&M agreements, for example, there is no way to determine whether or not IMCA would bear the actual risks and rewards of ownership of the project and, thereby, have a "unity of interest" with the legal owner/lessor, as previously required by this Commission. Clearly, Duke's ownership interest, management position and active involvement in the project implies the contrary.

III. Tampa Electric's Right to Participate in this Proceeding Is Clear

6. Under the two prong test of Agrico Chemical Company V. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2nd DCA 1981), to have standing, a party must demonstrate that (1) it will suffer an injury in fact of sufficient immediacy to entitle him to a Section 120.57 hearing, and (2) this injury must be of the type or nature the proceeding is designed to protect. Tampa Electric respectfully submits that it meets this test.

7. On information and belief, Tampa Electric believes that the project, as defined in IMCA's petition, would constitute the retail sale of electricity to at least one of Tampa Electric's industrial retail customers, IMCA, and would subject the owner of the Project to regulation as a retail public utility under Chapter 366, Florida Statutes, giving rise to a territorial dispute. IMCA is currently a retail customer of Tampa Electric and has numerous

facilities located within Tampa Electric's authorized retail service territory.

8. To the extent that Duke, IMCA or their affiliates provide retail electric service within Tampa Electric's Commission approved service territory, as the company believes would be the case under IMCA's proposal, the company will have an interest in and a right to oppose such service under Section 366.04, Florida Statutes. That section gives the Commission the jurisdiction and duty to resolve, upon petition of a utility or on its own motion, any territorial dispute involving service areas between and among electric utilities in this state.

9. The Commission's statutory authority to resolve territorial disputes dovetails with the Commission's jurisdiction and duty under Section 366.04, Florida Statutes, to supervise the planning, development and maintenance of a coordinated electric power grid throughout Florida so as to assure an adequate and reliable source of energy for operational and emergency purposes in this state and the avoidance of uneconomic duplication of generation, transmission and distribution facilities. IMCA's petition in this proceeding and Tampa Electric's opposition thereto create a ripe and justiciable controversy under the above-referenced statutory authorities of the Commission.

IV. Despite IMCA's Request For A Declaratory Order, The Commission Should Not Act On The Basis Of IMCA's Untested Assertions, Given The Substantial Interests Of Tampa Electric And Its Retail Customers Which Would Be Affected By The Disposition Of This Proceeding

10. In light of its public utility obligation, Tampa Electric has planned, constructed and operated its electric system, in relevant part, to serve the anticipated energy needs of its retail interruptible customers, the largest of which is IMCA. There are a wide variety of costs that will be stranded and ultimately shifted to Tampa Electric's remaining ratepayers if retail sales to IMCA are reduced.

11. In the year 2000, if IMCA and Duke carry through their proposal and IMCA reduces purchases from Tampa Electric by approximately 120 MW, the result could be at least a \$12.3 million reduction in annual retail base revenue. The revenues collected from IMCA under the interruptible tariff reflect recovery of the cost of the production, transmission and subtransmission level functions the responsibility for which recovery would be transferred to the remaining firm and interruptible customer base, or to Tampa Electric itself.

12. In addition, the existence of energy sales to IMCA provides a fuel cost benefit to Tampa Electric's ratepayers through its contributions to the overall average cost of fuel. The loss of energy sales to IMCA will, therefore, increase remaining ratepayers fuel costs. In part this is because the cost of incremental fuel is less than average so reduced energy sales will serve to raise the average fuel price. In addition, IMCA also takes a higher percentage of its energy at off-peak times when system and statewide fuel costs are lower.

13. Finally, Tampa Electric has made significant investments

in production, transmission and subtransmission plant to serve the total of IMCA's load in anticipation that the load would not be lost to retail service provided by others. Loss of such load would serve to strand some or all of that investment without an opportunity to mitigate the loss through additional sales to new customers. In particular, significant transmission and subtransmission investment has been made to serve the delivery points of IMCA which would be stranded should the expected load levels be reduced. Thus, the substantial interests of Tampa Electric and its retail customers will be directly affected by the Commission's resolution of the retail service issue presented, even putting aside the previously described negative effects on fuel costs. Simply stated, the "stakes" for Tampa Electric and its ratepayers in this matter are high.

14. The Commission should not be tempted to take as factual, therefore, the conclusory assertions made by IMCA in its Petition. Any admonition that declaratory orders apply only to the extent that the assumed underlying facts are correct would not be adequately protect Tampa Electric and its ratepayers from the consequences of unlawful retail sales in this instance. Such is the case because the descriptions offered of the arrangements among Duke, IMCA and the Project owner are so abstract, general and conclusory that a ruling in favor of the Petitioner would be a license and an invitation to roam beyond the constraints of existing law. Indeed, none of the contracts, such as the critical partnership, lease and O&M agreements alluded to in IMCA's

petition, have been negotiated.

15. If this Commission determines, on the basis of IMCA's untested assertions, that the Project does not amount to an unlawful retail sale, then there is not likely to be any subsequent, meaningful opportunity to disaffirm that the Project is, in fact, a case of true self-generation. IMCA will have no obligation to return to the Commission once its contracts have been negotiated and executed and such documents may not be easily discoverable outside of a Commission proceeding. Therefore, it is conceivable that the Project could be constructed and put into operation with no examination of the facts which would identify the Project as an instance of an unlawful retail sale.

V. Request for a Formal Hearing Under Section 120.57, Florida Statutes

16. Tampa Electric respectfully requests that a hearing be convened under the provisions of Section 120.57(1), Florida Statutes. There are disputed issues of material fact in the sense that IMCA's Petition for a Declaratory Statement does not allege facts specific or extensive enough to warrant a determination that the proposed transactions described in the petition would not constitute the retail sale of electricity within Tampa Electric's retail service territory. A formal proceeding is necessary to determine, through discovery, the presentation of evidence and cross-examination, the true nature of IMCA's proposal so that a clear determination may be made as to whether the proposed Project

will be owned and operated in such a way as to effect the retail sale of electricity, contrary to the purpose and intent of Section 366.04, Florida Statutes.

VI. Disputed Issues of Material Fact

17. Tampa Electric disputes IMCA's apparent belief that its Petition sets forth adequate facts upon which the Commission can conclude that IMCA is entitled to the relief it requests. Tampa Electric disputes IMCA's characterization of the facts and circumstances involved and the nature of the decisions made in the prior Commission cases cited in IMCA's Petition.

VII. Ultimate Facts Alleged


18. Tampa Electric's and its customers' substantial interests will be affected by the disposition of IMCA's Petition. Accordingly, Tampa Electric should be granted intervenor status in this proceeding.

VIII. Conclusion

WHEREFORE, Tampa Electric Company petitions the Commission for leave to intervene as a full party in opposition to IMCA's Petition in this proceeding and for the convening of a formal hearing pursuant to Section 120.57(1), Florida Statutes.

DATED this 30th day of October, 1997.

Respectfully submitted,



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ATTORNEYS FOR TAMPA ELECTRIC COMPANY

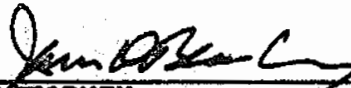
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Petition for Leave to Intervene, filed on behalf of Tampa Electric Company, has been furnished by U. S. Mail or hand delivery (*) on this 30th day of October, 1997 to the following:

Mr. John W. McWhirter, Jr.
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
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100 North Tampa Street
Tampa, FL 33602-5126

Mr. Steven F. Davis
IMC-Agrico Company
Post Office Box 2000
3095 County Road 640 West
Mulberry, FL 33860

Mr. Joseph A. McGlothlin
Ms. Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
117 South Gadsden Street
Tallahassee, FL 32301



ATTORNEY