ORIGINAL

CARLTON FIELDS

ATTORNEYS AT LAW

215 SOUTH MONROE STREET, SUITE 500
TALLAHASSEE, FLORIDA 32301-1866
TEL (904) 224-1585 FAX (904) 222-0398

MAILING ADDRESS
POST OFFICE DRAWER 190
TALLAHASSEE, FL 32302-0190

November 25, 1997

RECEIVED
NOV 25 1997
FPSC - Records/Reporting

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

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; DOCKET NO. 971337-EU

Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of the following documents:

1. Florida Power Corporation's Petition to Intervene and Request for Administrative Hearing; 12136-97
2. Florida Power Corporation's Motion to Dismiss Proceeding; 12137-97
3. Florida Power Corporation's Answer to Petition for Declaratory Statement. 12138-97

Also enclosed are additional copies of the above documents for acknowledgement of filing. We request you acknowledge receipt and filing of the above by stamping these additional copies and returning them to me in the self-addressed, stamped enveloped provided for your convenience.

If you or your Staff have any questions regarding this filing, please contact me at (813) 821-7000.

Very truly yours,

Gary L. Sasso

GLS:jlc

5 Enclosures
cc: Robert Scheffel Wright, Esq.
Joseph A. McGlothlin, Esq.
John W. McWhirter, Jr., Esq.

RECEIVED
NOV 25 1997
FPSC-BUREAU OF RECORDS

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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	)	DOCKET NO. 971337-EU FILED: November 17, 1997

FLORIDA POWER CORPORATION'S PETITION TO INTERVENE AND REQUEST FOR ADMINISTRATIVE HEARING

I. Introduction

1. Florida Power Corporation ("FPC") petitions the Commission for leave to intervene as a party in this proceeding, pursuant to Fla. Admin. Code Rule 25-22.039, on the grounds that the petitioners in this proceeding seek relief that will directly impinge upon FPC's ability to discharge its statutory obligation to provide adequate and reliable electric service and to maintain the integrity of the grid.

2. Under current law, only utilities regulated by the Commission, or power producers under contract to sell to such utilities, may initiate proceedings for a determination that new generating capacity is needed. Petitioners Duke Mulberry Energy, L.P. ("Duke") and IMC-Agrico Company ("IMCA") seek a declaration either giving them standing to initiate such a proceeding or exempting them from any obligation to obtain a need determination before siting a proposed power plant project.

3. The result they seek will impair FPC's ability to discharge its statutory obligation to assure adequate and

reliable service by, inter alia, thwarting FPC's ability to plan for and serve the need of its retail customers as part of the ten-year site plan process, impairing FPC's control over the reliability and integrity of its transmission facilities in the area of the proposed project, and potentially imposing upon FPC and its ratepayers the consequences of uneconomic duplication of facilities.

4. The name of Petitioner and its business address are:

Florida Power Corporation
3201 - 34th Street South
Post Office Box 14042
St. Petersburg, FL 33733-4042

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

James McGee
Senior Counsel
Jeff Froeschle
Corporate Counsel
Florida Power Corporation
Post Office Box 14042
St. Petersburg, FL 33733-4042
Telephone: (813) 866-5184
Facsimile: (813) 866-4931

Gary L. Sasso
Carlton, Fields, Ward, Emmanuel, Smith & Cutler, P.A.
Post Office Box 2861
St. Petersburg, FL 33731
Telephone: (813) 821-7000
Facsimile: (813) 822-3768

For deliveries by courier service, the address is:

Florida Power Corporation
3201 - 34th Street South
St. Petersburg, FL 33711

Carlton, Fields, Ward, Emmanuel, Smith & Cutler, P.A.
Barnett Tower, Suite 2300
One Progress Plaza
St. Petersburg, FL 33701

II. Substantial Interests Affected

6. Duke and IMCA have petitioned the Commission for a declaration that they are entitled to apply for a determination of need for an electrical power plant pursuant to the Florida Electrical Power Plant Siting Act ("PPSA" or the "Siting Act"), Section 403.519, Florida Statutes, and Commission Rules 25-22.080-.081, Fla. Admin. Code. In the alternative Duke and IMCA ask the Commission to declare that no determination of need is required for their purported combination self-generation and merchant plant project (the "Project").

7. In their Petition for Declaratory Statement, IMCA and Duke frankly ask this Commission to depart from its decisions and the decisions of the Florida Supreme Court in Nassau Power Corp. v. Beard, 601 So. 2d 1175 (Fla. 1992) ("Nassau I") and Nassau Power Corp. v. Deason, 641 So. 2d 396 (Fla. 1994) ("Nassau II"), limiting applicant status under the PPSA to state-regulated electric utilities and to independent power producers ("IPPs") under contract with such a utility. In their alternative request for relief, IMCA and Duke ask this Commission to disregard the plain language of the PPSA, making a need determination a prerequisite to use of the PPSA, in order to permit merchant plant developers to by-pass the need-determination process altogether.

8. As the Commission and the Court recognized in the Nassau decisions, the PPSA may not be construed in a vacuum. A determination of need under the Siting Act necessarily involves

consideration of the need for power of the ultimate retail consumers of electricity. Because only state-regulated electric utilities have a statutory obligation to serve such customers, the Nausau decisions hold that the PPSA contemplates that only those electric utilities (or IPPs under contract with those utilities) may petition for a determination of need.[1] This may not be circumvented. The Siting Act expressly provides that "an affirmative determination of need by the Public Service Commission pursuant to [the Siting Act] shall be a condition precedent to the conduct of the certification hearing.' Section 403.508(3), Florida Statutes. And the Siting Act makes clear that "[n]o construction of any new electrical power plant or expansion in steam generating capacity of any existing electrical power plant may be undertaken . . . without first obtaining certification in the manner as herein provided" (apart from exemptions that IMCA and Duke have not asserted are relevant here). Section 403.506(1), Florida Statutes (emphasis added).

9. The Commission and the Florida Supreme Court also recognized in the Nassau decisions that the PPSA directs the

---

[1] Under Chapter 366, relating to Public Utilities, an "electric utility" is "any municipal electric utility, investor-owned electric utility, or rural electric cooperative" that provides electric service to the public and is otherwise subject to the Commission's powers to ensure the development of adequate and reliable energy grids and the conservation of electric power within those grids. Sections 366.02(2), 366.04(2), 366.05(7) and (8), Florida Statutes. Similarly, an "electric utility" under the PPSA includes those state-regulated electric companies "engaged in, or authorized to engage in, the business of generating, transmitting, or distributing electric energy" within the state. Section 403.503(13), Florida Statutes.

Commission to take into account in determining need the impact of any proposal on electric system reliability and integrity, the need to provide adequate electricity at a reasonable cost, whether the proposed facility is the most cost-effective alternative available for supplying electricity, and conservation measures reasonably available to mitigate the need for the plant. Both the Commission and the state-regulated electric utilities have a statutory obligation to ensure that these objectives are furthered. E.g., Sections 366.03, 366.04(2), 366.05(7), (8), 366.80-.85, Florida Statutes. In directing the Commission to consider these factors in determining whether a need exists for a proposed power plant project, the PPSA recognizes and enforces the overarching responsibility of the Commission and state-regulated utilities to assure that these important legislative goals are fulfilled.

10. By asking this Commission to depart from its rulings, and the Florida Supreme Court's decisions in Nassau I and Nassau II, Duke and IMCA seek a ruling that would have a serious, imminent, and deleterious impact on FPC's ability to discharge its statutory obligations under the PPSA and other legislation.

a. To begin with, it is clear that while Duke and IMCA seek the perceived economic opportunity of constructing a merchant power plant in Central Florida, they do not seek to assume FPC's statutory obligation to serve the customers of this region. Nor could they, since they cannot lawfully directly serve retail consumers of electricity. Just as the Commission

must consider the impact of IMCA's and Duke's proposal on the Commission's responsibility to ensure adequate and reliable electric service in this region and the integrity of the grid, so too must FPC evaluate and respond to the impact of this proposal on its ability to meet its obligations to provide both adequate generation and transmission facilities to serve its ratepayers at a reasonable cost.

b. In this connection, the Commission expressly recognized in its decision in Nassau II that construing the PPSA to limit applicant status to electric utilities that have a duty to serve customers (and to IPPs under contract with them) "simply recognizes the utility's planning and evaluation process." In Re: Petition of Nassau Power Corporation, Order No. PSC-92-1210-FOF-EQ (Pub. Serv. Comm. Oct. 26, 1992), at 5. To amplify this point, each state-regulated electric utility is required by statute to prepare and file with the Commission a ten-year site plan, "estimat[ing] its power-generating needs and the general location of its proposed plant sites." Section 186.801, Florida Statutes. Significantly, the ten-year site plan requirement was enacted initially as part of the PPSA, and was codified separately only in order to collect comprehensive planning requirements in one location in the Florida Statutes. Section 403.505, Florida Statutes (1973); 1973 Florida Laws Chapter 73-33, Section 1; 1976 Florida Laws Chapter 76-76, Section 2; Staff Analysis for Committee Substitute for Senate Bill No. 659, Senate

Committee on Natural Resources and Conservation, p. 1 (April 19, 1976).

c. The planning process under this statutory scheme necessarily includes determinations by the utilities of whether or when they will build new generating capacity or purchase power from others during the planning period. The site-plan process is part of an orderly procedure for assessing need for additional generating capacity and fulfilling the objectives of the PPSA and related legislation of ensuring system integrity and adequate and reliable electric energy in this state, and thus it is an important means by which the state-regulated electric utilities discharge their statutory obligation to provide the public with efficient and reliable electric service.

d. In the same vein, Section 366.05, Florida Statutes, provides that if the Commission determines that inadequacies exist with respect to the energy grids developed by the state-regulated electric utilities, the Commission shall have the power, "after a finding that mutual benefits will accrue to the electric utilities involved, to require installation or repair of necessary facilities, including generating plants . . . with the costs to be distributed in proportion to the benefits received . . . " This provision goes on to direct that the "electric utilities involved in any action taken . . . pursuant to this subsection shall have full power and authority . . . to jointly plan, finance, build, operate, or lease generating . . . facilities," id., using, if applicable, the provisions of the

PPSA (which were not altered by this provision). There is no dispute that this provision applies only to state-regulated electric utilities.

e. The Legislature has thus made clear that it is the Commission and the state-regulated electric utilities, which include public utilities like FPC, that have the obligation to assure the electric power needs of the state will be met as part of a broad and comprehensive regulatory scheme, providing for reciprocal benefits and burdens. In point of fact, public utilities are required by law to make adequate investments in generating capacity, with appropriate assurances for the recovery of costs and a return on those investments. At the same time, the Commission discharges its statutory duties through the powers that it exercises over the regulated utilities.

f. The decisions in Nassau I and Nassau II directly support and further this regulatory scheme and the concomitant planning process by confirming that the prerogative of initiating proceedings to determine the need for siting new power plants is vested where the statutory responsibility for planning and assuring adequate service resides -- namely, with the electric utilities regulated by the Commission and with the Commission itself.

g. Put another way, because any proposal to build new generating capacity for resale in this state necessarily will bear upon the ability of regulated utilities to meet their statutory obligations, the Commission and the Florida Supreme

Court in the Nassau decisions have made clear up to the present time that the utility whose customers are to be served by a proposed generating facility is an indispensable party to any need proceeding. The standing of IPPs to initiate such proceedings is thus derivative of the standing of the regulated utility with whom they have a purchase power contract, and the utility must participate in the proceeding as a co-applicant. In this manner, the Commission is assured of the participation of an accountable, regulated utility in any need proceeding.

h. This only makes sense. It is untenable on the one hand to require utilities to plan to meet retail electric power needs, but on the other hand to divorce from those utilities the role of proposing when and how new generating capacity will be initiated. This would have a direct and deleterious impact on the ability of utilities, including FPC, to discharge their responsibilities under the site-plan process to ensure the provision of adequate and reliable electric service in their respective territories. It follows that FPC has a direct and immediate interest in participating in this proceeding, in which Duke and IMCA seek a declaration that would bring about such a result, to assure that the Commission is apprised of and has an opportunity to consider the legal impediments to granting such relief and the ramifications of the declaration sought.

11. Opening up the PPSA to speculative merchant plant developers would not only wrest from the state-regulated electric utilities meaningful control over the site-planning process that

they are statutorily required to pursue, but would impede the ability of the utilities even to monitor what those developers are planning. At the Staff workshop, Duke's representative rejected the prospect that merchant plant developers could submit ten-year site plans like those prepared by electric utilities, suggesting that it would be impractical and would compromise competitively sensitive information. Yet, the state-regulated electric utilities, including the public utilities, would be expected to forecast load and to plan strategies to serve that load without the benefit of this information.

12. Further, based on the limited information set forth in the petition filed by IMCA and Duke, it appears that the proposed Project would place additional demands on the transmission system maintained by FPC in the area that would serve the project. FPC may be required to modify or augment its transmission system at an increased cost to all of FPC's native load customers in order to transmit the output of a new generating plant. The Nassau decisions, of course, confer upon FPC a significant measure of control over the determination of whether, when, and where to create new generating capacity, based on considerations that include the integrity of FPC's transmission system. Duke and IMCA are seeking in this proceeding relief that would impair this control. For this reason, too, FPC's interest in this proceeding is direct and immediate.

13. Finally, the Commission is expressly directed by statute to avoid "further uneconomic duplication of generation,

transmission, and distribution facilities" in this state. Section 366.04(5), Florida Statutes. The relief that Duke and IMCA seek in this proceeding directly threatens to impinge upon this mandate and, by the same token, to visit upon FPC and other regulated utilities and the environment of the State of Florida the consequences of the construction of redundant generating facilities. If merchant plant developers, like Duke and IMCA, are permitted unilaterally to launch new generation projects without regard to the need of particular utilities or their customers, or are permitted alternatively to bypass any need determination whatsoever, the risk that they will unnecessarily duplicate existing generation facilities is palpable.

III. FPC's Standing to Intervene

14. In order to establish standing to intervene in any proceeding, it is settled that a petitioner must show that (1) it will suffer injury in fact of sufficient immediacy to warrant a hearing, and (2) that the injury is of a type or nature that the proceeding is designed to protect. E.g., Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2d DCA 1981), review denied, 415 So. 2d 1359 (Fla. 1982). Further, in applying the Agrico test, the Commission "must not lose sight of the reason for requiring a party to have standing in order to participate in a judicial or administrative proceeding": "[T]o ensure that a party has a substantial interest in the outcome" so that "he will adequately represent the interest he asserts" in a proceeding in which that interest

is not "totally unrelated to the issues which are to be resolved in the administrative proceeding." Gregory v. Indian River County, 610 So. 2d 547, 554 (Fla. 1st DCA 1992).

15. As we have discussed, FPC's interest in ensuring that it will be able to continue to meet it statutory duties of furnishing at a reasonable cost adequate and reliable electric service in its territory and ensuring that the integrity of the grid is maintained will be directly and deleteriously affected by any ruling that denies its status as an indispensable party in a need proceeding, or that puts control over the process into the hands of developers that do not have contracts with utilities and that have no statutory obligation to serve retail consumers. Further, petitioners' proposal threatens to impair FPC's ability to plan for, and ensure, the reliability of FPC's transmission system and to impose upon FPC and its ratepayers the consequences of uneconomic duplication of generating facilities.

16. More specifically, in Nassau I and Nassau II, the Commission and the Florida Supreme Court made clear that it was the business of the regulated utilities in this state to plan for and meet the need that the PPSA was enacted to address. The ruling that Duke and IMCA seek in this declaratory statement proceeding directly impinges upon these interests. Therefore, because the issues to be resolved in this proceeding will affect FPC's statutory duties and responsibilities, FPC has a sufficient interest in the outcome of the proceeding to give FPC standing to intervene. See Osceola County v. St. Johns River Water Mgmt.

Dist., 486 So. 2d 616, 617 (Fla. 5th DCA 1986) (County with statutory duties and responsibilities with respect to planning for water management and conservation has a sufficient interest in state activities that affect those duties and responsibilities to provide the County standing to challenge Water District's consideration of consumptive use permit), aff'd, 504 So. 2d 385 (Fla. 1987); Coalition for Adequacy and Fairness in School Funding, Inc. v. Chiles, 680 So. 2d 400, 403, n.4 (Fla. 1996) (school boards allegedly prevented from carrying out their statutory duties have standing to seek declaratory relief that adequate education is fundamental right under the Florida Constitution). Thus the first condition of Agrico is met.

17. Further, as discussed, the Project will likely require access to FPC transmission facilities. Based on the minimal information set forth in the Petition, it appears that the Project would place additional demands upon those facilities, necessitating that FPC augment its facilities at an increased cost to all of FPC's native load customers. Further, a determination by the Commission that would confer upon merchant plant developers the ability to initiate such projects would impair the ability of utilities like FPC to plan and manage their generation and transmission systems so as to ensure adequate and reliable service. In these respects, too, FPC will suffer injury in fact if Petitioners are given the relief they seek.

18. Finally, as described, opening up the siting process directly to merchant plant developers would pose a palpable

threat of the uneconomic duplication of facilities, to the detriment of FPC and its ratepayers.

19. At the same time, it is evident that the interests that FPC seeks to defend are within the zone of interests that will be addressed by this proceeding. This proceeding will profoundly affect the role that state-regulated utilities play under the PPSA. The Nassau decisions make clear that it is the responsibility of the state-regulated electric utilities, through their own efforts or through contracting parties, to take a measured and effective approach to the development and maintenance of generating capacity in this state. For that matter, the ten-year site plan requirement was enacted as part and parcel of the same legislation creating the PPSA. See p. 6, supra. The Petition filed by Duke and IMCA call upon the Commission to alter this regulatory approach, and thus to alter the role that state-regulated utilities now play in managing the initiation of new generating capacity in this state.

a. In this connection, in Nassau I, the Commission and the Court explicitly recognized that "the four criteria [for assessing need] in section 403.519 [of the PPSA] are 'utility and unit specific' and that the need for the purposes of the Siting Act is the need of the entity ultimately consuming the power." 601 So. 2d at 1178 n.9 (emphasis added). Again, in Nassau II, the Commission and the Court held that "a need determination proceeding is designed to examine the need resulting from an electric utility's duty to serve customers." 641 So. 2d at 398.

Utilities that are not subject to state regulation "have no similar need because they are not required to serve customers." Id.

b. The utility-specific criteria discussed in these cases and set forth in the statute reflect the statutory obligations of both the Commission and the state-regulated utilities to ensure electric system reliability and integrity, to provide adequate electricity at a reasonable cost, to consider whether a proposed facility is the most cost-effective alternative available for supplying electricity, and to take into account whether conservation measures are reasonably available to mitigate the need for the plant. FPC seeks to intervene in this proceeding precisely because Duke and IMCA are seeking a ruling that will seriously impair or dilute FPC's ability to meet these statutory concerns. See Osceola County, 486 So. 2d at 617.

c. Moreover, as discussed, FPC seeks to intervene in this proceeding to protect its role in controlling the orderly implementation of projects that affect the reliability of its transmission system. The PPSA explicitly evidences concern for "electric system reliability and integrity." Section 403.519, Florida Statutes. A ruling that would take from state-regulated utilities, and give to merchant plant developers, the ability to initiate new projects to develop generating capacity would diminish FPC's ability to meet these statutory concerns.

d. Finally, we have shown that affording access indiscriminately to merchant plant developers may well lead to

the uneconomic duplication of generating facilities with attendant problems for FPC The whole point of the Power Plant Siting Act, the related planning legislation, and the Nassau decisions was to ensure that the development of generating capacity in this state would proceed in a well-considered and orderly fashion. FPC seeks to intervene to avoid impairment to these very interests. Thus, the second requirement of Agrico is met.

20. Indeed, the fact that the Commission Staff saw fit to conduct a workshop on November 7, 1997, on the issue whether merchant plants should be given standing as applicants under the PPSA to seek a need determination, and invited and received input from numerous public and municipal utilities on the question, is eloquent testimony to the profound impact this question has on the obligation and interests of the state-regulated electric utilities in meeting their responsibilities under Chapter 366 of the Florida Statutes and the PPSA. Participating in a workshop, however, outside the record of this proceeding has not afforded FPC an adequate opportunity to present its views in a case such as this, which may have a profound impact on its responsibilities as a public utility. Accordingly, FPC should be given leave to intervene as a full party in this Declaratory Statement proceeding.

IV. Intervention to Challenge the Propriety of the Proceeding

21. FPC is filing herewith a Motion to Dismiss Proceeding, challenging the propriety of a declaratory statement proceeding

to determine the issues raised by the petition filed by Duke and IMCA. In that Motion, FPC demonstrates that resort to a declaratory statement proceeding is limited to matters where only the interests of the petitioning party are implicated and in which the interests of other parties will not be adjudicated. Plainly, Duke and IMCA are seeking relief that will have a significant state-wide impact on those utilities with a duty to provide the public with efficient and reliable electric service and their customers. Indeed, they ask the Commission to repudiate its own decisions, and decisions by the Florida Supreme Court, that directly and importantly involve and affect the role that the state-regulated electric utilities play in the overarching regulatory scheme.

22. If the Commission declines to grant FPC standing to participate as a full party throughout this declaratory statement proceeding, FPC requests that the Commission grant FPC standing at least to assert its Motion to Dismiss. Certainly, FPC must be given standing at least for the purpose of arguing that the procedure being followed may impermissibly prejudice FPC's interests without an opportunity for adequate participation. Otherwise, no party in the proceeding would step forward to assert the limitation on the use of the declaratory statement remedy, and the limitation would be eviscerated.

23. The Commission should then grant FPC's Motion to Dismiss in deference to some other procedure that will afford due process and an opportunity to participate in the resolution of

these issues to all interested parties, including FPC. The Commission should not allow the declaratory statement procedure to be used as a means to force major policy changes without due process to parties such as FPC that would be affected substantially by such rulings.

V. Request for Hearing Pursuant to Section 120.57(2), Fla. Stat.

24. In the event the Commission does not dismiss the Petition, FPC requests that the Commission convene an administrative hearing pursuant to Section 120.57(2), Florida Statutes, and Fla. Admin. Code R. 25-22.036, to address the issues raised by the Petition and the responses thereto. These issues may be determined by application of controlling Supreme Court precedent in Nassau I and Nassau II, in addition to the other authorities cited in FPC's submissions to the Commission, to the facts alleged in the Petition. FPC's entitlement to request and receive such a hearing is established in paragraphs 1-23, supra, which are incorporated by reference into this request.

25. Accordingly, FPC should be permitted to intervene as a party in this proceeding, and an informal administrative hearing should be held to determine the merits of the Petition.

VI. Conclusion

26. FPC requests that the Commission grant leave for FPC to intervene as a full party in opposition to the Petition for Declaratory Statement filed by Duke and IMCA in this proceeding, or, at a minimum, as a party for purposes of filing its Motion to

Dismiss Proceedings. If the Commission denies FPC's Motion to Dismiss, FPC requests that the Commission convene an informal administrative hearing pursuant to Section 120.57(2), Florida Statutes.

DATED this 25th day of November 1997.

Respectfully submitted,

FLORIDA POWER CORPORATION

Gary Sasso WDH

JAMES A. MCGEE
Senior Counsel
JEFF FROESCHLE
Corporate Counsel
FLORIDA POWER CORPORATION
Post Office Box 14042
St. Petersburg, FL 33733
Telephone: (813) 866-5153
Telecopier: (813) 866-4931

GARY L. SASSO
Florida Bar No. 622575
Carlton, Fields, Ward,
Emmanuel, Smith & Cutler
Post Office Box 2861
St. Petersburg, FL 33731
Telephone: (813) 821-7000
Telecopier: (813) 822-3768

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail to: Robert Scheffel Wright, Esq., Landers and Parson, P.A., Post Office Box 271, Tallahassee, FL 32302 as counsel for Duke Mulberry Energy, L.P.; and, Joseph A. McGlothlin, McWhirter, Reeves, McGlothlin, Davidson, Rief & Bakas, P.A. 117 South Gadsen Street, Tallahassee, FL 32301 and John W. McWhirter, Jr., McWhirter, Reeves, McGlothlin, Davidson, Rief & Bakas, P.A., Post Office Box 3350, Tampa, Florida 33602, as counsel for IMC-Agrico Company this 25th day of November, 1997.

Attorney