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COGENERATION & ALTERNATIVE ENERGY
 ENERGY REGULATORY LAW

VIA FEDERAL EXPRESS
 January 22, 1998

Ms. Blanca S. Bayo, Director
 Division of Records & Reporting
 Florida Public Service Commission
 Capitol Circle Office Center
 2540 Shumard Oak Boulevard
 Tallahassee, FL 32399

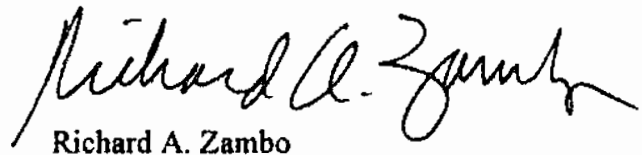
In Re: Petition of IMC-Agrico Company for a Declaratory Statement
 FPSC Docket ~~XXXXXXXXXX~~

Dear Ms. Bayo:

Enclosed for filing in the above Docket please find an original and 7 copies of Florida Global Citrus, Ltd.'s Motion for Reconsideration of Order No. PSC-98-0074-FOF-EU issued on January 13, 1998 in the referenced proceeding. Also enclosed find a double-sided high density 3.5 inch floppy disk containing this document in WordPerfect 6.1 format as prepared on a Windows-based computer. If you have any questions regarding this filing, please do not hesitate to call.

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Sincerely,



Richard A. Zambo

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CERTIFICATE OF SERVICE
DOCKET NO. 971313-EU

I HEREBY CERTIFY that a copy of the Motion For Reconsideration By Florida Global Citrus, Ltd. in the referenced proceeding has been furnished by U.S. Mail to the following parties of record, this 22nd day of January, 1998

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Florida Public Service Commission
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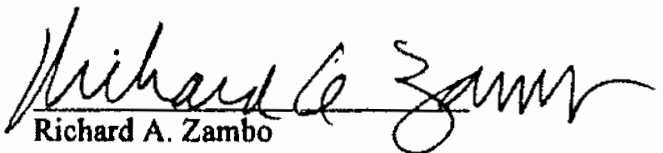
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By:


Richard A. Zambo

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

In re: Petition of IMC-Agrico Company)
for a Declaratory Statement Confirming)
Non-Jurisdictional Nature of Planned)
Self Generation.)
_____)
Submitted for filing:
January 22, 1998

MOTION FOR RECONSIDERATION BY
FLORIDA GLOBAL CITRUS, LTD.

Florida Global Citrus, Ltd. (Florida Global) through its undersigned attorney and pursuant to Rule 25-22.060, F.A.C., hereby moves the Commission: (a) to reconsider those portions of its Order No. PSC-98-0074-FOF-EU, issued on January 13, 1998 in the captioned proceeding (the "Order"), which fail to grant Florida Global's Petition For Leave To Intervene as a full party; or, (b) in the alternative, to reverse those portions of the Order which set a hearing and grant intervention to FPC, PRECO and TECO. As grounds therefore Florida Global says:

1. The exact name of and address of Petitioner are:

Florida Global Citrus, Ltd.
6225 Bridgers Road
P.O. Box 37
Auburndale, FL 33823
Attn: Richard J. Reichler, CFO

2. The person to whom all pleadings, notices, orders, schedules, recommendations and other documents to be filed or served in this Docket are to be sent is:

Richard A. Zambo
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DOCUMENT NUMBER-DATE

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BACKGROUND

3. On December 8, 1997, Florida Global timely filed its Petition For Leave To Intervene in the captioned proceeding ("Florida Global's Petition" or "Intervention Petition") in support of IMC-Agrico. It appears that the Intervention Petition, although timely filed, was submitted to the Commission subsequent to completion of Staff's detailed analysis of the issues presented, and completion of the near final version of the Recommendation. As a result, Florida Global's Petition was given little attention in the order, and in view of the language in the Order, Florida Global is also concerned that its Intervention Petition may have been misconstrued. Florida Global regrets any confusion that may have resulted.

4. In its Intervention Petition, Florida Global urged that a hearing would not be appropriate in the instant case¹ but acknowledged that due to the interest generated by the issues raised that the Commission might be convinced to grant a hearing. (It is not intuitive that a hearing will produce any more information than would have been provided by IMC-Agrico, upon request of Staff, on an informal basis.) Florida Global continues to fear that hearings will result in unwarranted and unnecessary delays in the issuance of a final order, thereby affecting not only IMC-Agrico, but Florida Global as well.

5. Anticipating that possibility, albeit expecting it to be unlikely, Florida Global's Petition requested, in the alternative: (a) leave to intervene in any such hearings; or, (b) if intervention was not granted to any other party, the opportunity to participate on the same basis as any other party is permitted to participate. (Contrary to the implication of the Order, Florida Global did not request amicus curiae status but rather requested intervention status to the extent any other party is granted intervention.) Because Florida Power Corporation (FPC), Peace River Electric Cooperative (PRECO) and Tampa Electric Company (TECO) were granted intervention, Florida Global respectfully requests that the Commission reconsider and reverse those portions of the Order which fail to grant Florida Global's

¹ Florida Global remains of the opinion that a hearing and intervention are improper in this proceeding and that granting intervenor status to the FPC, PRECO and TECO will do little more than delay the issuance of a final order in this Docket.

requested intervention; or, in the alternative, to reverse those portions of the Order which set a hearing and grant intervention to FPC, PRECO and TECO.

6. As stated in its Intervention Petition, Florida Global owns and operates citrus processing facilities in Auburndale, Florida and is currently a GSLDT customer of TECO. In recent years the citrus processing business has come under increasing competitive pressures of both domestic and foreign origin. The cost of electricity purchased from TECO constitutes a significant portion of Florida Global's overall production cost. Florida Global is at a cost disadvantage to competitors who self-generate or purchase lower cost electricity.

7. In early 1997, Florida Global implemented an aggressive investigation of electric cost reduction opportunities, including the installation of highly efficient steam and electric energy producing facilities "self-generation/cogeneration" and other system energy efficiency improvements. Florida Global is planning the installation of new steam generation facilities which are expected to include cogeneration - a fact of which TECO is well aware.

8. Furthermore, Florida Global has sought a transfer to TECO's interruptible rate (IST-3) in an effort to reduce its electric costs. TECO has advised that its interruptible rates are fully subscribed up to the subscription limits and are not available to new subscribers. TECO has also recently advised that Florida Global is at the "top" of the waiting list for transfer to an interruptible rate schedule as soon as the rate is available to new subscribers.

9. Accordingly, a Commission decision in this proceeding denying IMC-Agrico's petition will have one or all of the following impacts on Florida Global: (i) increasing Florida Global's cost of electricity; (ii) impeding its ability to use lease financing or master limited partnership arrangements for cogeneration or other energy efficiency improvements; or, (iii) preventing it from moving to lower cost interruptible service. Any or all of these impacts will threaten the competitive and financial viability of Florida Global, thereby substantially and immediately affecting the substantial interests of Florida Global. Moreover Florida Global may be forced to file its own petition for declaratory statement to clarify any uncertainty as to the status of the principals on which the Monsanto or Seminole cases were decided. This will impose an unwarranted burden and duplicative costs on Florida Global and on the Commission resources.

DISCUSSION

10. Six parties sought leave to intervene in this proceeding - FPC, Florida Power & Light (FPL), PRECO, TECO, Florida Global and the Florida Industrial Cogeneration Association (FICA). Of those six parties, FPC, PRECO and TECO (the "utilities") were granted leave to intervene while FPL, Florida Global and FICA were only authorized to participate as amicus curiae. Once having decided to conduct a hearing, the Commission erred in failing to allow Florida Global to intervene as a full party in that hearing.

11. In its Order, the Commission granted intervenor status to FPC, PRECO and TECO based on the erroneous conclusion that they each met the two prong test for standing to participate in an administrative proceeding, as articulated by the Court in the case of Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 478 (1st DCA 1981). Florida Global does not concede that a hearing should be held or that FPC, PRECO and TECO should have been granted intervention. The Commission characterized FPL's request for intervention as "speculative" and therefore denied intervention but granted amicus curiae status. Florida Global concurs that FPL (as well as FPC, PRECO and TECO) lacks the requisite standing to be granted intervention status. (Unlike Florida Global, FPL's petition specifically sought in the alternative either intervention or amicus curiae status.) As to the remaining parties - Florida Global and FICA - the Order gives no indication of the rationale or reasoning leading to denial of the requested intervention. They are simply "lumped" together with FPL, being granted their petitions "...to participate as amicus curiae...". This decision of the Commission is in error. Florida Global requested and is entitled to full intervenor status in the hearing based on the Agrico decision. (Counsel for Florida Global attempted to clarify this point at the December 16th agenda, but due to the shortness of time and the large number of agenda items requiring Commission action, was unable to do so.)

12. As restated in the Commission's Order, the Court in Agrico held that standing to participate in an administrative proceeding as a party whose substantial interests will be affected by proposed agency action requires one to show:

- i) that he/she will suffer injury in fact² which is of sufficient immediacy to entitle him/her to a section 120.57 hearing, and
- ii) that his/her substantial injury is of the type or nature which the proceeding is designed to protect against.

13. Although Florida Global is concerned with the "sequence" of events regarding its request for intervention³, the Commission found FPC, PRECO and TECO to have standing to intervene in the case, based on speculation "...that if the Declaratory Statement is issued⁴, territorial disputes, stranded investment and unwarranted costs to the [utility] companies and their rate payers will result..." if the IMC-Agrico proposal is later found to result in unlawful retail sales. Relying on these speculative costs as justification, the utilities irrationally seek to guarantee that the ratepayers will be exposed to costs of a similar magnitude (ie. intervention in this case) - in order to avoid possible future hypothetical costs. Contrary to the principals articulated in Agrico, granting intervention to the utilities will not prevent immediate injury - it will guarantee it to the ratepayers, including Florida Global.

14. As stated in its Intervention Petition, Florida Global too will suffer immediate injury in fact for the separate and distinct reasons set forth below - each of which will be discussed at length in subsequent paragraphs. Moreover, the hearing scheduled by the Commission in this case is designed to protect Florida Global from such injuries.

First as a ratepayer of TECO, any negative impact on ratepayers resulting from this proceeding will flow directly to Florida Global.

Second, Florida Global is currently planning the installation of self-generation/cogeneration facilities and is considering, among others, the financing and ownership structures set forth in the Monsanto and Seminole cases. A Commission decision which dilutes, diminishes or otherwise raises questions of

² Apparently mere economic loss would not satisfy this prong of the test.

³ At the December 16, 1997 agenda conference, the issue of intervention appeared to have been decided by the Commission prior to its decision to conduct a §120.57(1) hearing.

⁴ Florida Global assumes this means a statement "favorable" to IMC-Agrico.

the legal relevance of those cases will have an immediate impact on Florida Global. Such impacts may include the need for filing a Declaratory Statement with the Commission to resolve such matter.

Third, IMC-Agrico's proposed project will result in interruptible service being available under TECO's interruptible rate subscription limit. If interruptible service is available to Florida Global within the time-frame of the IMC-Agrico project schedule, Florida Global would be required to reevaluate its self-generation/cogeneration project operating assumptions, possibly resulting in a substantial modification of its energy balance.

15. Because Florida Global is one of the ratepayers that TECO allegedly seeks to protect from bearing the cost of territorial disputes, stranded investment and other unquantified unwarranted costs, it is unassailable that Florida Global also possesses sufficient standing to be allowed full intervention status - possibly to an even greater extent than FPC, PRECO and TECO. A studied review of the intervenors thus far allowed by the Commission reveals that there is no intervenor whose interests lie purely with the ratepayer. Florida Global is greatly concerned that TECO (and the other utilities) may act to protect the shareholders at the expense of the ratepayers. As the Commission is aware, TECO is under a fiduciary obligation to its shareholders and a regulatory obligation to its ratepayers. Clearly, since ratepayer and shareholder interests often conflict, TECO cannot be relied upon to aggressively, and without prejudice, pursue a resolution of this case which is in the best interest of Florida Global and the other ratepayers. Such a conflict-of-interest makes it incumbent upon Florida Global and this Commission to insure that the interests of the ratepayers take precedence over the interests of the shareholders. (This is especially true in the instant case where projects of the type proposed by IMC-Agrico may pose a competitive threat to TECO's shareholders.) As to IMC-Agrico, if its petition is granted, it will no longer be a ratepayer in the "traditional" sense - it will be self-sufficient. Undoubtedly, Florida Global will suffer immediate injury in fact, and the hearing scheduled by the Commission in this case is designed to protect

Florida Global from such injury. Accordingly, Florida Global meets both prongs of the Agrico test and must be granted intervention.

16. Florida Global is currently planning the installation of self-generation/cogeneration facilities and other energy efficiency improvements. In that process, it is considering, among others, financing and ownership structures substantially identical to those set forth in the Monsanto and Seminole cases. The precedents relied on by IMC-Agrico in its Petition For Declaratory Statement - Monsanto and Seminole - aside from addressing the specific facts presented in those cases, also provide insights into Commission policy with regard to legitimate financing arrangements which may be used by industry with respect to electricity consuming and producing facilities. In the past, the Commission has indicated a desire to avoid interfering with industry's ability to employ traditional, legitimate financing arrangements in the procurement of facilities. (As the Commission is aware, Monsanto involved a traditional lease arrangement and Seminole involved a master limited partnership arrangement - both traditional means of financing and/or owning facilities by private industry.) A change in such policy as a result of the IMC-Agrico Petition would interfere with Florida Global's use of such financial mechanisms. Accordingly, a decision of the Commission which dilutes, diminishes or otherwise raises questions of the legality of lease financing or master limited partnership arrangements will have immediate impacts on Florida Global. Such impacts would include deferral of its planned energy efficiency projects, its self-generation/cogeneration project, or restructuring of financial/ownership arrangements for those projects, or, the filing of a Declaratory Statement with the Commission to clarify current policy. This would not only result in additional, and unquantifiable unwarranted costs to Florida Global, but potentially lengthy delays⁵ will prevent Florida Global from implementing energy cost reduction and energy efficiency improvements in a timely fashion. This in turn would negatively affect Florida Global's ability to remain competitive and financially viable. Forcing Florida Global to initiate a

⁵ This is in addition to Florida Global's concern that a final disposition could be delayed well into 1999 - assuming motions for reconsideration and/or an appeal of the Commission's decision.

separate proceeding for Declaratory Statement or otherwise is administratively inefficient and will impose unquantifiable and unwarranted costs and burdens upon the resources of both Florida Global and the Commission. Clearly, Florida Global will suffer immediate injury in fact, and the hearing scheduled by the Commission in this case is designed to protect Florida Global from such injury. Accordingly, Florida Global meets both prongs of the Agrico test and must be granted intervention.

17. As an alternative to self-generation/cogeneration, Florida Global has sought lower cost interruptible service from TECO. As noted previously, TECO has advised that its interruptible rates are "closed" to new customers due to having met the current subscription limit. IMC-Agrico is an interruptible customer of TECO. If IMC-Agrico's petition is approved significant amounts of interruptible service will become available to new customers - such as Florida Global - under TECO's interruptible rate schedules. The Commission's decision in this case therefore, will determine whether additional interruptible service will be available to Florida Global, and the availability of such service will impact upon Florida Global's current self-generation/cogeneration and energy efficiency plans. Florida Global would then be required to reevaluate its self-generation/cogeneration project operating assumptions and energy balance, modify its current plans, and incur additional costs and delays associated with design/equipment changes. Clearly, Florida Global will suffer immediate injury in fact, and the hearing scheduled by the Commission in this case is designed to protect Florida Global from such injury. Accordingly, Florida Global meets both prongs of the Agrico test and must be granted intervention.

CONCLUSION

18. Florida Global will suffer immediate injury in fact - injury of the type the hearing in this case is designed to protect against. Accordingly, Florida Global meets both prongs of the Agrico test and must be granted intervention.

19. This is the only proceeding in which Florida Global can protect its interests. A Commission order, whether granting or denying IMC-Agrico's Petition, will either be

controlling under the rule of stare decisis or be entitled to great weight in future proceedings involving similar proposals by Florida Global or others. Failing to permit Florida Global to intervene will foreclose Florida Global from addressing the factual issues presented as they compare to the precedents of Monsanto and Seminole. This is not only the type of proceeding designed to protect Florida Global's interests, it is the only proceeding in which such interests can be protected and Florida Global is the only party who can protect them. As a matter of fundamental due process, Florida Global is entitled to intervention as a party.

20. As a result of the Commission's Order, FPC, PRECO, TECO and IMC-Agrico are currently the only parties to this proceeding. Undoubtedly, FPC, PRECO and TECO will focus their efforts on preventing the loss of large revenue producing ratepayers, and on deterring competition from entities such as Duke Energy. IMC-Agrico will focus its attention on securing regulatory endorsement of their self-generation project which will provide sufficient generating capacity to render them self-sufficient. Certainly the Commission can see that the interests of these four parties are not necessarily consistent with the interests of Florida Global - yet there is no question that Florida Global will suffer injury in fact from a proceeding designed to protect it from such injury, but from which it is currently excluded.

21. As an industrial concern planning the addition of self-generation/cogeneration facilities, Florida Global is well qualified to bring valuable and "independent" insights and expertise to the process as relates to the use, terms and conditions of alternative financing and ownership arrangements traditionally employed by industry, which may prove useful to the Commission in determining the disposition of the IMC-Agrico Petition.

22. Although Florida Global disagrees that a hearing should be conducted in this case, because such a hearing has been set, failure by the Commission to grant Florida Global's intervention as a full party in interest will result in a determination of Florida Global's rights without due process - due process to which Florida Global is entitled and guaranteed under the law. Moreover, with the hearing currently scheduled for mid-March, it is crucial that the Commission act favorably on this request as expeditiously as possible if Florida Global's participation is to be meaningful.

PRAYER FOR RELIEF

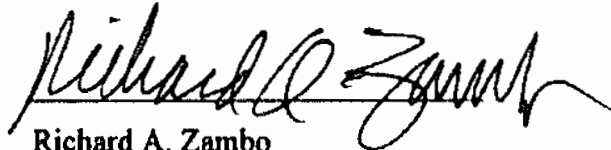
WHEREFORE, Florida Global respectfully requests that the Commission:

(a) Reconsider, and on an ~~expedited~~ basis, those portions of Order No. PSC-98-0074-FOF-EU which fail to grant Florida Global's Petition For Leave To Intervene as a full party in interest, and requests that the Commission issue an order granting Florida Global leave to intervene as a full party at interest; or,

(b) In the alternative, Florida Global respectfully requests that the Commission ~~expeditiously~~ reconsider those portions of its Order which provide for a hearing in this matter and which allow intervention by FPC, PRECO and TECO, by declaring such hearings unnecessary, and denying intervention by any party - including FPC, PRECO and TECO.

Date: January 22, 1998

Respectfully submitted,



Richard A. Zambo
Florida Bar No. 312525

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