

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Joint Petition of Florida Power Corporation )  
and Tampa Electric Company for Expedited )  
Declaratory Relief )  
\_\_\_\_\_ )

Docket No. 020105-EI  
Filed: February 8, 2002

**IMC PHOSPHATES COMPANY'S MOTION TO DISMISS  
THE JOINT PETITION OF FLORIDA POWER CORPORATION  
AND TAMPA ELECTRIC COMPANY FOR EXPEDITED DECLARATORY RELIEF**

IMC Phosphates Company (IMC), pursuant to rule 28-106.204, Florida Administrative Code, hereby moves to dismiss the Joint Petition of Florida Power Corporation and Tampa Electric Company for Expedited Declaratory Relief (Joint Petition). In support of its motion, IMC states:

1. On February 6, 2002, Florida Power Corporation (FPC) and Tampa Electric Company (TECo) filed a Joint Petition seeking an "expedited" declaratory statement pursuant to section 120.565, Florida Statutes, concerning the provision of retail electric service to IMC.

2. IMC's substantial interests are subject to determination in the Joint Petition filed by TECo and FPC. *See* IMC's Petition to Intervene and Exhibit A.

3. IMC's Petition to Intervene disputes material facts alleged in the Joint Petition.

*See* IMC's Petition to Intervene and Exhibit A.

4. The disputed issues of material fact contained in the Joint Petition and in IMC's Petition to Intervene and Exhibit A cannot be resolved appropriately through the use of a declaratory statement pursuant to section 120.565. *See, e.g.*, Rule 28-105.001, Florida Administrative Code ("A declaratory statement is not the appropriate means for determining the conduct of another person or for obtaining a policy statement of general applicability from an

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agency.”); *In Re: Standard Offer Contract for the Purchase of Firm Capacity and Energy From a Qualifying Facility Between Panda-Kathleen, L.P. and Florida Power*, Docket No. 950110-EI, Order No. PSC-9500998-FOF-EI (August 16, 1995)(granting petition for full hearing on issues raised by declaratory statement petitions where “material factual issues were in dispute in the case[.]”); *In re: Petition of Tampa Electric Company for a Declaratory Statement Regarding Proposed Transfer of Service*, Docket No. 890415-EI, Order No. 21301 (May 31, 1989)(dismissing request for declaratory statement concerning provision of electric service where disputes of material fact were illustrated in opposing party’s response to such request).

5. As the Commission has previously said in a dispute among the same three parties:

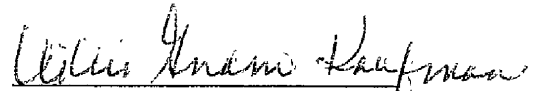
After consideration of TECo’s request for declaratory statement and a review of the petitions to intervene filed by FPC and Agrico, it is apparent that responding to TECo’s request for declaratory statement is not likely to resolve all pending issues. It appears that there are disputes of material fact and that the substantial interests of the three noted companies are directly involved.<sup>1</sup>

6. If the mediation requested in IMC’s Petition to Intervene does not result in a settlement agreement, the disputed issues of material fact addressed in IMC’s Petition to Intervene can only properly be resolved through a full and formal evidentiary proceeding pursuant to §§ 120.569, 120.57, Florida Statutes.

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<sup>1</sup> *In re: Petition of Tampa Electric Company for a Declaratory Statement Regarding Proposed Transfer of Service*, Order No. 21301 in Docket No. 890415-EI.

**WHEREFORE**, IMC requests that the Joint Petition be dismissed, or in the alternative, converted to an evidentiary proceeding under §§ 120.569, 120.57, Florida Statutes.



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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing IMC Phosphates Company's Motion to Dismiss the Joint Petition of Florida Power Corporation and Tampa Electric Company for Expedited Declaratory Relief has been provided by (\*) hand delivery, (\*\*) facsimile or U.S. Mail to the following this 8<sup>th</sup> day of February, 2002:

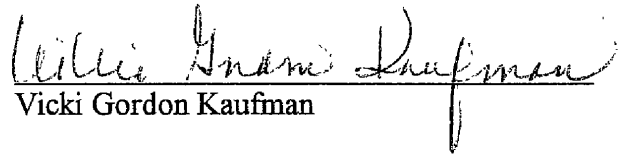
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