

ORIGINAL

STEEL
HECTOR
DAVIS

Steel Hector & Davis, Inc.
215 South Monroe, Suite 601
Tallahassee, Florida 32301-7804
904.222.2500
904.222.8410 Fax

December 1, 1997

Charles A. Guyton
904.222.3421

By Hand Delivery

Blanca S. Bayó, Director
Records and Reporting
Florida Public Service Commission
4075 Esplanade Way, Room 110
Tallahassee, Florida 32399-0850

**Re: Petition of Duke Mulberry Energy, L.P. and IMC-Argico Company for a
Declaratory Statement Concerning Eligibility to Obtain Determination of
Need Pursuant to Section 403.519, Florida Statutes
Docket No. 971337-EI**

Dear Ms. Bayó

Enclosed for filing on behalf of Florida Power & Light Company are the original and fifteen (15) copies of Motion for Leave to File an Amicus Curiae Memorandum of Law Addressing Duke Mulberry/IMCA's Declaratory Statement Petition in Docket No. 971337-EI. Also enclosed is an additional copy of the motion which we request that you stamp and return to our runner.

If you or your Staff have any questions regarding this filing, please contact me at 222-2300

Mr. K _____
FA _____
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CAF _____
CM _____
CTH _____
EAG 3
LEG _____
LH 5
O-C TAI/23033-1
RCH _____
SC 1
WAB _____
OTH _____
Miami 305 577 7000
305 577 7001 Fax
West Palm Beach 561 650 7200
561 655 1509 Fax
Key West 305 292 7272
305 292 7271 Fax
Tallahassee 904 222 4100
904 222 4100 Fax

Very truly yours,

Charles A. Guyton

DOCUMENT FILED DATE
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LONG

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition 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-EI

Filed: December 1, 1997

FLORIDA POWER & LIGHT COMPANY'S
MOTION FOR LEAVE TO FILE AN AMICUS CURIAE
MEMORANDUM OF LAW ADDRESSING DUKE
MULBERRY/IMCA'S DECLARATORY STATEMENT PETITION

Pursuant to Rule 25-22.037(2), F.A.C., Florida Power & Light Company ("FPL") moves the Commission for leave to file an amicus curiae memorandum of law addressing the Declaratory Statement Petition filed by Duke Mulberry Energy, L.P. ("Duke Mulberry") and IMC-Agrico ("IMCA") in this proceeding. FPL respectfully submits that the filing of its amicus curiae memorandum of law, a copy of which is attached, will facilitate the Commission's consideration of the issues raised by Duke Mulberry/IMCA.

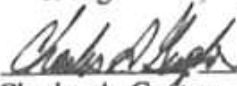
In the attached legal memorandum, FPL demonstrates that Duke Mulberry/IMCA improperly invoke the declaratory statement statute and rules to seek a statement of general policy applicable to "merchant plants;" improperly invoke policy arguments and factually disputable matters in their petition; ignore the Commission's responsibility under the Grid Bill to require electric utilities to maintain grid reliability and integrity; fail to distinguish Commission and Supreme Court decisions directly on point which require denial of the petition, ask the Commission to overturn almost a decade of consistent, well reasoned interpretation of the Siting Act, disregard the utility specific criteria for determining need in the Siting Act, rely upon

"authority" that is irrelevant and overruled by both the Commission and the Supreme Court, and seek alternative relief that is at odds with the plain language of the Siting Act.

The Commission has previously allowed amicus curiae participation in actions before it. Sec. In re: Petition of Florida Power and[sic] Light Company for a Declaratory Statement Regarding Request for Wheeling, 89 FPSC 2: 298; In re: Investigation of the ratemaking and accounting treatment for the dismantlement of fossil-fueled generating stations, 91 FPSC 7: 136, In re: Complaint by Telecom Recovery Corp. Against TRANSCALL AMERICA, INC. D/b/a ATC LONG DISTANCE regarding billing discrepancy, 93 FPSC 8: 447; But cf., In re: Investigation regarding the appropriateness of payment for Dial-Around (10XXX, 950, 800) compensation from interexchange telephone companies (IXCs) to pay telephone providers (PATS), 93 FPSC 7: 379 (denied because it was, in effect, an untimely motion for reconsideration); In re: Petition for Declaratory Statement Regarding Exemption from Public Service Commission Regulation for Cellular Radio Telecommunications Carrier by Cellular World, Inc., 92 FPSC 2: 646 (denied as essentially an untimely petition for reconsideration). FPL respectfully submits that its amicus curiae memorandum of law should be accepted.

Respectfully submitted,

Steel Hector & Davis LLP
215 S. Monroe St, Suite 601
Tallahassee, Florida 32301
Attorneys for Florida Power
& Light Company

By: 
Charles A. Guyton

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Motion for Leave to File an Amicus Curiae Memorandum of Law Addressing Duke Mulberry/IMCA's Declaratory Statement Petition was served by Hand Delivery (when indicated with an *) or mailed this 1st day of December, 1997 to the following:

Richard Bellak, Esquire *
Division of Legal Services
Florida Public Service Commission
4075 Esplanade Way, Room 370
Tallahassee, Florida 32399-0850

Lee L. Willis, Esquire *
James D. Beasley, Esquire
Ausley & McMullen
227 South Calhoun Street
Tallahassee, Florida 32301

Joseph A. McGlothlin, Esquire *
Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301

John W. McWhirter, Jr., Esquire
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
Post Office Box 3350
100 North Tampa Street
Tampa, Florida 33602-5126

Robert Scheffel Wright, Esquire *
Landers & Parson
310 West College Avenue
Tallahassee, Florida 32301



Charles A. Guyton