

ORIGINAL
FILE COPY

**Florida
Power**
CORPORATION

JAMES A. MCGEE
SENIOR COUNSEL

March 5, 1997

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

Re: Docket No. 961407-EQ

Dear Ms. Bayó:

Enclosed for filing are the original and 15 copies of Opposition and Response to Petition of North Canadian Marketing Corporation to Intervene as a Party and Motion of North Canadian Marketing Corporation to Dismiss without Prejudice by Florida Power Corporation.

Please acknowledge your receipt of the above filing on the enclosed copy of this letter and return to the undersigned. Also enclosed is a 3.5 inch diskette containing the above-referenced Opposition and Response in WordPerfect format. Thank you for your assistance in this matter.

Very truly yours,

James A. McGee

- ACK _____
- AFA 2
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG 1
- LEG 1
- LIN 5
- OPC _____
- RCH _____
- SEC 1
- WAS _____
- OTH _____

IAM/kp
Enclosures

DOCUMENT NUMBER-DATE

02388 MAR-56

FPSC-RECORDS/REPORTING

GENERAL OFFICE

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A Florida Progress Company

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Expedited
Approval of Settlement
Agreement with Pasco Cogen,
Ltd. by Florida Power
Corporation

Docket No.961407-EQ

Submitted for filing:
March 5, 1997

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the Opposition and Response to
Petition of North Canadian Marketing Corporation to Intervene as a Party and
Motion of North Canadian Marketing Corporation to Dismiss Without Prejudice
by Florida Power Corporation has been furnished to the following individuals by
regular U.S. Mail this 5rd day of March, 1997:

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ATTORNEY

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

FILE COPY

In re: Petition for Expedited
Approval of Settlement Agreement
with Pasco Cogen, Ltd. by Florida
Power Corporation

Docket Number 961407-EQ
Submitted for filing:
March 5, 1997

**FLORIDA POWER CORPORATION'S OPPOSITION AND
RESPONSE TO PETITION OF NORTH CANADIAN
MARKETING CORPORATION TO INTERVENE AS A PARTY
AND MOTION OF NORTH CANADIAN MARKETING
CORPORATION TO DISMISS WITHOUT PREJUDICE**

Florida Power Corporation ("Florida Power") opposes the Petition of North Canadian Marketing Corporation ("NCMC") to intervene as a party in this proceeding and NCMC's Motion to dismiss this proceeding without prejudice, and requests that the Commission deny all relief sought by NCMC in such Petition and Motion. In support of its opposition to such Petition and Motion, and in response thereto, Florida Power respectfully submits the following:

OPPOSITION AND RESPONSE TO PETITION TO INTERVENE

1. This proceeding involves the request of Florida Power for approval of a settlement (the "Settlement") between it and Pasco Cogen Ltd. ("Pasco"), of certain disputes that have arisen with respect to a Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility dated March 13, 1991 (the PPA"), to which Pasco and Florida Power are parties. NCMC is not a customer of either Florida Power or Pasco, nor does it appear that NCMC carries on any business in the State of Florida. By NCMC's own admission, the only basis of its claim of standing in this proceeding is that it sells natural gas to Pasco to fuel Pasco's cogeneration facility. NCMC's contract with Pasco is not before the Commission in this proceeding, and in its Petition to Intervene NCMC

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affirmatively asserts that the Commission has no jurisdiction over such contract or over any disputes between itself and Pasco arising out of that contract.

2. NCMC bases its claim to standing in this proceeding on its allegation that its gas sales contract with Pasco requires Pasco to obtain NCMC's consent to any amendments to the PPA, which it asserts Pasco has not obtained, and on the fact that the PPAs will be amended by the Settlement. However, according to NCMC's Petition, the issue of whether its consent is required is the subject of an arbitration commenced by Pasco. NCMC is not a party to the PPA, nor is it a direct or third party beneficiary of the PPA. The provision of its gas contract upon which it relies, as set out in its Petition, does not purport to give NCMC the right to be a party to any amendment to the PPA. Neither the PPA nor the Settlement are subject to of the arbitration between Pasco and NCMC. Florida Power is not a party to the gas sales contract between NCMC and Pasco, nor is it a party to such arbitration.

3. All of the claims asserted by NCMC in its Petition rest on the alleged failure of Pasco to comply with the terms and provisions of the gas sales contract, and the adverse effect that NCMC will allegedly suffer as a result of the amendments to the PPA effected by the Settlement, claims for which NCMC must look to arbitration or the civil court system for whatever remedies may be available to it. The Commission's approval of the Settlement will not directly affect NCMC, nor deprive it of any rights it may have under its gas sales contract with Pasco; therefore, the relief NCMC seeks in this proceeding is not of a type or nature which this Commission has jurisdiction to provide nor that this proceeding is designed to protect. *Agrico Chemical Co. v. Dept. of Environmental Regulation*, 406 So.2d 478 (2d D.C.A. Fla. 1981), rev.den., 415

So.2d 1359 (Fla. 1982); Village Park Mobile Home Assn., Inc. v. State Dept. of Business Regulation, 506 So.2d 426 (1st D.C.A. Fla. 1987).

4. Since NCMC is not a party to the PPA, the failure of Pasco to obtain NCMC's consent to the amendments to the PPA that will be effected by the Settlement, if such consent was required, will not have (nor does NCMC's Petition assert that the lack of such consent, if required will have) the effect of invalidating either the Settlement or the PPA as amended by the Settlement. NCMC does not assert in its Petition that the failure of Pasco to obtain its consent to the Settlement will result in Pasco being deprived of gas supply to operate its cogeneration facility, nor does NCMC provide any indication as to how, if at all, its dispute with Pasco will have an effect on the availability of fuel to or the viability of Pasco's cogeneration facility. Therefore, the matter of whether or not such consent was required or obtained, and what remedy NCMC is entitled to as against Pasco if such consent was required and was not obtained, is simply neither material nor germane to this proceeding and the Commission's determination of whether the approval of the Settlement is in the public interest.

5. Florida Power's Petition herein was based on the facts known to Florida Power at the time it was filed, and includes those facts that were (and are) germane to the Commission's determination of whether to approve the Settlement. That Petition is not misleading with respect to third party consents that may be required by Pasco, and as NCMC admits the Settlement states that certain third party consents have been or will be obtained. Florida Power has never been, nor does NCMC assert in its Petition that it has been, privy to discussions and negotiations between NCMC and Pasco concerning the Settlement. Although NCMC gratuitously asserts that Florida Power owed some sort of duty not to induce Pasco to breach its obligations, NCMC neither specifically claims nor

offers any facts indicating that Florida Power ever so acted, and Florida Power categorically denies that it did so.

**OPPOSITION AND RESPONSE TO
MOTION TO DISMISS WITHOUT PREJUDICE**

6. Florida Power incorporates paragraphs 1 through 4 of its Opposition and Response to NCMC's Petition to Intervene as part of its Opposition and Response to NCMC's Motion to Dismiss Without Prejudice.

7. NCMC having completely failed to demonstrate any standing to participate in this proceeding, there is clearly no basis for the Commission to dismiss the proceeding at NCMC's behest.

8. While the validity of the amendments to the PPA effected by the Settlement, in so far as those amendments affect NCMC's rights under its gas sales contract with Pasco, may be subject to the arbitration brought by Pasco against NCMC, as pointed out in paragraph 2 above NCMC's assertion that the Settlement's validity as between Florida Power and Pasco is subject to that arbitration is simply not true. NCMC provides neither factual nor legal support for this claim, nor could it do so.

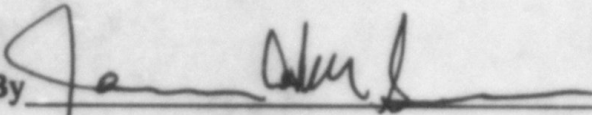
9. What NCMC's Motion to Dismiss Without Prejudice clearly seeks is for the Commission to make the Settlement NCMC's hostage in its dispute with Pasco. It would clearly not be in the public interest to afford NCMC this kind of leverage over Pasco, which might in turn be used to the detriment of Florida Power's ratepayers.

WHEREFORE, Florida respectfully requests that the Commission deny NCMC intervenor status in this proceeding, deny NCMC's Motion to dismiss the proceeding without prejudice, deny all other relief sought by NCMC in its Petition to Intervene and Motion To Dismiss Without Prejudice, and that the

Commission grant Florida Power such other relief as the Commission deems appropriate.

Respectfully submitted,

OFFICE OF THE GENERAL COUNSEL
FLORIDA POWER CORPORATION

By 

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