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February 20, 1997

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Ms. Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Betty Easley Conference Center, Room 110  
Tallahassee, FL 32399-0850

**Via Hand Delivery**

Re: Petition for Expedited Approval of Settlement Agreement Regarding Negotiated Contract for Purchase of Firm Capacity and Energy from a Qualifying Facility, with Pasco Cogen Ltd. by Florida Power Corporation, Docket No. 961407-EQ

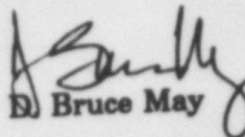
Dear Ms. Bayo:

Enclosed for filing in the docket referenced above are the original and 15 copies of Vastar Gas Marketing, Inc.'s ("VGM") Petition for Leave to Intervene; the original and 15 copies of VGM's Request for Oral Argument; and a diskette containing both pleadings. For purpose of our records, please acknowledge your receipt of this filing on the enclosed copy of this letter.

Thank you for your consideration in this matter.

Sincerely,

HOLLAND & KNIGHT LLP

  
D. Bruce May

Enclosure  
DBM/sms

cc: All parties of record  
Ansley Watson, Jr., Esq.  
Norma Rosner, Esq.  
Chuck King, Esq.

*Intervene*  
DOCUMENT NUMBER-DATE  
01957 FEB 20 5  
FPSC-RECORDS/REPORTING

*oral argument*  
DOCUMENT NUMBER-DATE  
01958 FEB 20 5  
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for expedited approval of settlement agreement regarding negotiated contract for purchase of firm capacity and energy from a qualifying facility with Pasco Cogen, Ltd. by Florida Power Corporation )

Docket No. 961407-EQ

Filed: February 20, 1997

VASTAR GAS MARKETING, INC.'s  
PETITION FOR LEAVE TO INTERVENE

Vastar Gas Marketing, Inc. ("VGM"), by and through undersigned counsel, pursuant to Rules 25-22.026, 25-22.036 and 25-22.039, Florida Administrative Code, requests leave to intervene in this proceeding wherein the Florida Public Service Commission (the "Commission") is scheduled to address the Settlement Agreement and Amendment to Negotiated Contract for the Purchase of Firm Capacity and Energy From a Qualifying Facility Between Pasco Cogen, Ltd. and Florida Power Corporation (the "Settlement Agreement"). VGM requests intervention for the limited purpose of advising the Commission that the Settlement Agreement contains material misrepresentations regarding whether all required consents have been obtained, and

ACK I will not, as Florida Power Corporation ("FPC") contends, comprehensively resolve  
AFA I litigation if approved by the Commission for purposes of cost recovery. In fact,  
APP I approval of the Settlement Agreement without all requisite consents could entangle  
CAF I  
CMU I FPC and Pasco Cogen, Ltd. ("Pasco") in additional complex litigation that will operate  
CTR I to the detriment of FPC, FPC's ratepayers, and other affected persons. Therefore,  
EAG I  
LEG I  
LIN 5 VGM respectfully submits that it is premature for the Commission to address FPC's  
OPC I  
RCH I Petition for Expedited Approval of the Settlement Agreement (the "Petition") at this  
SEC I

WAS  
OTH *Orlando*

DOCUMENT NUMBER-DATE

01957 FEB 20 5

FPSC-RECORDS/REPORTING

time. VGM requests that the Commission refrain from approving the Settlement Agreement until all parties that will be substantially affected by the Settlement Agreement have had a meaningful opportunity to evaluate and consent to its terms in accordance with their respective contract rights.

**Intervenor Information**

1. VGM is a corporation formed under the laws of the State of Delaware with its principal office in Houston, Texas. VGM is authorized to do business in Florida.

VGM's full name and address are:

Vastar Gas Marketing, Inc.  
200 Westlake Park Boulevard, Suite 200  
Houston, Texas 77079-2648

2. Copies of pleadings, notices and other documents in this proceeding directed to VGM should be served on:

D. Bruce May  
Karen D. Walker  
HOLLAND & KNIGHT LLP  
P.O. Drawer 810  
Tallahassee, Florida 32302

and

Norma J. Rosner  
General Counsel  
Vastar Gas Marketing, Inc.  
200 Westlake Park Blvd., Suite 200  
Houston, Texas 77079-2648



### Statement of Ultimate Facts

3. Pasco and FPC entered into a Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility on March 13, 1991 (the "PPA").<sup>1</sup> Pasco administers the PPA from its natural gas-fired cogeneration facility in Pasco County, Florida (the "Project").
4. On August 28, 1991, Pasco entered into an agreement with North Canadian Marketing Corporation ("NCM") (the "Sale Agreement") pursuant to which NCM agrees to sell, and Pasco agrees to purchase, natural gas for use at the Project.
5. On October 30, 1992, NCM entered into a Purchase Agreement with Arco Natural Gas Marketing, Inc., predecessor in interest to VGM (the "Purchase Agreement") pursuant to which NCM purchases from VGM 75% of the natural gas that NCM in turn delivers to Pasco under the Sale Agreement.
6. The terms of the Sale Agreement and the Purchase Agreement refer to the pricing provision of the PPA. Thus, changes to the PPA could result in corresponding changes to these fuel supply contracts.
7. Because of the relationship between the PPA and the Sale and Purchase Agreements, the fuel supply contracts operate together to expressly prohibit material

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<sup>1</sup> The Power Purchase Agreement was initially approved by the Commission for cost recovery purposes in Order No. 24734. In re: Petition for Approval of Contracts for Purchase of Firm Capacity and Energy by Florida Power Corporation, 91 F.P.S.C. 7:60, Docket No. 910401-EQ, Order No. 24734 (July 1, 1991). Certain modifications to the Power Purchase Agreement were approved by the Commission for cost recovery purposes in Order No. PSC-95-0540-FOF-EQ. In Re: Petition for approval, to the extent required, of certain actions relating to approved cogeneration contracts by Florida Power Corporation, 95 F.P.S.C. 5:5, Docket No. 940797-EQ, Order No. PSC-95-0540-FOF-EQ (May 2, 1995).



changes to the PPA without the knowledge and prior consent of NCM and VGM. Section 3.03 of the Sale Agreement prohibits any amendment or variation to the PPA if that amendment or variation would materially and adversely affect NCM's rights under the Sale Agreement.<sup>2</sup> Similarly, Section 4.03 of the Purchase Agreement<sup>3</sup> precludes NCM from agreeing to any material variations to the Sale Agreement without VGM's consent.

8. In August of 1994, a dispute arose between Pasco and FPC over certain pricing and other provision in the PPA. The dispute resulted in litigation in the Circuit Court of the Sixth Judicial Circuit in and for Pasco County.<sup>4</sup> On October 25, 1996, Pasco and FPC executed a Settlement Agreement in an effort to resolve that litigation. The effectiveness of the Settlement Agreement is conditioned upon it being approved by the Commission for cost recovery purposes.

9. On November 25, 1996, FPC filed a Petition with the Commission requesting expedited approval of the Settlement Agreement. If approved by the Commission, the Settlement Agreement will materially alter the terms of the PPA by: (1) establishing new energy and capacity pricing mechanisms; (2) providing for the curtailment of energy deliveries by Pasco during certain specified periods; (3) allowing FPC to buy-out the last four years and seven months of the PPA; and (4) apparently

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<sup>2</sup> Because of confidentiality provisions in the Sale Agreement and the Purchase Agreement, VGM is refraining from quoting this provision at this time.

<sup>3</sup> Id.

<sup>4</sup> Pasco Cogen, Ltd. a Florida limited partnership, by its general partners Pas Power Co., a Florida corporation, and NCP Dade Power Incorporated, a Delaware corporation v. Florida Power Corporation, a Florida corporation, Case No. 94-5331-CA-Y.

eliminating Pasco's oversight of FPC's coal purchasing practices (coal pricing is an important component of gas price under the Purchase Agreement). These changes to the PPA threaten to materially alter the terms of the Sale Agreement to the detriment of VGM and NCM.

10. The fact that the Settlement Agreement, if approved, will amend the PPA and threaten the fuel supply contracts thus far has been cavalierly ignored by Pasco and FPC. Despite the plain language of Section 3.03 of the Sale Agreement, Pasco did not receive the prior written consent of NCM before executing the Settlement Agreement with FPC. Instead, Pasco and FPC elected to shut VGM and NCM out of their settlement discussions and to enter into the Settlement Agreement without NCM's consent.

11. The failure of Pasco and FPC to obtain NCM's consent prior to entering into the Settlement Agreement has directly deprived VGM of its rights under the Purchase Agreement to evaluate and, if deemed necessary, object to the Settlement Agreement prior to its execution. Simply put, Pasco cannot interfere with NCM's or VGM's rights under the Sale Agreement and Purchase Agreement, respectively, by changing the PPA unless Pasco first obtains NCM's consent, and NCM obtains VGM's consent. Should the Commission approve the Settlement Agreement without NCM's and VGM's consent, VGM and NCM will be materially and adversely affected.<sup>5</sup>

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<sup>5</sup> Through this Petition, VGM is not requesting that the Commission interpret or resolve disputes under the Sale Agreement and/or Purchase Agreement. Indeed, VGM recognizes that the Commission is without jurisdiction to do so. VGM seeks only to inform the Commission of the controversies surrounding Pasco's failure to obtain the required consents so that the Commission can have all the facts when it assesses



### Substantial Interest Affected

12. VGM has standing to intervene as a party in this proceeding. Intervention in a Commission proceeding is granted to those entities whose substantial interests are subject to determination or will be affected through the proceeding. Fla. Admin. Code R. 25-22.039. VGM has a direct and substantial interest in the Settlement Agreement which is the focus of this proceeding.

13. If the Commission approves the Settlement Agreement, it will have endorsed certain changes to the PPA that threaten to materially alter the Sale Agreement and impair VGM's consent rights. As a consequence, VGM will experience real and immediate injuries. The changes to the PPA effected by the Settlement Agreement could radically alter the economic basis for NCM's Sale Agreement with Pasco and thereby impair NCM's ability to meet its obligations to VGM under the Purchase Agreement. This substantially heightens VGM's risk under the Purchase Agreement, and could potentially lead to reduced payments by NCM under the Purchase Agreement. Most certainly, VGM will experience the burden and expense of protracted litigation to protect its rights under the Purchase Agreement if the Settlement Agreement is approved. Thus, intervention in this proceeding is necessary for VGM to fully protect its interest in the Purchase Agreement.

14. Furthermore, VGM's formal participation in this proceeding is necessary in order for the Commission to evaluate whether to approve for cost recovery purposes the requested modifications to the PPA. Rule 25-17.0836, Florida Administrative Code,

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FPC's claim that the Settlement Agreement comprehensively resolves litigation.



requires Commission cost recovery approval of modifications that affect "the overall efficiency, cost-effectiveness or nature of the project." Fla. Admin. Code R. 25-17.0836. In evaluating such modifications, the Commission is authorized, and indeed obligated, to evaluate the impact of the changes on fuel supply issues and on the viability of the project. See In re: Petition for approval, to the extent required, of certain actions relating to approved cogeneration contracts by Florida Power Corporation, 95 F.P.S.C. 5:5, Docket No. 940797-EQ, Order No. PSC-95-0540-FOF-EQ (May 2, 1995) (modifications to power purchase agreements are considered material if they impact "the viability of the project" or "the primary fuel source of the QF facility."); see also Fla. Admin. Code R. 25-17.0836 (changes to fuel type are material modifications requiring Commission cost recovery approval). Only VGM and other fuel suppliers to the Project can adequately apprise the Commission of the impact of the Settlement Agreement on the Project's fuel supply. FPC's Petition and the Settlement Agreement are completely deficient in this respect. Indeed, there is no reference to the Project's fuel supply or the serious disputes surrounding the fuel supply contracts in the Settlement Agreement or FPC's Petition. Thus, participation by VGM in this proceeding is absolutely essential.

15. Granting VGM leave to intervene in this proceeding is consistent with prior Commission orders concerning similar issues of standing. In Docket No. 940771-EQ, the docket related to the same energy pricing issues that the Settlement Agreement here purports to resolve, the Commission granted Florida Gas Transmission Company's ("FGT"'s) Petition to Intervene. In Re: Petition for determination that implementation

of contractual pricing mechanism for energy payments to qualifying facilities complies with Rule 25-17.0832, F.A.C. by FLORIDA POWER CORPORATION, 94 F.P.S.C. 11:279, Docket No. 940771-EQ, Order No. PSC-94-1401-PCO-EQ (Nov. 16, 1994). FGT's Petition to Intervene asserted that FGT had a direct interest in that proceeding because FPC's proposed pricing mechanism "could operate to affect the projects to be served by [FGT's] transmission system." VGM's interest in this proceeding is strikingly similar, but even more direct than, FGT's interest in Docket No. 940771-EQ. The Settlement Agreement, if approved, will materially alter energy and capacity prices under the PPA and could seriously interfere with existing natural gas contracts by which the Project receives its fuel supply. Moreover, Docket No. 940771-EQ, in which FGT intervened, involved a pricing dispute between QFs and FPC over the terms of the power purchase agreements. In that docket, the Commission was under no obligation to evaluate fuel supply issues. In contrast, Commission orders and Rule 25-17.0836 require the Commission in this proceeding to fully evaluate the impacts of the Settlement Agreement on the fuel supply and viability of the Project. Such impacts can only be adequately evaluated if VGM participates in this proceeding.

#### **Basic Position**

16. VGM's basic position is that the Commission should not approve the Settlement Agreement because it contains material misrepresentations and will not, as FPC claims, comprehensively eliminate litigation. In fact, Commission approval of the Settlement Agreement could embroil FPC and Pasco in more complex and contentious litigation.



17. Paragraph 14 of the Settlement Agreement states: "Each of the Parties hereto represents and warrants that . . . [i]t has obtained or will undertake reasonable efforts to obtain all necessary approvals of third parties. . . ." This statement is simply untrue. Pursuant to the express terms of the Sale Agreement, Pasco was required to obtain the consent of NCM prior to executing the Settlement Agreement. Pasco, however, never obtained NCM's consent.

18. FPC's Petition states: "The Settlement Agreement will result in significant, measurable savings to FPC's ratepayers and terminate complex litigation that requires the expense of time, money and resources by the parties to their detriment and to the detriment of FPC's ratepayers." Here, again, FPC has failed to provide all of the facts. The Settlement Agreement is not a comprehensive settlement. Although the Settlement Agreement may resolve isolated litigation between Pasco and FPC currently pending in Pasco County Circuit Court, the failure of Pasco and FPC to consult NCM and VGM in the settlement process could lead to additional litigation over the fact that the Settlement Agreement seriously interferes with VGM's and NCM's rights under the Sale Agreement and the Purchase Agreement. Thus, Commission approval of the Settlement Agreement will not benefit FPC's ratepayers by terminating litigation. Instead, it could embroil FPC in additional complex litigation to the detriment of FPC's ratepayers.

19. The activities preceding the Settlement Agreement are unique when compared with other settlements resolving litigation between qualifying facilities and



FPC that have come before the Commission for cost recovery approval.<sup>6</sup> Here, despite the fact that the Settlement Agreement could dramatically alter the fuel supply contracts associated with the Project, Pasco and FPC entered into a Settlement Agreement without seeking the input of Pasco's gas suppliers. FPC then filed its Petition seeking expedited Commission approval of the Settlement Agreement in what appears to be an effort to, among other things, have the Commission bless material changes to the PPA without apprising the Commission of the far reaching and litigious ramifications of those contract changes.

20. The ramifications of the Settlement Agreement, if approved for cost recovery purposes, are much broader than the expenditure by FPC of time, money and resources for additional litigation. Indeed, the outcome of the litigation could threaten Pasco's gas supply, which, in turn, could jeopardize Pasco's ability to produce power at the Project. These detrimental impacts of the Settlement Agreement can be avoided if a true global settlement is reached that takes into account the interests of Pasco's gas suppliers. Accordingly, the Commission should refrain from approving the Settlement Agreement until the necessary consents of NCM and VGM to a settlement have been obtained.

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<sup>6</sup> See e.g., In Re: Petition for expedited approval of settlement agreement between Florida Power Corporation and Orlando Cogen, L.P., 96 F.P.S.C. 7:314, Docket No. 960193-EQ, Order No. PSC-96-0898-AS-EQ (July 12, 1996); In Re: Joint petition for expedited approval of Settlement Agreement by Auburndale Power Partners, Limited Partnership and Florida Power Corporation, 95 F.P.S.C. 8:381, Docket No. 950567-EQ, Order No. PSC-95-1041-AS-EQ (Aug. 21, 1995).

### Disputed Issues of Material Fact

21. The disputed issues of material fact of which VGM has knowledge at this time include, without limitation, the following:

- (a) whether it is premature for the Commission to address the Petition until NCM's and VGM's consents have been obtained;
- (b) whether it is prudent for the FPC to enter into the Settlement Agreement with Pasco without the consents of VGM and NCM;
- (c) whether the Settlement Agreement contains material misrepresentations regarding the consents required to be obtained in connection with the Settlement Agreement;
- (d) whether additional litigation arising out of the Settlement Agreement could jeopardize Pasco's gas supply;
- (e) whether the Settlement Agreement is a comprehensive settlement of litigation; and
- (f) whether the Settlement Agreement will create additional litigation to the detriment of FPC's ratepayers;

### Policy Issues

22. VGM urges the Commission to consider thoughtfully the mechanism by which it may authorize FPC to recover the costs of the buy-out/buy-down of the PPA. Decisions in this matter will set precedent which may bind the Commission in stranded

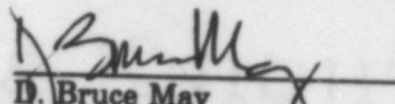


cost recovery and other uneconomic investment buy-out/buy-down proceedings which will arise later this decade after anticipated electric industry restructuring occurs.

WHEREFORE, VGM respectfully requests that the Commission:

- (a) grant VGM intervenor status in this proceeding;
- (b) refrain from approving any settlement between Pasco and FPC that would amend the PPA until a settlement is reached that is acceptable to NCM and VGM; and
- (c) grant such other relief as the Commission deems appropriate.

Respectfully submitted,

  
D. Bruce May  
Florida Bar No. 354473  
Karen D. Walker  
Florida Bar No. 0982921  
HOLLAND & KNIGHT LLP  
P.O. Drawer 810  
Tallahassee, FL 32302  
(904) 224-7000

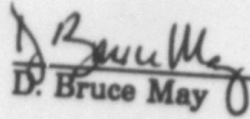
**Attorneys for Vastar  
Gas Marketing, Inc.**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing Petition for Leave to Intervene was furnished by U.S. mail to James A. McGee, Esq., Florida Power Corporation, P.O. Box 14042, St. Petersburg, FL 33733-4042 and by hand delivery to Lorna R. Wagner,



Esq., Florida Public Service Commission, 2540 Shumard Oak Blvd., Rm. 370,  
Tallahassee, FL 32399-0850 this 20th day of February, 1997.

  
D. Bruce May

TAL-99755.12

HOLLAND & KNIGHT

100% RECYCLED