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February 21, 1997

D. BRUCE MAY
904-435-5607

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: In re: Petition for Expedited approval of an agreement to purchase the Tiger Bay cogeneration facility and terminate related purchased power contracts by Florida Power Corporation, Docket No. 970096-EQ

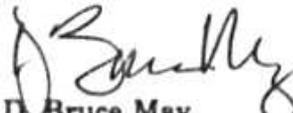
Dear Ms. Bayo:

Enclosed for filing in the docket referenced above are the original and 15 copies of the Direct Testimony of Joseph P. Catasein on behalf of Vastar Gas Marketing, Inc. Also enclosed is a diskette containing this document. For 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: Norma Rosner, Esq.
Chuck King, Esq.

TAL-102306

DOCUMENT NUMBER DATE
02005 FEB 21 5
FPSC RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for expedited)
approval of an agreement to)
purchase the Tiger Bay)
cogeneration facility and)
terminate related purchased)
power contracts by Florida)
Power Corporation.)
/

Docket No. 970096-EQ

Filed: February 21, 1997

DIRECT TESTIMONY

OF

JOSEPH P. CATASEIN

ON BEHALF OF

VASTAR GAS MARKETING, INC.

- ACK _____
- AFA 1
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG Dudley
- LEG 1
- LIN 3+08
- OPR _____
- PLN _____
- SEC 1
- WFS _____
- OTH _____

DOCUMENT NUMBER-DATE

02005 FEB 21 97

FPSC-RECORDS/REPORTING

1 In 1982, I became involved with the early interstate pipeline "Special
2 Marketing Program" while managing the Transportation and Exchange
3 activities of Tennessee Gas Pipeline. Later, I worked for Tenneco Energy
4 where I helped transition the company through FERC Order No. 436.
5 During the mid-80's I worked in the burgeoning cogeneration and
6 independent power industries with the Independent Energy Corporation
7 where I developed natural gas combined cycle cogeneration projects. In
8 1992, I joined ARCO Gas Marketing, Inc., predecessor in interest to
9 Vastar Gas Marketing, Inc., taking the lead in business development
10 projects. I assumed my current position as Vice President of Power
11 Marketing for Vastar in 1995.

12
13 **Q. What are your responsibilities as Vice President of Power**
14 **Marketing?**

15
16 **A.** I have been responsible for setting up Vastar Gas Marketing, Inc. As Vice
17 President, I oversee and manage Vastar's trading and marketing activities
18 and long term gas supply agreements.

19
20 **Q. What is the purpose of this proceeding?**

21
22 **A.** It is my understanding that FPC has requested that the Commission
23 approve, on an expedited basis, the Purchase Agreement executed between
24 Tiger Bay Limited Partnership, Inc., FPC and FPC Acquisition, L.L.C. on
25 January 20, 1997. The Purchase Agreement provides that FPC will

1 purchase, own, and operate all of Tiger Bay's assets associated with Tiger
2 Bay's gas-fired combined cycle cogeneration facility located near Fort
3 Meade in Polk County, Florida (the "Project"). Additionally, the Purchase
4 Agreement provides that FPC and Tiger Bay plan to terminate five power
5 purchase agreements ("PPAs") which are administered by Tiger Bay from
6 the Project, and under which Tiger Bay currently sells 217.75 MW of
7 committed capacity to FPC.

8
9 **Q. Does Vastar have a stake in the transactions contemplated by the**
10 **Purchase Agreement?**

11
12 **A. Yes, Vastar has a significant stake in the outcome of this proceeding.**
13 **Vastar currently has been supplying over 90% of the Project's natural gas**
14 **requirements pursuant to its Gas Sales Contract with Tiger Bay. Vastar**
15 **has the contractual right to supply up to 100% of the Project's natural gas**
16 **requirements. Vastar is extremely concerned that the transactions**
17 **contemplated by the Purchase Agreement may seriously interfere with**
18 **Vastar's rights and benefits under the Gas Sales Contract.**

19
20 **Q. What is your involvement with the Gas Sales Contract?**

21
22 **A. I was the principal negotiator for Vastar in developing the Gas Sales**
23 **Contract with Tiger Bay and Destec. I am also responsible for Vastar's**
24 **performance under the Gas Sales Contract.**

25

1 **Q. Please provide the relevant background which led to the**
2 **execution of the Gas Sales Contract.**

3
4 **A. Vastar entered into the Gas Sales Contract with Tiger Bay based on three**
5 **specific and fundamental representations by Tiger Bay. First, Vastar**
6 **understood that the purchaser of the natural gas pursuant to the Gas**
7 **Sales Contract would be a private, unregulated entity whose interests**
8 **would be aligned with that of Vastar. Tiger Bay's sole business focus was**
9 **to achieve maximum profit from the Project by maximizing electric output**
10 **and sales. Vastar shared Tiger Bay's objectives since maximizing the**
11 **electric output and sales from the Project would advance Vastar's interest**
12 **in maximizing gas sales to the Project.**

13
14 **Second, in entering into the Gas Sales Contract, Vastar relied on Destec's**
15 **representation that Destec or its affiliate, Polk County Cogen, Inc., would**
16 **remain as owner and managing partner of the Project. This**
17 **representation provided Vastar with assurances that it would have a long-**
18 **term relationship with a project owner that had extensive experience in,**
19 **and an excellent industry reputation for, operating efficient and profitable**
20 **cogeneration facilities. Vastar also had assurances that the project owner**
21 **would vigilantly enforce its contract rights under the PPAs with FPC. It**
22 **was also important that Tiger Bay and Destec had no conflicting interest**
23 **with Vastar in supplying natural gas or otherwise competing with**
24 **Vastar's core business. In fact, the parties memorialized this**
25 **understanding in the Gas Sales Contract which requires Destec and Tiger**

1 Bay to obtain Vastar's prior written consent to any sale of Destec's
2 interest in the Project.

3
4 Third, the pricing formula under the Gas Sales Contract was developed
5 under the express assumption that the Project would purchase quantities
6 of gas while operating at high load factors. At the time the Gas Sales
7 Contract was executed, Tiger Bay had already entered into four PPAs
8 with FPC, which Tiger Bay represented to Vastar would enable the
9 Project to run at high load factors.

10
11 **Q. Would the transactions contemplated by the Purchase Agreement**
12 **have any impact on Vastar's Gas Sales Contract with Tiger Bay?**

13
14 **A. Yes.** Under the Purchase Agreement, Vastar's Gas Sales Contract will be
15 assigned by Tiger Bay to FPC. This assignment and the termination of
16 the PPAs could fundamentally alter the originally agreed upon purpose,
17 nature, and economics of the Gas Sales Contract, and Vastar's rights
18 thereunder, unless certain contract ambiguities created by the proposed
19 assignment and termination of the PPAs are clarified.

20
21 **Q. Please explain.**

22
23 **A. At a minimum, the assignment and corresponding termination of the**
24 **PPAs could significantly impact several key aspects of the Gas Sales**
25 **Contract: the capitalization of Tiger Bay; the force majeure and regulatory**

1 out provisions; the volume of gas to be sold, the price of gas; and the
2 payment mechanism under which moneys are paid or escrowed.
3

4 **Q. How will the Purchase Agreement affect the capitalization of**
5 **Tiger Bay?**
6

7 **A.** Upon the closing of the Purchase Agreement and the related termination
8 of the PPAs, Tiger Bay will no longer have a revenue stream from the
9 Project or the Project assets. Section 18.02 of the Gas Sales Contract
10 provides that Tiger Bay will remain the primary obligor of the purchasing
11 party's obligations under the Agreement, even after the Gas Sales
12 Contract is assigned to a third party. Without revenue from the Project
13 or the Project assets, Tiger Bay may no longer have sufficient means to
14 fulfill its obligations as the primary obligor under the Gas Sales Contract
15 upon assignment.
16

17 **Q. How will the Purchase Agreement impact the force majeure and**
18 **regulatory out provisions of the Gas Sales Contract?**
19

20 **A.** The assignment of the Gas Sales Contract to FPC, as contemplated by the
21 Purchase Agreement, would greatly heighten the risks that Vastar would
22 face under the force majeure and regulatory out provisions of the Gas
23 Sales Contract. When Vastar entered into the Gas Sales Contract it
24 assumed the risks associated with unanticipated acts of regulatory bodies
25 preventing the mutual contract performance of two unregulated entities.

1 It did not assume the risks associated with governmental orders and
2 restraints imposed on a regulated utility whose day-to-day business is
3 subject to extensive governmental oversight and potential governmental
4 intervention.

5
6 **Q. Describe how the Purchase Agreement could affect the volume**
7 **of gas sold under the Gas Sales Contract.**

8
9 A. As I previously stated, Vastar entered into the Gas Sales Contract, which
10 is a full requirements contract, based on Tiger Bay's representations that
11 the Project must operate at high load factors in order for Tiger Bay to
12 meet its output obligations under the PPAs. The Project has been
13 operated as a baseload facility since its inception, running consistently at
14 above a 90% utilization factor, not including scheduled downtime. If the
15 PPAs are terminated, there will no longer be any express contractual
16 provisions governing the Project's future utilization level. Thus, Vastar
17 will be faced with uncertainty regarding the level at which the Project will
18 be utilized and operated in the future, and with corresponding doubt as
19 to the volume of gas to be supplied under the Gas Sales Contract.

20
21 **Q. You mentioned that the Purchase Agreement could also affect**
22 **the pricing provisions of the Gas Sales Contract. Please explain.**

23
24 A. The pricing provisions of the Gas Sales Contract are related to the pricing
25 provisions of the PPAs. The Gas Sales Contract provides that Vastar

1 shall be paid the higher of a fixed, escalating gas price or a floating gas
2 price calculated based upon the weighted average energy rate that the
3 Project has been receiving from FPC under the PPAs. If FPC acquires
4 the Project and the PPAs are terminated, the Project will no longer be
5 receiving an express energy rate. In addition, how the energy rate would
6 be calculated, in particular the coal price component in the Avon Park
7 PPA, is also in question. This would create uncertainty and leave
8 ambiguous the price that Vastar is entitled to receive under the Gas Sales
9 Contract.

10
11 **Q. You mentioned that if FPC acquires the Project and terminates**
12 **the PPAs there are questions raised by the coal price component**
13 **in the Avon Park PPA. Please explain.**

14
15 **A. The energy rate under the Avon Park PPA is tied to the delivered price**
16 **of coal at FPC's Crystal River Units 1 & 2. In order to ensure proper**
17 **energy payments under the Avon Park PPA, Tiger Bay had an interest in**
18 **assuring that there was a proper allocation of coal prices among FPC's**
19 **Crystal River Units 1, 2, 4 & 5. The termination of the PPA would**
20 **eliminate any oversight of FPC's coal price allocation methodologies.**

21
22 **Q. Would the proposed termination of the PPAs create other**
23 **ambiguities with respect to the Gas Sales Contract?**

24

1 A. Yes. The termination of the PPAs would create an ambiguity as to how
2 Vastar would be paid under the tracking account. As I have previously
3 stated, the Gas Sales Contract provides that Vastar shall be paid the
4 higher of a fixed, escalating gas price or a floating gas price calculated
5 based upon the weighted average energy rate that the Project has been
6 receiving under the PPAs. The Gas Sales Contract provides for a tracking
7 account which is a delayed payment mechanism to be used in the event
8 the fixed gas price exceeds the floating gas price. At times when the fixed
9 price exceeds the floating price, monies associated with the difference
10 between the two are credited to the tracking account. The ultimate
11 payment of monies in the tracking account to Vastar comes from the
12 Project's cash distributions generated by sales under the PPAs after Tiger
13 Bay's debt payment. Thus, termination of the PPAs raises uncertainties
14 regarding Vastar's ability to receive monies through the tracking account.
15 The problem is exacerbated because in order for Tiger Bay to finance the
16 Project, Vastar agreed to a complex payment structure under which
17 Vastar's right to cash distributions from the Project would be subordinate
18 to the Project Lenders.

19
20 **Q. Are there any provisions in the Gas Sales Contract that protect**
21 **Vastar in the event of a transaction such as that contemplated by**
22 **the Purchase Agreement?**

23
24 A. Yes. The Gas Sales Contract contains specific provisions to protect Vastar
25 against the unilateral assignment by Tiger Bay of the rights and

1 obligations under the Gas Sales Contract. These provisions are triggered
2 by two different aspects of the Purchase Agreement.

3
4 **Q. Please elaborate.**

5
6 **A.** First, Section 18.01 of the Gas Sales Contract prevents Tiger Bay from
7 assigning the Gas Sales Contract to a third party without first obtaining
8 Vastar's written consent. Second, as I have already mentioned, Vastar,
9 as a condition to entering into the Gas Sales Contract, relied upon
10 representations by Destec that it or its affiliate would remain as the
11 owner and manager of the Project. Section 18.03 of the Gas Sales
12 Contract reflects this understanding by requiring Destec to obtain
13 Vastar's consent prior to any sale of its interest in the Project.

14
15 **Q. Have either of these consents been obtained?**

16
17 **A.** No. In June of 1996, Destec advised Vastar of the possible sale of the
18 Project to FPC. In November of 1996, Vastar was contacted by Destec
19 regarding a possible meeting with FPC and the possible disclosure of
20 confidential documents to that utility. At that time, Vastar submitted to
21 Destec a draft confidentiality agreement under which proprietary
22 information could be distributed to FPC. Destec never responded and
23 Vastar did not hear anything further concerning the proposed meeting or
24 the potential sale of the Project until it was publicly announced after FPC
25 filed its Petition with the Commission. Vastar subsequently received a

1 telephone call and a letter from Destec dated January 23, 1997 notifying
2 Vastar of the impending sale of the Project to FPC and the intended
3 assignment of the Gas Sales Contract to FPC.
4

5 **Q. Has Vastar decided whether or not it will consent to the**
6 **assignment and the sale of Destec's interest in the Project?**
7

8 **A. Not at this time. Vastar has not had an opportunity to adequately**
9 **address with FPC, Destec, or Tiger Bay the contract ambiguities which**
10 **have arisen. Discussions have only recently been initiated. In addition,**
11 **Commission staff has raised as an issue in this proceeding whether the**
12 **Commission should approve the Gas Sales Contract for cost recovery**
13 **purposes, if it is assigned to FPC. Because this is now an issue in this**
14 **proceeding, Vastar will have to condition any consent it may give upon**
15 **Commission approval of the Gas Sales Contract for cost recovery**
16 **purposes.**
17

18 **Q. What is your understanding of the ramifications if Destec and**
19 **Tiger Bay fail to obtain Vastar's consent as required by Section**
20 **18.01 and 18.03 of the Gas Sales Contract?**
21

22 **A. Vastar's consents are essential to the closing of the Purchase Agreement.**
23 **The Purchase Agreement specifically requires Tiger Bay to obtain all**
24 **required consents of third parties, including Vastar, prior to closing. In**

1 addition, Tiger Bay must represent and warrant that it is in compliance
2 with all material terms and requirements of the Gas Sales Contract.

3
4 **Q. What impact does this condition to closing have on FPC's request**
5 **that the Commission expeditiously approve the Purchase**
6 **Agreement?**

7
8 **A. FPC's request is premature. Until Tiger Bay obtains Vastar's consents,**
9 **the closing of the Purchase Agreement cannot occur. Such consents would**
10 **be facilitated by amending language to clarify contract ambiguities which**
11 **have arisen. Therefore, the Commission should not vote on FPC's**
12 **Petition prior to: (i) Vastar consenting to the assignment of the Gas Sales**
13 **Contract to FPC and the sale by Destec of its interest in the Project; and,**
14 **(ii) the Commission receiving for the record clarifying amendments to the**
15 **Gas Sales Contract. For the Commission to move forward without such**
16 **consents and clarifications could result in the unnecessary expenditure of**
17 **time and resources by the Commission, its staff, and the parties to this**
18 **docket.**

19
20 **Q. Would it be prudent for FPC to consummate the transactions**
21 **contemplated by the Purchase Agreement and acquire the**
22 **Project without Destec and Tiger Bay having first obtained**
23 **Vastar's consent as required under the Gas Sales Contract?**

24

1 **A.** No. Acquisition of the Facility and termination of the PPAs without
2 Vastar's consent would be imprudent. By ignoring Vastar's consent rights
3 under the Gas Supply Contract, FPC would, in essence, invite costly and
4 time consuming litigation which is certainly not in its best interest or in
5 the interest of its ratepayers.

6

7 **Q.** **If Vastar consents to the assignment of the Gas Sales Contract to**
8 **FPC and the sale of Destec's interest in the Project, what is your**
9 **understanding of the future of the Gas Sales Contract?**

10

11 **A.** FPC has represented that it will respect Vastar's rights under the Gas
12 Sales Contract and that it intends to continue to purchase gas from
13 Vastar under the Gas Sales Contract. The assignment of the Gas Sales
14 Contract is an integral and necessary part of the Purchase Agreement.
15 Accordingly, the Gas Sales Contract must remain in full force and effect
16 and Vastar's rights under the Gas Sales Contract must not be
17 compromised in order for the transactions contemplated by the Purchase
18 Agreement to occur.

19

20 **Q.** **If the Gas Sales Contract is assigned to FPC, should the**
21 **Commission approve the Gas Sales Contract for cost recovery**
22 **purposes?**

23

24 **A.** Yes. The assignment of the Gas Sales Contract is part and parcel of the
25 Purchase Agreement. FPC has recognized this in its Petition in which it

1 states that "it is necessary for Florida Power to acquire Tiger Bay's
2 existing gas supply contract in order to realize the more substantial
3 capacity savings achievable through the purchase." This issue was also
4 addressed by the Commission in a recent buy-out proceeding [Docket No.
5 960182-EQ] in which the Commission recognized that Florida Power &
6 Light Company would have to incur certain fuel costs in order for its
7 ratepayers to realize net savings.

8
9 Furthermore, the Gas Sales Contract has definite value to FPC's
10 ratepayers. It establishes a cap for the price of gas that FPC will pay to
11 Vastar through the year 2010. This is beneficial because the price of gas
12 on the market is unpredictable. For example, although the projected
13 monthly spot price of gas for April, May and June of 1997 are anticipated
14 to be below the Gas Sales Contract price, the Gas Sales Contract price has
15 been below the spot price for December of 1996 and is expected to be
16 below the spot price for January and February of 1997.

17
18 Vastar also has valid and binding contractual rights under the Gas Sales
19 Contract which must be protected and preserved. The Gas Sales Contract
20 constitutes a long term agreement between Vastar and Tiger Bay and
21 extends for a period of sixteen (16) years commencing on January 1, 1995.
22 The Gas Sales Contract was competitively procured by Tiger Bay in order
23 to supply virtually all of the natural gas needed to operate the Project and
24 to meet its electrical generating obligations under Tiger Bay's PPAs with
25 FPC. Tiger Bay contracted with Vastar because Vastar was able to

1 commit to satisfying Tiger Bay's future supply needs at the best available
2 price, and to provide credit conditions to facilitate financing. In fact, the
3 Project would not have been financed without Atlantic Richfield Company
4 providing parent guarantees to Tiger Bay and the Project Lenders.
5

6 **Q. You refer to several possible adverse effects that the Purchase**
7 **Agreement could have on the Gas Sales Contract. Are any of the**
8 **adverse effects eligible for resolution in this proceeding?**
9

10 **A. Yes. One of Vastar's concerns centers on a key issue in this proceeding -**
11 **- whether the Gas Sales Contract should be approved for cost recovery**
12 **purposes. Vastar seeks assurances in this proceeding that no regulatory**
13 **impediments will interfere with FPC's ability to perform under the Gas**
14 **Sales Contract. Thus, it is absolutely critical that any consent to the**
15 **assignment that Vastar might give be expressly conditioned upon the**
16 **Commission's cost recovery approval of the Gas Sales Contract.**
17

18 **Q. Are there any other matters that Vastar wants to bring to the**
19 **Commission's attention in this proceeding?**
20

21 **A. Yes. Over the next several years, it appears imminent that the electric**
22 **market will move to a more competitive environment. Parties involved**
23 **in the industry are already positioning themselves for such changes.**
24 **Vastar wants the Commission to be aware that its decision in this docket**
25 **will set precedent and will guide Vastar and other fuel suppliers in their**

1 future actions in Florida. It will also serve as an indication not only to
2 gas suppliers, but to all entities involved in the generation of electricity,
3 of how the Commission intends to address the future of electric
4 competition in Florida.

5

6 **Q. Does this conclude your direct testimony.**

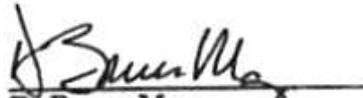
7

8 **A. Yes.**

9

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Direct Testimony of Joseph P. Catasein on behalf of Vastar Gas Marketing, Inc. was furnished by U.S. mail to James A. McGee, Esq., Florida Power Corporation, P.O. Box 14042, St. Petersburg, FL 33733-4042; Patrick K. Wiggins, Esq., Donna L. Canzano, Esq., Wiggins & Villacorta, P.A., P.O. Drawer 1657, 501 E. Tennessee St., Suite B, Tallahassee, FL 32302; Joseph A. McGlothlin, Esq., Vicki Gordon Kaufman, Esq., McWhirter, Reeves, McGlothlin, Davidson, Rief & Bakas, 117 South Gadsden Street, Tallahassee, FL 32301 and by hand delivery to Lorna R. Wagner, Esq., Florida Public Service Commission, 2540 Shumard Oak Blvd., Rm. 370, Tallahassee, FL 32399-0850 this 21st day of February, 1997.



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

TAL-101544.5

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I HEREBY CERTIFY that a copy of the foregoing Direct Testimony of Joseph P. Catasein on behalf of Vastar Gas Marketing, Inc. was furnished by U.S. mail to James A. McGee, Esq., Florida Power Corporation, P.O. Box 14042, St. Petersburg, FL 33733-4042; Patrick K. Wiggins, Esq., Donna L. Canzano, Esq., Wiggins & Villacorta, P.A., P.O. Drawer 1657, 501 E. Tennessee St., Suite B, Tallahassee, FL 32302; Joseph A. McGlothlin, Esq., Vicki Gordon Kaufman, Esq., McWhirter, Reeves, McGlothlin, Davidson, Rief & Bakas, 117 South Gadsden Street, Tallahassee, FL 32301 and by hand delivery to Lorna R. Wagner, Esq., Florida Public Service Commission, 2540 Shumard Oak Blvd., Rm. 370, Tallahassee, FL 32399-0850 this 21st day of February, 1997.



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TAL-101544.5