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CALIFORNIA OFFICES
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SACRAMENTO
BERKELEY

February 27, 1997

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

Re: **Petition to Intervene in Docket 961407-EQ**
Motion to Dismiss Without Prejudice
Request to Participate in Oral Argument

RECEIVED
FLORIDA PUBLIC SERVICE COMMISSION
97 FEB 28 MID 14
MAIL ROOM

Dear Ms. Bayó:

Enclosed for filing are the original and eight copies of each of three pleadings:

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

- The "Petition of North Canadian Marketing Corporation to Intervene as a Party;" - 02227-97 *OK DON*
- The "Motion of North Canadian Marketing Corporation to Dismiss Without Prejudice;" - 02228-97
- and
- The "Request of North Canadian Marketing to Participate in Oral Argument," all in the - 02229-97
- above referenced proceeding, Docket 961407-EQ.

Please date-stamp and return one copy of each of the attached pleadings as acknowledgement of their receipt, retaining the seven copies required under Rule 25-22.0375(3). I have served this pleading upon those identified in the initial filing as attested in the attached certificate of service, and will serve it upon all other parties on the service list as soon as a copy of that list, which was requested today, can be received from your office.

In accordance with the rules, I have included diskettes containing a copy of the attached filings in WordPerfect format. It is provided separately in WP 4.2, WP 5.0, and WP 6.0 for your

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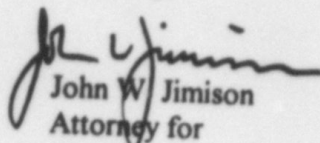
Ms. Blanca S. Bayó
February 27, 1997
Page 2

convenience.

In addition, the undersigned hereby provides notice of intent to represent North Canadian Marketing Corporation before the Commission in this matter as a Class A Practitioner pursuant to Rule 25-22.008. I attach an affidavit attesting to the fact that I am licensed to practice law in the District of Columbia and Virginia, and that I have represented clients before federal and state regulatory commissions. I further attach the required sponsorship by a licensed Florida attorney.

Thank you for your assistance in this matter.

Sincerely,



John W. Jimison
Attorney for
North Canadian Marketing Corporation

Attachments

**Affidavit of
John W. Jimison, Esq.**

Pursuant to Rule 25-22.008(2)(b), I, John W. Jimison, Esq., hereby request that I be qualified as a Class A Practitioner to appear before the Florida Public Service Commission for the purpose of representing North Canadian Marketing Corporation and other clients doing business in Florida. In support of that request, I certify that I am and have been since 1975 a licensed attorney in the State of Virginia (Virginia Bar No. 15165) and that I am and have been since 1980 a licensed attorney in the District of Columbia (D.C. Bar No. 316141). I further certify that I have for more than nine years represented clients before State regulatory Commissions (in particular the California Public Utilities Commission) and before the Federal Energy Regulatory Commission.

John W. Jimison (Signature)

February 27, 1987 (Date)

**Sponsorship of John W. Jimison, Esq.,
to Practice before the
Florida Public Service Commission**

Pursuant to Rule 25-22.008 (2) (b) of the Florida Administrative Code, I. C. Steven Yerrid, Esq., a licensed attorney in the State of Florida, Bar Member No. 207594, do hereby sponsor John W. Jimison, a licensed attorney in the State of Virginia and in the District of Columbia, to practice as a Class A Practitioner before the Florida Public Service Commission in Proceeding No. 961407-EI and in such other matters as may be required in the representation of his clients doing business in Florida.

I. C. Steven Yerrid (Signature)
12/18/96 (Date)

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

PETITION OF
NORTH CANADIAN MARKETING CORPORATION
TO INTERVENE AS A PARTY

Pursuant to Rules 25-22.026, 25-22.036, and 25-22.039, Florida Administrative Code,
North Canadian Marketing Corporation ("NCMC") respectfully petitions to intervene in the
above-styled proceeding as a party and to participate in oral argument of the issues therein. In
support of this petition, NCMC states as follows:

Introduction

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

All pleadings, motions, notices, orders, or other documents required to be served
in this docket should be addressed to the following:

John W. Jimison, Esq.
Brady & Berliner, P.C.
1225 19th Street, N.W.
Washington, D.C. 20036
Telephone: (202) 955-6067
Facsimile: (202) 822-0109

and

DOCUMENT NUMBER-DATE
02227 FEB 28 5
FPSC-RECORDS/REPORTING

Sheldon D. Reid, President
North Canadian Marketing Corporation
425 - 1st Street, S.W.
Calgary, Alberta T2P 4V4
CANADA
Telephone: (403) 231-0065
Facsimile: (403) 231-0501

2. NCMC is a California corporation engaged in the sale of natural gas in the United States. NCMC is a wholly-owned subsidiary of North Canadian Resources, Inc., itself a wholly-owned subsidiary of Norcen Energy Resources Limited. NCMC's corporate offices are located at the address indicated above for Mr. Reid.

Background

3. On November 25, 1996, Florida Power Corporation ("FPC") filed with the Commission a "Petition for Expedited Approval of Settlement Agreement with Pasco Cogen, Ltd. by Florida Power Corporation" ("FPC Petition"). FPC attached to its Petition a document entitled "Settlement Agreement and Amendment to Negotiated Contract for the Purchase of Firm Energy from a Qualifying Facility between Pasco Cogen, Ltd., and Florida Power Corporation" ("Settlement Agreement").

4. This Settlement Agreement purports to resolve, among other matters, ongoing litigation between FPC and Pasco Cogen, Ltd. ("Pasco") concerning the terms, conditions, and payments to be made for purchased power from the Pasco plant under the

"Negotiated Contract for the Purchase of Firm Energy from a Qualifying Facility between Pasco Cogen, Ltd., and Florida Power Corporation" ("Power Purchase Agreement" or "PPA"), from August, 1994, to the date of the Settlement Agreement, and to provide revised terms, conditions, and payments for power purchases from the plant into the future.

5. Pursuant to the Gas Purchase Agreement ("GPA") signed between Pasco Cogen, Ltd. ("Pasco") and NCMC on August 28, 1991, as amended, NCMC has the exclusive right to supply the first 20,472 million Btus of gas to the Pasco Cogen plant each day, estimated by NCMC to equal more than 95% of the plant's maximum sustained gas requirements.¹ In reliance on its rights and obligations under the GPA, NCMC has entered upstream contracts to obtain significant portions of the necessary gas from other suppliers, primarily including Vastar Gas Marketing, Inc ("VGM").²

6. The GPA establishes the terms and conditions for gas sales by NCMC to Pasco in order to allow Pasco to meet its obligations under the PPA, and is coordinated with the operation of the PPA in terms of the volumes of gas required and may have influence upon

¹ NCMC's involvement in this project, through affiliates, goes back to its inception when North Canadian Power Corporation, at that time a Norcen subsidiary, developed, financed, and constructed the project, remaining a 50% partner until June 13, 1994.

² VGM has separately filed to intervene as a party in this proceeding. While NCMC supports VGM's petition to intervene, NCMC's own petition is wholly separate and distinct from that of VGM and is based on different rights and responsibilities with respect to the Pasco project, and should be considered by the Commission on its own merits.

the prices paid for it. Any change in the power sales requirements, prices, or revenue stream, or change in the business relationship between FPC and Pasco under the PPA may prompt or require corresponding changes in the volume, economics, or structure and terms of the business relationship described in the GPA. NCMC therefore has a direct, vital, and non-substitutable interest in any proposed amendments to the PPA which would have the effect of modifying the sales of power by Pasco to FPC in any manner which leads to parallel modifications in the sales of natural gas by NCMC to Pasco.

7. In light of NCMC's direct and vital interest in the PPA, NCMC and Pasco agreed in Section 3.03 of the GPA that NCMC was to have the right to provide its express consent prior to any amendment of the Power Purchase Agreement between Pasco and FPC which would have a materially adverse effect on NCMC's interest. Pasco was thereby obligated to seek and obtain NCMC's consent prior to any such amendment.³
8. Discussions occurred prior to the initiation of this proceeding between Pasco and

³ The text of Section 3.03 of the GPA states as follows: "Agreements to Amendments. Unless required to do so by a final, non-appealable order of a court or Regulatory Authority having jurisdiction, neither Seller nor Buyer shall, without the consent of the other, make or acquiesce in any amendment or other variation in or to the Power Purchase Agreement, the Transportation Agreement, or any other such agreement if such amendment or variation would materially and adversely affect such other party's position (including its anticipated economic benefits) under this Agreement or if the variation is inconsistent with the terms of this Agreement." A complete text of the GPA can be made available to the Commission if requested, but would only be releasable to other parties or the general public under the Commission's confidentiality rules after certain provisions were redacted.

NCMC concerning numerous issues related to the Pasco plant's power sales to FPC, its ongoing dispute and litigation with FPC over the curtailment status of its plant and pricing of power, and the effects of a more competitive electricity market environment. During these discussions, both parties acknowledged Pasco's obligation to seek and obtain NCMC's prior consent to any amendment of the Power Purchase Agreement between Pasco and FPC to the extent that amendment materially and adversely affected NCMC.

9. FPC was also fully aware prior to entering into its proposed settlement with Pasco of NCMC's right to prior consent to any amendments to the PPA. In addition, the Prudential Insurance Company of America ("Prudential"), the primary lender to the project, was aware of NCMC's right to consent, not least through its own possession of a copy of the GPA. Prudential had a similar right to provide its prior consent to any amendment of the PPA.

10. Despite their knowledge of Section 3.03 of the GPA and Pasco's obligation therein to seek and obtain NCMC's prior consent to any amendment of the PPA, Pasco and FPC proceeded to finalize the Settlement Agreement without asking or receiving NCMC's consent, and to file it before the Commission via the above-referenced Petition.

11. The Settlement Agreement, among other things, incorporates significant concessions from Pasco from its litigation position on disputed issues, amends the PPA,

and modifies economic and business relationship between Pasco and FPC in a number of significant ways, several of which may affect the pricing and the quantity of the power sold under the PPA, and thereby the economics and volumes of gas required by the plant. Given the relationship between the PPA and the GPA, such profound changes to the PPA could have a significant effect on performance of the GPA. The concessions made by Pasco in reaching the Settlement Agreement operate in a manner directly and materially adverse to NCMC's interest as the primary seller of gas to the Pasco plant.⁴

12. However, notwithstanding Pasco's contractual obligation not to agree to amend the PPA without NCMC's consent, and notwithstanding FPC's duty not to induce Pasco to breach its obligations to NCMC by agreeing to amend the PPA without NCMC's consent, NCMC's prior consent to the Settlement Agreement was neither sought in good faith prior to executing the Settlement Agreement nor obtained.

13. Neither the FPC Petition nor the Settlement Agreement contain any reference to NCMC, its right to prior consent to any amendment, or the failure of the parties to seek in advance of agreement or obtain that prior consent. Significantly, as FPC acknowledges in its Petition (Footnote #3, at p. 3), Prudential's prior consent to amendment of the PPA was sought and obtained.

⁴ What is more, under the settlement, Pasco has already received a significant sum of money reflecting the past underpayments by FPC for power, yet Pasco has refused to pay monies owed to NCMC for the gas which was consumed to generate that purchased power.

14. The FPC Petition and Settlement Agreement were not even served upon NCMC. Neither FPC nor Pasco informed NCMC that they had reached and filed a settlement agreement with this Commission. Instead, NCMC became aware of the FPC Petition and the Settlement Agreement via a third party. NCMC first obtained a copy of the FPC Petition and Settlement Agreement from the Commission itself upon NCMC's request to the Commission staff.
15. The failure to inform the Commission about NCMC's interest and consent right, and the failure to inform NCMC or serve NCMC with a filing so clearly involving NCMC's interests, coupled with the wholly unsupported petition for expedited approval, leads NCMC to believe that Pasco and FPC have attempted to induce the Commission into precipitous action on their proposal and are trying to present NCMC with a *fait accompli*.⁵ The Commission should permit NCMC's intervention in order to assure the validity of its own deliberations and a reasonable basis for any eventual action it may take in this matter.
16. Upon being apprised by NCMC of NCMC's awareness of the FPC Petition and

⁵ NCMC notes that its consent right is subject to an exception in cases where Pasco is "required" to "make or acquiesce in any amendment or other variation in or to" the PPA. NCMC contends that Commission action in response to a voluntary petition such as this does not and cannot constitute a requirement on the parties to make or acquiesce in the amendments FPC and Pasco have proposed. But FPC and Pasco may be proceeding so that they may then allege that Commission action on the Settlement Agreement preempts NCMC's right to consent under the GPA.

Settlement Agreement, and of NCMC's intent to participate in its disposition before this Commission, Pasco reacted by sending NCMC a letter which:

- a. demanded arbitration under the GPA of whether NCMC is materially and adversely affected by the Settlement Agreement; and
- b. threatened NCMC with a lawsuit should NCMC "interfere" with the Settlement Agreement through intervention and participation in this proceeding at the FPSC.

A copy of this letter is appended to this Petition as Attachment A. NCMC submits that this attempt to intimidate NCMC from exercising its First Amendment rights to participate in governmental processes affecting its interests should not be encouraged or rewarded by the Commission's denial of this petition to intervene.

17. NCMC has been and remains willing to negotiate the outstanding issues related to the Pasco plant. NCMC is participating in the arbitration demanded by Pasco concerning the material and adverse effects of the Settlement Agreement on NCMC. NCMC believes that Pasco's claim that Pasco and not NCMC may determine when and whether a change in the PPA is materially adverse to NCMC's interests is absurd on its face. Since arbitration is proceeding at Pasco's initiative, however, this Commission should not countenance Pasco's and FPC's preemptive tactics by reviewing and deciding upon the merits of the Settlement they have put forward until after an arbiter rules either (a) that NCMC's rights to give prior consent to it have been violated and that the proposed amendments to the PPA must be reopened pending that consent; or (b) that NCMC's rights have not been violated.

Petition to Intervene as a Party

18. In light of the facts stated above, NCMC has a direct and substantial interest in the PPA proposed to be amended in the Settlement Agreement presented for approval to the Commission in this docket. NCMC is a party to ongoing arbitration in Houston, Texas, initiated by Pasco concerning the validity of Pasco's agreement to the Settlement Agreement and its amendments to the PPA in light of Pasco's failure to obtain NCMC's consent. No other party can adequately represent NCMC's interest in this matter, and all other current parties' interests conflict with those of NCMC. For these reasons, the Commission should grant NCMC status as a party to this proceeding.
19. NCMC meets the tests to have standing as a party to this proceeding. In *Agrico Chemical Company v. Dept. Of Environmental Regulations*, 406 So.2d 478, 482 (Fla. 2d DCA 1981), a two-part test was established to determine whether an intervenor's interest in a matter before a Florida administrative agency was sufficient to warrant that party's standing to appeal such an action. NCMC respectfully submits that its participation in this proceeding as a party meets the test articulated in that case and following cases.
20. In keeping with the first element of the *Agrico* test, NCMC will suffer significant injury if the Settlement Agreement is approved by this Commission and the PPA is restructured, since such restructuring will preemptively establish conditions that will make

the current terms, conditions, and economics of the GPA unworkable, contrary to the intent of the parties, or out of step with the controlling reality. It is clear that Pasco, the project operator, and FPC, the power-purchaser, are together engaged in attempting to achieve a preemptive approval of an amended PPA that meets each of their needs, and those of the lender, Prudential, at the expense of the gas supplier to the project, NCMC.⁶ In doing so, they not only violate NCMC's consent right, but also threaten the integrity of the arrangements which permit the project to continue operating.

21. Under the second element of the *Agrico* test, NCMC's interest, as the exclusive supplier of fuel for this Qualifying Facility, is within the range of interests that the Commission's jurisdiction over such agreements between regulated utilities and cogenerators is designed to protect. In a recent case, the Commission dealt directly with those aspects of Qualifying Facility agreements over which it had to exercise its jurisdiction in protection of the ratepaying public, which uses and pays for the power purchased under the PPA. The Commission ruled:

As we will explain below, we have decided that routine changes to cogeneration contracts, or changes explicitly contemplated in the original contract, do not require our further review. ... When the changes are material, however, when they may affect the continuing cost-effectiveness to the ratepayers, the viability of the project, the primary fuel source of the QF facility, the utility's capacity import capability into the state due to a change in location of the facility, or the reliability of the electric grid, we will require further formal review and

⁶ They also will seek to persuade this Commission to protect them in their attempted preemptive action against NCMC by denying NCMC standing to protest their so-called Settlement.

approval. (Emphasis added)⁷

22. Under these criteria, Commission review and approval of the Settlement Agreement, if it takes place at all despite the ongoing arbitration, the flaws in the agreement, and its misstatements of fact, must include participation by NCMC as a party. NCMC's participation is required for the Commission to appropriately exercise its own responsibilities because FPC's and Pasco's failure to obtain NCMC's consent to their Settlement Agreement and its amendments of the PPA have assured that "the primary fuel source of the QF facility" has been placed seriously at risk, and with it "the continuing cost-effectiveness to the ratepayers" and "the viability of the project."

23. If the Commission finds the FPC Petition and the Settlement Agreement ripe for review at all despite their clear flaws, the Commission must therefore include within the questions over which it takes jurisdiction questions including the primary fuel source of the project, its viability, and its cost-effectiveness to the ratepayers. The Commission cannot discharge its responsibility to review these issues without the presence of NCMC in the proceeding as a party. As the exclusive fuel supplier to the project, and one with a right to consent to any changes in the PPA, NCMC submits that the Commission can only review the meaning of the Settlement Agreement relating to those issues if NCMC is a full participant.

⁷ *In Re: Petition for approval, to the extent required, of certain actions relating to approved cogeneration contracts by Florida Power Corporation, Order No. PSC-95-0540-FOF-EQ, 95 FPSC 5:5, 1995 Fla. PUC LEXIS 662 (May 2, 1995).*

24. Pasco and FPC may desire to keep NCMC out of the proceeding, to leave the Commission ignorant of the self-serving and destructive nature of their actions to exclude NCMC from their agreement and dishonor NCMC's consent right, and to neuter NCMC's protest of their Settlement Agreement, by arguing that NCMC lacks standing under the tests defined in *Agrico*. But the Commission can only properly exercise its jurisdiction over the questions before it by reviewing the evidence that NCMC alone can provide. For its own purposes of protecting the public interest, the Commission must grant NCMC standing as a party in this case, as well as for the purpose of allowing NCMC to protect itself against those who would violate its contractual rights.
25. NCMC is *not* asking the Commission to review, judge, take jurisdiction over, or settle any issues arising under the GPA between NCMC and Pasco. NCMC is not asking for standing in this proceeding as a function of any need, requirement, or authority for the Commission to govern the performance of the GPA. The Commission does not have jurisdiction over the GPA, nor does it need to have such jurisdiction merely to recognize that, as a function of the consent rights embodied in the GPA, the Commission cannot review the validity of the proposed amendments to the PPA in the Settlement Agreement without NCMC participating as a party. The GPA is clear on its face that Pasco cannot legally participate in nor agree to the proposed amendments to the PPA without NCMC's prior consent. The Commission is not limited to recognizing the legal effects of only those contracts over which it has direct jurisdiction; it must also recognize that non-jurisdictional

contracts may establish rights and obligations that bind parties in their performance of or amendments to a jurisdictional contract.

26. Once this Commission is apprised of NCMC's right and its equivalence to Pasco's own right with regard to any amendments of the PPA, as the Commission is hereby apprised, this Commission should not and properly may not move to consideration of such proposed amendments without, at a minimum, granting standing to NCMC to participate in the proceeding. As NCMC moves in a separate pleading, the Commission should instead dismiss the FPC Petition and Settlement Agreement without prejudice to their being refiled at such time as the parties can truthfully allege that all necessary consents, including NCMC's, have been obtained.
27. There is clear evidence available to counter all statements by the Applicants to the effect that they have obtained the necessary consents to their agreement and have the power to reach the agreement they put before the Commission. There can be no competent, substantial evidence to the contrary in the record of any proceeding the Commission conducts to review their agreement.⁸
28. If Pasco or FPC dispute that NCMC's consent right exists, applies, or has been violated, NCMC submits that the Commission must allow that issue to be resolved prior

⁸ See Fla. Stat. §120.68(7)(b)

to proceeding with consideration of the Settlement Agreement. Pasco has demanded arbitration of the issue; Pasco's proposed settlement should therefore be dismissed without prejudice until the Arbitrator has ruled and, if NCMC prevails, the Settlement is reworked to accommodate NCMC's interests and to obtain NCMC's consent. Any dispute over whether NCMC is materially and adversely affected by the Settlement Agreement would be a question of fact before the Arbitrator, and could be an issue for hearings or other fact-finding procedures. Any disposition of the FPC Petition can and should await the outcome of the Arbitration Pasco has itself demanded. Therefore, NCMC's separate Motion to Dismiss Without Prejudice, filed before the Commission today, should be granted.

29. If however, the Commission determines not to await the Arbitrator's determination of NCMC's relative rights, and to proceed with its review of the FPC Petition and Settlement Agreement, then at a minimum NCMC must be permitted to become a party to this proceeding to allow the Commission to understand the implications for the fuel supply to the plant, the viability of the project, and the cost-effectiveness to ratepayers.

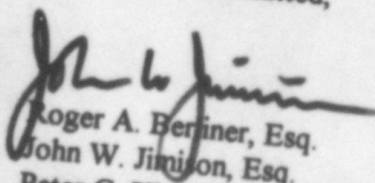
Disputed Issues of Fact

30. Finally, NCMC submits that, should the Commission move to consideration of this matter, disputed issues of fact concerning which NCMC would supply probative evidence include, but are not limited to:

- a. the effect of the proposed amendments on the gas supply to the plant, its economics, security, and the consequent effects on ratepayers and on the viability of the plant;
- b. the effectiveness of the proposed Settlement in its claim to terminate litigation and avoid litigation expenses with potential effect on ratepayers; and
- c. the accuracy of assertions in the Settlement Agreement such as the assertion that necessary third party consents have been obtained or reasonably sought.

31. *Wherefore*, in the event that the Commission does not first determine to dismiss the FPC Petition without prejudice subject to the conclusion of the ongoing arbitration process and, if so ruled by the arbiter, Pasco obtaining necessary consents, as NCMC separately proposes, NCMC should be granted the right to intervene as a party in this proceeding.

Respectfully submitted,



Roger A. Berliner, Esq.
 John W. Jimison, Esq.
 Peter G. Hirst, Esq.
 Brady & Berliner
 1225 19th Street, N.W.
 Washington, D.C. 20036

Attorneys for
 North Canadian Marketing Corporation

February 27, 1997

Attachment A: Letter of December 18, 1996, from Pasco to NCMC.

ATTACHMENT A

PASCO COGEN LIMITED
111 MADISON STREET • P. O. BOX 2562
TAMPA, FLORIDA 33601-2562

December 18, 1996

VIA FACSIMILE

Mr. Sheldon D. Reid
Vice President, Marketing
North Canadian Marketing Corporation
Fifth Avenue Place 425 - 1 Street S.W.
Box 2595, Station M
Calgary, Alberta
CANADA T2P 4V4

Re: Gas Purchase Agreement between North Canadian Marketing Corporation ("NCM") and Pasco Cogen, Ltd. ("Pasco") dated August 28, 1991 (as amended) - DEMAND FOR ARBITRATION

and

Florida Public Service Commission ("FPSC") Docket No. 961407-EQ - 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

Dear Mr. Reid:

Pursuant to clause 20.02 of the above agreement (the "GPA"), Pasco hereby demands a meeting with representatives of NCM for the purpose of appointing a single arbitrator to resolve the dispute between Pasco and NCM relating to (i) whether, under clause 3.03 of the GPA, the amendments to the Power Purchase Agreement (as defined in the GPA) contemplated by the Settlement Agreement between Pasco and Florida Power Corporation ("FPC") dated October 25, 1996 would "materially and adversely affect" NCM's position under the GPA, and (ii) whether, as alleged in your letter to Pasco dated March 31, 1995, the payments made by Pasco to NCM for gas delivered under the GPA from September 1, 1994 through February 28, 1995 constituted a default in Pasco's obligation to pay the full contract price for gas delivered by NCM.

Such meeting will be in Houston, Texas, at the offices of Skadden, Arps, Slate, Meagher & Flom, 1600 Smith Street, Suite 4460, commencing at 2:00 p.m. CST on Friday,

Sheldon D. Reid
December 18, 1996
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December 27, 1996, or at such earlier time and date as Pasco and NCM mutually agree.

If NCM and Pasco are unable to agree on a single arbitrator, or if NCM fails to meet with Pasco at the time specified above (or at such other time as may be mutually agreed between Pasco and NCM), Pasco will immediately seek to have the arbitrator expeditiously appointed by the Houston Chapter of the American Arbitration Association.

As NCM is aware, in July 1994, FPC unilaterally decided, and announced in a letter to Pasco dated July 18, 1994, that FPC would begin making the "on-off" decision for the generating unit referenced in Section 9.1.2 of the Power Purchase Agreement based solely on the pricing parameters set forth in that section, and without consideration of the operational characteristics of such unit. Mr. Chris Holden's letter to NCM dated September 28, 1994 explained the new position taken by FPC and enclosed a copy of FPC's letter of July 18, 1994.

As NCM is also aware, Pasco vigorously contested this unilateral action by FPC and filed suit against FPC in October 1994. Between the time the lawsuit was filed by Pasco and the spring of 1996, extensive discovery was pursued by both Pasco and FPC, resulting in taking about 100 depositions, the parties' producing in excess of a million pages of documents for inspection and copying, and each party's incurring substantial expenses for the fees of attorneys and experts. Pasco and FPC met on a number of occasions for about a year before October 25, 1996 in an effort to settle the lawsuit, resulting in the settlement agreement for which approval of the FPSC is sought in the captioned docket.

Counsel for Pasco was notified on December 12 of a meeting scheduled by NCM with the FPSC Staff in Tallahassee, Florida, at 9:30 a.m. on December 18, 1996 (which meeting has subsequently been rescheduled for December 19 at 2:30 p.m.). While NCM believes a dispute exists with Pasco under the GPA, and while the GPA provides for resolution of all disputes relating to the GPA by binding arbitration, whether the settlement agreement between Pasco and FPC should be approved by the FPSC involves no issues "relating to" the GPA. Nor does the captioned proceeding before the FPSC involve any issues, determination of which by the FPSC in the above proceeding would affect any "substantial interest" of NCM.

Pasco is evaluating remedies other than arbitration which may be available to Pasco as a result of NCM's conduct in contacting, and scheduling a meeting with, members of the FPSC Staff, and thereby interfering with the efforts of FPC and Pasco to obtain the FPSC's approval of the settlement of the litigation between them on the terms set forth in the settlement agreement. We strongly urge that NCM refrain from any attempt to use the proceeding (or to cause any delay in the proceeding) in the above docket before the FPSC -- in which NCM has no interest whatsoever which is or may be entitled to consideration by the

Sheldon D. Reid
December 18, 1996
Page 3

FPSC -- in an effort to obtain what NCM might view as "leverage" in resolving the disputes between NCM and Pasco mentioned in the first paragraph of this letter. More specifically, Pasco urges strenuously that NCM take steps immediately to cancel the meeting with the FPSC Staff scheduled for December 19.

Florida has a well-established cause of action arising out of interference with contractual relationships. NCM is tortiously interfering with Pasco's rights. If interference by NCM results in disapproval of the settlement agreement by the FPSC, or even a delay in the agreement's approval by the FPSC, Pasco will be damaged. Pasco will seek compensatory and punitive damages for such interference.

Not only is NCM interfering with Pasco's contractual relationship with FPC, NCM is interfering with Pasco's right to settle a lawsuit. Even in situations where a person may be allowed to interfere to protect his own competitive interest, tortious interference will still result where improper means are employed. NCM's means and methods here are totally unjustified. Ethyl Corp. v. Baltex, 386 So.2d 914 (Fla. 3d DCA 1980); Perez v. Rivero, 534 So.2d 914 (Fla. 3d DCA 1988); Ad-Vantage Telephone Directory Consultants, Inc. v. GTE Directories Corporation, 849 F.2d 1336 (11th Cir. 1987); American Medical International, Inc. v. Scheller, 590 So.2d 947 (Fla. 4th DCA 1991) (\$19,000,000 damage award affirmed); Texaco, Inc. v. Peanzoil Co., 729 S.W.2d 768 (Tex. Civ. App. 1987) (\$1 billion punitive damages).

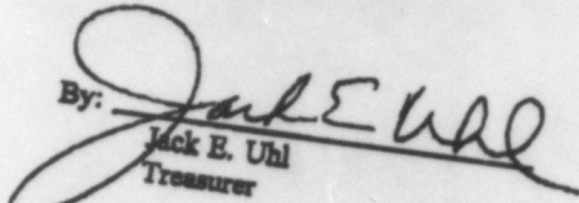
Pasco requests that NCM cease and desist from this unlawful interference with Pasco's rights. If any damage, either by disapproval or by delay of the FPC petition, results from NCM's conduct, Pasco will seek compensatory and punitive damages. Such action will not be subject to arbitration under the GPA since NCM's conduct constitutes a tort separate and apart from the GPA.

Please govern yourself accordingly.

Sheldon D. Reid
December 18, 1996
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Sincerely,

PASCO COGEN, LTD.
By PAS Power Co.,
a general partner

By: 
Jack E. Uhl
Treasurer

EEW/a

- cc: Mr. Grant Billings
Mr. Mark Schweitzer
Ms. Beth Matheson
Charles W. Pittman, Esquire
Ansley Watson, Jr. Esquire

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled in this proceeding.

Dated at Washington, D.C. this 28th day of February, 1997.

Evonne Edmonds

Evonne Edmonds