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**Florida  
Power**  
CORPORATION

**JAMES A. MCGEE**  
SENIOR COUNSEL

March 3, 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. ~~96107-EQ~~

Dear Ms. Bayó:

Enclosed for filing are the original and 15 copies of Response and Opposition to Petition for Leave to Intervene of Vastar Gas Marketing, Inc. 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 Response and Opposition in WordPerfect format. Thank you for your assistance in this matter.

Very truly yours,

James A. McGee

JAM/kp  
Enclosures

DOCUMENT NUMBER 02333

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FPSC-RECORDS/REPORTING

GENERAL OFFICE

3201 Thirty fourth Street South • Post Office Box 14042 • St. Petersburg, Florida 33733-4042 • (813) 866-5184 • Fax: (813) 866-4931

A Florida Progress Company

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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

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**Docket No.961477-EQ**

**Submitted for filing:  
March 3, 1997**

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY that a true copy of the Response and Opposition to  
Petition for Leave to Intervene of Vastar Gas Marketing, Inc. by Florida Power  
Corporation has been furnished to the following individuals by regular U.S. Mail  
this 3rd day of March, 1997:**

**John W. Jimison  
Brady & Berliner, P.C.  
1225 Nineteenth Street, N.W.  
Suite 800  
Washington, DC 20036**

**D. Bruce May  
Karen D. Walker  
Holland & Knight, L.L.P.  
P.O. Drawer 810  
Tallahassee, FL 32302-0810**

**Sheldon D. Reid  
Lake Interest Holdings, Inc.  
425 1st Street, S.W.  
Calgary, Alberta T2P 4V4  
CANADA**

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

  
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**ATTORNEY**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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

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**Docket No. 961477-EQ**

**Submitted for filing:  
March 3, 1997**

**RESPONSE AND OPPOSITION TO  
PETITION FOR LEAVE TO INTERVENE OF  
VASTAR GAS MARKETING, INC.**

Florida Power Corporation ("Florida Power"), by and through undersigned counsel, requests that the Commission deny the Petition of Vastar Gas Marketing, Inc. ("VGM") for leave to intervene in this proceeding and all relief requested by VGM in such Petition, and in opposition and response to such Petition respectfully submits the following:

1. This proceeding involves the request of Florida Power for approval of a settlement (the "Settlement") between it and Lake Cogen Ltd. ("Lake"), 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 Florida Power and Lake are parties. VGM is not a customer of either Florida Power or Lake, nor does it appear that VGM carries on any business in the State of Florida. By VGM's own admission, the only basis of its claim of standing in this proceeding is the fact that it sells natural gas to another entity, North Canadian Marketing, Inc. ("NCM"), which in turn sells

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natural gas to Lake to fuel Lake's cogeneration facility. VGM is not in contractual or other privity with either Florida Power or Lake. Indeed, Florida Power has never seen and is not aware of the terms and provisions of the contract which VGM claims exists between itself and NCM. Neither VGM's contract with NCM nor NCM's contract with Lake are before the Commission in this proceeding, and VGM affirmatively asserts that the Commission has no jurisdiction over its contract with NCM.

2. VGM claims that the amendments to the PPA agreed upon between Florida Power and Lake could materially and adversely affect NCM's rights under its contract with Lake, and in turn VGM's contract with NCM, and that Lake has failed to obtain the consent of NCM and VGM to such PPA amendments, as allegedly required under the contract pursuant to which NCM sells natural gas to Lake, and VGM sells gas to NCM. On this allegation, VGM predicates its request that the Commission "refrain" from approving the Settlement until NCM and VGM have consented to the Settlement.

3. The essence of VGM's claim to standing herein is based on a claim that the Settlement, if approved by the Commission, could alter NCM's contract rights with Lake, which allegedly would create a risk to VGM that NCM will not in the future perform under its contract with VGM. VGM does not allege that NCM has threatened not to perform under either its gas supply agreement with Lake or under whatever contract it has with VGM. VGM does not allege, nor indeed could it allege, that it will sustain immediate or substantial injury as a

result of a Commission order granting the relief sought by Florida Power in this proceeding, nor is the potential injury alleged by VGM of a type or nature which this proceeding is designed to protect. VGM therefore has failed to demonstrate that it has standing in this proceeding, and its Petition for Leave to Intervene should be denied. 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). This Commission has no power to prevent or remedy any future breach by NCM of whatever contract it may have with VGM. If and when NCM breaches that contract, that matter is properly within the jurisdiction of the civil courts, and only the civil courts can provide VGM a remedy.

4. VGM further alleges that the possibility that NCM will breach its contractual obligations to VGM somehow threatens the fuel supply for and therefore the viability of the Lake cogeneration facility. Neither Lake, the owner-operator of the facility that is subject to the PPA, nor NCM, the supplier of natural gas fuel to the Lake facility, has asserted in this proceeding that Lake's fuel supply is in jeopardy. Therefore, there is simply no fuel supply or project viability issue raised by VGM's petition.

5. VGM asserts, and Florida Power categorically denies, that Florida Power has misrepresented certain facts in its Petition for approval of the Settlement. The first of such alleged misrepresentations concerns the statement that the parties to

the Settlement have each obtained or will take reasonable efforts to obtain all necessary approvals of third parties. Incredibly, even though VGM does not assert that Lake does not intend to obtain whatever third party consents are required to the Settlement, VGM claims that this representation is incorrect because Lake has not yet obtained the consent of NCM to the Settlement. Not only is the statement in the Petition about which VGM complains clearly not untrue on its face, in as much as VGM has not asserted in this proceeding either that its or NCM's right to consent to the Settlement, if any, will not be obtained. The second alleged misrepresentation is that the Settlement will not have the effect of terminating litigation involving the PPA to the benefit of Florida Power's ratepayers. VGM is not a party to the litigation between Florida Power and Lake to which such statement relates, nor does VGM deny that litigation will be terminated by the Settlement. VGM speculates that if its rights under a contract with NCM, to which neither Florida Power nor Lake are parties, are breached by NCM, Florida Power might somehow become involved in litigation. Suffice it to say that Florida Power's Petition does not represent that approval of the Settlement will somehow bar its becoming involved in any future litigation, nor does the possibility that there will be litigation in the future demonstrate that any misrepresentation has been made by Florida Power in its Petition.

6. In summary, VGM's Petition for Leave to Intervene raises no issues of fact which are material to the Commission's consideration of the matters which

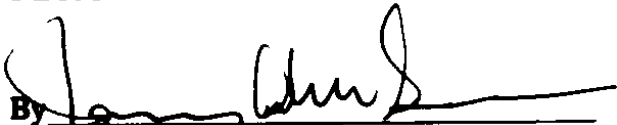
are before it in this proceeding, or upon which the Commission should "refrain" from approving the Settlement.

7. Contrary to VGM's assertion, there are no broad policy issues germane to the matters before the Commission in this proceeding. VGM has wholly failed to demonstrate, nor could it demonstrate, that the Commission's approval of the Settlement will have any precedential bearing on broad policy issues relating to potential restructuring of Florida's electric power industry. Further, even if such policy issues were a part of this proceeding, VGM has neither stated nor demonstrated that it has any stake in or standing with respect to such policy matters.

WHEREFORE, Florida Power respectfully requests that the Commission deny both VGM's request for leave to intervene in, and its request that the Commission withhold its approval of the Settlement that is before it in this proceeding, 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 

James A. McGee  
Post Office Box 14042  
St. Petersburg, FL 33733-4042  
Telephone: (813) 866-5184  
Facsimile: (813) 866-4931