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April 3, 1997

D. BRUCE MAY
904-425-5607

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. 970095-EQ

Dear Ms. Bayo:

Enclosed for filing in the docket referenced above are the original and 15 copies of Vastar Gas Marketing, Inc.'s Emergency Motion for Reconsideration of Order No. PSC-97-0354-PCO-EQ, and the original and 15 copies of Vastar Gas Marketing, Inc.'s Request for Oral Argument. Also enclosed is a diskette containing these documents. 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,

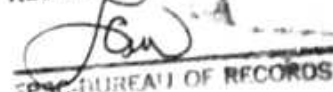
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D. Bruce May

- ACK
- AFA
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG *Dutley*
- LEG *2* KDW/sms
- SEN *5* cc: Norma Rosner, Esq.
- SPO _____
- REL _____
- SEC
- WAS _____
- YTH _____

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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

03437 APR-35

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for expedited)	
approval of an agreement to)	Docket No. 970096-EQ
purchase the Tiger Bay)	
cogeneration facility and)	Filed: April 3, 1997
terminate related purchased)	
power contracts by Florida)	
Power Corporation.)	
	/	

VASTAR GAS MARKETING, INC.'S EMERGENCY MOTION FOR RECONSIDERATION OF ORDER NO. PSC-97-0354-PCO-EQ

Vastar Gas Marketing, Inc. ("VGM"), by and through undersigned counsel, pursuant to Rule 25-22.0376, Florida Administrative Code, respectfully requests that the Florida Public Service Commission (the "Commission") reconsider Order No. PSC-97-0354-PCO-EQ in which the Prehearing Officer denied VGM's Petition for Leave to Intervene in this proceeding. Order No. PSC-97-0354-PCO-EQ, a brief three paragraph order, summarily denies VGM's Petition for Leave to Intervene stating that VGM has alleged no constitutional or statutory right to intervention, has failed to show that its substantial interests are being determined in this proceeding, and that its interests are not the interests that this proceeding is intended to protect. The order contains no analysis supporting these sweeping conclusions. Thus, VGM cannot be sure what points of fact the Prehearing Officer overlooked or failed to consider when reaching these general legal conclusions. The broad conclusions drawn in Order No. PSC-97-0354-PCO-EQ do indicate, however, that the Prehearing Officer overlooked and failed to consider that VGM is a "party" to this proceeding pursuant to Section 120.52(12)(a), Florida Statutes, because: (i) VGM is a specifically named person in this proceeding;

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FPSC-RECORDS/REPORTING

and (ii) VGM's substantial interests will be determined by the Commission in this proceeding when the Commission addresses Issue No. 14 and decides whether to approve cost recovery of VGM's September 22, 1993 Gas Sales and Purchase Contract with Tiger Bay Limited Partnership ("TBLP") (the "Gas Sales Contract") through this and subsequent fuel cost recovery proceedings.

Because the Prehearing Officer has overlooked and failed to consider these material and relevant points of fact and law which demonstrate that VGM is entitled to intervene in this proceeding, VGM moves the Commission to reconsider Order No. PSC-97-0354-PCO-EQ on an emergency basis, and upon such reconsideration, to grant VGM's Petition for Leave to Intervene.

Background

1. On January 20, 1997, Florida Power Corporation ("FPC"), FPC Acquisition, L.L.C., and TBLP entered into a Purchase Agreement pursuant to which FPC proposes to purchase, own and operate all of TBLP's assets associated with TBLP's gas-fired combined cycle cogeneration facility located near Fort Meade in Polk County, Florida (the "Project"). This docket was initiated on January 21, 1997 when FPC filed a petition with the Commission requesting approval of the transactions contemplated by the Purchase Agreement, including the termination of the five power purchase agreements that TBLP currently administers from the Project.

2. VGM supplies natural gas to the Project pursuant to its Gas Sales Contract with TBLP. The Purchase Agreement contemplates that TBLP will assign VGM's Gas Sales Contract to FPC, which will assume TBLP's obligations and duties

as the buyer of the gas under the Gas Sales Contract. The terms of the Gas Sales Contract, however, require TBLP to obtain VGM's consent to such assignment. To date, VGM has not given its consent.

3. On February 6, 1997, VGM, as the sole fuel supplier to the Project, filed a Petition for Leave to Intervene in this proceeding. VGM's Petition for Leave to Intervene describes how VGM's interests will be substantially affected by this proceeding.

4. VGM was the first party to request leave to intervene in this proceeding.¹ VGM's Petition for Leave to Intervene was not opposed by any party, or potential party to this proceeding. Indeed, over the past two months, VGM has been participating in this proceeding as a party. VGM attended all meetings noticed by staff, filed a Preliminary List of Issues and Positions, filed Direct Testimony, participated in the Issue Development Workshop, responded to FPC's Motion for Preliminary Prehearing Conference, served discovery on FPC, and filed a Prehearing Statement.

5. On March 31, 1997, the same day as the Prehearing Conference, the Prehearing Officer issued Order No. PSC-97-0354-PCO-EQ denying VGM's Petition for

¹ All other parties that have requested to intervene in this proceeding were granted intervention within less than a month after the filing of a petition for leave to intervene. TBLP filed a Petition for Leave to Intervene on February 17, 1997. The Prehearing Officer issued Order No. PSC-97-0258-PCO-EQ granting TBLP's petition on March 10, 1997. The Florida Industrial Power Users Group ("FIPUG") filed a Petition for Leave to Intervene on February 18, 1997. The Prehearing Officer issued Order No. PSC-97-0259-PCO-EQ granting FIPUG's petition on March 10, 1997. The Office of Public Counsel ("OPC") filed a Notice of Intervention on March 21, 1997. The Prehearing Officer issued Order No. PSC-97-0343-PCO-EQ on March 25, 1997 acknowledging OPC's intervention.

Leave to Intervene and also denying VGM's request to present oral argument on its Petition for Leave to Intervene. The order simply states that VGM "alleges no constitutional or statutory right to intervention . . . [,] has failed to show that its substantial interests are being determined in this proceeding" and that its "interests . . . are not interests this proceeding is intended to protect." The order does not contain any rationale or basis for these broad conclusions. The order also provides no explanation for the Prehearing Officer's denial of VGM's Request for Oral Argument on its Petition for Leave to Intervene.

Reconsideration Is Appropriate

6. The purpose of a motion for reconsideration filed pursuant to Rule 25-22.0376 is to bring to the Commission's attention some material and relevant point of fact or law that the Prehearing Officer overlooked in issuing a non-final order. See Diamond Cab Co. v. King, 146 So. 2d 889, 891 (Fla. 1962). VGM recognizes that a motion for reconsideration is not an appropriate venue to reargue matters which were already considered. That is not VGM's intent. VGM is filing this Motion for Reconsideration to bring to the Commission's attention points of fact and law that the Prehearing Officer overlooked or failed to consider that entitle VGM to intervention as a party to this proceeding pursuant to Section 120.52(12)(a), Florida Statutes.

7. The ability of VGM to intervene in this proceeding depends upon whether VGM satisfies the definition of "party" in Section 120.52(12), Florida Statutes. Section 120.52(12) defines a "party" to include "specifically named persons who substantial interests are being determined in the proceeding." § 120.52(12)(a), Fla. Stat. (Supp.

1996). Order No. PSC-97-0354-PCO-EQ does not address whether VGM is a specifically named person in this proceeding. This is a material and relevant point that the Prehearing Officer overlooked and failed to consider. Further, although Order No. PSC-97-0354-PCO-EQ concludes that VGM has failed to show that its substantial interests are being determined in this proceeding, it is apparent from this conclusion that the Prehearing Officer has also overlooked and failed to consider the fact that an issue to be determined by the Commission in this proceeding -- Issue No. 14 in the draft prehearing order -- is whether to approve VGM's Gas Sales Contract for cost recovery through the Commission's fuel and purchased power cost recovery proceedings. The fact that the Commission has been asked by FPC to approve VGM's Gas Sales Contract for cost recovery purposes makes it patently clear that VGM's substantial interests will be determined in this proceeding.

8. As described below, if the Prehearing Officer had not overlooked and failed to consider that VGM is a specifically named person in this proceeding whose substantial interests will be determined by the Commission, the Prehearing Officer would have granted VGM's Petition for Leave to Intervene pursuant to Section 120.52(12)(a), Florida Statutes. Thus, reconsideration of Order No. PSC-97-0354-PCO-EQ is necessary and appropriate.

VGM Is a "Party" Entitled to Intervene In This Proceeding

9. As demonstrated by the following, VGM is a specifically named person in this proceeding:

- a. VGM is expressly named on pages two and seven of FPC's Petition.²
- b. VGM is expressly named on page four of the Purchase Agreement appended to FPC's Petition.
- c. VGM is expressly named on pages seven, sixteen and seventeen of Robert Dolan's Direct Testimony filed on behalf of FPC.
- d. VGM's Gas Sales Contract has been filed with the Commission under a Request for Confidential Classification.
- e. VGM is expressly named throughout the Request for Confidential Classification.
- f. Commission staff's Interrogatory No. 23 to FPC asks: "Has FPC analyzed the benefits and costs of terminating the gas supply contract with Vastar . . . prior to the contract expiration date?"
- g. Issue No. 14 in this proceeding is: "Should the Commission approve the recovery of fuel costs associated with the Vastar natural gas supply contract through the Fuel and Purchased Power Cost Recovery Clause?"

² FPC's Petition refers to Vastar Resources, Inc. instead of VGM as the supplier of gas to the Project under the Gas Sales Contract. Vastar Resources, Inc. is affiliated with VGM. However, VGM is the entity that is the party to the Gas Sales Contract.

10. The Florida First District Court of Appeal has held that the City of Key West was a "specifically named person" whose substantial interests were being determined in a proceeding to develop a rule relating to Areas of Critical State Concern where the boundary description in the proposed rule included the City of Key West, even though the City of Key West was not expressly mentioned in the proposed rule. City of Key West v. Askew, 324 So. 2d 655, 657 (Fla. 1st DCA 1975). If the City of Key West was a "specifically named person" in that proceeding, VGM is clearly a specifically named person in this proceeding where the issues, pleadings, testimony, prehearing orders, and discovery are replete with express references to VGM.

11. Additionally, VGM's substantial interests are being determined in this proceeding. As described above, the transactions contemplated by the Purchase Agreement include the assignment of the Gas Sales Contract to FPC. Assuming that VGM consents to the assignment, and the Commission approves the Purchase Agreement, VGM will be in direct privity with FPC. Thus, the Gas Sales Contract, which is currently a non-regulated agreement between two private, non-regulated entities, will become a regulated agreement subject to direct Commission intervention in this and subsequent cost recovery proceedings.

12. There is no doubt that cost recovery of the VGM Gas Sales Contract through the fuel and purchased power cost recovery clause is directly at issue in this proceeding. In order to determine whether cost recovery is appropriate, the Commission will need to analyze and make quantitative decisions about VGM's Gas Sales Contract. These decisions should not be made in the absence of VGM, a critical

party to the Gas Sales Contract, and the party that could be forced to bear the risks associated with the Commission's decision, if that decision is to deny cost recovery approval of the Gas Sales Contract.

13. The issue before the Commission in this proceeding relating to the VGM Gas Sales Contract is the same issue that the Commission addresses in its semi-annual fuel and purchased power cost recovery proceedings. By denying VGM the opportunity to intervene in this proceeding, the Prehearing Officer indicates that VGM will not have the opportunity to intervene in the Commission's fuel and purchased power cost recovery proceedings in the future when the Commission will continue its evaluation of the recovery by FPC of the costs associated with VGM's Gas Sales Contract. Denying the intervention of VGM -- a named party to a contract being reviewed by the Commission for cost recovery -- is a denial of due process. Moreover, excluding VGM from this proceeding does not comport with the prior liberal intervention standards applied by the Commission in fuel and purchased power cost recovery proceedings where the Commission has granted intervention to unions, environmental and other special interests groups. See In Re: Fuel and Purchased Power Cost Recovery Clause and Generating Performance Incentive Factor, 94 F.P.S.C. 2:386, Docket No. 940001-EI, Order No. PSC-94-0214-PCO-EI (Feb. 23, 1994) (granting United Mine Workers of America intervention); In re: Fuel Cost Recovery Clause, Docket No. 82001-EU, Order No. 11274 (Oct. 27, 1982) (granting Floridians United for Safe Energy, Inc. intervention).

14. In this proceeding, the Commission will conduct a quantitative analysis of the costs associated with VGM's Gas Sales Contract, other parties and staff have and will continue to comment on VGM's Gas Sales Contract, and the Commission will determine whether to approve VGM's Gas Sales Contract for cost recovery. For this to occur while denying VGM the right to participate in this proceeding does not make any sense and unduly and unlawfully prejudices VGM. Because VGM is a named person whose substantial interests are being determined by the Commission, VGM is entitled to intervene as a party in this proceeding.

Request for Emergency Treatment

15. Due to the belated issuance of Order No. PSC-0354-PCO-EQ, and the fast approaching hearing in this docket, VGM requests that this Emergency Motion for Reconsideration be heard by the Commission on an emergency basis at its April 14, 1997 Agenda Conference. Emergency treatment is necessary so as to prevent VGM's rights from being further prejudiced and to preserve the time, energy and resources of the Commission, its staff and the parties to this proceeding.

16. VGM was the first party to request intervention in this proceeding, filing its Petition for Leave to Intervene with the Commission just 15 days after FPC filed its Petition requesting the Commission to approve the Purchase Agreement. Order No. PSC-97-0354-PCO-EQ denying VGM's Petition for Leave to Intervene, however, was not issued until hours before the Prehearing Conference on March 31, 1997, which was 53 days after VGM filed its Petition for Leave to Intervene, and only 17 days before the hearing scheduled to be held in this docket.

17. The hearing in this docket is now just two weeks away. VGM has already been prejudiced by the denial of VGM's Petition for Leave to Intervene so close to the hearing date. An issue proposed by VGM to be considered in this proceeding has been stricken by the Prehearing Officer and FPC had not responded to VGM's discovery requests. Each day that this Motion for Reconsideration is not addressed by the Commission and the hearing date draws nearer, VGM will suffer prejudice. By addressing this Motion for Reconsideration at its April 14, 1997, the Commission can grant VGM standing in time to fully participate in the hearing. If, on the other hand, the Commission waits to address this Motion for Reconsideration until after the April 17, 1997 hearing, and the Commission finds that VGM has standing, the Commission will need to conduct another hearing in this docket. Conducting an unnecessary hearing would waste the time, energy and resources of the Commission, staff and the parties to this docket. By addressing this Motion for Reconsideration on April 14, 1997, the full Commission can determine whether VGM has standing to intervene prior to the April 17 hearing.

WHEREFORE, VGM respectfully requests that the Commission:

- (a) address this Motion for Reconsideration on an emergency basis at the Commission's April 14, 1997 Agenda Conference;
- (b) reconsider Order No. PSC-97-0354-PCO-EQ;
- (c) grant VGM's Petition for Leave to Intervene; and
- (d) grant such other relief as the Commission deems appropriate.

Respectfully submitted,



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(904) 224-7000

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Vastar Gas Marketing, Inc.'s Emergency Motion for Reconsideration of Order No. PSC-97-0354-PCO-EQ was furnished by hand delivery to the following this 3rd day of April, 1997:

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