

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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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.

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Docket No. 970096-EQ

Submitted for filing:  
February 17, 1997

**RESPONSE TO VASTAR GAS MARKETING, INC.'S  
PETITION FOR LEAVE TO INTERVENE**

Florida Power Corporation ("Florida Power"), in response to the Petition for Leave to Intervene in this docket filed by Vastar Gas Marketing, Inc. ("VGM"), and VGM's request that the Commission delay its consideration of Florida Power's Petition, respectfully submits the following:

**VGM'S INTERVENTION**

1. Florida Power does not resist, nor does it support, the grant of leave to VGM to intervene herein. However, Florida Power is constrained to point out that it is unnecessary for VGM to participate in these proceedings to protect its rights under the Gas Sales and Purchase Contract dated September 29, 1993 ("Gas Sales Contract") by and between Tiger Bay Limited Partnership ("Tiger Bay"), as buyer, and Arco Natural Gas Marketing, Inc., predecessor in interest to VGM, as seller. As VGM's own Petition indicates, the Gas Sales Agreement

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contains a provision, Section 18.01, pursuant to which VGM is entitled to written notice of any proposed assignment of the Gas Sales Agreement by Tiger Bay, and for VGM's prior consent to such assignment, which consent "shall not be unreasonably withheld". Florida Power's Petition herein, and the Purchase Agreement dated January 20, 1997 (the "Purchase Agreement"), by and between Florida Power and Tiger Bay annexed thereto, make clear that neither Florida Power nor Tiger Bay seek any alteration of VGM's rights under the Gas Sales Agreement, and that the provisions of the Gas Sales Agreement are not in dispute herein; VGM is, therefore, adequately protected by, and should be required to rely upon, the Gas Sales Agreement.

#### **VGM'S "STATEMENT OF ULTIMATE FACTS"**

2. That portion of VGM's Petition for Leave to Intervene that purports to set forth certain "ultimate facts" with respect to this matter contains a number of misstatements, which Florida Power is compelled to point out to the Commission.

3. First, in paragraph 10, VGM alleges that the Purchase Agreement and the assignment of the Gas Sale Agreement to, and its assumption by, Florida Power will have a "substantial impact" on VGM, and claims that it should have had the opportunity to participate in the negotiations between Florida Power and Tiger Bay that resulted in the execution of the Purchase Agreement. There is

absolutely no basis for such allegations. The Purchase Agreement and Florida Power's Petition herein plainly reflect that Florida Power intends to acquire the Gas Sales Agreement without alteration in its terms, and the Petition specifically requests that the Commission approve the inclusion of the cost of natural gas thereunder in Florida Power's fuel costs under the fuel adjustment clause of Florida Power's rates. Further, there is nothing in the provisions of the Gas Sales Agreement dealing with assignment that contemplates that VGM has the right to participate in any negotiations that may lead to an agreement for the assignment of the Gas Sales Agreement.

4. Mr. Dolan's testimony alluded to in paragraph 11 was based on information obtained in the course of the negotiations for the Purchase Agreement, and is not a misrepresentation of the facts as understood by him. VGM was notified by Tiger Bay in writing in June, 1996, that it was engaged in negotiations with Florida Power for the sale and purchase of the Tiger Bay generating facility. Mr. Dolan was given to understand by Tiger Bay's representatives that VGM had been approached concerning renegotiation or "buy out" of the Gas Sales Agreement and had indicated that it had no interest in discussing such matters with Florida Power prior to its acquisition of the Tiger Bay assets. Thus, Mr. Dolan's testimony accurately depicts Mr. Dolan's understanding of VGM's position, and his (and Florida Power's) state of mind with respect thereto.

5. In paragraph 12, VGM claims that "it is premature" for the Commission to address the matters before it pursuant to Florida Power's Petition herein until VGM's consent has been obtained. The inaccuracy of this claim is manifest on the face of Florida Power's Petition and the Purchase Agreement. The provisions of Article VI, Sections 6.01 (c) and 6.02 (c), make the issuance by the Commission of a final, nonappealable order approving the transactions contemplated by the Purchase Agreement a condition to the obligations to close such transactions of both Florida Power and Tiger Bay. The provisions of Article VIII, Sections 8.01 (d) and (h), permit either Florida Power or Tiger Bay to terminate the Purchase Agreement if the Commission does not approve Florida Power's proposed rate treatment of the acquisition cost of the Tiger Bay assets by July 1, 1997, subject to extension of such "drop dead" date if the Commission has issued such an order but the time for appeal has not expired. Therefore, it is absolutely essential that the Commission proceed with its review of the contemplated transactions in a timely fashion.

**VGM'S REQUEST THAT THE COMMISSION DELAY THIS  
PROCEEDING**

6. Although VGM's Petition is styled as one for leave to intervene in this proceeding, the primary relief sought is a delay of the proceeding until VGM consents to the assignment of the Gas Sales Agreement to, and its assumption by,

Florida Power. Procedurally, this matter should have been made the subject of a separate, specific motion.

7. Delaying this proceeding in response to VGM's request would be substantively as well as procedurally inappropriate. Contrary to VGM's assertions, there is ample time for it to assess the effect, if any, on VGM of the assignment of the Gas Sales Agreement to, and its assumption by, Florida Power during the pendency of this proceeding and prior to the closing of the Purchase Agreement. In as much as the Purchase Agreement does not contemplate any alteration in the terms and provisions of the Gas Sales Agreement, it is inconceivable that VGM's analysis of the Purchase Agreement transactions cannot be completed during such interim, or that VGM will suffer any detriment if the Commission proceeds in accordance with the present schedule. On the other hand, it is obvious that if the Commission delays these proceedings until VGM consents to the Purchase Agreement transactions it will have provided VGM enormous leverage to extract better terms for the sale of its natural gas to fuel the Tiger Bay facility than presently afforded by the Gas Sales Agreement, a result that is so unfair that the Commission should reject VGM's request out of hand.

8. Conversely, the transaction contemplated by the Purchase Agreement provides for Florida Power to acquire from Tiger Bay assets of significant value

to Tiger Bay, and the timely completion of the transaction is a substantial part of the consideration to be received by Tiger Bay. Thus, if the Commission delays action in this matter, there is a substantial likelihood that the transaction will not close and Florida Power will lose the opportunity to obtain for its ratepayers the benefits of lower power costs which acquisition of the Tiger Bay facility pursuant to the Purchase Agreement will provide, a benefit which VGM does not dispute. This risk to Florida Power's ratepayers far outweighs the nebulous concerns upon which VGM bases its request for delay.

**WHEREFORE, Florida Power respectfully requests that the Commission deny VGM's request for delay of this proceeding, and that the Commission grant Florida Power such other relief as the Commission deems appropriate.**

Respectfully submitted,

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