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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of nuclear outage)
at Florida Power Corporation's)
Crystal River Unit No. 3.)

Docket No. 970261-EI
Filed: March 21, 1997

RESPONSE IN OPPOSITION TO
FLORIDA POWER CORPORATION'S MOTION
TO CONFIRM SCOPE OF HEARING AND SEVER WORKSHOP

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to Rule 25-22.037(2)(b), Florida Administrative Code, respond in opposition to the Motion of Florida Power Corporation to Confirm Scope of Hearing and Sever Workshop, which should be denied for the following reasons:

1. While Florida Power Corporation's (FPC's) concerns are understandable, the company asks for too much. The workshop scheduled for March 26, 1997, will be the first opportunity for interested parties to hear FPC's initial explanation why Crystal River #3 (CR3) has not been generating electricity since September 2, 1996. In the meantime, FPC is receiving the benefit of a Commission decision which allows the company to collect replacement fuel costs of approximately \$300 million per day from its customers without first satisfying the dictates of the Administrative Procedure Act. FPC's failure to meet its burden of proof as the party seeking affirmative relief was acknowledged by the Commissioners at the fuel adjustment hearing. FPC is in no position to insist that its due process rights are jeopardized by the procedure the Commission has adopted to find out whether it

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was reasonable to allow the company to burden its customers in the first place.

2. All "evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs" is admissible in an administrative hearing pursuant to Section 120.569(2)(e), Florida Statutes (Supp. 1996). The Office of Public Counsel reserves the right to introduce any evidence, from whatever source, that is admissible under Chapter 120, Florida Statutes.

3. FPC has asked the Commission to confirm that the hearing will not address FPC's "actions and decisions with respect to the modifications themselves." Motion, at 1. It is not at all clear what is meant by FPC's use of the term "modifications." Plant modifications done wrong or without adequate management oversight may have been the initiating cause of the outage, making replacement fuel costs properly the responsibility of stockholders. Similarly, modifications performed during the outage may have been necessitated by improper modifications done earlier.

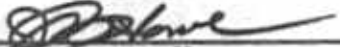
4. All the relevant information is in FPC's possession. It is premature for the Commission to limit the matters subject to inquiry without having a full understanding of everything which might be encompassed within the category of evidence FPC is trying to exclude.

WHEREFORE, the Citizens of the State of Florida, through the Office of Public Counsel, urge the Florida Public Service

Commission to deny the Motion of Florida Power Corporation to
Confirm Scope of Hearing and Sever Workshop.

Respectfully submitted,

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**CERTIFICATE OF SERVICE
DOCKET NO. 970261-EI**

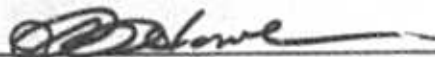
I HEREBY CERTIFY that a true and correct copy of the foregoing RESPONSE IN OPPOSITION TO FLORIDA POWER CORPORATION'S MOTION TO CONFIRM SCOPE OF HEARING AND SEVER WORKSHOP has been furnished by U.S. Mail or *Hand-delivery to the following parties on this 21st day of March, 1997.

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