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JACK SHREVE
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OFFICE OF THE PUBLIC COUNSEL

c/o The Florida Legislature
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Room 812
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April 2, 1997

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

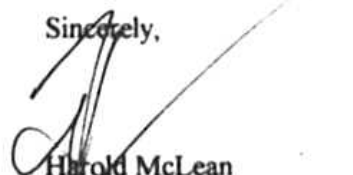
RE: Docket No. 970001-EI

Dear Ms. Bayó:

Enclosed are an original and ten copies of a Motion for Reconsideration in the above-referenced docket.

Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

Sincerely,


Harold McLean
Associate Public Counsel

- ACK _____
- AFA 1
- APP _____
- CAF _____
- CMU _____
- CTR _____
- LAG 1
- LEG 1
- LIN 3
- OPC _____
- RCH _____
- SEC 1
- WAS _____
- OTH _____

HM/dsb
Enclosures

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DOCUMENT NUMBER-DATE

00420 APR-25

FPSC-RECORDS/REPORTING

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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the matter of:)
Fuel and purchased power)
cost recovery clause and)
generating performance)
incentive factor.)
_____ /

Docket No. 970001-EU

Filed: April 2, 1997

MOTION FOR RECONSIDERATION

The Citizens of the State of Florida, by and through JACK SHREVE, Public Counsel, (Citizens) move the Florida Public Service Commission (commission) to reconsider Order No. PSC-97-0359-FOF-EI (the order) in this docket, insofar it purports to permit Florida Power Corporation (FPC) to recover certain replacement fuel costs occasioned by the outage of the nuclear generating unit known as Crystal River unit no. 3, and as grounds therefore say:

1. On February 19, 1997, the commission held an evidentiary hearing in this docket pursuant to notice and pursuant to Section 120.57(1) Florida Statutes, the commission voted to (among other things) permit FPC to begin charging a higher fuel cost recovery factor to its customers beginning April 1, 1997 for the period April through September, 1997;
2. The order in this docket issued on April 1, 1997 after having lingered at the commission until such time as increased rates were actually being charged by the utility, thus depriving parties any opportunity to move for reconsideration before the fact. The order permits, among other things, FPC to recover certain replacement fuel costs made necessary by the as yet unexplained outage of Crystal River No. 3 nuclear unit;

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3. The principal factor upon which FPC relied in its request for an increased fuel cost recovery is the outage of Crystal River No. 3 nuclear generating unit which was taken out of service on September 2, 1996 and is expected by FPC to remain out of service for much of 1997, yet FPC brought no evidence to the commission in this docket explaining whether, or to what extent FPC the replacement fuel costs were prudently, or reasonably incurred,

4. A fundamental principle of regulatory law by which the commission is bound holds that no expense incurred by a utility in the provision of utility service be approved for recovery from the customers of that utility until that expense be shown by the utility to have been reasonably and prudently incurred; moreover, the burden to show whether the expense is reasonable and prudent lies with the utility--it may not be presumed by the commission;

5. The commission hearing transcript, an excerpt of which is attached to this motion, indicates the absence of evidence on the point of whether it was reasonable or prudent on the part of FPC to incur the outage of Crystal River No. 3, and to incur the replacement fuel costs as a result thereof. Reference to the attached exhibit will clearly show that at least two members of the panel of three unequivocally indicated that, in the words of the panel chairman, "there's nothing in the record either way."

6. The order provides no additional justification for the outage; instead it cautions parties that:

In the future, however, when a utility seeks to recover costs which have a significant impact on the utility's fuel adjustment factor, the utility must affirmatively demonstrate prior to approval for recovery

that the actions or events that gave rise to the need for the recovery and the underlying costs are reasonable.

For the present, however, the commission order erroneously and with out justification forces the customers of FPC to extend an unsecured loan to FPC, at modest interest, to be repaid at some uncertain time in the future--*prior to the commission's receipt of any evidence whatsoever on the point.*¹

7. Whereas the Citizens recognize that a motion for reconsideration is not a simple matter of urging the commission to change its mind, it also recognizes that Section 120.68(10), Florida Statutes, as well as a great volume of case law, requires that, in the language of the statute, a reviewing court "... shall, however, set aside agency action or remand the case to the agency if it finds that the agency's action depends on any finding of fact that is not supported by competent substantial evidence in the record." Competent and substantial evidence has been defined (time and again) by the courts of the state. In Duval Utility Company v. Florida Public Service Comm'n, 380 So. 2d 1028, 1031 (Fla. 1980), quoting from DeGroot v. Sheffield, 95 So.2d 912, 916 (Fla. 1957) it was found to be "such evidence as will establish a substantial basis of fact from which the fact at issue can reasonably be inferred [or] ...such relevant evidence as a reasonable mind would accept as adequate to support a conclusion."

8. "[N]othing in the record either way" falls noticeably short of the standard set by the courts for review of commission orders;

¹ In the descriptive words of commission chairman Julia Johnson: "there's nothing in the record either way."

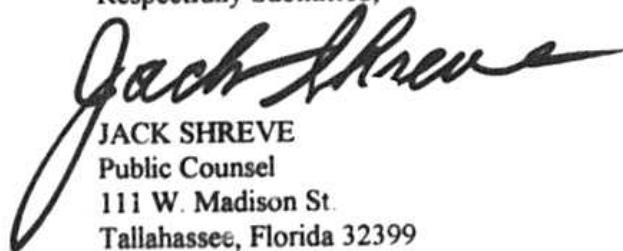
9. The following language from the order provides the only purported justification for the commission's admitted approval of replacement fuel costs, the lack of evidence regarding reasonable and prudence notwithstanding: "...we do not believe it was unreasonable for FPC to expect that it would have the opportunity to meet the burden of proof in a proceeding specifically designed to determine the prudence of these costs." Just as the record lacks evidence probative of whether the nuclear outage and the attending replacement fuel costs are reasonable, it lacks evidence as to whether it was reasonable for FPC to rely on a mistaken notion concerning which party has the burden of proof when utilities of any stripe come to the commission for more money. That FPC is the beneficiary of expert legal advice is a matter so sure, it is appropriate for official notice. Yet, because of FPC mistaken notion (which they must cure in the future) customers will be deprived of the use of their money for an undetermined time.

10. The commission order, by the words of the commissioners who cast its underlying vote, is not based upon substantial competent evidence of record. It unjustly deprives the Citizens of the use of their money to their detriment and in the absence of evidence. It simply does not comport with the essential requirements of law, and ought to be reconsidered by the commission.

WHEREFORE: the Citizens of the State of Florida move the Florida Public Service Commission to reconsider order PSC-97-0359-FOF-EI and to its order to provide that Florida Power Corporation shall not increase the fuel cost recovery factor until such time as an evidentiary, Section 120.57(1), Florida Statutes at which Florida Power Corporation shall adduce competent substantial evidence that the outage of Crystal River No. 3 generating plant was through no fault of the utility or its management, if any it can; and shall further adduce competent

substantial evidence that the replacement fuel costs were prudently incurred, if any it can. The Citizens of the State of Florida further move the commission to enter its order reversing any increase of the fuel cost recovery factor already implemented by Florida Power Corporation, and requiring Florida Power Corporation to properly account for same.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Jack Shreve". The signature is written in a cursive style with a large, sweeping initial "J".

JACK SHREVE
Public Counsel
111 W. Madison St.
Tallahassee, Florida 32399

Attorney for the Citizens
of the State of Florida

**CERTIFICATE OF SERVICE
DOCKET NO. 970001-EI**

I HEREBY certify that a copy of the foregoing MOTION FOR RECONSIDERATION has been served by *hand delivery or U.S. mail to the following parties of record on this 2nd day of April, 1997:

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A handwritten signature in black ink, appearing to read 'Harold McLean', written over a horizontal line.

Harold McLean
Associate Public Counsel