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**Florida
Power**
CORPORATION

JAMES A. MCGEE
SENIOR COUNSEL

April 12, 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. 970001-EI

Dear Ms. Bayó:

Enclosed for filing in the subject docket are an original and ten copies of Florida Power Corporation's response in opposition to Public Counsel's motion for reconsideration.

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 document in WordPerfect format. Thank you for your assistance in this matter.

Very truly yours,

James A. McGee

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CTR _____ JAM/kp
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LEG 1 _____ cc: Parties of record
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GENERAL OFFICE
A Florida Progress Company

FPSC-RECORDS/REPORTING

CERTIFICATE OF SERVICE

Docket No. 970001

I HEREBY CERTIFY that a true and correct copy of Florida Power Corporation's response in opposition to Public Counsel's motion for reconsideration has been sent by regular U.S. mail to the following individuals on April 14, 1997:

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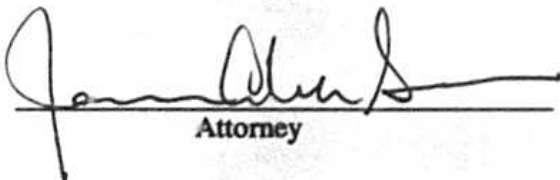
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and Purchased Power
Cost Recovery Clause with
Generating Performance Incentive
Factor.

Docket No. 970001-EI
Submitted for filing:
April 14, 1997

**RESPONSE OF FLORIDA POWER CORPORATION
IN OPPOSITION TO PUBLIC COUNSEL'S
MOTION FOR RECONSIDERATION**

Florida Power Corporation (Florida Power), hereby responds in opposition to the Motion for Reconsideration filed in this docket by the Office of Public Counsel (Public Counsel) on April 2, 1997 and states as follows:

1. As Public Counsel acknowledges, the purpose of "a motion for reconsideration is not a simple matter of urging the commission to change its mind," (Motion, ¶7) but rather it is to bring to the Commission's attention matters of oversight, inadvertence or mistake in reaching its decision. Despite this recognition, Public Counsel's Motion contains nothing but a reargument of points fully considered by the Commission in reaching its decision at the February 19th hearing in this proceeding. Public Counsel does not even allege any oversight or mistake on the part of the Commission. On this basis alone, his motion should be rejected.

2. Public Counsel's Motion also fundamentally misapprehends the nature of the fuel adjustment procedure. Public Counsel contends that "no expense incurred by a utility in the provision of utility service [can] be approved for recovery from the customers of that utility until that expense has been shown by

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the utility to have been reasonably and prudently incurred." Motion ¶4. This may be a correct statement with respect to a final decision on cost recovery, but it is simply inapplicable to a proceeding, such as a general rate case or the fuel adjustment, in which the Commission allows interim cost recovery subject to refund.

3. In contending that the Commission lacks sufficient evidence of prudence, Public Counsel fails to recognize that the Commission has made no final decision with respect to the recovery of replacement fuel costs associated with the extended outage at Florida Power's Crystal River nuclear plant. Instead, the Commission has taken reasonable steps, consistent with its established practice for reviewing nuclear plant outages, to ensure that it will, in fact, have full and complete evidence before it when a final decision is ultimately reached. In doing so, the Commission also carefully balanced the interests of ratepayers by allowing only partial interim recovery of replacement fuel costs, thus protecting the ratepayers from the more extreme rate burden of either current recovery of all such costs pending its investigation, or, as Public Counsel urged, recovery in the future of all or a significant portion of the costs if they are ultimately found to be prudently incurred.

4. Public Counsel also fails to properly distinguish the difference between the burden of going forward with the evidence and the ultimate burden of proof. As the party requesting recovery, Florida Power clearly bears the ultimate burden of proof. However, a presumption exists that, absent evidence to the contrary, expenses of a utility in rendering service are prudently incurred. *West Ohio Gas Co. v. Public Utilities Commission of Ohio*, 294 U.S. 63, 79 L. ed. 761 (U.S. Sup. Ct., 1934) ("Good faith is to be presumed on the part of

managers of a business. [Citations omitted.] In the absence of a showing of inefficiency or improvidence, a court will not substitute its judgment for theirs as to the measure of a prudent outlay.") Florida Power's testimony identified replacement fuel costs incurred as a result decrease nuclear generation. See, Exhibit No. 1 (JS-1, page 3 of 3). Once those costs were put at issue, the burden of going forward with the evidence reverts to Florida Power. Public Counsel could have done so through testimony, in which case Florida Power would have had the opportunity to respond with rebuttal testimony. Instead, Public Counsel chose to raise the issue through prehearing pleadings subsequent filing of testimony. The Commission then set the issue for hearing in the future to allow evidence to be adduced. The Commission has followed proper procedure, fully consistent with the parties' due process rights and Florida Power's ultimate burden of proof. Public Counsel contention to the contrary is wrong and should be rejected.

Respectfully submitted,

OFFICE OF THE GENERAL COUNSEL
FLORIDA POWER CORPORATION

By 

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