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June 16, 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. 970261-E1

Dear Ms. Bayó:

Enclosed are an original and fifteen copies each of a Motion to Strike Reply of Florida Power Corporation to Public Counsel's Opposition to Motion to Strike Testimony of William R. Jacobs, Jr. for filing 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,

John Roger Howe
John Roger Howe
Deputy Public Counsel

- ACK _____
- AFA 2
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG Base
- LEG JRH/dsb
- Enclosures
- 5
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- ROGERC/BLBAYO9LTR
- S: 1
- W: _____
- OT: _____

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DOCUMENT NUMBER-DATE
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EPSC-RECORDS/REPORTING

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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: June 16, 1997

**MOTION TO STRIKE REPLY OF
FLORIDA POWER CORPORATION TO
PUBLIC COUNSEL'S OPPOSITION TO MOTION
TO STRIKE TESTIMONY OF WILLIAM R. JACOBS, JR.**

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to Rule 25-22.037(2), Florida Administrative Code, move the Florida Public Service Commission to strike the reply of Florida Power Corporation (FPC) to the Citizens' response in opposition to the company's motion to strike the testimony of the Citizens' witness, William R. Jacobs, Jr., for the following reasons:

1. FPC's motion to strike Dr. Jacobs's testimony was filed on May 29, 1997, and served by facsimile and U.S. mail. Rule 25-22.037(2) permits the filing of such a motion, although service by facsimile is not covered by Commission rules. The Citizens response in opposition to the motion was filed on June 6, 1997, pursuant to Rule 25-22.037(2)(b), which allows for a written memoranda in opposition to a motion to be filed within 7 days of service of the motion. On June 16, 1997, FPC filed a "reply" to the Citizens' response. There is, however, no provision in Commission rules for a reply to a memoranda filed in opposition to a motion. Moreover, FPC has not filed a motion requesting leave to file a reply. FPC's "reply", therefore, is not properly before the Commission and should be stricken.

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2. FPC has been subject to the Commission's procedural rules for many years and can be presumed to know their contents. Yet, FPC does not cite to any rule as authorizing its filing, nor does it cite to any instances in which the Commission has permitted a reply to be filed. In the Southern States Utilities rate case, Docket No. 920199-WS, the Commission denied a motion for leave to file a reply to a response in opposition to a motion for reconsideration. Order No. PSC-96-0406-FOF-WS, issued March 21, 1996 ("We considered the utility's motion for reconsideration and various other pleadings filed by the parties at the February 20, 1996, Agenda Conference. We . . . denied SSU's motion to file a reply.")

3. In Citizens of Florida v. Mayo, 357 So. 2d 731, 734 (Fla. 1978), the court quoted with approval from a Commission order which said "[t]he Commission's procedural rules are a comprehensive body covering their subject matter; hence, the model rules are simply inapplicable to the Commission." The rules are comprehensive, and they do not permit a reply to a memoranda in opposition to a motion.

WHEREFORE, the Citizens of the State of Florida, through the Office of Public Counsel, urge the prehearing officer to issue an order striking the Reply of Florida Power Corporation to Public Counsel's Opposition to Motion to Strike Testimony of William R. Jacobs, Jr.

Respectfully submitted,

JACK SHREVE
Public Counsel



John Roger Howe
Deputy Public Counsel

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Attorneys for the Citizens of
the State of Florida

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

I HEREBY certify that a copy of the foregoing MOTION TO STRIKE REPLY OF FLORIDA POWER CORPORATION TO PUBLIC COUNSEL'S OPPOSITION TO MOTION TO STRIKE TESTIMONY OF WILLIAM R. JACOBS, JR., has been served by*hand-delivery, or by **facsimile and U.S. Mail to the following persons on this 16th day of June, 1997.

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