

**Florida  
Power**  
CORPORATION

**RECEIVED** Alexander Glenn  
CORPORATE COUNSEL

JUN 23 1997

June 19, 1997

FPSC - Records/Reporting

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. 970261-EI

Dear Ms. Bayó:

Enclosed for filing in the subject docket are an original and fifteen (15) copies of Florida Power Corporation's Response In Opposition to Public Counsel's Motion to Strike Reply.

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 5.1 format. Thank you for your assistance in this matter.

Sincerely,

R. Alexander Glenn

RAG/mgc

Enclosures

cc: Parties of Record

DOCUMENT NUMBER - DATE  
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Power**  
CORPORATION

**R. Alexander Glenn**  
CORPORATE COUNSEL

June 19, 1997

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ACK \_\_\_\_\_  
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APP \_\_\_\_\_  
CAF \_\_\_\_\_  
CMU \_\_\_\_\_  
CTR \_\_\_\_\_

RAG/mgc

ENC Baso Enclosures

LEG 3  
LIT 5 cc: Parties of Record

W.H. 2  
S. 1  
W.D. \_\_\_\_\_  
G.H. \_\_\_\_\_

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

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Docket No. 970261-EI

Submitted for filing:  
June 19, 1997

**FLORIDA POWER CORPORATION'S RESPONSE IN OPPOSITION  
TO PUBLIC COUNSEL'S MOTION TO STRIKE REPLY**

Florida Power Corporation ("Florida Power") opposes Public Counsel's Motion to Strike Reply of Florida Power Corporation to Public Counsel's Opposition to Motion to Strike Testimony of William R. Jacobs, Jr. on the following grounds.

1. The Rules of the Public Service Commission that apply to formal proceedings like this one provide that "Generally, the Florida Rules of Civil Procedure shall govern in proceedings before the Commission under this part, except that the provisions of these rules supercede the Rules of Civil Procedure where conflict arises between the two." Rule 25.22.035, Florida Admin. Code. The Florida Rules of Civil Procedure provide for the filing of motions but are silent on the parties' ability to file responses to motions or replies to responses. Rule 1.100 (b), Fla. Rules of Civil Procedure. In State court, responses to motions and replies to responses are filed routinely, as needed, without leave of court.

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2. The Commission's rules provide that a party may seek relief by means of a written motion and that other parties may file memoranda replying to the motion within seven (7) days of the date the motion is served. Rule 25-22.037 (2)(b), Florida Admin. Code. Thus, the Commission's rules, like the Florida Rules of Civil Procedure, are silent on reply memoranda. But the Commission's rules, like the Florida Rules of Civil Procedure, are most fairly read not to preclude the filing of reply memoranda, but to establish restrictions on the filing of the motion itself (it must be in writing) and on the filing of the response (it must also be in writing and filed within a time certain). Obviously, the Commission has the discretion to rule on a motion based only on those submissions -- the motion and the response. But this does not mean that parties may not file reply memoranda or that the Commission may not exercise discretion to consider such memoranda, if filed.

3. Public Counsel's reliance on Citizens of Florida v. Mayo, 357 So. 2d 731, 734 (Fla. 1978), is misplaced. Public Counsel cites this case for the proposition that the Commission's procedural rules are comprehensive. Obviously, under the express terms of the Commission's rules -- deferring to the Florida Rules of Civil Procedure in instances where the Commission's rules do not address an issue -- this Commission's rules are not comprehensive and were not intended to be. The Court in Mayo merely recognized that the Commission was not statutorily required to adopt additional rules.

4. The Commission should exercise its discretion in this instance to consider Florida Power's Reply to Public Counsel's opposition to Florida Power's motion to strike Jacobs' testimony. Public Counsel's opposition is rife with distortions of the record, which are detailed in Florida Power's reply memorandum. In fairness to the Commission, and in the interest of justice, the Commission should receive and consider the information provided in Florida Power's reply memorandum in order to make a fully informed ruling in this important matter.

#### CONCLUSION

For the foregoing reasons, Public Counsel's motion to strike should be denied. The Commission should exercise discretion to receive and consider Florida Power's reply.

Respectfully submitted,

OFFICE OF THE GENERAL COUNSEL  
FLORIDA POWER CORPORATION

By  \_\_\_\_\_

James A. McGee  
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Telephone: (813) 866-5587  
Facsimile: (813) 866-4931

**CERTIFICATE OF SERVICE**

**Docket No. 970261-EI**

I HEREBY CERTIFY that a true and correct copy of Florida Power Corporation's Response in Opposition to Public Counsel's Motion to Strike Reply has been sent by regular U.S. mail to the following individuals on June 19, 1997:

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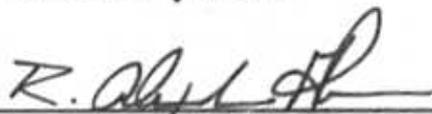
\*Also served by hand  
\*\*Also served by Telefax

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