

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and Purchased ) DOCKET NO. 930001-EI  
Power Cost Recovery Clause ) ORDER NO. PSC-93-0242-PCO-EI  
and Generating Performance ) ISSUED: 02/15/93  
Incentive Factor. )  
\_\_\_\_\_)

ORDER DENYING AUTHORIZATION TO PROCEED WITH FILING

On December 17, 1992, the Commission issued Order No. PSC-92-1469-FOF-TL in Docket Nos. 920188-TL and 920939-TL, resolving motions filed by Roy A. Day. In that order, the Commission imposed several sanctions on Mr. Day, including an order that Mr. Day was required to obtain permission from the Chairman prior to filing any pleading with the Commission:

GTEFL has asked the Commission to impose various sanctions on Mr. Day pursuant to Section 120.57(1)(b)5, Florida Statutes. In this regard, GTEFL asks that Mr. Day not be allowed to file pleadings without the prior authorization of the Commission. This is similar to the method which various courts have employed to deal with Mr. Day.

Upon review, we shall impose this sanction and require Mr. Day to obtain written authorization from the Chairman prior to filing any pleading with the Commission. To this end, when Mr. Day's filings are received, the Chairman will issue a procedural order either granting or denying authorization to Mr. Day to proceed with the pleading.

Order No. PSC-92-1469-FOF-TL at 9. The order also states at page 10:

It is further . . . ORDERED that as a further sanction, Mr. Day shall be allowed to file no pleading with this Commission without the written authorization of the Chairman as set forth in the body of this Order.

On January 22 and 25, 1993, Mr. Day filed a Motion to Intervene in Docket No. 930001-EI and a pleading Mr. Day entitled "a Petition and a Motion to Disqualify the FPSC". A copy of those documents is attached hereto. Mr. Day's most recent pleadings contain the same vituperative and libelous rantings as the earlier pleadings that earned Mr. Day the sanction of this Commission. I find that they do not comport with the Commission's rules on

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practice and procedure, they do not allege facts necessary to show that Mr. Day has standing to intervene, and they are completely without merit. I deny Mr. Day permission to file these documents in Docket No. 930001-EI.

I deny permission to file the Motion to Intervene and the Petition and Motion to Disqualify FPSC for the following reasons:

- 1) Mr. Day has failed to demonstrate standing to intervene pursuant to Section 350.0611, Florida Statutes, and Florida case law.
- 2) Mr. Day has failed to make a clear and plain statement of his cause of action to allow Florida Power Corporation to form a response.
- 3) While it appears that Mr. Day alleges some sort of fraud on the part of the Commission and the Public Counsel, he fails to do so with particularity as is required by Rule 1.130(b), Florida Rules of Civil Procedure.
- 4) Mr. Day fails to state a cause of action for which relief can be granted under Rule 1.140, Florida Rules of Civil Procedure.
- 5) Mr. Day's pleadings were not served on any party of record and thus, are improper under Rule 25-22.028, Florida Administrative Code, and Rule 1.080, Florida Rules of Civil Procedure.
- 6) Mr. Day's pleadings are impertinent and scandalous in content within the meaning of Rule 1.130(f), Florida Rules of Civil Procedure, and a sham pleading within the meaning of Rule 1.50(a), Florida Rules of Civil Procedure.
- 7) Mr. Day's allegations appear libelous on their face and they go beyond the qualified privilege against liability afforded parties filing a pleading.
- 8) Mr. Day's allegations are conclusory in nature, devoid of any supporting specific factual allegations and fail to state a claim upon which relief can be granted pursuant to Rule 1.140(b), Florida Rules of Civil Procedure.

In denying Mr. Day permission to proceed with his pleadings, I am guided by the Commission's findings in Order No. PSC-92-1469-FOF-TL. In that order, we found that Mr. Day's pleadings were "filed for an improper purpose which is manifested by excessive persistence and obdurate resistance out of proportion with the issues before the Commission", and that they were "abusive and frivolous harangues which are intended solely to harass and which

comport with virtually none of our procedural rules". We also found that Mr. Day should be required to comply with the Commission's rules:

the normal latitude which we afford to individuals filing pro se is inappropriate in the context of Mr. Day's propensity for baseless and repetitious pleadings. Thus, all future filings by Mr. Day shall be required to comport with our rules and shall be served on all parties of the docket in which they are filed. Failure to comply with applicable Commission rules and orders shall result in summary denial of the pleadings.

Order No. PSC-92-1469-FOF-TL at 3.

Mr. Day was also warned that, should he persist in filing improper pleadings, a monetary sanction would be imposed pursuant to Section 120.57(1)(b)5, Florida Statutes. In the order, we struck Mr. Day's pleadings; ordered him to comply with applicable Commission rules and orders and to serve his pleadings on all parties to the applicable docket; and ordered that pleadings which do not comport with applicable Commission rules and orders would be denied on that basis.

Mr. Day is hereby warned once again that the Florida Public Service Commission will not permit abusive, meritless pleadings to be filed in its administrative proceedings. Further attempts to derail and delay the administrative process will not be tolerated.

It is therefore

ORDERED by the Chairman of the Florida Public Service Commission that Mr. Roy A. Day is denied authorization to proceed with the filing of the attached "Motion to Intervene" and "Petition and Motion to Disqualify FPSC". It is further

ORDERED that the Clerk of the Division of Records and Reporting shall retain a copy of this Order and the attached pleading, but shall not file the pleading in any Commission docket.

ORDERED that no party in any docket shall be required to respond to the attached pleading. It is further

ORDERED that Mr. Day is hereby warned that continuing to file improper pleadings will result in the imposition of monetary sanctions pursuant to Section 120.57(1)(b)5, Florida Statutes.

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By ORDER of J. Terry Deason, Chairman, Florida Public Service Commission, this 15th day of February, 1993.

  
J. TERRY DEASON, Chairman  
FLORIDA PUBLIC SERVICE COMMISSION

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or sewer utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.