

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for a rate) DOCKET NO. 910890-EI
increase by Florida Power) ORDER NO. PSC-93-0919-PCO-EI
Corporation.) ISSUED: 06-17-93
_____)

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 sanctions on Mr. Day, one of which was to order him 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 further 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 April 29, 1993, Mr. Day filed a "Motion for Emergency Ruling on April 29, 1993," "Motion to Disqualify the Florida Public Service Commission," "Motion to Stay Proceedings in the Above-entitled and Numbered Action," "Motion to Reschedule the May 4, 1993 Conference on the Above-entitled and Numbered Action," "Motion for Copy of Commission Staff's Recommendation," and "Motion for a Change of Venue for the Commission's Conferences on the Above-entitled and Numbered Action." By his pleadings, Mr. Day sought to

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FLORIDA PUBLIC SERVICE COMMISSION

78

have the Commission either stay its decision in Docket No. 910890-EI or have the Commission move all of its agenda conferences to Tampa, Florida. Mr. Day also sought to have the Commission disqualify itself and transfer the matter to Federal Court. These 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 practice and procedure and that they are completely without merit. In denying Mr. Day permission to proceed with his pleading, I am guided by the Commission's findings in Order No. PSC-92-1469-FOF-TL. I deny Mr. Day permission to file these documents in Docket No. 910890-EI.

I deny Mr. Day permission to file the above-mentioned pleadings for the following reasons:

- 1) 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.
- 2) While it appears that Mr. Day alleges some sort of fraud he fails to do so with particularity as is required by Rule 1.130(b), Florida Rules of Civil Procedure.
- 3) Mr. Day fails to state a cause of action for which relief can be granted under Rule 1.140, Florida Rules of Civil Procedure.
- 4) Mr. Day fails to set out a claim for relief in sufficient clarity to allow Florida Power Corporation to form defenses or to admit or deny any allegations.
- 5) Mr. Day's motions 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 motions are impertinent and scandalous in their 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 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." Further, we determined 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 pleadings. Further attempts to detail 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 pleadings. It is further


ORDER NO. PSC-93-0919-PCO-EI
DOCKET NO. 910890-EI
PAGE 4

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. It is further

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.

By ORDER of Chairman J. Terry Deason, as Prehearing Officer, this 17th day of June, 1993.


J. TERRY DEASON, Chairman and
Prehearing Officer

(S E A L)
MAH:bmi

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 wastewater utility. A motion for

ORDER NO. PSC-93-0919-PCO-EI
DOCKET NO. 910890-EI
PAGE 5

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.

Roy A. Day
P.O. Box 33
Tarpon Springs, Florida 34688-0033

April 26, 1993

PERSONAL for
Mr. Steve Tribble, Director of Records and Reporting
Florida Public Service Commission
101 Gaines Street
Tallahassee, Florida 32399

RE: Docket No. 910890-EI; Day (Intervenor) v. Florida Power Corp.

Dear Tribble:

IF AN AGENT AND SERVANT OF MR. STEVE TRIBBLE IS READING THE INSTANT LETTER, YOU ARE TO CEASE AND DESIST READING THE INSTANT LETTER, AND GIVE TO MR. STEVE TRIBBLE, AND MR. STEVE TRIBBLE, ONLY. THANK YOU.

Please find enclosed Intervenor Roy A. Day's Motion To Disqualify Florida Public Service Commission, Roy A. Day's Motion To Stay Proceedings In The Above-Entitled And Numbered Action, Roy A. Day's Motion To Reschedule The May 4, 1993 Conference On The Above-Entitled And Numbered Action, And Motion For Copy Of Commission Staff's Recommendation, Roy A. Day's Motion For A Change Of Venue For The Commission's Conferences On The Above-Entitled And Numbered Action, Roy A. Day's Motion For Emergency Ruling On May 4, 1993, in the above-entitled and numbered action. Kindly upon your filing of these pleadings, affix your file stamp to the letter indicating date and time of filing and return to the undersigned in the self-addressed and stamped envelope.

The above-entitled and numbered action is proceeding in a forma pauperis proceeding. Accordingly, I can only afford to provide one copy of the aforesaid pleadings.

Thank you for your cooperation and assistance in this matter.

Very truly yours,

Roy A. Day

RAD/rr

STATE OF FLORIDA
PUBLIC SERVICE COMMISSION

ROY A. DAY,
Intervenor

DOCKET NO. 910890-EI

FLORIDA POWER CORPORATION

I. ROY A. DAY'S MOTION FOR EMERGENCY RULING
ON APRIL 29, 1993,

II. ROY A. DAY'S MOTION TO DISQUALIFY THE FLORIDA PUBLIC
SERVICE COMMISSION

III. ROY A. DAY MOTION TO STAY PROCEEDINGS IN THE ABOVE-ENTITLED
AND NUMBERED ACTION

in the alternative,

IV. ROY A. DAY'S MOTION TO RESCHEDULE THE MAY 4, 1993
CONFERENCE ON THE ABOVE-ENTITLED AND NUMBERED ACTION, AND
MOTION FOR COPY OF COMMISSION STAFF'S RECOMMENDATION

V. ROY A. DAY'S MOTION FOR A CHANGE OF VENUE FOR THE
COMMISSION'S CONFERENCES ON THE ABOVE-ENTITLED
AND NUMBERED ACTION

ROY A. DAY, files these motions, and Roy A. Day would respectfully show unto this court the following in support thereof:

1. On April 26, 1993, Roy A. Day received in the United States Mail a memorandum dated April 2, 1993 which gave Roy A. Day notice of a May 4, 1993 conference in Tallahassee, Florida (See EXHIBIT '1', which EXHIBIT '1' is attached hereto and by reference incorporated herein).

2. Intervenor Roy A. Day was denied the right to 'intervene' in the above-entitled and numbered action to present each and all defenses and issues to show clear, strong, convincing, unequivocal and uncontroverted evidence that Florida Power Corporation was

granted a "fraudulent rate increase" based on documents replete with "fraud, falsehoods, half-truths, misrepresentations and exparte communication". Subsequently, Intervenor Roy A. Day was denied meaningful access to the Supreme Court of Florida to review Intervenor Roy A. Day's right to intervene in the above-entitled and numbered action. Roy A. Day to present each and all true and correct defenses and issues. Roy A. Day filed a federal civil action on behalf of the citizens of the State of Florida which refers, relates, mentions and pertains to the above-entitled and numbered action (See C.A. No. 93-655-CIV-T-23C, Roy A. Day, et al. v. Florida Power Corporation, et al., in the United States District Court for the Middle District of Florida). Accordingly,, so justice can be served with the true and correct evidence and facts and law, and so the citizens of the State of Florida receive TRUE AND CORRECT RATE INCREASES, and NOT FRAUD OF THE FIRST ORDER, Roy A. Day moves the Florida Public Service Commission to STAY each and all proceedings in the above-entitled action, including but not limited to, the May 4,1993 conferences as reflected in the attached EXHIBIT '1'.

IN THE ALTERNATIVE:

3. Roy A. Day is a pauper, and as reflected in pleadings filed by Roy A. Day in the above-entitled and numbered action, Roy A. Day has requested that each and all conferences be held in the Tampa Bay area, since Roy A. Day is a pauper and cannot afford to pay for a trip to Tallahassee, Florida, with the overlay that the incident involved in the above-entitled and numbered action took place in the

Tampa Bay area, and the citizens have the right to be heard meaningfully on the issues. Further, Roy A. Day cannot properly prepare for the said conference until Roy A. Day receives a copy of the "Commission staff's recommendation", and as of the mailing of the instant pleading, Roy A. Day has NOT received a copy of the said Commission staff's recommendation. IT IS SELF-EVIDENT THAT THE "FPSC" IS DOING NOTHING MORE THAN ATTEMPTING TO DENY ROY A. DAY AND THE CITIZENS FROM BEING MEANINGFULLY HEARD ON THE INSTANT ACTION.

4. Due to the aforesaid facts, Roy A. Day moves the "FPSC" to reschedule the May 4, 1993 conference to a time in the future when the said conference can be held in the Tampa Bay area so each and all citizens can heard meaningfully.

5. In addition, since Roy A. Day is proceeding in a form pauperis mode, Roy A. Day cannot afford to obtain a copy of the "Commission staff's recommendations". Accordingly, so that Roy A. Day can properly prepare for each and all conferences, Roy A. Day moves the "FPSC" to provide Roy A. Day a copy of the Commission staff's recommendations in a form pauperis mode.

6. For judicial economy, Roy A. Day repeats and realleges the Motion To Disqualify The FPSC as if the aforesaid motion was expressly stated herein. Further, Roy A. Day repeats and realleges each and all pleadings filed by Roy A. Day in the above-entitled and numbered action, as if the aforesaid pleadings were expressly stated herein. The aforesaid pleadings reflect Roy A. Day's earlier request to transfer each and all conferences to the Tampa Bay area, since the Tampa Bay area is the region where the incident occurred, and where each and all citizens have the right to be heard meaningfully.

7. To prevent Roy A. Day's rights and property from being adversely affected, Roy A. Day needs an emergency ruling on April 29, 1993.

WHEREFORE, PREMISES CONSIDERED, Roy A. Day request that the following relief be granted:

a. That Roy A. Day's Motion To Disqualify Florida Public Service Commission for the above-entitled and numbered action is GRANTED; That Roy A. Day's Motion For Transfer To Federal Court is GRANTED; declare that the above-entitled and numbered action is transferred to the United States District Court for the District of Columbia, in the alternative, to C.A. No. 92-963-CIV-T-17C, so the said federal court can determine a court with competent jurisdiction, and subsequently, entertain the instant motion to hold action in abeyance.

b. That Roy A. Day' Motion To Stay Proceedings In The Above-Entitled And Numbered Action is GRANTED; that each and all proceedings in the above-entitled and numbered action is stayed pending a final decision in C.A. No. 93-655-CIV-T-23C, Roy A. Day, et al. v. Florida Power Corporation, et al., in the United States District Court for the Middle District of Florida; declare that Roy A. Day was denied meaningful access to Florida Public Service Commission to present each and all defenses and issues as an INTERVENOR.

IN THE ALTERNATIVE:

c. That Roy A. Day's Motion To Reschedule The May 4, 1993 Conference On The Above-Entitled And Numbered Action, And Motion For Copy Of Commission Staff's Recommendation is GRANTED; that the May 4, 1993 conference for the above-entitled and numbered action is re-

scheduled to a time in the future when Roy A. Day has received a copy of the Commission staff's recommendation, and when each and all conferences can be held in the Tampa Bay area, since Roy A. Day is a pauper and cannot afford a trip to Tallahassee, Florida, and since the incident involved in the above-entitled and numbered action occurred in the Tampa Bay, and so each and all citizens can testify at the said conference.

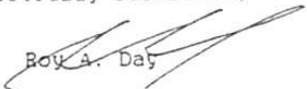
d. That Roy A. Day's Motion For A Change Of Venue For The Commission's Conferences On The Above-Entitled And Numbered Action is GRANTED; that the above-entitled and numbered action pertaining to each and all conferences is transferred to the Tampa Bay area, since the Tampa Bay area is the region where the incident occurred, and where each and all citizens have the right to be heard, with the overlay that Roy A. Day is a pauper, and cannot afford to pay for a trip to Tallahassee, Florida, and so each and all citizens can testify.

e. That Roy A. Day's Motion For Emergency Ruling On May 4, 1993 is GRANTED; that the instant pleading will be entertained on May 4, 1993 to prevent Roy A. Day's rights and property from being adversely affected.

f. Granting Roy A. Day such other and further relief as may be just.


ORDER NO. PSC-93-0919-PCO-EI
DOCKET NO. 910890-EI
PAGE 12

Respectfully submitted,


Roy A. Day

CERTIFICATE OF SERVICE

I hereby certify that I was 'illegally' denied the right to intervene, and Roy A. Day has no personal knowledge of the parties involved in the instant action.



Roy A. Day

ORDER NO. PSC-93-0919-PCO-EI
DOCKET NO. 910890-EI
PAGE 13

State of Florida

Commissioners:

J. TERRY DEASON, CHAIRMAN
THOMAS M. BEARD
SUSAN F. CLARK
LUIS J. LAUREDO
JULIA L. JOHNSON



DIVISION OF RECORDS &
REPORTING
STEVE TRIBBLE
DIRECTOR
(904) 488-8371

Public Service Commission

April 23, 1993

TO: All Interested Persons
FROM: Steve Tribble, Director of Records and Reporting
RE: Notice of Commission Conference for May 4, 1993

On the reverse side of this page is an excerpt of the Agenda for the Commission's conference, which is scheduled to begin at 9:30 a.m. in Room 106 of the Fletcher Building, 101 East Gaines Street, Tallahassee. The excerpt summarizes the issues to be decided in a docket in which you have expressed an interest. As a party of record or interested person in this docket, you may wish to obtain a copy of the Commission staff's recommendation. To do so, call the Records Section of this office at (904) 488-8371.

Also, as a party of record or interested person, you may wish to attend the conference and address the Commission regarding the docket. If this is your intent, you will need to sign the appearance register, which is located on a table at the back of the hearing room near the double doors. (If you fail to sign the register, you may miss the opportunity to speak before the Commissioners vote on the docket.) The Chairman will then announce each item as it is taken up and ask for your comments at the appropriate time. Any comments you wish to make should be limited to approximately five minutes.

If you have any questions regarding this information, please feel free to call me.

ST:ds
Attachment

PSC/RAR 34 (Rev 1/91)

(P7) (EX. 111)

Agenda for
Commission Conference
May 4, 1993

ITEM NO.

CASE

31** DOCKET NO. 910890-EI - Petition for a rate increase by
FLORIDA POWER CORPORATION.

Docket Opened: 8/27/91

Critical Date: None

Hearing Dates: 5/6/92, Talla., Service Hrg., ES DS CL LA
5/13/92, Ocoee, Service Hrg., DS CL LA
5/14/92, St. Pete, Service Hrg., DS CL LA
5/14/92, Clearwater, Service Hrg., DS CL
6/19/92, Talla., Prehrg., ES
7/9, 10, 13, 14, 15, 16, 17, 20, 22/92,
BR ES DS CL LA
10/9/92, Talla., Motion Hrg., ES

Commissioners Assigned: DS BR CL LA
Prehrg Officer DS

Staff: LEG: Palecki
EAG: Jenkins, Kummer
AFA: Devlin, Salak, Slemkewicz

Issue 1: What action, if any, should be taken in this rate proceeding in response to Florida Power Corporation's (FPC) announced commitment to reduce its work force in 1993 and 1994?

Recommendation: FPC's November 1993 step increase should be reduced by \$3,245,979 (jurisdictional).

Alternate Recommendation: No action is required in this matter.

Issue 2: Recommendation that, if the primary recommendation is approved, this docket must remain open in order for FPC to file its cost of service compliance study. If the Commission approves the alternative recommendation, then this docket should be closed.

(P. 8) (Ex. "1")