

State of Florida
Division of Administrative Hearings

ORIGINAL

Sharyn L. Smith
Director and Chief Judge
Ann Cole
Clerk of the Division



The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida
32399-3060

October 15, 1999

Mr. David E. Roomes
3340 Northwest 71st Street
Coconut Creek, Florida 33073

990689-EI

Re: David E. Roomes vs. Florida Power & Light Company
and Florida Public Service Commission
DOAH Case No. 99-3446

Dear Mr. Roomes:

I am sorry that you refused to participate in the pre-hearing conference I scheduled for October 13, 1999, and that you hung up the telephone when I tried to explain who I am and the reason for the telephone conference. I entered an order scheduling the conference on October 7, 1999, and mailed it to you on that date, and my secretary left a message on your voice mail on October 8, 1999, telling you about the conference.

On September 17, 1999, the Division of Administrative Hearings received a copy of a packet of materials you apparently put together from orders and other documents sent to you by the Florida Public Service Commission and the Division of Administrative Hearings. You apparently sent this packet to Grace Jaye, an attorney with the Public Service Commission, together with a cover letter in which you stated:

WHAT IS THIS ALL ABOUT??
AT THE CONFERENCE CALL ON TUESDAY JULY 27,
1999, IT WAS DECIDED THAT A MEETING WILL BE
SCHEDULED BETWEEN FLORIDA POWER & LIGHT
COMPANY AND MYSELF, I AM STILL AWAITING THAT
MEETING.

- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG _____
- MAS _____
- OPC _____
- PAI _____
- SEC _____
- WAW _____
- OTH _____

On October 1, 1999, the Division of Administrative Hearings also received a copy of a letter you sent to Ms. Jaye dated September 28, 1999, in which you again referred to the fact that nothing was achieved at the end of the Public Service Commission conference call on July 27, 1999.

I wanted to explain to you "what this is all about" during the telephone conference on October 13, but, since I could not speak with you then, I am writing to explain to you who I am,

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FPSC-RECORDS/REPORTING

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what I do, and the nature of the hearing that I have been asked to conduct by the Public Service Commission.

First, I want you to know that I have no association at all with the Florida Public Service Commission or with Florida Power & Light Company. My title is Administrative Law Judge, and I work for the Division of Administrative Hearings, which is an independent state agency that operates something like a court. The Administrative Law Judges employed by the Division of Administrative Hearings hold trial-like hearings and enter orders in which we evaluate the evidence presented at the hearings, both the testimony and the documents, and decide what the facts of the cases are, based on this evidence. We set out these facts, and the legal conclusions we reach based on the facts, in written orders that we send to the agency that has referred the case to the Division of Administrative Hearings.

In your case, you filed a complaint with the Public Service Commission against Florida Power & Light Company regarding power outages at your residence. Someone on the staff of the Public Service Commission investigated your complaint and tried to resolve your complaint through an informal process the Public Service Commission uses in cases such as yours. When your complaint was not resolved in this informal process, the Commissioners on the Public Service Commission entered an Order Referring Case to Division of Administrative Hearings for a hearing; this order was entered on August 2, 1999, and the file that the Public Service Commission had compiled about your complaint was sent to the Division of Administrative Hearings on August 11, 1999.

Your case was assigned to me on August 13, 1999, and the Chief Judge of the Division of Administrative Hearings sent you an Initial Order on that date, together with a document entitled "Representing Yourself Before The Division of Administrative Hearings. On September 9, 1999, I sent you, Ms. Jaye, and Wade Litchfield, the attorney for Florida Power & Light Company, a Notice of Hearing and an Order of Pre-Hearing Instructions; in the Notice of Hearing, I scheduled the final hearing in your case for October 22, 1999, in Miami, Florida. Copies of these documents were included in the packet of materials which were attached to your letter that I quoted above.

The purpose of the final hearing that I have scheduled is to allow you the opportunity to present the sworn testimony of yourself and any other witnesses you want to testify on your behalf and to offer into evidence documents and things which you

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believe support your position with respect to your complaint about power outages at your residence. Florida Power & Light Company has the same opportunity to present the testimony of witnesses and offer documents and things into evidence. The way in which cases heard by the Administrative Law Judges at the Division of Administrative Hearings are handled is described in a statute enacted by the legislature, Section 120.57(1), Florida Statutes. I have enclosed a copy of this statute for your information.

As part of the process of preparing for the hearing, both you and Florida Power & Light Company can ask each other for information through a process known by the legal term "discovery." There is a discussion of discovery in the document "Representing Yourself Before The Division of Administrative Hearings;" even though a copy of this document was sent to you on August 13, 1999, with the Initial Order, I have enclosed another copy for your information. As explained in this document, Florida Power & Light Company is required to respond to the discovery requests you send to it. By the same token, you are required to respond to discovery requests that Florida Power & Light Company sends to you.

On September 2, 1999, Florida Power & Light Company sent you two formal discovery requests, a request that you provide documents to Florida Power & Light Company and a set of interrogatories for you to answer. As stated in the document "Representing Yourself Before The Division of Administrative Hearings," there are rules in the Florida Rules of Civil Procedure that set time limits within which you must respond to discovery requests. With respect to the request for production of documents and the interrogatories which Florida Power & Light Company sent you on September 2, 1999, you should have responded to the requests within thirty-five days of September 2, 1999, or on October 7, 1999.

On October 8, 1999, the Division of Administrative Hearings received a document entitled "Respondent's Florida Power & Light Company's Motion to Compel," in which Florida Power & Light Company asserted that you had not answered the interrogatories they sent to you or responded to the request that you produce documents for review. In the motion, Florida Power & Light Company requested that I enter an order requiring you to respond to the request for production of documents and the interrogatories sent to you on September 2, 1999. Pursuant to Section 120.57(1), Florida Statutes, and the Florida Rules of Civil Procedure, you must respond to these discovery requests,

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and I have decided that it is reasonable for you to send your responses to Florida Power & Light Company by November 8, 1999. Because the final hearing in your case is scheduled for October 22, 1999, it is necessary for me to cancel the final hearing in order to give you this additional time in which to send your responses to Florida Power & Light Company.

In order to formalize my decisions that you must respond to the discovery requests of Florida Power & Light Company by November 8, 1999, and that the final hearing scheduled of October 22, 1999, is cancelled, I have entered an Order Compelling Responses to Discovery and Cancelling Hearing, a copy of which is enclosed with this letter.

In writing you this letter and in entering the Order Compelling Responses to Discovery and Cancelling Hearing, I am assuming that you want to proceed with the trial-like final hearing I have described above. If you do not want me to conduct such a hearing in your case, please notify me in writing as soon as possible. If there is anything in this letter that you do not understand or if you are uncertain about how you should proceed, you should consider consulting an attorney.

Sincerely,



PATRICIA HART MALONO
Administrative Law Judge

Enclosures

cc: R. Wade Litchfield, Esquire
Grace A. Jaye, Esquire

ORIGINAL

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DAVID E. ROOMES,
Petitioner,
vs.
FLORIDA POWER & LIGHT COMPANY,
Respondent,
and
FLORIDA PUBLIC SERVICE
COMMISSION,
Intervenor.

Case No. 99-3446

990689-EI

ORDER COMPELLING RESPONSE TO DISCOVERY
AND CANCELLING HEARING

THIS CAUSE came before the undersigned for consideration of Respondent's Florida Power and Light Company's Motion to Compel, which was filed October 8, 1999. In the motion, the Respondent avers that the Petitioner has failed to respond either to the first set of interrogatories or to the request for production of documents served on the Petitioner September 2, 1999. The Respondent represented in the motion that a good faith effort had been made to resolve the issues presented in the motion but that

these efforts had been unsuccessful. The undersigned was also unsuccessful in persuading the Petitioner to participate in a telephone conference call scheduled for 3:15 p.m. on October 13, 1999.

Accordingly, having considered the record in this case and the grounds for the motion, the motion is GRANTED, and it is

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- OTH _____

DOCUMENT NUMBER-DATE

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FPSC-REGIONS/REPORTING

ORDERED:

1. The final hearing scheduled for October 22, 1999, is cancelled.
2. On or before November 8, 1999, the Petitioner shall respond to Florida Power & Light Company's Request for Production of Documents to Petitioner, David E. Roomes, which was served on the Petitioner on September 2, 1999, by certified mail.
3. On or before November 8, 1999, the Petitioner shall respond to Florida Power & Light Company's first set of interrogatories, which was served on the Petitioner on September 2, 1999, by certified mail.
4. Failure of the Petitioner to provide the required responses to discovery on or before November 8, 1999, may be grounds for closing the file of the Division of Administrative Hearings and returning the matter to the Florida Public Service Commission for final disposition.
5. The motion for continuance filed by the Respondent is DENIED as moot.

DONE AND ORDERED this 15th day of October, 1999, in Tallahassee, Leon County, Florida.

Patricia H. Malono

PATRICIA HART MALONO
Administrative Law Judge
Division of Administrative Hearings
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1230 Apalachee Parkway
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www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of October, 1999.

COPIES FURNISHED:

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