

Diamond Williams

110069-EI

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Subject: Electronic Filing / Docket 110069-EI / FPL's Reply to Petitioner's M/Extension of Time to Respond, etc.

Attachments: 4 19 11 Dkt 110069 FPL Reply to Rojo.pdf

Electronic Filing

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b. Docket No. 110069 - EI
In RE: Complaint of Rosario Rojo against Florida Power & Light Company, Case No. 858880E

c. The Document is being filed on behalf of Florida Power & Light Company.

d. There are a total of 5 pages

e. The document attached for electronic filing is Florida Power & Light Company's Reply to Petitioner's Motion for Extension of Time to Respond and Oppose Defendant's Motion to Dismiss with Prejudice and Reply to Petitioner's Motion to Oppose Defendant's Motion to Dismiss with Prejudice

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DOCUMENT NUMBER-DATE
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4/19/2011

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Rosario Rojo against Florida) Docket No. 110069-EI
Power & Light Company)
_____) Filed: April 19, 2011

FLORIDA POWER AND LIGHT COMPANY’S REPLY TO PETITIONER’S MOTION FOR EXTENSION OF TIME TO RESPOND AND OPPOSE DEFENDANT’S MOTION TO DISMISS WITH PREJUDICE AND REPLY TO PETITIONER’S MOTION TO OPPOSE DEFENDANT’S MOTION TO DISMISS WITH PREJUDICE

Florida Power & Light Company, Inc. (“FPL”) hereby files its Reply to Petitioner’s Motion for Extension of Time to Respond and Oppose Defendant’s Motion to Dismiss With Prejudice, as well as its Reply to Petitioner’s Motion to Oppose Defendant’s Motion to Dismiss With Prejudice. For the reasons set forth below, the Florida Public Service Commission (“Commission”) should reject Petitioner’s requests, and move forward to dismissal of Petitioner’s Complaint with prejudice.

Background

1. On March 15, 2011, Petitioner filed her Petition for Formal Complaint. On April 4, 2011, FPL filed its Motion to Dismiss the Complaint with Prejudice. On April 12, 2011, Petitioner filed a Motion for Extension of Time to Respond and Oppose Defendant’s Motion to Dismiss with Prejudice (“Motion for Extension”). Additionally, on April 12, 2011, Petitioner filed a Motion to Oppose Defendant’s Motion to Dismiss With Prejudice (“Motion to Oppose”).

Petitioner’s Motion for Extension of Time to Respond and Oppose Defendant’s Motion to Dismiss With Prejudice Should be Rejected

2. Petitioner’s Motion for Extension is untimely, and should be rejected. Rule 28-106.204(6), Florida Administrative Code, provides that “Motions for extension of time shall be

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filed prior to the expiration of the deadline sought to be extended and shall state good cause for the request.” The deadline here that Petitioner seeks to extend is the time for response to FPL’s Motion to Dismiss. Rule 28-104.206(1), F.A.C., provides that responses in opposition to motions may be filed within seven days of service of a written motion. FPL’s Motion to Dismiss was served electronically on Petitioner on April 4, 2011. Petitioner’s deadline to respond was April 11, 2011. Therefore, Pursuant to Rule 28-106.204(6), F.A.C., Petitioner’s deadline to move to extend that deadline was April 11, 2011. Petitioner filed her Motion for Extension on April 12, 2011. Petitioner’s Motion for Extension is untimely and should be rejected.

3. Furthermore, as noted above, Rule 28-106.204(6), F.A.C., also requires that Motions for Extension of Time state good cause for the request. Not only does Petitioner not state good cause for the request, Petitioner fails to state any cause for the request. Petitioner only claims that “Defendant’s allegations are false, and Plaintiff requests time to oppose and object properly since Plaintiff was told that her interests would be protected by the General Counsel Office. Florida Power & Light Co.’s Motion to Dismiss is a motion that has to be answered properly.” A belief that a Motion to Dismiss is “false” is not good cause for extending a deadline for replying. Petitioner has failed to provide any reason for her delay in missing the deadline for replying, and her Motion for Extension should be rejected.

**Petitioner’s Motion to Oppose Defendant’s Motion to Dismiss With Prejudice
Should Be Rejected**

4. Petitioner’s Motion to Oppose appears to be a Reply to FPL’s Motion to Dismiss, rather than a proper Motion under the applicable rules. Petitioner requests, “an order granting this Motion since this motion is based on false, uncertain, unethical allegations were [sic] Defendant

is trying to ignore their liability and wrongdoing. These allegations were made with malice and bad faith. Rosario Rojo denies any and all allegations and requests Defendant's Motion to Dismiss with Prejudice to be DENIED." This language is clearly intended as a reply to FPL's Motion to Dismiss. It includes statements of denial of allegations of the Motion to Dismiss, and requests that the Motion to Dismiss be denied. Thus, Petitioner's Motion to Oppose should be treated by the Commission as an attempt to reply to FPL's Motion to Dismiss.

5. Petitioner's Motion to Oppose, as a reply to FPL's Motion to Dismiss, is untimely. Rule 28-104.206(1), F.A.C., provides that responses in opposition to motions may be filed within seven days of service of a written motion. FPL's Motion to Dismiss was served on April 4, 2011. Petitioner's deadline to reply was April 11, 2011. Petitioner's Motion to Oppose was filed on April 12, 2011. Therefore her reply in the form of a motion should be rejected by the Commission.

6. Should the Commission consider Petitioner's Motion to Oppose as a motion, it could only be interpreted as a request for permission to reply to FPL's Motion to Dismiss, as indicated by Petitioner's statement, "Plaintiff, Rosario Rojo, requests from the Florida Public Service Commission to grant this Motion to Oppose Defendant's Motion to Dismiss with Prejudice." Prior to the seven day deadline provided by Rule 28-104.206(1), F.A.C., Petitioner has every right to file a reply in opposition to FPL's Motion to Dismiss. However, Petitioner failed to do so, and should not be given an opportunity to skirt the Rule's provisions. Furthermore, as with her Motion for Extension, Petitioner's Motion to Oppose fails to state any good cause for extension of the time to reply to FPL's Motion to Dismiss. For these reasons, if considered as a Motion, the Commission should reject her Motion to Oppose.

WHEREFORE, based on the foregoing, the Florida Public Service Commission

("Commission") should reject Petitioner's requests, and move forward to dismissal of the Petitioner's Complaint with prejudice.

Respectfully submitted this 19th day of April, 2011.

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CERTIFICATE OF SERVICE
Docket No. 110069-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic delivery or this 19th day of April, 2011, to the following:

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