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10
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12
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14
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16
17
18
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22
23
24
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I N D E X**WITNESSES**

NAME	PAGE NO.
DARRYL TROY	
Cross Examination by Mr. Brooks	456
Redirect Examination By Ms. Cowdery	545
CHRISTOPHER SINGLETARY	
Direct Examination by Mr. Brooks	555
Cross Examination By Ms. Cowdery	563
CERTIFICATE OF REPORTER	583

P R O C E E D I N G S

(Transcript continues in sequence from Volume 3.)

THE COURT: Let's go back on the record.

Cross examine.

CROSS EXAMINATION

BY MR. BROOKS:

Q Mr. Troy, on March 13, 1997, did you prepare a document to Mr. Plescow concerning the chronological history of the Mother's Kitchen account?

A Yes.

Q In your two-page letter, one of the entries in that document, a Page 2, by the date of 8-22-96, it shows "gas shut off for nonpayment," with SONP in parenthesis next to it. Is that an accurate entry?

A At the time we thought it was accurate. Now we know it is not accurate.

Q At the time you thought it was accurate, but now you know it was not. What made you change your mind as to the accuracy of that entry?

A In researching the shut off for nonpays, we were concerned mostly by the shut off for nonpay of 9-12 which caused the problem. We weren't concerned about how many, were there previous shut-offs back early in the discovery, or the investigation with the Commission.

1 After there was some debate as to how many
2 turn-offs there were and when they were, we started to
3 researching in our records to find field documents to
4 back up these dates. And we could not find any field
5 dates for the 8-22 shut off for nonpay, so we dropped
6 it.

7 Q Is there a field document showing the
8 receipt of -- is there a field document showing the
9 receipt of \$290?

10 A There is a field document showing the
11 receipt of 290, which we received from the Petitioner.

12 Q But the Company had no independent record
13 showing receipt of \$290?

14 A The Company did not have the \$290 receipt
15 record on their premises.

16 Q Did the Company have independent documents
17 showing a receipt of a \$290 payment?

18 A There was no receipt for the \$290.

19 Q So the receipt, sir, independent
20 document's -- independent of the receipt?

21 A Oh. No.

22 Q So your computer records, as well as your
23 account summary here, is a configuration of facts and
24 figures that you wrote into the record after these
25 particular items were brought up to you; is that

1 correct?

2 A What you're saying is not true. This record
3 shows what is on the computer.

4 You're questioning the \$290 payment of
5 August 12th. We are taking the position, as this
6 summary shows, that it came and was posted in on
7 August 28th as one payment of \$521.72. We received
8 the 290 on August 12. We received another 231.72 on
9 August 28th. They were combined. The original
10 receipts that were made up individually were discarded
11 and one in-house receipt was made for \$521.72, and a
12 transaction was recorded on the computer, and this is
13 what the --

14 Q Sir, I asked you, specifically, if there
15 were independent documents -- if the company had
16 independent documents reflecting the \$290 payment
17 aside from the receipt?

18 A No.

19 Q The only documents that reflected that \$290
20 payment prior to that payment being brought up to you,
21 that was had by the Company, was the receipt that we
22 supplied you with; is that not correct?

23 A Yes.

24 Q And then you went back and generated
25 computer records to coincide with that receipt; is

1 that not correct?

2 A What you're saying is not true. We did not
3 generate any computer records to coincide with that.

4 Q You just stated, sir, that the entry on your
5 account summary was drawn up based upon your research
6 of the computer records. You show a \$290 payment
7 there on August 12. Now, either you had independent
8 records in your computer to generate this summary or
9 you were relying upon the receipt that was given to
10 you by the Petitioner. It's one or the other. Which
11 is it?

12 A The summary is in agreement with our
13 computer record, which shows a receipt on August 28th
14 of \$521.72, which is specified right there, if you
15 read the description next to August 12th payment.

16 Q Mr. Troy, when you were showing the \$290
17 receipt you stated you had -- the Company had no
18 independent --

19 MS. COWDERY: Objection to the form of the
20 question. He's assuming facts which are not in
21 evidence.

22 MR. BROOKS: I'm repeating what he just
23 said, ma'am.

24 Q Mr. Troy --

25 MS. COWDERY: I'm objecting to that

1 particular question unless he's restating the
2 question.

3 MR. BROOKS: I'll restate it.

4 THE COURT: Please do.

5 Q (By Mr. Brooks) Mr. Troy, you were shown a
6 receipt by Petitioner's for \$290; is that not correct?

7 A That's correct.

8 Q Did the Company at that time have a record
9 showing such a \$290 payment?

10 A Not as a single amount but a compilation.

11 Q Sir, would you please answer directly?

12 MS. COWDERY: I'm going to object to the
13 form of the question because he was responding. The
14 witness needs to be able to finish his response.

15 MR. BROOKS: He was asked specifically if
16 the Company had a record that showed a \$290 payment.
17 His response is not directly in response to the
18 question. The question requires a yes or no.

19 Q (By Mr. Brooks) Did the Company have a
20 record, independent record, reflecting a \$290 payment?

21 A The question is confusing to me, Mr. Brooks.
22 What I'm saying is --

23 Q Let me try again --

24 MS. COWDERY: Let the witness --

25 THE COURT: Just a moment.

1 (Simultaneous conversation.)

2 MR. BROOKS: I'm going to ask the question.

3 THE COURT: Just a moment, hold it. Only
4 one person talks at a time.

5 Right now, Mr. Brooks, you may ask the
6 question. Rephrase the question.

7 Q (By Mr. Brooks) Mr. Troy, you were shown a
8 \$290 receipt for payment by the Petitioner, were you
9 not?

10 A Yes.

11 Q At the time you were shown this receipt for
12 payment, did there exist within your company an
13 independent record displaying \$290 received on the
14 12th of August?

15 A No.

16 Q Okay. On the 28th of August, where you show
17 an entry on your account summary of \$231.72 with a
18 explanation of cash payment, does the Company have a
19 receipt or record of actual receipt of \$231.72?

20 A In that individual amount?

21 Q Yes.

22 A No.

23 Q On the document that you identified and
24 Ms. Cowdery had entered as Respondent's Exhibit 24,
25 which is a billing notice for \$540 on 8-7-96, do you

1 know what I'm talking about?

2 A Yes, I do.

3 Q This document reflects a total amount due of
4 \$540.04. When this document says "total amount due,"
5 is that the actual amount that is outstanding on the
6 bill or a payment amount that you're requesting?

7 A That is the outstanding amount on the bill
8 and it is due when the bill is rendered.

9 Q So this was the total unpaid balance on the
10 bill?

11 A Yes, sir.

12 Q So as of August 7, 1997, the total unpaid
13 balance was \$540.04, correct?

14 A That is correct.

15 Q Okay. On the exhibit that -- Exhibit 25,
16 Respondent's 25 that Ms. Cowdery had you identify and
17 entered into evidence, on the turn-off notice, there's
18 a gas turn off -- states "gas turn off due to past due
19 gas, \$285.64." Would you explain why if on the 7th
20 there was a total outstanding balance of 540.04, that
21 only 285.64 was entered on this document?

22 MS. COWDERY: Do you need to review those
23 documents?

24 WITNESS TROY: No.

25 The disconnect notice was mailed prior to

1 that bill being computed and figured. It was mailed
2 on August 2, when the amount owed was 285.64 that was
3 the amount past due at that time. That bill was
4 rendered on August 7th, five days later. The bill had
5 not even been calculated.

6 Q No, sir. I'm referring to Respondent's
7 Exhibit 25, which is a -- I believe you called it a
8 door hanger?

9 A Yes.

10 Q Okay. This has a date of 8-12 on it.

11 A Right.

12 Q And it shows past due gas 285.64, which was
13 placed there after the statement date on the bill
14 shows 540.04.

15 MS. COWDERY: What's the question?

16 Q Why is the 285 on the door hanger as opposed
17 to the 540 on the bill?

18 A The current portion of that bill is not due
19 until approximately 20 days after the bill is
20 rendered. When I say "not due," not considered past
21 due. It would not be part of the cutoff notice. It
22 had not aged to that extent yet to be part of the
23 cutoff notice.

24 Q Could it be because -- could it also be
25 because your office received a \$254.40 payment on this

1 bill?

2 A No. No. We sent out a cutoff notice and
3 that was the amount it was cut off for and that's the
4 amount that was on the door hanger. The cutoff notice
5 went out August 2nd. We followed up on the cutoff
6 notice, terminated the service. That's the same
7 amount that would be on the door hanger as was on the
8 cutoff notice which went out prior to when that bill
9 was rendered. That's all that was past due at the
10 time.

11 Q Could you please explain why on this
12 Respondent's 24, which shows the 540.04 entry, just
13 above that there's an entry of 254.40?

14 MS. COWDERY: Is he talking about this?
15 (Hands document to witness.)

16 A That's something -- I don't know who wrote
17 that on. Somebody wrote that on this. It's a
18 penciled-in figure.

19 Q That's exactly what I'm referred to.

20 A I think that's probably all of the current
21 charges. If you added up the 190 through the 498,
22 it's probably the current charges. I don't know what
23 it represents. I don't know what it represents. We
24 didn't -- I didn't put that on there. The bill was
25 dated for 540.04, with a past-due balance of 285.64.

1 That's what your cutoff notice had on it, 285.64.

2 Q And you don't know who placed this figure on
3 this bill?

4 A I have no way of knowing, no.

5 Q Now, when you were testifying concerning the
6 computer printouts, in Respondent's Exhibit 32, you
7 made mention of something that was called a backup
8 sheet. Is that backup sheet included with 32, with
9 the Exhibit 32?

10 A I need to see the exhibit.

11 Q Is it?

12 A I'm not sure what I was referring -- when I
13 say backup sheet -- a lot of these schedules have
14 backup sheets. There's two parts to them, in other
15 words. Page 3, the backup is Page 4. Add up all of
16 the entries on Page 4 and it equals the total bill on
17 Page 3. When I was saying backup, I might have been
18 referring that way. I would not have referred to
19 anything that's not in here as a backup. Everything
20 is in here.

21 When you get to the items that are in the
22 20's, there's again two sheets involved. One I might
23 refer to as backup to the first sheet. That's the
24 only understanding I have of using that term.

25 Q When you were making reference to these

1 documents that compiled Exhibit 32, you kept making
2 references to changes to the date, changes to the
3 particular -- the reference to Page 28 you stated that
4 the documents showed a change -- to show the change to
5 9-12-96 from 8-12-96. Why was it necessary to change
6 this document from 8 -- from 9 -- from 8-12 to 9-12?

7 A Okay. There's two positions to put the
8 shut-off date. One of them is called the "last shut
9 off for nonpaid" and the other one is called, I
10 believe, the "previous." Here the position called
11 "last shut off for nonpay" had 8-12. We needed to
12 change that to 9-12 and the 8-12 had to be put in the
13 previous. So they just put the new current shut off
14 for nonpaid in the proper position and taken the one
15 that was in there and putting it at previous. We show
16 the last two shut-offs for nonpaid in the record.

17 Q And who makes the changes?

18 A At the top of the page you will see a
19 person's name. It was done on their terminal, which
20 means they most likely did it but it's done on their
21 terminal at their desk. That's what that means.

22 Q Are the terminals interconnected?

23 A All of the terminals are connected to the
24 main computer down in West Palm Beach. When you say
25 interconnected, no. All I can say about that entry,

1 it was entered at Diane's desk in her terminal.

2 Q Okay. If Ms. Keitt made an entry at, say,
3 one of the other parties terminal, could she do that?

4 A Yes, she can do that.

5 Q She also had the capability to go in and
6 change dates?

7 A But it documents it. It's a safety that's
8 built into our safety. If a person doesn't use their
9 terminal for so many minutes, it signs off
10 automatically. If they should leave their desk, it
11 will sign off as another safety feature. And they
12 have to sign back in. So people will not change data.

13 Q Okay. In your responses to Ms. Cowdery you
14 made several references to conversations with me on
15 the 13th. In your references to the conversations --

16 MS. COWDERY: Would you identify the month,
17 please?

18 MR. BROOKS: I'm sorry.

19 Q (By Mr. Brooks) On September the 13th. In
20 your references in those conversations you made
21 comments concerning my demeanor, and specific
22 references to what I was requesting of you. And you
23 gave a reason why the gas -- you directed personnel to
24 turn the service off at Mother's Kitchen.

25 On your computer printout you testified,

1 according to Exhibit 32, on Respondent's Exhibit 32,
2 the notes that -- the handwritten notes portion of
3 that. You testified that you had the service
4 disconnected because of -- you felt there was a danger
5 or a hazard at leaving the service on. Did you not?

6 A Yes.

7 Q In your handwritten notes concerning that
8 conversation, was there a notation made of such a
9 comment on the date it was supposed to have happened
10 in your notes?

11 A Give me a moment just to read over the notes
12 again. (Pause) Give me the question again.

13 Q In your testimony you have made reference to
14 the fact that you instructed your employee to turn the
15 gas off and leave it off because of my demeanor?

16 MS. COWDERY: Objection. Objection.
17 Objection. You're stating what the witness's
18 testimony was and I don't believe that was precisely
19 what the witness's testimony was.

20 MR. BROOKS: I'll rephrase it.

21 Q (By Mr. Brooks) You made references to my
22 demeanor and you made references to comments similar
23 to you telling your employees to turn the service off,
24 leave it off, because of my demeanor and hazardous
25 condition, did you not?

1 A Yes.

2 Q In your notes of the occurrence of
3 conversation of that date, is there a reference to
4 such demeanor and such reasons for turn off?

5 A There's not in the notes, no.

6 Q As a matter of fact, Mr. Troy, is it not
7 true that on the 13th of September, through my
8 telephone conversation with you, that the extent of
9 that conversation centered around the fact that we had
10 paid every payment that Ms. Keitt had asked for.

11 A Yes, because the account was paid up at that
12 time.

13 Q And the other part of the conversation
14 centered around your employee there, at the front --
15 being there at the front of the range, is it not?

16 A Yes, sir.

17 Q Okay. Now, at any point, at any point
18 during that time, did you ask me whether or not we had
19 paid an additional deposit?

20 A No.

21 Q Was there anything in our conversation on
22 the phone, on the 13th, that would have warranted my
23 exclaiming to you the fact that we had paid an
24 additional deposit?

25 MS. COWDERY: Objection. It calls for

1 speculation from the witness.

2 MR. BROOKS: I'll rephrase it, Your Honor.

3 THE COURT: Go ahead.

4 Q (By Mr. Brooks) Was there any statements
5 made during that conversation that would have required
6 me to give an answer referring to a deposit?

7 A I don't remember you saying anything about
8 having made any type of deposits. All I knew was to
9 open a new account, you would have to make a deposit.
10 And I --

11 Q You knew that. But was there anything in
12 that conversation that would have prompted any
13 reference to a deposit?

14 MS. COWDERY: I'm going to object to that
15 question because the form of the question is such that
16 it calls for an amount of speculation that is
17 inappropriate.

18 THE COURT: I'm going to overrule the
19 objection. Witness may answer.

20 Q Was there anything in the conversation that
21 would have caused you to respond about a deposit?

22 A Yes, sir. When Diane talked to me --

23 Q I referred to our conversation.

24 A I tried to get into why I was talking to you
25 about a deposit being necessary. When the account was

1 going to be terminated in Al Byrd's name and
2 re-established, I reiterated to you that you would
3 have to go into the office and come up with a deposit
4 and make the payment of the deposit. So we did talk
5 about a deposit, yes. But I don't remember you saying
6 anything about previously had been made a deposit.

7 Q So you're now saying that while I was
8 talking with you on the telephone you also had
9 conversations with Diane?

10 A Prior to talking to you. I told you she
11 called me first and then you called me.

12 Q Okay. When you were responding to the
13 question you said that in your conversation with
14 Diane, in response to my question about statements
15 concerning the deposit in our conversations.

16 A No. I'm just trying to tell you that Diane
17 talked to me first. That's all I was saying.

18 Q All right, sir. Did you talk to Bill
19 McDaniel on the 13th of September?

20 A No.

21 Q Did you have any conversations with anyone
22 concerning the exact nature -- the exact nature of the
23 leak on the range at Mother's Kitchen?

24 A When you say "exact nature," I mean, as to
25 exactly --

1 Q What was causing it?

2 A No.

3 Q Any references that you have made, either to
4 date or prior to today, concerning the actions of
5 McDaniel at Mother's Kitchen consisted of things you
6 were told happen?

7 A Any references I made today?

8 Q Any statements you made today, or prior to
9 today, concerning the actions of McDaniel in Mother's
10 Kitchen restaurant on the 13th of September are
11 reflections of what you were told happened; is that
12 not correct?

13 A I was the investigator. Obviously I talked
14 to all the people in the Sanford office, including to
15 McDaniel, or to him through his supervisor. The
16 information as relayed to me. He also filled out a
17 statement of what his actions were on the 13th of
18 September.

19 Q Understood. Aside from statements from
20 individuals, you have no personal firsthand knowledge
21 of what actually occurred there in Mother's Kitchen on
22 the 13th of September?

23 A Not firsthand. I was not there.

24 Q When your serviceman, McDaniel, wrote in his
25 statement that he thought that capping the range --

1 **MS. COWDERY:** Objection. We're referring to
2 information that's not in evidence -- quoting from
3 evidence.

4 **MR. BROOKS:** Yes, ma'am, it is. It was
5 entered by you in your questioning of McDaniel at the
6 last hearing. And Mr. McDaniel's statement is of
7 record at any rate because it was in his testimony.

8 **THE COURT:** What's the question?

9 **MS. COWDERY:** Can I have a moment?

10 **THE COURT:** Let me hear the question,
11 please.

12 **MR. BROOKS:** Yes, sir.

13 I asked the witness -- I started, I didn't
14 even complete it -- I asked the witness if
15 Mr. McDaniel, in his statements on the record, of
16 record here, stated that by capping the range, that he
17 found no other reason to disconnect service at the
18 restaurant -- if Mr. McDaniel's statement was such,
19 would this witness have any problem or any opinion as
20 to whether or not it was a viable statement?

21 **MS. COWDERY:** I'm going to object because
22 it's along the lines of a compound or confusing
23 question.

24 **THE COURT:** I'll sustain the objection.

25 **MR. BROOKS:** I'll rephrase it.

1 Q (By Mr. Brooks) You stated that you had
2 seen McDaniel's written statement; is that correct.

3 A That's correct.

4 Q Mr. McDaniel gave you a written statement in
5 response to your asking for it; is that correct?

6 A Yes, sir.

7 Q In Mr. McDaniel's statement, does
8 Mr. McDaniel make a representation about the safety of
9 the equipment at the restaurant?

10 MS. COWDERY: I'm going to object again.
11 That statement is not in the record. That was a
12 question that Mr --

13 MR. BROOKS: Your Honor, I'm asking the
14 witness -- he states that he obtained a written
15 statement from McDaniel, a statement that he
16 requested. And I'm asking the witness if he recalled
17 a portion of that statement.

18 THE COURT: Okay. That's not in the -- the
19 statement itself is not in the record, Mr. McDaniel
20 testified but --

21 MS. COWDERY: That is correct.

22 THE COURT: You can refer to his testimony
23 if there's a question there.

24 Q (By Mr. Brooks) Were you present at the
25 last hearing?

1 A Yes, sir.

2 Q Do you recall hearing Mr. McDaniel giving
3 testimony at the last hearing?

4 A Yes, sir.

5 Q Do you recall Mr. McDaniel making the
6 statement that he capped the gas range?

7 A Yes.

8 Q Do you remember Mr. McDaniel making the
9 statement that he did prepare to depart the
10 restaurant?

11 A I believe that is correct.

12 Q Do you remember Mr. McDaniel saying that he
13 left -- when he was preparing to depart he left the
14 gas on because there was a serviceable appliance still
15 in the restaurant?

16 A I believe he said that.

17 Q Do you recall Mr. McDaniel testifying that
18 after he prepared to leave the restaurant he got a
19 call from Diane, or some communication from Diane?

20 A Yes.

21 Q Do you recall Mr. McDaniel stating that he
22 was told by -- I believe his exact words were by his
23 supervisors to shut the meter -- to lock the meter at
24 Mother's Kitchen as opposed to leaving that appliance
25 on?

1 A I'm not sure who he said -- I don't know
2 that it was his supervisors that told him that, but he
3 was told to turn off the meter and lock it.

4 Q Mr. McDaniel is a serviceman of some record
5 with your company, is he not?

6 A Yes, sir.

7 Q And he's a certified, qualified serviceman,
8 is he not?

9 A Yes.

10 Q If a dangerous and hazardous condition
11 existed, would it require Mr. McDaniel getting
12 permission from somebody before shutting down the
13 system to a dangerous or hazardous piece of equipment?

14 A It would if he considered it to be a
15 dangerous or hazardous condition, he would check
16 before he left the premises.

17 Q Would he leave the equipment on before
18 checking with the supervisor if he felt --

19 A If there was some doubt in his mind, he
20 would check with the office before he left the
21 premises.

22 Q Would he write out a hazardous condition
23 sheet before checking with the office?

24 A Most definitely.

25 Q He would write that before checking with

1 you?

2 A Yes.

3 Q Or your office?

4 A As soon as he found a hazardous condition.

5 And it was not repaired. He has no choice but to red

6 tag it and write a hazardous condition report out.

7 Regardless of --

8 Q Under any circumstances would he leave the
9 gas supply on to a facility with such a hazardous
10 condition?

11 A If there was a hazardous condition present
12 in his mind, he would not leave it on. If he felt it
13 was safe, he could leave it on, yes.

14 Q So when Mr. McDaniel capped the range and he
15 left the gas supply line on and started to depart,
16 then based upon what you just said about
17 Mr. McDaniel's action he wouldn't consider it to be
18 hazardous or dangerous having capped the range?

19 A Yes, except for one condition: He made
20 contact with the office for some reason. There was
21 some doubt in his mind about the account. And he did
22 not leave the premises until he contacted the office.
23 And he asked guidance at that point.

24 Q I believe his exact statement was that he
25 was contacted by the office as he started to leave.

1 But that's all right.

2 If no such hazardous condition existed at
3 the time that the gas supply was shut off at Mother's
4 Kitchen, after it being reconnected for payment of
5 your notice of disconnection, would it then be a
6 violation of your company's policy, or the rules of
7 the Public Service Commission to do so?

8 A I don't understand the question.

9 Q If no such hazardous condition existed at a
10 facility, and your company's employees shut off the
11 gas to that facility, would it be a violation of your
12 tariffs, or of the Florida Public Service Commission
13 rules, to shut the gas supply off to that facility?

14 A Everything else is in order, account is paid
15 up-to-date, the customer has done everything he's
16 supposed to do and there's no hazardous condition
17 present, then he could leave the gas on.

18 Q No. I asked you if it would be a violation
19 of your tariff, and the Florida Public Service
20 Commission regulations, to turn the gas off to a place
21 where there was --

22 A Yes. If there's no hazardous condition we
23 would have no reason to -- it would be a violation to
24 turn it off. We couldn't leave it on.

25 Q What occurs, sir, when the term "capping" is

1 used for an appliance, a gas appliance in a facility?

2 A They'll disconnect the appliance at the
3 coupling. Take out a little screw cap, threaded cap,
4 screw it on, make it tight. Check it for any leaks.
5 Probably a five-minute job.

6 Q Is there any type of device or item put in
7 place so that if someone tampered with it your
8 employee could tell if he came back?

9 A No.

10 Q No.

11 You mentioned, a response to Ms. Cowdery's
12 questions and my demeanor, of our conversation of the
13 13th of September, that I made mention to you of
14 something to do with food.

15 A Yes. The preparing of food. You had
16 business commitments of some type and you had to get
17 this food cooked.

18 Q Is it not true that during our conversation
19 I told you about the existence of the fryer there at
20 the restaurant?

21 A I do not remember. I don't recollect that
22 at all.

23 Q Is it not true that I asked specifically if
24 the range was capped, no leaks in the fryer, why was
25 the gas being turned off?

1 A You did not ask me that.

2 Q Is it not true that during our conversation
3 you were asked about telling your serviceman over the
4 phone to repair what I term a leak that he had caused
5 to that stove?

6 A You made a comment to me to talk to the
7 serviceman. I never got in touch with the serviceman.
8 The phone was never given to the serviceman. It
9 wasn't long after that that you slammed down the phone
10 on me. I think I had made a comment that we would
11 repair it but you would have to pay for it and the
12 office might require a cash on the account. It wasn't
13 long after that that you disconnected the line, after
14 saying you were going to sue the company for lost
15 business.

16 Q Sir, is it not true that your records show
17 prior work being done to that range by your
18 serviceman, McDaniel, to the oven?

19 A He worked on the range or oven on June 3rd
20 of 1996.

21 Q And your records show that as a charge for
22 that service a bill was initiated for \$30?

23 A That is correct.

24 Q At the time that I was demanding that you
25 have your serviceman repair that oven on the morning

1 of the 13th, did you tell me that it would require the
2 payment of \$200?

3 A No, I did not.

4 Q Did you tell me that you will not tell him
5 to repair that oven until someone got in touch with
6 Diane Keitt?

7 A I never told you that. Absolutely not.

8 Q You made reference to -- in explaining the
9 procedure necessary for the repair of this oven, you
10 made reference to the signing of a service order. Is
11 that correct?

12 A Yes.

13 Q Did you ever make the statement that service
14 was -- the oven was not repaired because Mr. Brooks
15 would not sign a work order?

16 A I could have made that statement, yes, that
17 is possible.

18 Q Have you or any of your employees ever
19 produced such a work order that I supposedly refused
20 to sign?

21 A As far as I know, no, but I must -- would
22 you give me a little opportunity to explain this?

23 Q Sure.

24 A Normal operating procedure, and these
25 serviceman to this every day, when they find a problem

1 with the appliance, they will talk to the customer,
2 "Do you want it fix? If he says yes, then the
3 serviceman says, "I'm going to fill out a work order
4 which you will have to sign guaranteeing payment and
5 also have to sign it when the work is done." If it
6 gets that far and the individual there says, "I want
7 it fixed," then the serviceman will take the time to
8 write out a work order.

9 According to Bill McDaniel, he never got
10 that far with Mother's Kitchen. That you would not
11 authorize the repair. When I say "authorize" I mean
12 also pay for it. Authorizing, if you will, to pay for
13 the repair when I say "authorize." I'm not saying you
14 didn't want it. I'm just saying you wouldn't
15 authorize it.

16 Q So it's your testimony that there were
17 actually several reasons why your company did not
18 address the problem with that oven, one being --

19 MS. COWDERY: Objection. The qualified
20 representative appears to be testifying.

21 MR. BROOKS: I'm attempting to ask him a
22 question, ma'am.

23 THE COURT: Let me hear the question first.

24 Q (By Mr. Brooks) So based upon what you
25 just said, you're testifying there had to be several

1 reasons why the service was not left intact at
2 Mother's Kitchen after you were paid the past due
3 amount. One being the fact that McDaniel did not get
4 to the point to where he actually wrote out a work
5 order and the other being a hazardous condition.

6 A The repair was not accomplished, was not
7 finalized on the range. And in my view, my judgment,
8 even though the range was disconnected, there was
9 still a hazardous condition and threat there in the
10 premise of Mother's Kitchen that morning.

11 Q On what do you base that assumption?

12 A I went over that with my attorney, you know,
13 in a previous conversation. It was your demeanor,
14 your attitude, your rationality. I mean, literally
15 shouting and screaming over the phone. Not only Diane
16 said you were abusive, I sensed it firsthand. I don't
17 know if you have been on the receiving end when you
18 get upset. It's pretty loud. And threats of suing,
19 threats -- or claims that would caused the leak,
20 messing with the range caused these problems. Your
21 unacceptance that there was a leak on the range.
22 Threatened to sue because you had all this food to
23 cook. You put all of this together and I seen a
24 problem.

25 Q Okay, sir. Take your assumption here. You

1 said claimed that a leak didn't exist. That was one
2 of the impressions you were receiving.

3 A Either that, or the serviceman was causing
4 the problem on the range, whatever it is. That these
5 were the words you were using. It could have been a
6 statement like "If there's a leak, your serviceman has
7 caused it." You were blaming him for the problem with
8 that range at that moment.

9 Q Is it not true that's precisely what I told
10 you?

11 A That you were blaming him for --

12 Q That your serviceman had caused a leak to
13 that range.

14 A I think you said that in those words, sure.

15 Q Is it not also true, sir, that I told you to
16 have your serviceman repair that range and any payment
17 necessary, I would pay it and argue about it later.

18 A No. I don't remember saying any payments
19 necessary you would pay it. I know you wanted it
20 repaired. And then I responded with you would have to
21 pay for it.

22 Q On the repair done by Mr. McDaniel
23 previously, the \$30 charge, was payment demanded at
24 the time that repair was done?

25 A No. That was billed on the gas bill.

1 Q It was billed on the gas bill. Why would it
2 be any different in this instance?

3 A I told you over the phone, we had received
4 two NSF checks within a two-month period.

5 Q Were the \$30 for that service prior by
6 Mr. McDaniel paid for by check?

7 A Repeat your question.

8 Q Were those \$30 charges for McDaniel's
9 services prior, were they paid for by check?

10 A There was a couple of checks on the account,
11 there was no \$30 payment. It was lumped into other
12 payments. I can't tell you which one was -- since we
13 did the work on the range there was a check for
14 211.72. There was -- most of the rest of the payments
15 were all cash on the gas bill. But once we get
16 returned checks is when we stop the check payments or
17 credit payments. They had the right to request cash
18 up front at the time of the repair if they so desired.
19 That's what I was relating to you at the time.

20 Q He couldn't have taken cash?

21 A Yes, he could have taken cash. That's what
22 I told you.

23 Q Precisely. So my question to you is, if
24 Mr. McDaniel had repaired the leak and stated an
25 amount, and he did state an amount, then he can code

1 it --

2 MS. COWDERY: Objection, objection,
3 objection.

4 THE COURT: Court just a moment.

5 MS. COWDERY: I'd like to have that
6 stricken. That was testimony that is not supported by
7 anything in the record. Mr. Brooks is testifying.
8 That's not -- there's no facts in the record to that
9 effect. I'd like to have that stricken.

10 THE COURT: I'll sustain the objection.

11 Mr. Brooks, let's ask questions now. Let's
12 not testify.

13 MR. BROOKS: Yes, sir.

14 Q (By Mr. Brooks) If Mr. McDaniel could have
15 taken cash, why was this work order I supposedly would
16 not sign completed?

17 A He said you would not authorize the repair.
18 I think his exact words were you did not want it
19 repaired, if I remember his testimony.

20 Q A business -- you already stated that I was
21 telling you about needing to have food prepared and
22 losing a bunch of money. And it's logical and
23 reasonable to you that I would be -- I believe I would
24 not want the range repaired?

25 A You were very -- irrational that morning,

1 Mr. Brooks; very irrational about many things.

2 Q Sir, on your account summary where you show
3 billings, is there any bill there for \$290?

4 A No.

5 Q Is there any bill there for \$231.72?

6 A No.

7 Q Is there any bill there for \$150?

8 A No.

9 Q Is there any bill there for \$170?

10 A No.

11 Q Is there any bill there for \$160?

12 A No.

13 Q Given your familiarity with the events and
14 the record of this account with your Sanford office,
15 is it not a fact that each and every time members of
16 this partnership were notified of your requirement for
17 some type of payment in any form -- any form or any
18 shape, that within, if not the same date, the
19 following date that payment was made?

20 A Not all the payments were made that fast. I
21 can't testify as to how soon you responded to when a
22 request for payment went out and when a payment came
23 in. I just don't know how long the time interval was.

24 Payments were always coming in at the last
25 minute to avoid turn-off. Payments were never the

1 amount of a bill; it was always a rounded off amount.

2 You can see this by the payment history.

3 Q And if that were the case, that -- that were
4 the case as you just testified, why did -- when the
5 service was disconnected it was not left completely
6 disconnected until the entire amount was paid?

7 A Which disconnection are you talking about?

8 Q Any of it? With the exception of the --
9 with the exception of the September one.

10 MS. COWDERY: I would ask for a specific
11 question.

12 MR. BROOKS: I just gave him one, ma'am.

13 THE COURT: He may answer.

14 A Only our disconnect was on August 12, and
15 the amount it was shut off for was 285.64. You
16 paid -- 290.

17 Q Sir.

18 A -- which the record shows that's all the
19 money you had at the time and that's what you paid us.

20 Q What records show that was all of the money
21 we had at the time?

22 A Some of the -- I think it was Diane Keitt at
23 the original trial date stated that.

24 Q Stated what?

25 A You brought in \$290 on the 12th to get the

1 service re-established and that's all the money you
2 had. You were going to bring a few more -- a small
3 amount back at a later date to finish off the payment.
4 At the time there would have been required about \$325,
5 which would have been the 285 on the cutoff notice
6 which you were cut off for, plus the reconnect fee.
7 So the 290 was a little short but we reconnected you
8 for the 290.

9 Q Now, if we're to believe what you just said
10 and what Diane Keitt was supposed to have related, you
11 stated that three-hundred-some dollars was the actual
12 amount; is that what you testified?

13 A Yes.

14 Q Of the three-hundred-some dollars you
15 received \$290?

16 A Yes.

17 Q Did you ever receive the balance?

18 A No.

19 Q Then why was the service not disconnected
20 again?

21 A We just consider ourselves good people
22 there. We connected it for the 290. We're talking
23 about \$25.

24 Q As a matter of fact, sir, throughout the
25 entire history on this account, is it not true that

1 you people dictated the amount as you saw fit. You
2 changed the -- you changed your reasoning from one
3 moment to the next with the reason for a demand of
4 payment?

5 A This is not true. If you will look at the
6 record, at the balances owed on this account, there
7 was continual arrears, continual balances owed. This
8 account was always behind. Always on the brink of
9 being cut off. We were lenient in this account trying
10 to keep the account on.

11 Q You were mailing billings directly to Alfred
12 Byrd, were you not?

13 A At his instructions.

14 Q Sir, at his home, were you not?

15 A At his instructions, yes. He opened the
16 account.

17 Q Mr. Byrd has another account with you, does
18 he not?

19 A He has a personal account with the gas
20 company.

21 Q Yes, sir, he does.

22 Now, did that personal account, was that
23 personal account of the same history as this? Did it
24 have such entries?

25 MS. COWDERY: Objection. Objection.

1 **MR. BROOKS:** As this type thing.

2 **MS. COWDERY:** Objection. This is completely
3 irrelevant to the case of what Mr. Byrd's personal
4 account was. It's outside the scope of direct. We
5 didn't bring Mr. Byrd into this. It has nothing to do
6 with any issue in the case as set forth in the
7 prehearing stipulation.

8 **MR. BROOKS:** Your Honor, Ms. Cowdery, her
9 witness -- her witness makes constant statements, and
10 the witness has, by way of testimony, entered into the
11 record his opinions of demeanors and other actions
12 which contributed to the way in which they handled
13 this account.

14 He alludes to the payment record and this
15 type of thing on this account. He admits to sending
16 the billings to Alfred Byrd, not directly to the
17 partnership. He uses this history as a basis for
18 later actions, and specific, his reasonings for
19 violating the regulations in denying service at
20 Mother's Kitchen after they had received payment and
21 while serviceable equipment, nonleaking serviceable
22 equipment was present in the facility. And he
23 points -- he goes back and he points towards a history
24 of payments and stuff on this account to justify doing
25 one thing in one minute, and another in another.

1 Now, if he was mailing the -- if the demands
2 for payments were to Alfred Byrd, and Alfred Byrd was
3 a customer of record with them with another account,
4 and Mr. Byrd's other record followed the same line
5 of -- the same line of history, then when telephonic
6 contact was made from Ms. Keitt with one of the actual
7 partners, and payment was brought to them, whether it
8 was the same date or a couple of days later, as long
9 as payment -- what was demanded was being brought to
10 your company, then Mr. Byrd's history on the -- on his
11 parallel account should have alerted these people,
12 especially after we went in and protested the shutoff,
13 should have alerted these people that a problem was
14 one in getting the bill to a person and we were being
15 penalized because we were not -- we were not being
16 mailed something. We were supposed to be mind readers
17 and know that they would do something to bring it in
18 to them.

19 **THE COURT:** I understand your position but
20 I'm going to sustain the objection.

21 **Q** **(By Mr. Brooks)** Is there any record or any
22 document which indicates that upon that restaurant
23 being telephonically contacted by Diane Keitt and
24 demand for payment was made, that that payment was not
25 made?

1 A I can't answer that question.

2 Q Is there any record or any document which
3 shows that Diane Keitt verbally requested an amount of
4 money from us that was not brought to her?

5 A Again, I'm not saying no. I can't answer
6 that question.

7 Q Is there any record --

8 A Well --

9 Q Well, you said you were the investigator.
10 You collect the records and you have a slew of
11 computer records. So I'm asking you, from the records
12 that you've seen, is there such an entry?

13 A Her communications with Mother's Kitchen
14 about collections, I wouldn't have this information.
15 I know there was a problem, because she told me it was
16 a problem. And you were -- most payments were made at
17 the last minute to avoid turn off. Other than that, I
18 just can't respond to collection problems that she
19 made with Mother's Kitchen or any employees or Al
20 Byrd.

21 Q You purport to be an expert. You made this
22 summary and your summary was supposedly based upon
23 records you collected.

24 MS. COWDERY: Objection. Mr. Troy has
25 answered the question to the best of his ability, and

1 Mr. Brooks is being unnecessarily argumentative.
2 Mr. Brooks -- Mr. Troy said he does not know --
3 essentially the content of those conversations and he
4 doesn't know.

5 THE COURT: I'll sustain the objection.
6 Mr. Brooks, if the witness doesn't remember, you need
7 to move on.

8 MR. BROOKS: Sir, there was no reference to
9 a conversation that Ms. Cowdery -- Ms. Cowdery
10 espouses here. It was in reference to his collection
11 of records, and the records themselves.

12 Now, all the witness had to say was, no,
13 Ms. Keitt didn't put any such records before him. He
14 alluded to being this investigator that went out and
15 collected all of the records. And we're supposed to
16 have a complete set of records here. So if a document
17 is not in his possession, they say they are not there.

18 THE COURT: Ask a question. Let's move on.

19 Q (By Mr. Brooks) Did you make a
20 chronological history of this account dated June 13,
21 1977, for the Florida Public Service Commission?

22 A Yes.

23 Q Do you recall that document specifically?

24 A I remember making the document out. If you
25 put one before me I can respond to it a lot better.

1 **Q** Okay, sir. I show you a document that's got
2 the heading of Florida Public Utilities Company, date
3 Friday, June 13th, 1997, and it's got the label on the
4 front of it that says "Petitioner's Exhibit 9,
5 Composite Exhibit 9, A through J." I show you this
6 document. (Hands document to witness.)

7 **MR. BROOKS:** I offer that document for
8 Petitioner's -- for identification, Petitioner's 8, I
9 believe it is.

10 **THE COURT:** First the witness has to
11 identify it. He hasn't indicated he's familiar with
12 the document.

13 **WITNESS TROY:** Yes. I'm familiar with the
14 document.

15 **THE COURT:** All right. Then for the record
16 we'll identify it as Petitioner's Exhibit A.

17 **Q** (By Mr. Brooks) Sir, in that document
18 there are -- on Page 2, there are a couple entries
19 that I highlighted with a highlighting pen. Can you
20 explain why those particular items are broken down
21 that way, but the entry of 521.72 has no composite
22 breakdown on it?

23 **A** The entry of 521.72?

24 **Q** There are several entries above where you
25 have entered \$521.72.

1 A I see the 521.72 cash on account as of
2 August 28th. What is your question now? Some entries
3 above it you want me to respond to.

4 Q There are several entries made on that
5 document where you go to the trouble of showing an
6 amount -- what the amount represents to make a whole
7 amount that you have outlined there. You have a
8 total, then you have a breakdown of the total of what
9 each item represents.

10 A I do this on the bills. I show the total
11 bill. Then I show the current gas portion and the
12 prior gas portion. In other words, what's current and
13 what's past due on each one of the bills. I've done
14 that in all of the bills, yes.

15 Q Okay. Is there any breakdown whatsoever on
16 the payments on that document?

17 A Yes. This shows payments. That came in
18 also.

19 Q And it shows -- does any of them show a
20 breakdown as to what the payment represents?

21 A No. It just shows when a payment came in.
22 It will say sometimes check or cash but it will show
23 when a payment came in.

24 Q It shows a total amount?

25 A Shows a total amount of payment, right.

1 Q Okay. Now, find the reference then to
2 521.72. When you drew up that document, that
3 particular document, that 521.72 entry, was there
4 anything in your records at the time that you created
5 that document, was there anything in your records that
6 showed that amount to be anything other than a cash
7 payment on that date?

8 A No.

9 Q When you go to the section that you have --
10 you have them labeled by dates there. Do you see any
11 entry for 8-12-96?

12 A No.

13 Q Do you see any entry for 8-22-96?

14 A No.

15 Q And the time that you compiled this
16 particular document, did you rely upon all of the
17 computer records, all of the records from your field
18 office that were available to you at the time?

19 A Yes.

20 Q So this document reflects the sum total of
21 what was available on your computer system as well as
22 your office files at the time?

23 A Yes.

24 Q Is there any mention whatsoever on this
25 document of a petty cash box?

1 A No.

2 Q Is there any mention whatsoever on this
3 document of a combining of payments to get a total
4 payment on any line on this document?

5 A No.

6 Q And the computer records that you have
7 available to you at this time were a reflection of the
8 complete records from your Sanford office and your
9 Palm Beach office?

10 A That is correct. At that time. At the time
11 we made up the --

12 Q As of June 13, 1997.

13 A All of the records I had before me. When
14 you say complete set, what you're implying there is we
15 never found another record since that date. We might
16 have found --

17 Q I'm asking you --

18 A -- by not concerning --

19 Q I'm asking you -- I'm asking you if this
20 document and the figures that you placed on this
21 document were based on the total computer records, and
22 records from your office file, whether Sanford or Palm
23 Beach, or to both of them, as of June 13, 1997?

24 A To the best of my knowledge, yes.

25 Q (By Mr. Brooks) Your Honor, I'd like to

1 have this document entered. I think our next in line
2 is Exhibit 8, I believe.

3 MS. COWDERY: I would object. To the extent
4 that Mr. Brooks appears to be looking for
5 inconsistencies, he has not laid a proper foundation
6 for putting this in the record as a prior inconsistent
7 statement because Mr. Troy has explained any questions
8 that have been asked to him. So there's no foundation
9 for prior inconsistent statement, which is, I think,
10 what he's trying to do.

11 THE COURT: Mr. Brooks, any comment?

12 MR. BROOKS: Yes, sir. This exhibit is
13 offered as a matter of record per the witness's own
14 testimony; a factual account of the record that he had
15 available to him as of this particular date, and --
16 the date of June 13, 1997.

17 It's purpose and intent will also go to
18 showing that in conjunction with this particular
19 exhibit, as well as several other exhibits, leading up
20 to his account summary here, what he terms as a
21 factual account of the record on this particular -- in
22 this particular instance, is -- as this company -- as
23 this Respondent goes from a time and period right at
24 the time of the -- the problems arose, and the further
25 away you get and the more discussion you get, their

1 chronological history, their account summaries change.
2 As is the case with this document that the Court has
3 already allowed the Respondent to use.

4 Now, if this -- if as the Respondent is
5 doing, in making a representation that this is a
6 factual account of an account summary of the actual
7 account of Mother's Kitchen, then any documents this
8 Respondent has produced under the same heading or
9 similar heading, prior to this particular document,
10 Petitioner feels should be admitted as exhibits to
11 point to Petitioner's position that this is just the
12 latest in a whole chain of documents that have been
13 concocted as they went along in this case.

14 **THE COURT:** Okay.

15 **MS. COWDERY:** A brief response?

16 **THE COURT:** Briefly.

17 **MS. COWDERY:** It appears what Mr. Brooks is
18 trying to do is get this document in as a prior
19 inconsistent statement, and Mr. Troy has explained any
20 questions that have been asked of him. Therefore,
21 there's not a proper foundation for admitting this in
22 evidence. I think the prejudice of extraneous
23 documents outweighs any kind of relevance that's here.

24 **THE COURT:** I'm going to sustain the
25 objection. Let's move on.

1 Q (By Mr. Brooks) Mr. Troy, on July 9, 1997,
2 did you prepare a letter to Mr. J. Richard Durbin of
3 the Florida Public Service Commission?

4 A Possibly. I'd have to see the letter.

5 Q Does this document refresh your memory in
6 regards to that letter? (Hands document to witness.)

7 A July 9, J. Richard Durbin.

8 Q In that letter --

9 MS. COWDERY: Wait a minute, please, while I
10 review it. (Pause)

11 Q (By Mr. Brooks) Mr. Troy, in this
12 particular letter to Mr. Durbin, you make reference to
13 a cash payment in the amount of \$290, do you not?

14 A Yes.

15 Q You also make reference to \$290 was placed
16 and held in the office manager's petty cash box, do
17 you not?

18 A Yes.

19 Q Is there an independent record, computer
20 record, hard file record, an independent record to
21 show that that occurred?

22 A There's no independent record.

23 Q You also state in this letter that on --
24 that on August 28th a reimbursement check of \$211.72
25 plus \$20 return check service charge was credited to

1 Mother's Kitchen account; is that correct?

2 A Right. That is correct.

3 Q You show that to be credited along with the
4 \$290 held in petty cash?

5 A Yes.

6 Q Is there an independent document or
7 independent computer record which will reflect the
8 combining of those two payments to equate two to the
9 one?

10 A There is a record that shows the total
11 payment of 521.72. There is a receipt, in-house
12 receipt. There is a computer record showing the total
13 payment of 521.72. Our position is that it is the 290
14 received an August 12 combined with the 231.72
15 reimbursement for --

16 Q I realize that --

17 A -- received August 28th.

18 Q I realize that's your position. What I'm
19 asking you is, is there any independent record that
20 would document that position?

21 A Only to the extent of the total payment
22 being recorded on August 28th. We have an in-house
23 receipt for 521.72.

24 Q Your reference to an in-house receipt of
25 521.72, does that receipt look any different from any

1 of the other cash payment receipts?

2 A They would use the same format, same cash
3 receipt format.

4 Q Is there anything to that receipt that would
5 make a person out of the company's network, an
6 independent person looking at that receipt, know that
7 that was an in-house receipt?

8 A No.

9 Q Is there any markings, codes or any entry
10 whatsoever to that receipt that would let anyone know,
11 even within the company, looking at that receipt, that
12 that was an in-house receipt as opposed to, I guess,
13 since you're calling it in-house, I don't know what
14 you would call the other -- (Laughter) -- let them
15 know it was not an in-house receipt?

16 A No, there's nothing.

17 Q So the only supporting -- as a matter of
18 fact, there is no supporting document here present,
19 now or then, that was -- an independent document that
20 would support the contention of a combining of the two
21 payments.

22 A Only the logic of it.

23 Q The logic. I asked you about a document,
24 sir. Not logic.

25 A No, there's no document.

1 Q Mr. Troy, you identified, and Ms. Cowdery
2 had entered into the record as Respondent's 33, a
3 document that was labeled "Consumer Request, Florida
4 Public Service Commission."

5 A Yes.

6 Q With a date of 10-2-96 on it.

7 A Yes.

8 Q There is a letter from you to Mr. Doug
9 Martin with Florida Public Service Commission attached
10 to it, is it not?

11 A Yes.

12 Q And the last paragraph of that letter, on
13 what's labeled Page 2, it states "One of the
14 individuals at the Kitchen, Mr. Brooks, who claimed to
15 have an interest in Mother's Kitchen, blamed our
16 company for the leak and wanted us to repair the leak
17 at our expense and turn on the gas." Does it not?

18 A Yes.

19 Q From where did you draw that phrase?

20 A From my conversations with you.

21 Q So in our conversation you were told that we
22 wanted the leak repaired?

23 A Yes. I think I testified you wanted it
24 repaired.

25 Q No, sir.

1 A Which I did.

2 Q Did you not earlier say that I refused to
3 sign a work order, and that Mr. McDaniel did not
4 prepare one because I told him I didn't want it
5 repaired?

6 A That is correct.

7 Q So if I told Mr. McDaniel I did not want it
8 repaired, why would you write that he wanted us to
9 repair the leak?

10 A I think you wanted it repaired but you
11 didn't want to pay for it.

12 Q So what you're saying now is that when you
13 testified earlier that I supposedly told you I didn't
14 want it repaired, you were actually not telling the
15 truth?

16 **MS. COWDERY:** Objection. That's not what
17 the witness testified to.

18 **THE COURT:** I think the witness may answer
19 the question.

20 **WITNESS TROY:** You stated to me you wanted
21 it repaired. When I stated you would have to pay for
22 it is when you either objected or got irate and soon
23 after that ended the conversation. I assume that's
24 the same thing that happened with you and Bill
25 McDaniel, according to his testimony.

1 Q (By Mr. Brooks) You made an assumption --

2 A According to his testimony.

3 Q You made an assumption in making either this
4 entry in the letter or the entry on the record in
5 testimony.

6 A No. That's consistent to what I testified
7 today. That you wanted us to repair it at our own
8 expense. I told you you would have to pay for it.

9 Q With the exception of the \$211.72 that you
10 show being received from Alfred Byrd of 7-24, I think
11 you -- your chart tells us.

12 A Yes, 7-24.

13 Q With the exception of that check coming from
14 Mr. Byrd, are there any documents -- let me rephrase
15 that.

16 Are there any documents within your company
17 that would show, aside from a check being issued to
18 your company -- are there any documents in your
19 company that would show the particular name of an
20 individual making payment to you?

21 A Aside from a check, there is not.

22 Q In your investigation, in your collection of
23 documents and statements, has anyone told you that
24 they received any payment on this account directly
25 from Alfred Byrd?

1 A I'm not sure who the payments came from. I
2 know most came from employees of Mother's Kitchen, but
3 it's all hearsay. I don't know how many Mr. Byrd made
4 himself. I did get one check from Mr. Byrd that I
5 know of because it was a check. But I'm not sure
6 about the cash payments.

7 Q In fact, Mr. Troy, there is very little
8 factual material about this account that you know of
9 that's not drawn from the statement of someone else.
10 Is that not true?

11 A If we're referring to the account summary.

12 Q No, sir, no. I'm referring to all of the
13 statements that you -- that you purport to be fact.
14 Those statements that you have, that you refer to as
15 being fact in this case, you derived them from someone
16 else; is that not correct?

17 **MS. COWDERY:** I object to this being too
18 vague to answer. "All statements of fact" is just too
19 broad.

20 **THE COURT:** Sustained.

21 **MR. BROOKS:** All right. I'll rephrase Your
22 Honor.

23 Q **(By Mr. Brooks)** All right. Mr. Troy, on
24 March 21, 1996, per your account summary there, it
25 shows \$200 payment; says original cash deposit paid by

1 Alfred Byrd. Did you take that \$200 from the Alfred
2 Byrd?

3 A I did not take the 200 from Alfred Byrd.

4 Q Did you see Alfred Byrd go to the Sanford
5 office and make that payment?

6 A I did not see Alfred Byrd go into Sanford
7 and --

8 Q On April 9 --

9 MS. COWDERY: Let him --

10 MR. BROOKS: He said he did not see it,
11 ma'am.

12 MS. COWDERY: He was answering with a
13 complete sentence, so you should let him finish.

14 MR. BROOKS: I am sorry. I apologize. I
15 thought he had.

16 Q (By Mr. Brooks) April 9, 1996, it shows
17 cash usage \$46.32. Did you actually document that
18 cash usage?

19 A That gas usage is documented in the computer
20 records.

21 Q Sir, that's not what I asked you.

22 A Are you asking if I read the meter?

23 Q I asked if you did it.

24 A Did I read the meter?

25 Q Yes.

1 A I did not read the meter.

2 Q Did you document the 67.32 bill that was
3 sent out on that meter reading?

4 A With the billing register that is documented
5 with bills that went out.

6 Q Did you, yourself --

7 A Prepare the bill?

8 Q -- create that bill?

9 A No, the computer did.

10 Q Did you --

11 **THE COURT:** Mr. Brooks. Mr. Brooks. Let me
12 interrupt. You've made your point. Let's move on.

13 **MR. BROOKS:** All right, sir.

14 Q (By Mr. Brooks) The document that was
15 entered by -- were you present at the deposition of
16 Mr. Dino Kramsky?

17 A Yes.

18 Q And you have seen the transcript of this
19 deposition as entered by your attorney here, today, I
20 believe as -- it's entered as Respondent's 1 --

21 **MS. COWDERY:** 13.

22 **MR. BROOKS:** 13.

23 A I have a copy of his deposition and I was at
24 the deposition.

25 Q So you're familiar --

1 A I'm familiar with it.

2 Q Okay, sir. Do you recall -- do you recall
3 compiling a document in response to a notice to
4 produce from Petitioner's in this case?

5 A I did work on some notice to produce, yes.

6 Q There were -- do you recall receiving
7 documents from Petitioner in which you had to give
8 responses to questions -- not to you particularly, but
9 your company had to give responses to particular
10 responses to interrogatories?

11 A Yes.

12 Q And in those interrogatories where your name
13 is affixed next to the response, did you actually give
14 those responses?

15 A Yes. Or participated in them. If there's
16 two names, then I participated with somebody else.
17 But, yes, I was involved.

18 Q Did -- in those interrogatories, did you
19 respond to a question concerning customer complaints?

20 **MS. COWDERY:** Objection. This is outside
21 the scope of direct. It is not part of my case
22 whatsoever. It was not part of Mr. Brooks'
23 case-in-chief whatsoever. This issue has not been
24 raised in this hearing. It's outside the scope of
25 direct. It's irrelevant to the issues in the case.

1 **THE COURT:** Mr. Brooks, where are you trying
2 to go with this?

3 **MR. BROOKS:** Sir, Ms. Cowdery, I must admit,
4 is confusing me a bit here.

5 She and her witness purport to display
6 before this court a factual account, a factual record
7 of account, central to the issues of this case. But
8 when errors in that account, their accounting is
9 pointed out, they are objected to as not relevant.

10 Now, what I was about to ask the witness
11 reference Mr. Kramsky's deposition had to do with the
12 fact that Mr. Kramsky states in his deposition that
13 there were several complaints that -- against the
14 Sanford office that he addressed with the Palm Beach
15 office. That is what my question to him was going to
16 be, as to whether or not he had actually received such
17 complaints.

18 **MS. COWDERY:** Your Honor, this has nothing
19 to do with errors in the account, which is -- just
20 nothing to do with errors in the account or the
21 account summary to ask -- if he's asking about
22 anything in the deposition that should have been cross
23 examined by -- of Mr. Kramsky, we're beyond that. But
24 I think what he's referring to is certain questions
25 which, in fact, he brought up with Mr. Kramsky in

1 cross examination, and which I objected to. That
2 still doesn't make it part -- it's not part of my
3 direct case. It's not part of his direct case. If it
4 takes striking -- if it takes striking his questions
5 from the cross examination of Mr. Kramsky's deposition
6 as being outside of the scope of direct, then I will
7 ask to do that. But it's still -- it's not part of
8 Mr. Kramsky's -- my direct examination of Mr. Kramsky
9 whatsoever. Not part of my case, not part of
10 Mr. Brook's case and, therefore, it's not appropriate
11 cross examination.

12 **THE COURT:** Mr. Brooks, are you talking
13 about complaints made by parties other than Mother's
14 Kitchen partners?

15 **MR. BROOKS:** No, sir. And, Your Honor, in
16 response to Ms. Cowdery, Ms. Cowdery entered this
17 deposition into the record as an exhibit. She made an
18 extensive reference to this deposition at the
19 beginning of the hearing. Mr. Troy was present at
20 this deposition.

21 **THE COURT:** I understand that. But the
22 question is, is this line of questioning going to go
23 into questions about customer service related to
24 customers other than Mother's Kitchen?

25 **MR. BROOKS:** No, sir.

1 look at what documentation? What documentation was it
2 that he was referring to?

3 A I would think that would be his files that
4 he had in the office. Remember, he was a division
5 manager at the time this incident took place. And
6 since he no longer was an employee of the company and
7 he was asked to give a deposition, he needed to look
8 over some of his records he had kept during the time.
9 Letters supposedly written to him. Letters in the
10 file. Any comments, anything in the file, in his own
11 files that he would need to prepare for his
12 deposition -- and the deposition.

13 Q And when he states, "I have been asked to
14 and looked at documentation supporting this charge,"
15 do you have any knowledge as to what that
16 documentation is?

17 A I'm not sure what he looked at, no.

18 Q On the morning of Mr. Kramsky's deposition,
19 did you and Ms. Cowdery meet with Mr. Kramsky prior to
20 the initiation of the deposition?

21 MS. COWDERY: Objection. I don't see that
22 this is relevant to anything that we're discussing
23 today. I don't see that it could possibly be relevant
24 to Mr. Darryl Troy's direct testimony in this case.

25 MR. BROOKS: It goes to documentation, sir.

1 Again, we're right back to the point where he's
2 alluding the fact that this particular document is
3 supposed to be an accurate summary of the record on
4 this account. But even in Mr. Kramsky's deposition
5 there's reference to documentation that obviously
6 Mr. Troy has not presented. And in lieu of the fact
7 that we have submitted in a proper fashion a Notice to
8 Produce, as well as interrogatories in this matter, if
9 such documents exist, we have a right to it. And if
10 it's not shown here, then I have the right to question
11 this witness as to their location and why they are
12 not.

13 MS. COWDERY: Your Honor, that is not what
14 Mr. Brooks asked the witness.

15 THE COURT: Okay.

16 MS. COWDERY: If Mr. Brooks wants to ask if
17 there's any other documents, he may ask that. But
18 he's asking about a preparation of a witness for
19 deposition, which has nothing to do with this account
20 summary. So I would say that the question --

21 THE COURT: I agree. I sustain the
22 objection.

23 Q (By Mr. Brooks) All right, Mr. Troy,
24 Mr. Kramsky -- would Mr. Kramsky have access to
25 documents or any part of the record on this account

1 that you would not be privy to?

2 A No, he would not.

3 Q To your knowledge would Mr. Kramsky take any
4 of the records on this account, or relative to this
5 account, with him when he left your company?

6 A I would hope not. I don't know. I would
7 think not. He would have no reason.

8 Q To the best of your knowledge?

9 A Best of my knowledge, no, he didn't take any
10 records.

11 Q So when Mr. Kramsky makes reference to
12 documentation supporting this charge, then that
13 reference is to documentation that he would have had
14 in his possession at the time.

15 A I presume, yes, sir. He's making reference
16 to it.

17 Q And since to the best of your knowledge he
18 did not take any of the records with him, where would
19 those records be now?

20 A He made reference to certain documents and
21 records and he didn't take them with him. The records
22 would still be in the company files.

23 Q Have you seen such records that would make
24 him state that his view of them would be supporting
25 this charge?

1 A I don't understand the question.

2 Q Is it your testimony that to the best of
3 your knowledge there are no other records in existence
4 relative to this account?

5 A That's to the best of my knowledge, yes;
6 best of my knowledge, yes.

7 Q Fine. To the best of your knowledge does
8 there exist a record of any type, a document of any
9 type prepared and executed by Alfred Byrd asking the
10 Mother's Kitchen account be placed solely in his name?

11 A Did you say prepared by Alfred Byrd?

12 Q Is there a record in your records of any
13 document displaying the fact that Alfred Byrd is
14 making a request of your company that the Mother's
15 Kitchen account be opened solely in his name?

16 A I would say the original deposit receipt
17 shows that since it has his name on it.

18 Q So is it your testimony that your company's
19 initiation of this account solely in the name of
20 Alfred Byrd was based upon his name being on the
21 deposit receipt in?

22 A His name on the deposit receipt and
23 communication with him at the counter at the time.

24 Q And those communications would have been
25 with whom?

1 A They would have been in the Sanford office.
2 And it's my understanding the individuals involved
3 with a customer service rep by the name of Roberta,
4 and the office manager, Diane Keitt, was also present
5 at the time.

6 Q Is there a document that was either for or
7 that executed -- formed, in any way, shape, fashion or
8 form by Roberta, or this other party that you just
9 mentioned, that would show in writing that Alfred Byrd
10 requested this account be open in his name, in his
11 name alone?

12 A Other than the deposit receipt?

13 Q Yes.

14 A There's documentation in the computer
15 system.

16 Q Who would have entered the documentation in
17 the computer system, sir?

18 A It most likely would have been Roberta, the
19 one that was there.

20 Q And what documentation is that?

21 MS. COWDERY: We're looking at the computer
22 records, which is Exhibit 32.

23 A Page 1.

24 Q (By Mr. Brooks) And can you show me on
25 that document where it says that Alfred Byrd requested

1 this to be in his own name; his name solely?

2 A No. It would have been taken either off the
3 deposit receipt or verbally. That's how he asked to
4 have it set up. This reflects the customer's desire
5 for the name of the account.

6 Q Sir, is it not true -- is it not true that
7 at your office when business accounts are opened, the
8 party coming into the account, into the office to have
9 the account open, whether the account is in the
10 company's name or whether you're presented with a
11 check in the company's name or not, that the
12 parties -- that your office makes it a practice to use
13 whomever brings the payment in as a name on the
14 receipt, but not necessarily the business account
15 name.

16 A I'm not understanding the question.

17 Q Is it not true that you have to show a
18 person, a person instead of just the business name?

19 A No. On a receipt when a payment comes in?

20 Q No, sir. On an account.

21 A No. You can show it in the business name or
22 a person.

23 Q If you showed an account in a business name,
24 you would not be required in the records anywhere to
25 have an actual person's name representing that

1 business?

2 A We would get documentation from the
3 business, which would be partnership papers, corporate
4 papers, some type of papers which would show owners.

5 Q Why would you get that?

6 A If we have, like, the name "XYZ
7 Corporation," we'd like to know who the owners are;
8 managers. Because we will get calls in on account and
9 we like to know who we're talking to; if they have
10 authority over the account.

11 Q Again, I ask you, is it not true the
12 procedure by your company is when you have a business
13 account, you get an individual's name to go along with
14 that business name?

15 A Yes.

16 Q Is that not the case here?

17 A Mother's Kitchen? Are you talking about the
18 Mother's Kitchen account?

19 Q Yes.

20 A Right. We knew it was a business. We had
21 the individual's name.

22 Q You had to have an individual's name. Is
23 that not true?

24 A Every business account has an individual's
25 name. I can't guarantee we have a name on every

1 business account. Yes, we like to have an
2 individual's name on business accounts.

3 Q On Mother's Kitchen?

4 A On Mother's Kitchen we had the name of an
5 individual and we had the business name.

6 Q The reason that Alfred Byrd's name was
7 placed on this account is because for a company's
8 account you need an individual's name also; is that
9 not true?

10 A Not so on this kind because it's Alfred Byrd
11 d/b/a.

12 Q No, sir.

13 A Customer of record is an individual; it is
14 not a business.

15 Q If that were so, sir, why then does not your
16 receipt for the \$200 security deposit show Alfred Byrd
17 d/b/a Mother's Kitchen?

18 A When they wrote up the receipt the first
19 thing that probably came out of his mouth was maybe
20 "Mother's Kitchen." Then he said, "This is my
21 business. This is my name. I am Alfred Byrd d/b/a
22 Mother's Kitchen. I want it in my name." He told
23 them he wanted his name on it.

24 Q And you have -- the assumption you just
25 espoused, you have documentation showing that that's

1 what he said?

2 A That's what I got, hearsay from Diane Keitt
3 and Roberta, that it was set up with.

4 Can I explain one step further? We had more
5 than just the customer's name on that receipt. There
6 was a Social Security number of that customer and it
7 was not a corporation number, federal ID number. It
8 was not a partnership ID number. It was an
9 individual's Social Security number was also put on
10 that receipt, which is evidence this was the customer
11 of record. That's how he wanted it.

12 Q The only thing it's evidence of is Alfred
13 Byrd and his Social Security number was present in
14 your business. Is that not correct? And in your
15 office there? That's about the only thing it's
16 evidence of, is it not?

17 A People have testified that he requested it
18 that way. And bills went out for -- I don't know how
19 many months.

20 Q And those bills -- those bills, as you have
21 testified, went unpaid; is that not correct?

22 A At first they were being paid, yes;
23 delinquents got worse and worse.

24 THE COURT: Mr. Brooks, are you finished
25 with this line of questioning?

1 **MR. BROOKS:** Yes, sir, I'm just about here.

2 **THE COURT:** All right. Let me interrupt
3 here for a moment.

4 I want you to be able to complete your
5 cross, but I'm a little concerned at the time.

6 Do you anticipate any extensive cross to
7 continue, or --

8 **MS. COWDERY:** Not extensive. I have about
9 half a dozen questions.

10 **THE COURT:** Mr. Brooks. Mr. Brooks, are we
11 nearly done or do we have some more to cover yet?

12 **MR. BROOKS:** Yes, sir. We're just about
13 completed here.

14 **THE COURT:** I'm not trying to cut you off.
15 I'm trying to get an idea on the time. Because -- do
16 you think another five minutes or so, or longer than
17 that, before you're finished?

18 **MR. BROOKS:** Given the volume, the sheer
19 volume of the documentation and the direct on Mr. Troy
20 here, I would think that I would probably 10, 15
21 minutes.

22 **THE COURT:** Okay. I want to let you do
23 that. What I'm concerned about is the building
24 security that you're in.

25 **MR. BROOKS:** Yes, sir.

1 **THE COURT:** I'm going to request we take a
2 short recess at this time, and someone check with
3 security to make sure that if we continue, so we can
4 complete this tonight, that you can get out, out of
5 the building. All right? So we're going to go off
6 the record for about five minutes. Let's hope we can
7 do that.

8 **MR. BROOKS:** All right, sir.

9 (Brief recess taken.)

10 - - - - -

11 **THE COURT:** Let's go back on the record
12 then. Mr. Brooks, continue.

13 **MR. BROOKS:** Yes, sir.

14 **Q** (By Mr. Brooks) Mr. Troy, you were present
15 at the deposition of Mr. Alfred Byrd; is that correct?

16 **A** Yes.

17 **Q** Your chronological history reflects Mr. Byrd
18 following Mr. Middleton to the gas company to make
19 that initial deposit, does it not?

20 **MS. COWDERY:** Objection. Too vague. What
21 chronological history?

22 **MR. BROOKS:** The chronological history of
23 March -- I believe you've still got it over there, do
24 you not? Chronological history of March 13, 1997,
25 that bears your signature and it's addressed to

1 Mr. Plescow. Do you recall that one?

2 WITNESS TROY: Yes, sir.

3 Q (By Mr. Brooks) When you state on 3-21-96,
4 FPU's Sanford distribution, Don Middleton was in the
5 Mother's Kitchen late in the afternoon. And it goes
6 on to state that Mr. Byrd followed him to your Sanford
7 office; is that correct?

8 A That is correct.

9 Q Okay, sir. Now, in your chronological
10 history where it states, "Mr. Byrd, Sanford office,
11 \$200 deposit was paid in cash by Mr. Byrd, and a
12 turn-on was issued in Alfred Byrd, doing business as
13 Mother's Kitchen." That's an accurate statement?

14 A Yes. I got that from the divisional
15 personnel.

16 Q In prior testimony you stated that when you
17 were making reference to your computer printouts, that
18 was in -- Respondent's Exhibit 32 you made reference
19 to a cut-off time -- you were making reference to that
20 1600 hours military time.

21 A Right.

22 Q Now, that reference you made to cut-off
23 times 1500 hours, since you were talking about the
24 computer records, I take it you mean your computer
25 system ties into your Palm Beach office; is that

1 correct?

2 A That's correct.

3 Q So if Mr. Byrd followed Mr. Middleton in the
4 late afternoon to your office, your Sanford office,
5 and arrived there after 4:00, your records would not
6 reflect that deposit until the following day; is that
7 not correct?

8 A The cash deposit.

9 Q Yes.

10 A Let's see, if he got it -- if they gave it
11 to us late on the 22nd, I would assume it would be in
12 the next day's computer record.

13 Q Okay, sir.

14 A If they got it late on the 21st -- did I say
15 22nd? It would have been the 21st, then it would have
16 been in the next day's computer record.

17 Q In that particular scenario you just
18 figured, this particular receipt that has a 3-21-96
19 date would have likewise been actually recorded on the
20 22nd.

21 A In the computer, right. The computer would
22 have picked it up on the 22nd.

23 Q Okay, sir. Now, in making reference to the
24 \$290 receipt, you had testified that that time stamp
25 on that receipt -- the receipt showed a receiving date

1 of 8-12 and there was a time stamp of 8-13 on it. Do
2 you recall that? Do you need to see it?

3 A I'd like to see it before I say yes. (Hands
4 document to witness.)

5 Yes, it's dated 8-12, which would be the
6 date you gave it to Diane. And it must have been late
7 in the afternoon. I wouldn't say late. Must have
8 been in the afternoon she stamped it. Her stamp was
9 already advanced to the 13th. So it would have been
10 an afternoon payment.

11 Q So if Mr. Byrd went into your office, your
12 Sanford office after 4:00 on the 21st, that receipt
13 for the \$200 security deposit should likewise have had
14 this paid with the following day's --

15 A Yeah.

16 Q -- stamp on it?

17 A Yeah. They hit it with a stamp. Right. It
18 should say the next day. The 22nd is the date that
19 should be on there.

20 Q Okay. So if Mr. Middleton testified that
21 Mr. Byrd -- it was after 4:00 when he and Mr. Byrd
22 went to your office, and this supposed receipt for the
23 security deposit was made, then if that were the case,
24 that document would also reflect that time stamp.

25 A Right. It's a manual stamp that they stamp

1 it with that should have been advanced to the 22nd.
2 Right.

3 Q And it should have been reflected on any
4 receipt that was received after 4:00.

5 A Definitely after 4:00. I would say even in
6 the afternoon hours.

7 Q And Mr. Byrd -- when you were present at
8 Mr. Byrd's deposition, did your attorney not take --

9 MS. COWDERY: Objection. I don't see how --
10 I'd like to know what his objections at Mr. Byrd's
11 deposition have to do with cross examining the direct
12 testimony of Mr. Troy.

13 THE COURT: Let me here the full question,
14 please.

15 Q Did not your attorney take and display to
16 you from Mr. Byrd a calendar page reflecting
17 Mr. Byrd's supposed time of departure from Mother's
18 Kitchen.

19 A Did Mr. Byrd not give us -- yes. Yes. He
20 gave us a calendar page that showed us his departure
21 from Mother's Kitchen.

22 Q Did not Mr. Byrd state that after that
23 particular date he went to all utilities and asked
24 them to remove his name from the record?

25 MS. COWDERY: Objection. He's asking

1 Mr. Troy to --

2 MR. BROOKS: If he remembers it, ma'am.

3 MS. COWDERY: -- to testify as to Mr. Byrd's
4 testimony.

5 MR. BROOKS: He was present, ma'am.

6 THE COURT: I sustain the objection.

7 Q (By Mr. Brooks) Do you have any
8 recollection of any documentation or statements
9 from -- made by Alfred Byrd, stating that on a
10 particular date and time he went to all utilities and
11 asked that his name be removed?

12 A I don't know of any documentation. He did
13 make a statement to that effect, that sometime after
14 he left Mother's Kitchen he went around to the
15 utilities.

16 Q If he had went to your company's Sanford
17 office and requested that his name be removed from the
18 account record, at the time that he did such, what
19 would have been the proper course of action for your
20 company, the Sanford office?

21 A We would have contacted -- we would have
22 asked him why? Is he shutting down the business? If
23 not, we would contact the employees of Mother's
24 Kitchen that were still there and see what their
25 intentions were. Give them probably three days to

1 come in to change over the account and bring in a
2 deposit.

3 Mr. Byrd did stop by one time and request
4 that, but it was on September 13th, the morning of
5 September 13th. In his testimony he stated he did
6 come by once but he could not remember the date, if I
7 remember.

8 Q Now, Ms. Cowdery made reference to and asked
9 you specific questions regarding the informal staff
10 conference before the PSC on February 24, 1997. One
11 of the -- you recall that staff conference?

12 A Yes.

13 Q And I believe that you stated that there was
14 no reference by me -- by me or any representative of
15 Mother's Kitchen concerning a \$500 deposit of any
16 kind.

17 A There was no mention made of a deposit, a
18 \$500 being made.

19 Q And you reviewed that document?

20 A Yes, I saw the document.

21 Q And there was no mention whatsoever of any
22 \$500 payment of any type?

23 A Being made, no.

24 Q Do you have that document in front of you?

25 A Yes.

1 Q Look at Page 36 of that document.

2 A Okay.

3 Q Starting at Line 4, where the Commission
4 staff -- said, "Okay. The bad check Mr. Byrd issued
5 then would have been for service that would have been
6 rendered sometime, I suppose, in July?"

7 A Yes.

8 Q Okay. "And, sir I do not know -- I do not
9 know the purpose of that check was -- I do know that
10 these people made us pay," and, again, I point to the
11 transcript from this lady sitting over here, "these
12 people made us pay a number of payments all in a row
13 on this account. As a matter of fact," and then
14 there's this inaudible thing here -- "they had us pay
15 a total of the \$541 prior to the 25th of July." Okay.

16 A Yes.

17 Q Do your records reflect a payment of \$541
18 prior to the 25th of July?

19 A It says "pay a total" also. That could be a
20 combination of payments.

21 Q Does it reflect even a total of \$541 prior
22 to the 25th of July?

23 A Looks to me like it would be much more than
24 that. 2-11-72. 160, 170, 150, and the original
25 deposit of 200. On top of that there was a

1 merchandise statement of 126 and some change.

2 Q So it is your opinion that prior to the 25th
3 of July there was a great deal more than \$541 that was
4 paid?

5 A There was payments on the gas bill, right,
6 to keep the gas account active, yes. Individual
7 payments.

8 Q More -- more than \$541 is referenced here.

9 A It would come out to more than that.

10 Q Okay.

11 A One payment, I might mention, was for a bad
12 check, the 170. Take that off because that was
13 reimbursement for a previous payment. It didn't
14 float. It would be close to 540 if I add them up
15 there.

16 Q Okay. Now, also on this document line 23 --
17 what that \$211 check was for -- Diane or whoever
18 handles that. We have a payment showing on July 25th,
19 to me it looks like there was a payment on the gas
20 bill. July 25th the check came in for \$211. On
21 August 8 it came back to the bank nonsufficient funds.
22 Payment was made and made good on August 28th.

23 A Right.

24 Q Okay. And this statement relaying that is
25 the statement you made to the Commission staff?

1 A Yes.

2 Q And it is accurate?

3 A Yes.

4 May I clarify one thing?

5 Q Go ahead.

6 A The check that came in for 211 was August
7 8th; it came from the bank and the payment was made.
8 Payment that was made was not 211.72, it was 211.72
9 plus the service charge of \$20 or 231.72.

10 Q Okay. So this statement is not an accurate
11 statement as it is shown here on this document?

12 A It says on August 8th it came back from the
13 bank NSF. Payment was made and it was made good on
14 August 28th. To make it good, you pay the amount of
15 the check plus the service charge.

16 Q It states, sir -- Mr. Troy, can you tell us
17 what the \$211 check was for Diane or whoever handles
18 that. Okay. It says what that check was for.

19 A What, that check 211.72? (Pause)

20 It was payments made on the gas account at
21 the time the gas account was in arrears, or the amount
22 due on the gas account was 527.36 according at the
23 chart here on July 15th. 211.72 came in on July 24th.
24 Now, how Mr. Byrd came up with that amount I don't
25 know. It looks at one time that the account did have

1 a 72-cent balance. Disconnect notice went out July 3,
2 on 371.72. A payment came in. You start looking at
3 this. It explains itself.

4 A disconnect notice went out July 3rd,
5 371.72. A payment came in July 11, \$160. If my math
6 serves me right that comes to 11.72 due.

7 Q Okay, sir. You just stated you don't know
8 how Mr. Byrd came up with that figure.

9 A As soon as I analyzed it, then it makes
10 sense. That's the amount that was still on the
11 account.

12 Q Now you can tell me how --

13 A Yes.

14 Q -- you see how Mr. Byrd came up with that
15 figure?

16 A I would state that that is probably what had
17 happened. Disconnect notice, 371.72; less the payment
18 made about 11 days earlier. Left a balance of 211.72.
19 I would assume he was paying off the balance.

20 Q Okay. If we make that assumption that he
21 was paying off the balance, my question to you, sir,
22 is this: Once that occurred, once that 211.72 was
23 paid, then that balance amount -- according to your
24 own testimony -- that balance amount on line next to
25 July 24, 1996, should have then went to zero balance?

1 A That is not right.

2 Q But you said --

3 A He paid off the balance that was on the
4 disconnect notice -- on the shaded in line right
5 above -- on July 3rd. That was the delinquent portion
6 that had to be --

7 Q Do you have a copy of that Disconnect
8 Notice?

9 A It would show on the bill of July 9th as a
10 past-due amount under that billing register we
11 submitted.

12 Q It's reflected on this bill?

13 A It should be on the July 9th bill. As
14 arrears. If you look at the --

15 Q But the actual Disconnect Notice you do not
16 have?

17 A No, we don't have the Disconnect Notice.
18 One was mailed on July 3rd for 371.72. Payments came
19 in within three weeks. Exactly 371.72 came in. What
20 more can I say? It's evident what the payments were
21 for. It's evident that the notice went out and
22 Mother's Kitchen responded by making the payments.

23 Q So this is precisely what I'm getting at,
24 sir.

25 In your prior statement you stated that the

1 history of this account, which prompted you to act on
2 the 13th, was one of continual nonpayment, continual
3 behind in payment, bad checks and all of this, which
4 led you to make -- to perform and act on the 13th of
5 September. Now you're telling me that your record
6 there reflects that all of the payments were made?

7 A Mr. Brooks, on the 13th of September --

8 MS. COWDERY: One second. I want to object
9 to the first section of what Mr. Brooks has stated as
10 being misleading and misquoted the testimony of the
11 witness.

12 MR. BROOKS: I tried to get the witness to
13 clarify it, ma'am.

14 MS. COWDERY: What you stated misquoted the
15 testimony of the witness.

16 MR. BROOKS: I withdraw it, Your Honor.

17 Q (By Mr. Brooks) Sir, you stated
18 previously, did you not, that the account history was
19 a factor in your determination to stop the account on
20 the 13th.

21 A Negative. I did not say that.

22 Q All right, sir. Please state for me why you
23 determined that the gas supply should have been
24 stopped permanently on the 13th of September?

25 A I already did it once. It was your

1 irrationality, attitude, unacceptance of the leak.
2 Refusal to have it repaired. Threatening the company,
3 both towards McDaniel and myself. Abusive behavior.
4 The account, I told you before, was paid up as of the
5 13th; it was paid up.

6 Q Did you not state that -- where you
7 mention -- where you mention the repair on the
8 account, did you not state previously that one of the
9 reasons monies would have been required in advance to
10 repair was the account history?

11 A Right. There was two NSF checks on the
12 account and we treat all customers alike. When we
13 have NSF checks, we require cash.

14 Q All right, sir. So --

15 A We weren't picking on Mother's Kitchen.
16 That's just how we operate the business. But we did
17 not curtail the service because of delinquency in
18 payment at that time. It was paid up.

19 Q Fine. The point -- your account summary
20 shows a continual balance over here in the balance
21 column. At no point is that thing at zero balance.

22 A That is correct.

23 Q Now, in response to a question that I asked
24 you concerning this \$211.72, you looked at some
25 document there before you and you stated that it's

1 obvious why it's \$211.72, did you not?

2 A Right.

3 Q You stated that if you look at this document
4 you will see that some 300-some-odd dollars paid to
5 the balance equated to the 211, and once that was
6 paid, then the balance was clear. Did you not?

7 A The balance that was on the Disconnect
8 Notice was clear.

9 Q Okay. All I'm trying -- that's all I was
10 trying -- to understand what you were saying.

11 Now, the balance on the Disconnect Notice,
12 why would it be different than the balance on the
13 account?

14 A Because the current billing is not
15 considered delinquent until 20 days after the bill
16 goes out. So you could always write a balance and not
17 have the account considered delinquent.

18 Q Where on your account summary where the
19 reference is made to the \$211.72 does it show a
20 current usage?

21 A On the previous bill rendered, which would
22 be July 9th, \$265.64.

23 Q Where on July 11th does it show a current
24 usage? July 24, I'm sorry. The next two, this 211.72
25 which you testified would have brought that balance to

1 zero. Where does it reflect the current usage on July
2 24, '96?

3 A Okay. You have the current gas usage right
4 here at 265.64.

5 Q That's for July 9.

6 A You have \$30 added to the account service
7 charge, which was current; it was just added to the
8 account right here.

9 Q That's July 15th.

10 A You have a \$20 NSF charge up here, which was
11 first billed in this amount here. It's not the gas
12 usage. It's part of the bill. If you have a copy of
13 the bill, it would show is part of the current
14 charges.

15 Q That's July 3 and July 9.

16 A \$50 and 265.64 equal what.

17 Q That's July 9. Show me the gas usage at
18 July 24.

19 A The current bill is 315.64. It's comprised
20 of the gas usage for July 9th, the \$30 service charge
21 put on July 15th and the \$20 NSF charge put on June
22 7th.

23 Q So in your account summary there, where you
24 have of the balances on any given day, that balance
25 does not reflect an actual balance, the balance even

1 behind in what is reflected there?

2 A No, that's the balance. I'm just saying
3 it's not all delinquent. Some of it is current and
4 some of it is past due. If you get any bill from a
5 billing register these days, it will break down the
6 total as each one of these days the bill went out; how
7 much is current, how much is past due. It's right on
8 the billing register or those two bills --

9 (Simultaneous conversation)

10 Q Okay, sir. So we're clear here on the
11 record, the document you got before you, is it the
12 same document that you're referring to here on the
13 platform?

14 A Yes.

15 Q All right. When you were asked what the
16 211.72 represented, you stated that it represented the
17 balance of a Disconnect Notice for 280-some dollars.

18 A It represented the Disconnect Notice that
19 went out on July 3rd. Total due as 371.72.

20 Q It went out on July 3rd?

21 A July 3rd we send out a Disconnect Notice for
22 \$371.72. On July 11, 160 came in; July 24th, 211.72
23 came in. Satisfied the requirements of that
24 Disconnect Notice.

25 Q Now, after July 11th, after July 11th, and

1 proceeding up to August 12th on your account summary
2 there, where you're showing a mailing address change,
3 okay --

4 A Yes.

5 Q Mr. Byrd did not come -- you have no record
6 of Mr. Byrd coming into your office and requesting
7 that his name be removed from that account during that
8 particular time frame?

9 A No.

10 Q None.

11 A Not that I know of, no.

12 Q If Mr. Byrd had come into your office during
13 that particular time frame and made such a request,
14 what would -- by your tariff and regulation, what
15 would your office have been required to do?

16 A If he had come in and requested the account
17 be taken out of his name, we would have come out to
18 the Mother's Kitchen account, read the meter,
19 finalized the bill in his name, rendered him a final
20 bill, and started off a new account in whatever name
21 Mother's Kitchen wanted. And they, of course, would
22 have to put up a deposit. And we would give, like I
23 said, three work days to do that.

24 Q Okay. Now, where you have here that the
25 mailing address was changed per Ashly Brooks request.

1 If your company did not know of the alliance between
2 Mr. Byrd, myself and the other partners, why would
3 they have made the change on Mr. Byrd's account at
4 someone else's request?

5 A We do this every day. We will change an
6 address. A person came into our office, namely
7 yourself, according to the record. A responsible
8 party of Mother's Kitchen, knowledgeable about
9 Mother's Kitchen, making a payment on Mother's
10 Kitchen, told us if we changed the account over to the
11 service address instead of the P. O. Box, we could
12 expect payments in a timely fashion. All we did was
13 remove the P. O. Box and reverted back to the service
14 address. Wasn't like sending it up to Oregon or
15 somewhere. We kept it right -- being mailed to the
16 service address by removing of the P. O. Box.

17 Q But that request was not made by Mr. Byrd?

18 A We don't require that on change of address.
19 We get hundreds of them every month. People write in
20 on a bill when they send a payment in, "Change my
21 address. My address is wrong. Start sending my bill
22 up north." We have numerous requests.

23 Q But those are from people who are of record
24 with your gas company, are they not?

25 A It comes in the mail. We don't know who

1 wrote it on there. Some of them sign their name.
2 Some don't. They just say here's an address change.

3 Q So, sir, you are sitting here telling me, as
4 a matter of fact, that if you -- if by your
5 interpretation of your procedure, if
6 Johnny-come-lately wrote to your company and told them
7 that he needed an address change at a particular place
8 of business you would do it?

9 MS. COWDERY: Object. This is unnecessarily
10 argumentative and clearly not what Mr. Troy testified
11 to. Clearly.

12 THE COURT: The question is argumentative.
13 Mr. Brooks, we need to wrap this up now.
14 Let's go. It's nearly 7 o'clock.

15 MR. BROOKS: All right. Mr. Troy.

16 Q (By Mr. Brooks) Is there one particular
17 document, one particular item, one particular payment,
18 one particular bill, one particular receipt of payment
19 that in any way, shape, fashion or form that's related
20 to Mother's Kitchen account that you personally -- you
21 personally -- received or made out? Did you
22 receive --

23 A I'm just going down the items. Just give me
24 a moment. (Pause)

25 No. There's nothing on there that I

1 personally made out to, received or computed. I mean
2 I didn't compute any bills. I didn't send out any
3 kind of notice. My people did but I did not.

4 Q So the entire content of your testimony here
5 today has been contents -- the contents of your
6 testimony here today has been the result of statements
7 and documents from others that you relied upon?

8 A People that worked for me, yes. Reliable
9 cashiers, data processing clerks presented a summary
10 of the account and I have documented, as best I could,
11 with the records in the company to substantiate the
12 entries on this --

13 Q Sir, yes or no. What you have presented
14 here today is not of your firsthand actual knowledge,
15 is it?

16 A No, it's just the people.

17 Q It is a collection of materials you obtained
18 from your employees; is that correct?

19 A Yes, sir.

20 MR. BROOKS: No further questions.

21 THE COURT: Redirect.

22 - - - - -

23

24

25

REDIRECT EXAMINATION

1
2 BY MS. COWDERY:

3 Q Mr. Troy, looking at the Florida Public
4 Service Commission Consumer Request form, which has
5 been identified as an exhibit in this case today,
6 there is a statement in there, it's the third sentence
7 from the end. Would you read that or tell us how you
8 read it; if there are any typographical errors in it?

9 A "Then after service was interrupted for a
10 second time due to a past-due bill, employees paid
11 the" -- it says "D-E-P-T" in full.

12 Q How did you read that?

13 A Debt.

14 Q Spelled?

15 A D-E-B-T.

16 Q Okay.

17 A It does say D-E-P-T. I read it as "debt."
18 Which they paid off what was due on the gas account.

19 Q Did the fact on -- let's go to September --

20 REPORTER'S NOTE: In the hearing room here in
21 Tallahassee we lose the audio from Orlando.)

22 THE COURT: It's five minutes of seven. We
23 seem to have lost you, Ms. Cowdery.

24 MS. COWDERY: You can't hear me?

25 THE COURT: You're back. We lost that--

1 MS. COWDERY: I would have stopped. I'm
2 almost done.

3 THE COURT: Just wait for a minute. Let the
4 court reporter tell you where she missed you.

5 THE REPORTER: "Did the fact on" -- and then
6 something about "September."

7 MS. COWDERY: Let's start the sentence over
8 anyway.

9 THE COURT: Please do.

10 Q (By Ms. Cowdery) On September 13th, 1996,
11 did the fact that the Fry-o-lator, or the fryer, was
12 working or not working at Mother's Kitchen enter into
13 your analysis or your decision to disconnect the gas?

14 A No.

15 Q Why not?

16 A The problem was with the range and -- the
17 repair of the range and not the Fry-o-lator. I felt
18 it was not safe to activate gas into the premises at
19 that time.

20 Q Okay. Do you recall when you were speaking
21 to Ms. Keitt on that same day, and you told her to
22 disconnect the gas, or you told her to tell the
23 serviceman to disconnect the gas, do you recall
24 whether or not you specifically talked to Ms. Keitt
25 about Mr. Brooks' demeanor or not?

1 A I might not have talked to her about the
2 demeanor. I know what it was but I don't know that I
3 talked to her about it.

4 Q All right. In distinguishing between an
5 individual and a business, and what information you
6 get about the business or about the individual, does
7 the designation of who is customer of record have a
8 impact on what information you get?

9 A I would say yes.

10 Q Okay.

11 A Customer of record.

12 Q Okay. What is the difference between if
13 you've got a business as a customer of record or an
14 individual as a customer of record?

15 A Well, if it's an individual customer of
16 record and it's a business account, of course, we'll
17 get the name of the business so we can associate the
18 customer's name with the business. If we're going to
19 go out and service this account, we're not going to
20 call it "Al Byrd's place." We're going to call it by
21 the name that's on the restaurant, Mother's Kitchen.
22 We also get the Social Security numbers of either the
23 business or an individual.

24 MS. COWDERY: I have no further questions.

25 THE COURT: Okay. Mr. Brooks, anything

1 else?

2 MR. BROOKS: Not for this witness, no, sir.

3 THE COURT: Anything else from the
4 Respondent?

5 MS. COWDERY: Let me see. Not for my
6 case-in-chief, no.

7 THE COURT: Do you rest?

8 MS. COWDERY: I do.

9 THE COURT: Thank you.

10 Anything else, Mr. Brooks?

11 MR. BROOKS: Yes, sir, I have a rebuttal
12 witness.

13 THE COURT: And in reference to what? To
14 whose -- as to what testimony do you wish to rebut?

15 MR. BROOKS: As to Ms. Keitt's testimony,
16 the deposition that was submitted from Mr. Kramsky,
17 Mr. Troy's testimony.

18 THE COURT: In regard to what? We need to
19 be specific.

20 MR. BROOKS: Regarding the references
21 made -- both the documentation, and orally, concerning
22 the events of August 12th, and the purported
23 non-document supporting actions that occurred on that
24 date.

25 THE COURT: On August 12th?

1 MR. BROOKS: Yes, sir.

2 THE COURT: Okay.

3 MR. BROOKS: And July 11th.

4 MS. COWDERY: I would object.

5 THE COURT: What is the witness you wish to
6 call?

7 MR. BROOKS: He's a party that was present
8 on July 11th at the Sanford office of the Respondent,
9 and he was also constantly in my presence on August 12
10 at the BPIF Office here in Orlando.

11 THE COURT: Who is the name of the person.

12 A

13 MR. BROOKS: Christopher Singletary.

14 THE COURT: Is that person present?

15 MR. BROOKS: Yes, sir, he is.

16 THE COURT: All right. And you have an
17 objection? Counsel?

18 MS. COWDERY: Well, it is possible there
19 would be some rebuttal because Mr. Brooks had a very
20 vague answer as to what the subject matter was.
21 However, I would point out that the law regarding
22 rebuttal is clear. Citing to Roads vs Asplundh Tree
23 Expert Company, which is 528 So.2d 459, Third DCA,
24 1988. Rebuttal evidence which is cumulative and in
25 any event could have been presented during the

1 case-in-chief is inappropriate.

2 The events of July 11th and the event of
3 August 12th are in Mr. Brooks' case; very germane
4 dates and his case-in-chief addressed July 11th;
5 events of July 11th. It addressed August 12th. If he
6 is going to ask Mr. Singletary to testify because he
7 was in Mr. Brooks' presence at the time in order to
8 verify what he said essentially, that is cumulative.
9 And, also, if it was important enough to bring in as
10 rebuttal, you know, important enough for him to talk
11 about, it should have been brought up in his
12 case-in-chief.

13 I can't imagine what he would be addressing
14 that would not be cumulative and should have been
15 addressed in the case-in-chief.

16 **THE COURT:** Mr. Brooks.

17 **MR. BROOKS:** Sir, Mr. Troy, Diane Keitt, as
18 well as Mr. Kramsky, in his deposition, gave rather
19 explicit -- what they termed as factual accounts of
20 events; very important events in this case, essential
21 elements of this case, in both testimony and in
22 Mr. Kramsky's case by deposition.

23 The party that I am going to call as a
24 rebuttal was in -- as a matter of fact, he was in
25 North Carolina during the hearing -- the hearing and

1 deposition phases of this matter. He just recently
2 returned to this area. And upon his returning we
3 immediately sought him out with subpoena to show up
4 here today.

5 Now, this is not a matter of where the
6 Respondent has offered a document to show that the
7 events they relate could actually have occurred as
8 they put it. Nor do we -- did we have any specific
9 document to put the event in the order in which we
10 portrayed them.

11 Now, this is a fact-finding conference, a
12 fact-finding forum. We have an independent witness
13 that is not a party on either side to this event who
14 witnessed these crucial elements of this case, and has
15 testimony going directly to those elements. And the
16 Florida Rules of Civil Procedure on rebuttal, as it
17 pertains to rebuttal, clearly gives me the right to
18 present additional testimony in opposition of any
19 direct testimony that the witnesses gave if this man's
20 testimony is germane to the issues, which they are.

21 **THE COURT:** Mr. Brooks, you testified as to
22 what happened on those dates, right?

23 **MR. BROOKS:** Sir --

24 **THE COURT:** On direct examine, did you not?

25 **MR. BROOKS:** Sir, the Court would not allow

1 Specific testimony that goes to my being in a place
2 where I could not possibly have been, in the office of
3 the Sanford division of this utility, when each and
4 every one of their representatives are claiming that I
5 was there.

6 THE COURT: Okay. Fine. Thank you. Just
7 trying to get an understanding.

8 Anything else, Ms. Cowdery?

9 MS. COWDERY: Yes. I would say, first of
10 all, that Mr. Harry Johnson did testify regarding
11 events of the 11th for sure. He testified regarding
12 the \$500 deposit. He was offered for that purpose.

13 Mr. Brooks stated that Mr. Singletary was in
14 North Carolina during the deposition time period and
15 the hearing. That would have been from December until
16 March, and he just recently returned and was
17 immediately sought out. This implies that he's so
18 important that there's -- you know, he would have been
19 deposed or called to hearing if he had been here. But
20 just like Mr. Kramsky, he could have been deposed and
21 Mr. Brooks could have called him as a direct witness.

22 Mr. Brooks doesn't address the law of
23 Florida regarding rebuttal evidence that is
24 cumulative evidence, which could have been presented
25 during the case-in-chief, is not appropriate for

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2 where I could not possibly have been, in the office of
3 the Sanford division of this utility, when each and
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14 North Carolina during the deposition time period and
15 the hearing. That would have been from December until
16 March, and he just recently returned and was
17 immediately sought out. This implies that he's so
18 important that there's -- you know, he would have been
19 deposed or called to hearing if he had been here. But
20 just like Mr. Kramsky, he could have been deposed and
21 Mr. Brooks could have called him as a direct witness.

22 Mr. Brooks doesn't address the law of
23 Florida regarding rebuttal evidence that is
24 cumulative evidence, which could have been presented
25 during the case-in-chief, is not appropriate for

1 Mr. Brooks. Go ahead.

2 DIRECT EXAMINATION

3 BY MR. BROOKS:

4 Q Mr. Singletary, did you recently return from
5 North Carolina?

6 A Yes.

7 Q Were you served a subpoena to appear here
8 today?

9 A Yes. I have it right here. (Takes out
10 document.)

11 Q It's all right, Mr. Singletary.
12 Were you at any time during the month of
13 July 1996 in the vicinity of Mother's Kitchen
14 restaurant, Sanford, Florida?

15 A Yes, sir.

16 MS. COWDERY: Your Honor, I'm going to
17 object to leading questions which specify dates, times
18 and amounts of money. I understand the need for some
19 leading, but dates, times and amounts of money are
20 pretty important.

21 THE COURT: Okay. I sustain as to the
22 amounts of money but I'm going to permit some leniency
23 on dates. Also, time -- you cannot suggest the time,
24 neither. But the date perhaps.

25 MR. BROOKS: Yes, sir. Yes, sir.

1 THE COURT: Go ahead.

2 Q (By Mr. Brooks) Mr. Singletary, what was
3 the reason you were at the vicinity of Mother's
4 Kitchen restaurant in July '96?

5 A I was doing a little construction job in the
6 back of this restaurant, Mother's Kitchen. A guy name
7 Rick asked me to go around there and see about making
8 some footers and stuff. And I was out doing that,
9 working with the structure.

10 Q Do you recall what date or approximate date
11 that you were there doing this construction?

12 A It was July the 11th. It was about 4:00 in
13 the afternoon.

14 Q What makes you certain it was July the 11th?

15 A Because Rick, the guy I worked for part
16 time, he told me to go out there and check, you know,
17 look for about the footers and stuff, and so I ended
18 up being there.

19 Q Did you have occasion on July 11th to speak
20 to or come in contact with Harry Johnson?

21 A Yeah. I seen him later on at Mother's
22 Kitchen. The saw I was using, the blade, it -- I seen
23 them coming out the back of the restaurant. I don't
24 know who he was talking to, but he said he was going
25 somewhere.

1 MS. COWDERY: Objection if we're going to
2 use Mr. Singletary just for purposes of hearsay.

3 THE COURT: Let me hear the -- I'll reserve
4 ruling on the objection. Go ahead.

5 A Well, how do I say that? Anyway, I heard
6 him say he was going to pay something, a bill or
7 something, gas company or something. So I asked him
8 if it was all right for me to catch a ride with him to
9 go to Scotty's because I needed a new blade for my
10 saw. He said yeah.

11 So I got in with him. And he stopped by the
12 company, the gas company. All right. He counted out
13 some money. Went in for a little while. I sat there.
14 He took me on to Scotty's. I went up there and I
15 bought a blade for \$17, and he took me back to the
16 restaurant where I started back to work on that.

17 Q Did anything happen that would give you an
18 indication of about how much money Mr. Johnson was
19 dealing with?

20 A I'd say he counted in front of me -- about
21 500 some bucks. Is watched him count it in the van.

22 Q And what time of day was this?

23 A It was a little bit after 4:00.

24 Q The document you have before you, can you
25 tell the court what that document is?

1 A It's Mother's Kitchen that my bossman was
2 talking about. They was going to renovate it, spread
3 it out or something. Like I said, I was there for the
4 footers and stuff.

5 Q Okay. Mr. Singletary, did you also have a
6 occasion to come to the home of Anthony or Tony Brooks
7 on any occasion?

8 A Tony Brooks? Yeah. I went to his house
9 about a month later.

10 Q Okay. And why did you go to his residence?

11 A Because my boss, Rick, he asked me to meet
12 him there. It was about 8 o'clock that morning.
13 Little bit after 8. I met him. I stood in front of
14 his house. He came out.

15 Q Do you recall what day that was?

16 A That was August the 12th, I think it was.
17 Something like that.

18 Q What did you do at Mr. Brooks' residence.

19 A Like I said, he came out and he greeted me
20 and we talked. Then I got in his vehicle and went
21 over here to Orlando; came over to Orlando to this
22 business thing, some kind of business building. I
23 don't know exactly the name. But I sat there with him
24 almost all day long.

25 Q What was your purpose in being there?

1 A Well, Rick told me -- he went in there to
2 get a loan or something. He said if it come up and
3 wanting to know why he was getting a loan about the
4 expansion and all of that -- that's best what I was
5 there for, just answering the questions and stuff like
6 that.

7 Q So Mr. Rick James, your employer, asked you
8 to accompany Tony Brooks to the Black Business Fund
9 Office in Orlando?

10 A Yes.

11 Q And this was on August 12th?

12 A Yeah.

13 Q And how long were the two of you at this
14 office?

15 A I had been in there all day.

16 Q Did Mr. Brooks ever leave that office
17 upon -- after arriving there in your presence?

18 A No.

19 Q In the afternoon, once you did leave there
20 approximately, what time was it?

21 A It was about 4:00, 4:30. Like that.

22 Q How long did it take for the two of you to
23 return to Seminole County?

24 A I'd say about 5:30. About 6:00.

25 Q Mr. Singletary, did you voluntarily come

1 A Well, Rick told me -- he went in there to
2 get a loan or something. He said if it come up and
3 wanting to know why he was getting a loan about the
4 expansion and all of that -- that's best what I was
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22 Q How long did it take for the two of you to
23 return to Seminole County?

24 A I'd say about 5:30. About 6:00.

25 Q Mr. Singletary, did you voluntarily come

1 **Q** What was your relationship?

2 **A** Well, I was engaged.

3 **Q** Do you have any personal knowledge of
4 Mr. Brooks, Mother's Kitchen or anything of that
5 nature?

6 **A** No, not really. It's just a job I was
7 doing.

8 **Q** Do you consider yourself a friend of
9 Mr. Brooks or any of the employees at Mother's
10 Kitchen?

11 **A** No, I don't. I know them.

12 **Q** What way do you know them?

13 **A** Seen them around Sanford, you know. I don't
14 too much care for him and that because he was a cop at
15 one time.

16 **MS. COWDERY:** I'm sorry, I missed this. I'm
17 very sorry, but would you please -- is Mr. Johnson
18 referring to you, to Tony Brooks, Anthony Brooks?

19 **Q** **(By Mr. Brooks)** Are you referring to me
20 when you refer to Tony Brooks?

21 **A** Yeah. Yeah.

22 **MS. COWDERY:** Thank you.

23 **MR. BROOKS:** Your Honor, the document that
24 Mr. Singletary has before him, and to which he's been
25 referring to, is a schematic diagram of improvements

1 that we were making -- an expansion, really, that we
2 were making to Mother's Kitchen in July of 1996. And
3 Mr. Singletary's boss, Rick James, who was going to be
4 in charge of the construction, provided Mr. Singletary
5 out there.

6 I want to -- I would like to introduce -- I
7 would like to introduce this schematic into evidence
8 as an exhibit for the Petitioner, if there's no
9 objection.

10 MS. COWDERY: I'd like to first move to
11 strike the testimony which Mr. Brooks has just given
12 regarding what that schematic is. He's not the
13 witness here.

14 And I would certainly object to this
15 schematic because there's absolutely no -- there's
16 been no identification of it as -- or what the
17 relevance of it is -- I mean other than that it's
18 something that Mr. James --

19 THE COURT: Mr. Brooks, what does this have
20 to do with your rebuttal?

21 MR. BROOKS: Sir, the document shows why the
22 rebuttal witness was at Mother's Kitchen. It also is
23 a document which shows that during the time that the
24 Respondent's maintain that I was supposed to have come
25 into their office, that it was impossible for me to

1 come into their office because I was in negotiations
2 with the Black Business Fund in Orlando at the time, a
3 fact to which Mr. Singletary has testified.

4 And, in addition to the schematic, I was
5 also going to offer in evidence the documents from the
6 Black Business Fund showing that I had been
7 negotiating with them for an expansion loan on that
8 restaurant on the dates in question.

9 THE COURT: That you should have done on
10 direct if you were going to do it. But the schematic
11 is not necessary for your rebuttal. I'll sustain the
12 objection.

13 Any other questions for the witness?

14 Q (By Mr. Brooks) Did at any time -- during
15 August 12, at any time did you, or myself in your
16 presence, go to the Sanford office of Florida
17 Public -- the gas company?

18 A No.

19 Q At any time in your presence during the time
20 that you had testified to surrounding the date of July
21 11, 1996, at any time during that particular day did
22 you see me in Harry Johnson's presence at the gas
23 company?

24 A No.

25 MR. BROOKS: No further questions, Your

1 Honor.

2 THE COURT: Okay, thank you.

3 CROSS EXAMINATION

4 BY MS. COWDERY:

5 Q Mr. Singletary, what kind of construction
6 work do you do?

7 A Dig footers.

8 Q Okay. Who is Rick?

9 A That's my bossman. I work for him like part
10 time.

11 Q What is his last name?

12 A Rick James.

13 Q How do you spell that last name?

14 A James.

15 Q James. J-A-M-E-S?

16 A Yes.

17 Q Okay. Do you do anything else besides
18 digging footers.

19 A No.

20 Q How often do you work for Mr. James?

21 A Off and on. I do a lot of part-time work
22 for him.

23 Q And the last month how much work have you
24 done for him in hours?

25 A I just got back from North Carolina.

1 Q Okay. Last year about how much -- in 1997,
2 about how much time per month did you work for
3 Mr. James?

4 A About -- I probably done about 30 some hours
5 work for him off and on.

6 Q In 1997?

7 A You said a month, right?

8 Q Per -- in every month you worked about 30
9 hours for him?

10 A Yes, ma'am.

11 Q How about 1995?

12 A That's about the same, you know.

13 Q About the same.

14 A Uh-huh.

15 Q Okay. Do you do like one job a month or do
16 you do a lot of little jobs?

17 A Little jobs and whatever he asks me to do.

18 Q But it's always digging footers?

19 A That's right.

20 Q So you're specialized in that. How many
21 times has he asked you to participate in getting loans
22 for him?

23 A I don't understand.

24 Q Okay. What was your purpose -- have you
25 ever helped him get any loans?

1 A Whom?

2 Q Mr. James?

3 A No, ma'am.

4 Q Okay. He's never sent you to go and answer
5 questions about loan documents?

6 A No. He just had me in case, you know, they
7 wanted to see why Mr. Brooks, you know, wanted his
8 loan. You know, like I can show them on a diagram.
9 But like I wasn't no specialized loan officer or
10 nothing like that.

11 Q Had you ever gone down with any of his
12 clients?

13 A No, ma'am. He just asked me to do that.

14 Q But he asked you to do that?

15 A Yes, ma'am.

16 Q Okay. All right. And before that time did
17 you know Mr. Brooks?

18 A Like I said, I seen him around. I don't
19 know him all that personal, you know.

20 Q All right. What questions did the people at
21 the Black Business Bureau ask you?

22 A They didn't get to around to me because they
23 was handling business.

24 Q So nobody asked you any questions?

25 A No, ma'am. Nobody asked me, you know, come

1 back to work.

2 Q And did you talk to Mr. -- why didn't Rick
3 go down?

4 A I don't know.

5 Q Did he usually take care of that kind of
6 stuff?

7 A But I don't know why he didn't come that day
8 but he asked me to go down there.

9 Q All right. Did you know Harry Johnson?

10 A I seen him around. I don't too much hang
11 out with them.

12 Q Okay. Do you know what you were doing on
13 July 10th, 1995?

14 A July 10th, 1995? Probably on my other job.
15 What day it fell on? I could tell you.

16 Q I don't know. I don't know. Let me ask you
17 a question. Do you remember what year you went with
18 Mr. Brooks to Orlando?

19 A It was last year. Just this year.

20 Q What year?

21 A '96.

22 Q Okay. '96. All right. Now, you said you
23 were in the van with Mr. Johnson and you counted out
24 the money in the van?

25 A Uh-huh.

1 Q Okay. What had he been carrying the money
2 in?

3 A He had the money in his pocket.

4 Q And he took it out in the van?

5 A In the van.

6 Q Counted it out in front of you. And where
7 was the van at this time?

8 A Right in front of the gas place.

9 Q Okay. And you just sat in the van and he
10 went in?

11 A Yeah. I didn't have no business in there.
12 My business was with Scotty's.

13 Q All right. How clear are you in your
14 recollection of how much money was there?

15 A I know there was over \$500.

16 Q Okay. Did you talk to Mr. Brooks before
17 this deposition at any time about this deposition?

18 A No, ma'am. I was at my job when I got this
19 subpoena thing.

20 Q Okay. So you did not talk to Mr. Brooks at
21 all about this deposition before you came here today?
22 Never. Didn't say the first word to him?

23 A Said the first word?

24 Q You never talked to him about this
25 deposition?

- 1 A No.
- 2 Q At all?
- 3 A I really don't even know what I'm doing
4 here.
- 5 Q Okay. Okay. When you said you were at
6 Mr. Tony Brooks' home about a month later, what house
7 is that? What home?
- 8 A I don't know really too much about that part
9 of Longwood, you know. I don't know too much about
10 those streets over there.
- 11 Q And why did you go there?
- 12 A Because Rick told me to meet him early that
13 morning. I got there a little bit after 8:00.
- 14 Q Why did you go to his home?
- 15 A That's when my boss told me to meet him
16 there.
- 17 Q How do you remember that date?
- 18 A Because that's the only time I went to his
19 house.
- 20 Q Okay. Do you know where you were on
21 September 12th?
- 22 A September the 12th, that was after Labor
23 Day?
- 24 Q I guess.
- 25 A I was in Burlington, North Carolina.

- 1 Q Okay. Did you talk to Mr. Brooks about
2 going to North Carolina?
- 3 A No.
- 4 Q Did you talk to Mr. Anthony Brooks about
5 this last trip you went to North Carolina?
- 6 A No, ma'am.
- 7 Q Did he know you went?
- 8 A He did if he didn't see me around the site.
- 9 Q He never talked to you; he never contacted
10 you?
- 11 A No, ma'am.
- 12 Q When were you in North Carolina?
- 13 A I was up there from Labor Day until a week
14 after Thanksgiving.
- 15 Q Okay. Where were you after Thanksgiving?
- 16 A Living in Deland.
- 17 Q How long were you there?
- 18 A A little bit after New Years.
- 19 Q Little bit after New Years of 1997?
- 20 A Uh-huh.
- 21 Q Then where did you go?
- 22 A Back to Sanford.
- 23 Q And what were you doing in Sanford?
- 24 A Went back to my old job. At Mobile Light.
- 25 Q Mobile Light. And what is that?

- 1 A It's make hospital beds.
- 2 Q Health care facility?
- 3 A Yeah.
- 4 Q How many hours a week do you work there?
- 5 A 40.
- 6 Q Okay. It's a full-time job?
- 7 A Yeah.
- 8 Q Okay. And how long -- are you still working
- 9 there?
- 10 A Uh-huh.
- 11 Q So from January until present you have been
- 12 working at Mobile Light?
- 13 A Yes.
- 14 Q How long did you say it took you to get
- 15 from -- takes you to get from Orlando to Sanford?
- 16 A On I-4 or what?
- 17 Q When you came back from the Black Business
- 18 Bureau?
- 19 A About 45 minutes, something like that.
- 20 Q Okay. Where did you go after that?
- 21 A After I come back?
- 22 Q After you went back to Sanford, where did
- 23 you go?
- 24 A Back to my house.
- 25 Q How can you be sure of the time?

1 **A** Because I had a watch then somebody stole.

2 **Q** So you're saying you looked at your watch?

3 **A** Always look at my watch.

4 **Q** And you remember that?

5 **A** Uh-huh.

6 **Q** Okay.

7 **MS. COWDERY:** I have no questions, Your
8 Honor.

9 **THE COURT:** Anything else, Mr. Brooks, for
10 this witness?

11 **MR. BROOKS:** No, sir.

12 **THE COURT:** Can the witness be released?

13 **MR. BROOKS:** Yes, sir, he can.

14 **THE COURT:** Thank you, sir. You are
15 excused.

16 Did they tell you how you can get out of the
17 building?

18 **WITNESS SINGLETARY:** Yes.

19 **THE COURT:** Okay. Thank you. You're free
20 to go.

21 Anything else, Mr. Brooks?

22 **MR. BROOKS:** Well, I had planned having
23 Arthur Brooks retake the stand for the purpose of
24 having the following exhibits in further -- I'm sorry,
25 sir.

1 I had planned on having Anthony Brooks take
2 the stand to place into the record the following
3 exhibits in rebuttal, and the court might find them
4 not necessary. I do not know.

5 But in further regards to the issue of Keitt
6 and Kramsky's assertions about the actions on my part
7 with regards to August 12 and specific actions of
8 another party there present to, I was going to have
9 placed -- in particular, the references to my having a
10 minor child with me on the date of August 12 in their
11 presence.

12 And I have in rebuttal thereto affidavits
13 from the child's mother, affidavits from my wife. The
14 child's mother stating that the child and she was in
15 Daytona Beach all of that day with the child's father.

16 They made reference to the child as being
17 three to four years old. I also intended to introduce
18 into the record the documents showing that the child,
19 on the date in question, was actually one year old.
20 They had -- they had in the record statements
21 concerning the child running wild through their
22 offices and things like that. I have to introduce
23 into the record documentation showing the child having
24 received awards in competitions that required the
25 child to be on strict behavior and stuff; not at all

1 like the child that they are alluding to in their
2 testimony and deposition.

3 All of which -- all of which goes directly
4 to this deposit issue, which is central to the
5 Petitioner's case.

6 THE COURT: Response, Ms. Cowdery?

7 MS. COWDERY: Objection to the use of any
8 affidavits. That denies me my right to cross
9 examination. I'm really not clear about what kind of
10 documents are being introduced, but it does not sound
11 like they are authenticated, and no basis has been
12 laid for their proper introduction.

13 MR. BROOKS: Sir, with regard -- I'm sorry.

14 THE COURT: You explained what they are. I
15 don't think that's rebuttal, at least not the kind
16 that we can use. The affidavits certainly are not
17 admissible since the witness -- since the person who
18 made the affidavit is not subject to cross
19 examination. As far as the other documents, I don't
20 think they would be beneficial, so --

21 MR. BROOKS: Sir?

22 THE COURT: Yes.

23 MR. BROOKS: Sir, if I may? Ms. Cowdery was
24 supplied copies of the affidavit and notice that they
25 were going to be utilized for the purpose of rebuttal

1 in actuality prior to the first hearing in this
2 matter. She's had ample time to do any discovery that
3 she chose to do. She chose not to.

4 **THE COURT:** It doesn't change the -- no, you
5 don't understand, Mr. Brooks. I doesn't change the
6 fact. She may have been notified and she may have had
7 the opportunity to depose the witness, but unless you
8 called the person as a witness, just some statement
9 that they make under seal, or however, is not --
10 doesn't change that fact. She doesn't waive her
11 objection. So I'm sustaining the objection.

12 Anything else?

13 **MR. BROOKS:** Okay. Since the court will not
14 allow that, Petitioner would request -- Petitioner
15 would request he be allowed to recall Harry Johnson
16 for the purpose of rebuttal.

17 **THE COURT:** Okay. What is Mr. Johnson going
18 to testify to that he hasn't already testified to?

19 **MR. BROOKS:** Mr. Johnson's rebuttal
20 testimony will go to -- it will go to the issue of the
21 summary -- this account summary that was just
22 introduced today into the hearing. It will go to
23 issues surrounding the dates, the amounts of monies
24 and stuff concerning this summary. They would also go
25 towards Mr. --

1 **THE COURT:** You need to be exact,
2 Mr. Brooks.

3 He's testified to that already, has he not?
4 You've asked him questions about money, dates, who was
5 where and who did what. Rebuttal is specific to a
6 particular question that has -- that you need to
7 attack.

8 **MR. BROOKS:** Your Honor, that's exactly what
9 I have been trying to do. The question pertaining
10 to -- just as Mr. Singletary's responses went directly
11 to the August 12 and July 11 issues, the entries on
12 this recap summary dealing with July 10 with this \$290
13 August 12, \$231.72 August 28, as well as this meter
14 shut off for nonpayment of the 230, plus the omission
15 of the shut off, which occurred on August 22nd, from
16 this summary.

17 Mr. Johnson will go to -- will go to
18 those -- or, for that matter, when I advised the Court
19 that I was going to take the stand in addition to
20 these other things, was to rebut those particular
21 issues and to rebut them with documentation.

22 **THE COURT:** That's different than -- how is
23 it different than testimony you've already given in
24 your direct case-in-chief?

25 **MR. BROOKS:** At the time of the testimony in

1 the direct case-in-chief, sir, Respondents had not
2 made the assertions that are put forth -- this
3 document (indicating) was not addressed prior to the
4 Petitioner's case-in-chief. This document,
5 Respondents produced here today. This is the first
6 testimony from Respondents concerning this document.
7 Just as particular reference to the documentation from
8 the PSC, which the Court -- which the Court had
9 previously ruled would not be allowed in this case,
10 allowed the Respondent to address in her direct, in
11 her final direct here.

12 THE COURT: No, I didn't. It was only
13 proffered. It's not admissible.

14 MR. BROOKS: It was still on the record,
15 sir.

16 THE COURT: Well --

17 MR. BROOKS: Petitioner was under the
18 impression that this was a fact-finding forum.

19 THE COURT: It is.

20 MR. BROOKS: If it is not -- if it is not a
21 complete fact-finding forum, then Petitioner's sorry.
22 They misunderstood. But it was our --

23 THE COURT: Mr. Brooks, I understand. And I
24 know you have been doing a very good job. And this is
25 a difficult thing for a person who is not an attorney.

1 I think you've done just extremely well.

2 But as far as rebuttal is concerned, it's
3 got to be to rebut a very narrow issue; not to just go
4 over stuff. If I've heard it once, I'm going to
5 review the transcript, and look at your view of the
6 evidence as far as what happened on those dates, and
7 look at what the Respondent says happened on those
8 dates, and I'll -- and the facts and all of the
9 documents that support that position. But you don't
10 get two bites at the apple as far as telling me a
11 second time what has already been covered.

12 MR. BROOKS: It's not an attempt to tell you
13 a second time, sir. It's to have documents, exhibits
14 placed on the record that refute the direct testimony
15 of the Respondent. But I understand if the Court --
16 if the Court views it -- if the Court is going to view
17 the transcript -- the transcript and take the view
18 that it's stating that it is from the record already
19 presented before the Court, then if the Court does not
20 want Petitioner to go that route, then Petitioner will
21 acquiesce to the wishes of the Court.

22 THE COURT: All I heard from you is seeking
23 the opportunity to give me cumulative testimony, and
24 that's not rebuttal.

25 MR. BROOKS: Okay, sir.

1 **THE COURT:** Anything else? Mr. Brooks?

2 **MR. BROOKS:** Given the Court's decision, no.

3 **THE COURT:** Okay. All right. Thank you.

4 Ms. Cowdery, anything else?

5 **MS. COWDERY:** I feel compelled to ask to

6 move to strike the testimony of Christopher

7 Singletary.

8 Part of Mr. Brooks' argument was that

9 Mr. Singletary was not available from the time of the

10 depositions through March. Mr. Singletary

11 specifically testified that he was in Deland and

12 Sanford. He was not in North Carolina.

13 Mr. Brooks could have put him in his

14 case-in-chief and chose not to. And I think

15 Mr. Singletary's testimony was cumulative on the

16 issues which were the case-in-chief of Petitioner, and

17 on that basis I would ask to have it stricken.

18 **THE COURT:** I'm going to deny the motion.

19 Anything else?

20 **MS. COWDERY:** No. Unless you are interested

21 at this point in hearing any kind of a closing

22 argument?

23 **THE COURT:** I'm going to request written

24 proposals, and we'll talk about that in a moment.

25 **MS. COWDERY:** Okay.

1 **THE COURT:** Nothing else as far as evidence
2 from the respondent; is that correct?

3 **MS. COWDERY:** No, sir.

4 **THE COURT:** Anything, Mr. Keating, for the
5 Commission?

6 **MR. KEATING:** No.

7 **THE COURT:** All right. Then at this time
8 this concludes the evidentiary portion of this matter.

9 Both parties are entitled to submit what is
10 called proposed findings of fact and conclusions of
11 law, and separate from that any argument. I encourage
12 you to do so.

13 Mr. Brooks, I understand that if that's --
14 this is not something that a nonlawyer normally
15 understands or wants to do, and there's no penalty if
16 you don't. But certainly I want you to understand the
17 law permits you to do so. And if you want to do so
18 you need to submit what's called proposed findings of
19 fact and be very clear. What those are is what facts
20 you believe the evidence has proven, by short,
21 individually numbered paragraphs. Do not rehash
22 somebody's testimony. It's only -- in other words,
23 what happened on August 12th. What facts you believe
24 from the cumulative -- from evidence of the documents,
25 the testimony, what fact should I find? What

1 happened? Do you understand? And the same with any
2 other dates that are important.

3 **MR. BROOKS:** Yes, sir.

4 **THE COURT:** Separate from that, if you want
5 to say that this person's testimony is more credible
6 than another person's, that's part of argument, and
7 that should be separate from the proposed findings of
8 fact.

9 Conclusions of law are simply what law
10 should I apply to this case, and if you want to submit
11 something to that you certainly may do so. I'm sure
12 Ms. Cowdery will be doing so and possibly Mr. Keating.

13 Any questions about what I've said so far?

14 **MS. COWDERY:** No, sir.

15 **MR. BROOKS:** No, sir.

16 **THE COURT:** The transcript, of course, has
17 been ordered for the first part and I've received it.
18 Mr. Brooks, I don't know if you've ordered a copy for
19 yourself?

20 **MR. BROOKS:** Yes, sir, I ordered one. I
21 didn't get it yet.

22 **THE COURT:** You haven't received it. Then
23 you need to talk to the court reporter, whoever makes
24 arrangements for that. I'm sure we're going to be
25 ordering a transcript for today's session. Correct?

1 **MS. COWDERY:** Yes.

2 **THE COURT:** Then the next question is after
3 the filing of the transcript, how much time do you
4 need to submit proposed findings of fact and
5 conclusions of law and argument? Do you need more
6 than 10 days?

7 **MS. COWDERY:** After we receive the
8 transcript, I think ten days will do it. Mr. Brooks,
9 is that sufficient time?

10 **MR. BROOKS:** Yes, sir. That will be fine.

11 **THE COURT:** Mr. Brooks, the court reporter
12 has requested your telephone number. She needs to
13 contact you directly about the transcript.

14 **MR. BROOKS:** Yes, sir. Area 407-323-3657.
15 Or let me give you two; make sure you reach me the
16 first time, 407-862-3925.

17 **THE REPORTER:** Thank you.

18 **THE COURT:** After that, those are submitted,
19 we'll review the documents and issue what's called a
20 recommended order. And that will be sent to both
21 parties, or all parties, at the same time and then the
22 jurisdiction goes back to the Public Service
23 Commission for final agency action. Okay. And you
24 have some additional rights, which I'll have at the
25 end of my order.

1 MR. BROOKS: Yes, sir.

2 THE COURT: Any questions about procedure?

3 MR. BROOKS: No, sir.

4 MS. COWDERY: No, sir.

5 THE COURT: Any questions at all.

6 MR. BROOKS: No, sir.

7 THE COURT: All right. Thank you all very
8 much, and nothing further, then we're concluded.

9 (Thereupon, the hearing concluded at

10 7:50 p.m.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON)

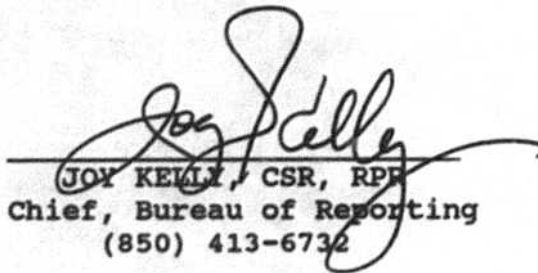
CERTIFICATE OF REPORTER

3
4 I, JOY KELLY, CSR, RPR, Official Commission
Reporter,

5 DO HEREBY CERTIFY that the Hearing in DOAH
6 Case No. 97-4990 and FPSC Docket No. 970365-GU was
heard by the Division of Administrative Hearings at
7 the time and place herein stated; it is further

8 CERTIFIED that I stenographically reported
the said proceedings; that the same has been
9 transcribed by me; and that this transcript,
consisting of Volume 3 and Volume 4, constitutes a
10 true transcription of my notes of said proceedings.

11 DATED this April 13, 1998.

12
13
14
15 
16 JOY KELLY, CSR, RPR
Chief, Bureau of Reporting
17 (850) 413-6732
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