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DIVISION OF LEGAL SERVICES
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Public Service Commission

April 30, 1998

Division of Administrative Hearings
Clerk of the Court
1230 Apalachee Parkway
Tallahassee, Florida 32399

Re: Case No. 97-4990 - Mother's Kitchen Ltd. vs. Florida Public Utilities Company (FPSC Docket No. 970365-GU)

Dear Sir:

Enclosed are the original and one copy of the Florida Public Service Commission's Proposed Recommended Order to be filed in the above referenced case. Please date stamp the additional copy and return in the enclosed postage-paid envelope. Thank you.

Sincerely,

Wm. Cochran Keating
Wm. Cochran Keating, IV
Staff Counsel

- ACK _____
- AFA _____
- APP _____ WCK/js
- CAF _____ Enclosure
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FPSC-RECORDS/REPORTING

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MOTHER'S KITCHEN LTD.,)
)
 Petitioner,)
)
 vs.) Case No. 97-4990
) 970365-GU
)
 FLORIDA PUBLIC UTILITIES)
 COMPANY,)
)
 Respondent,)
)
 and)
)
 PUBLIC SERVICE COMMISSION,)
)
 Intervenor.)
 _____)

INTERVENOR FLORIDA PUBLIC SERVICE COMMISSION'S
PROPOSED RECOMMENDED ORDER

Pursuant to Section 120.57(1)(b), Florida Statutes, the Florida Public Service Commission hereby submits its proposed recommended order in the above-styled cause as set forth below:

Pursuant to notice, a formal hearing was conducted in this case on March 4, 1998, in Sanford, Florida, and continued on April 1, 1998, by video teleconference between Orlando, Florida, and Tallahassee, Florida, before Daniel M. Kilbride, the assigned Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Anthony Brooks, II, Qualified Rep.
Mother's Kitchen Ltd.
Post Office Box 1363
Sanford, Florida 32772

For Respondent: Kathryn G. W. Cowdery, Esquire
Gatlin, Shiefelbein & Cowdery, P.A.
3301 Thomasville Road, Suite 300
Tallahassee, Florida 32312

For Intervenor: William Cochran Keating, IV, Esquire
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

STATEMENT OF THE ISSUES

Pursuant to the parties' Prehearing Stipulation, the following issues are presented in this case:

1. Whether Respondent, Florida Public Utilities Company (FPUC), established the natural gas account for Mother's Kitchen Restaurant in compliance with all applicable statutes and Florida Public Service Commission (PSC) rules concerning establishment of service and customer deposits, specifically Rule 25-7.083(4)(a), Florida Administrative Code.

2. Whether Petitioner, Mother's Kitchen Ltd. (MK), provided a deposit of \$500 to FPUC at any time to establish a new account for Mother's Kitchen Restaurant.

3. Whether FPUC administered the account of Mother's Kitchen Restaurant in compliance with all applicable statutes and PSC rules concerning refusal or discontinuance of service, specifically Rules

25-7.089(2)(g), (3), (5), (6)(a) and (e), Florida Administrative Code.

4. Whether FPUC should be required to provide a refund of all or any part of any deposit made to establish an account for Mother's Kitchen Restaurant or any amounts paid for natural gas usage, service charges, returned check charges, or other fees charged to that account.

PRELIMINARY STATEMENT

On September 29, 1997, the PSC issued a Notice of Proposed Agency Action in which it announced its intention to find: (1) that FPUC administered the Mother's Kitchen Restaurant account in compliance with all applicable statutes and PSC rules concerning establishment of service and customer deposits; (2) that MK did not provide a deposit of \$500 to FPUC at any time to establish a new account for Mother's Kitchen Restaurant; (3) that FPUC administered the Mother's Kitchen Restaurant account in compliance with all applicable statutes and PSC rules concerning refusal or discontinuance of service; and (4) that FPUC should not be required to provide a refund of all or any part of the deposit made on the Mother's Kitchen Restaurant account or any amounts paid for service or fees on the account. On October 16, 1997, MK timely filed a petition requesting a Section 120.57 formal hearing on the PSC's proposed action. The PSC referred this matter to the Division of Administrative Hearings to conduct a formal hearing.

On December 23, 1997, the PSC filed a motion for leave to intervene in this proceeding. By order issued January 23, 1998, the PSC's motion was granted.

A formal hearing was held on March 4, 1998, in Sanford, Florida, and was continued on April 1, 1998, by video teleconference between Orlando, Florida, and Tallahassee, Florida. Petitioner MK presented the testimony of Eddie Hodges, Arthur L. Brooks, Linda D. Brooks Jackson, Anthony L. Brooks II, Harry L. Johnson, and Christopher Singletary. Respondent FPUC presented the testimony of Alfred Byrd, Donald Middleton, Diane Keitt, William R. McDaniel, and Darryl Troy. Petitioner's Exhibits 1 through 7 and Respondent's Exhibits 1 through 34 were offered and received into evidence.

FINDINGS OF FACT

1. Petitioner, Mother's Kitchen Ltd. (MK), is a partnership formed to operate a restaurant under the name of Mother's Kitchen Restaurant. (Petitioner's Exhibit 2) At all times in dispute, Mother's Kitchen Restaurant was physically located at 1744 West Airport Boulevard, Sanford, Florida 32771-0134. (Respondent's Exhibits 18 and 32)

2. Respondent, Florida Public Utilities Company (FPUC), is a natural gas utility regulated by the Florida Public Service Commission (PSC) pursuant to Chapter 366, Florida Statutes, and Chapter 25-7, Florida Administrative Code. (Prehearing

Stipulation, p. 5)

3. On March 21, 1996, Mr. Alfred Byrd (Byrd), a partner in Mother's Kitchen Ltd., signed a Job-Work Contract authorizing FPUC to prepare and connect appliances at Mother's Kitchen Restaurant to receive natural gas service. (Transcript 231-34; Resp. Exh. 5)

4. On March 21, 1996, Byrd provided, in person at FPUC's Sanford Office, a \$200 deposit on behalf of the partnership to FPUC in order to establish a gas account for Mother's Kitchen Restaurant. (Tr. 84, 153, 234, 248)

5. Byrd received a deposit receipt from FPUC dated March 21, 1996, in the amount of \$200. (Resp. Exh. 7; PH Stip, p. 3)

6. On March 21, 1996, FPUC established account number 0131-07252 in the name of "Alfred Byrd, d/b/a Mother's Kitchen" with a mailing address of "P.O. Box 134, Sanford, Florida 32772-0134" based on the information provided by and the instructions of Byrd. (Tr. 250-51, 280-281; Resp. Exh. 7)

7. On March 22, 1996, FPUC serviceman Vinny Polizzi prepared and connected a range and a fryer at Mother's Kitchen Restaurant for gas service, pursuant to the March 21, 1996, Job-Work Contract, and turned on the gas supply to Mother's Kitchen Restaurant. (Tr. 235-38; Resp. Exh. 5, 6, and 32; PH Stip, pp. 3-4)

8. On March 31, 1996, FPUC billed Byrd \$126.59 for labor and materials required to prepare and connect appliances under the March 21, 1996, Job-Work Contract. (Resp. Exh. 17 and 32)

9. On April 23, 1996, FPUC credited \$126.59 to the "Alfred Byrd d/b/a Mother's Kitchen" account, paid by Mother's Kitchen check #1013, dated April 22, 1996. (Resp. Exh. 16, 31, and 32)

10. On April 9, 1998, FPUC billed the "Alfred Byrd d/b/a Mother's Kitchen" account \$67.32, consisting of \$46.32 for gas usage from March 22, 1996, through April 2, 1996, and a \$21.00 turn on charge from March 22, 1996. (Resp. Exh. 18 and 32)

11. On May 8, 1996, FPUC billed the "Alfred Byrd d/b/a Mother's Kitchen" account \$297.07, consisting of \$229.75 for gas usage from April 2, 1996, through May 1, 1996, and \$67.32 in arrears. (Resp. Exh. 18 and 32)

12. On May 23, 1996, FPUC credited \$150.00 to the "Alfred Byrd d/b/a Mother's Kitchen" account, paid by Mother's Kitchen check #1074, dated May 20, 1996, and signed by Anthony Brooks (Brooks). (Resp. Exh. 19, 31, and 32) FPUC issued a receipt in the name of "Mother's Kitchen" for this payment. (Resp. Exh. 20; PH Stip, p.4)

13. On June 3, 1996, Byrd signed a Job-Work Contract authorizing FPUC to clean the pilot light on the gas oven at Mother's Kitchen Restaurant, and FPUC serviceman Bill McDaniel (McDaniel) completed this work the same day. (Tr. 314-15; Resp. Exh. 11 and 32)

14. On June 7, 1996, FPUC billed the "Alfred Byrd d/b/a Mother's Kitchen" account \$391.72, consisting of \$244.65 for gas

usage from May 1, 1996, through May 31, 1996, and \$147.07 in arrears. (Resp. Exh. 18 and 32)

15. On June 7, 1996, Mother's Kitchen check #1074 was returned for nonsufficient funds. (Tr. 378-79; Resp. Exh. 19, 31, and 32; PH Stip, p.4) FPUC imposed a \$20.00 service charge on the "Alfred Byrd d/b/a Mother's Kitchen" account for the returned check. (Tr. 379; Resp. Exh. 18 and 32)

16. On June 11, 1996, FPUC credited \$170.00 to the "Alfred Byrd d/b/a Mother's Kitchen" account, paid in cash on June 10, 1996, as reimbursement for the \$150.00 returned check #1074 and the corresponding \$20.00 service charge. (Tr. 381; Resp. Exh. 21, 31, and 32; PH Stip, p.4) FPUC issued a receipt in the name of "A. Byrd" for this payment. (Tr. 381; Resp. Exh. 21; PH Stip, p.4)

17. On July 9, 1996, FPUC billed the "Alfred Byrd d/b/a Mother's Kitchen" account \$657.36, consisting of \$265.64 for gas usage from May 31, 1996, through July 1, 1996, and \$371.72 in arrears. (Resp. Exh. 18 and 32)

18. On July 11, 1996, FPUC credited \$160.00 to the "Alfred Byrd d/b/a Mother's Kitchen" account, paid in cash on July 11, 1996. (Tr. 382; Resp. Exh. 31 and 32; PH Stip, p.4) FPUC issued a receipt in the name of "A. Byrd" for this payment. (Tr. 382; Resp. Exh. 22; PH Stip, p.4)

19. No person paid a \$500.00 deposit on behalf of MK to establish a new gas account with FPUC for Mother's Kitchen

Restaurant on July 11, 1996. At no time during the month of July did any person pay such a deposit. (Tr. 114-19, 270-71, 286, 292; Resp. Exh. 1, 18, 31, and 32)

20. On July 15, 1996, FPUC added a service charge of \$30.00 to the "Alfred Byrd d/b/a Mother's Kitchen" account for service performed pursuant to the June 3, 1996, Job-Work Contract. (Resp. Exh. 18 and 32)

21. On July 25, 1996, FPUC credited \$211.72 to the "Alfred Byrd d/b/a Mother's Kitchen" account, paid by Mother's Kitchen check #1131, dated July 24, 1996, and signed by Alfred Byrd. (Tr. 383, Resp. Exh. 31 and 32; PH Stip, p.4) FPUC issued a receipt in the name of "Mother's Kitchen" for this payment. (Tr. 384; Resp. Exh. 23; PH Stip, p.4)

22. On August 7, 1996, FPUC billed the "Alfred Byrd d/b/a Mother's Kitchen" account \$540.04, consisting of \$224.40 for gas usage from July 1, 1996, through July 31, 1996, \$285.64 in arrears, and the \$30 service charge added on July 15, 1996. (Tr. 385; Resp. Exh. 18, 24, and 32)

23. On August 8, 1996, Mother's Kitchen check #1131 was returned for nonsufficient funds. (Tr. 383; Resp. Exh. 31 and 32; PH Stip, pp.4-5) FPUC imposed a \$20.00 service charge on the "Alfred Byrd d/b/a Mother's Kitchen" account for the returned check. (Tr. 383; Resp. Exh. 18 and 32)

24. On August 12, 1996, FPUC discontinued gas service to

Mother's Kitchen Restaurant for nonpayment of \$285.64 in arrears on the "Alfred Byrd d/b/a Mother's Kitchen" account. (Tr. 386-87; Resp. Exh. 25; PH Stip, p.5)

25. On August 12, 1996, Brooks hand-delivered a \$290.00 cash payment to FPUC's Sanford office to be applied to the "Alfred Byrd d/b/a Mother's Kitchen" account. FPUC issued a receipt in the name of "Mother's Kitchen" for this payment. (Tr. 255-56, 259-60; Resp. Exh. 8; Resp. Exh. 13, pp.5-6; PH Stip, p.5) This payment was not credited to the account until August 28, 1996. (Tr. 261-65, 401) The delayed crediting of this payment had no effect on any notices or bills concerning the account. (Tr. 265-66)

26. On August 12, 1996, Brooks, in person at FPUC's Sanford office, requested that the mailing address for the "Alfred Byrd d/b/a Mother's Kitchen" account be changed to the physical address of Mother's Kitchen Restaurant. FPUC made the requested change that same day. (Tr. 258-59; Resp. Exh. 13, pp.5-7; Resp. Exh. 18; Resp. Exh. 32, pp.24-26)

27. On August 13, 1996, FPUC serviceman Tim Love reconnected gas service to Mother's Kitchen Restaurant based on the August 12, 1996, cash payment of \$290.00. (Tr. 389; Resp. Exh. 26; PH Stip, p.5)

28. On August 28, 1996, FPUC credited \$521.72 to the "Alfred Byrd d/b/a Mother's Kitchen" account. (Tr. 401-02, 406-07; Resp. Exh. 31 and 32) This credit consisted of the \$290 cash payment

made August 12, 1996, and a \$231.72 payment made August 28, 1996. (Tr. 261-66) The \$231.72 payment was made as reimbursement for the \$211.72 returned check #1131 and the corresponding \$20 service charge. (Tr. 533) FPUC prepared an in-house receipt for this credit. (Tr. 264-65, '502; Resp. Exh. 9)

29. No person made a \$521.72 payment to FPUC for the "Alfred Byrd d/b/a Mother's Kitchen" account on August 28, 1996. (Tr. 142-43, 256-266, 270, 401-02; Resp. Exh. 31).

30. On August 30, 1996, FPUC mailed a disconnect notice for the "Alfred Byrd d/b/a Mother's Kitchen" account to the physical address of Mother's Kitchen Restaurant. This notice stated that gas service to the restaurant would be discontinued if payment of \$230.04 in arrears on the account was not made by September 10, 1996. (Tr. 390-91; Resp. Exh. 27 and 32)

31. On September 9, 1996, FPUC billed the "Alfred Byrd d/b/a Mother's Kitchen" account \$471.29, consisting of \$221.25 for gas usage from July 31, 1996, through August 29, 1996, and \$230.04 in arrears. (Tr. 395-96; Resp. Exh. 18 and 29) This bill was mailed to the physical address of Mother's Kitchen Restaurant. (Tr. 374; Resp. Exh. 18)

32. On September 12, 1996, FPUC discontinued gas service to Mother's Kitchen Restaurant for nonpayment of \$230.04 in arrears on the "Alfred Byrd d/b/a Mother's Kitchen" account. (Tr. 397-98; Resp. Exh. 30 and 32; PH Stip, p.5)

33. On September 12, 1996, Mr. Harry Johnson hand-delivered a \$261.04 cash payment, consisting of payments for the \$230.04 in arrears and a \$31 reconnect fee, to FPUC's Sanford office to be applied to the "Alfred Byrd d/b/a Mother's Kitchen" account. FPUC issued a receipt in the name of "Mother's Kitchen" for this payment. (Tr. 271; Resp. Exh. 10)

34. On September 13, 1996, the following events occurred:

a. McDaniel was dispatched between 8:30am and 9:00am to reconnect gas service to Mother's Kitchen Restaurant. (Tr. 318)

b. Between 8:30am and 9:00am, Byrd, in person at FPUC's Sanford office, spoke to Ms. Diane Keitt (Keitt) and requested that gas service be discontinued on the "Alfred Byrd d/b/a Mother's Kitchen" account. (Tr. 272-73)

c. Keitt contacted McDaniel by radio as he was en route to Mother's Kitchen Restaurant and instructed him to tell someone at the restaurant to call Keitt at FPUC's Sanford office. (Tr. 274, 318-19)

d. McDaniel arrived at Mother's Kitchen Restaurant at approximately 9:00am. Upon entering the restaurant's kitchen, McDaniel told the occupants that someone needed to call Keitt immediately at the FPUC Sanford office. (Tr. 104, 318-320; PH Stip, p.5)

e. Next, McDaniel inspected the restaurant's natural gas appliances to make sure there were no open gas lines then

exited the building to perform a meter test to check for the possibility of a gas leak on the customer's side of the meter. (Tr. 104-106, 320-21) After natural gas service has been discontinued on any existing account, FPUC performs a meter test before reestablishing service in order to determine if there is a leak on the customer's side of the meter. (Tr. 243)

f. McDaniel's meter test revealed a gas leak on the customer's side of the meter. (Tr. 320-21) McDaniel searched for the leak by inspecting the gas appliances and applying a soapy solution used to detect leaks to the gas connections on each appliance. (Tr. 323) McDaniel located the leak on a worn pilot adjustment screw on the range. (Tr. 323-24) The leak could not be repaired without replacing the pilot adjustment screw. (Tr. 324-25, 336-37)

g. Brooks was present at the restaurant and called Keitt while McDaniel was performing the meter test. (Tr. 163, 274, 322, 420-21) Keitt informed Brooks that Byrd had requested discontinuance of service to the restaurant. (Tr. 274) Keitt also told Brooks that FPUC would continue providing service in order to provide MK time to pay a \$500 deposit to establish a new account. (Tr. 274-75)

h. Keitt then called FPUC Vice President Darryl Troy (Troy) at FPUC's home office in West Palm Beach, Florida, to inform him of the situation. (Tr. 275-76; 420-21)

i. Brooks called Troy, who confirmed Keitt's statements concerning Byrd's desire to have service discontinued and the necessity of providing a new deposit to establish a new account. McDaniel interrupted this phone conversation to tell Brooks that there was a gas leak on the restaurant's range. (Tr. 106, 322, 422-23) Brooks was upset that McDaniel had not yet restored gas service. (Tr. 106, 327, 422) Brooks refused to authorize or pay for repairs to the range. (Tr. 327, 423).

j. McDaniel prepared a Report of Hazardous Condition or Corrective Action Required to document the gas leak on the range and inform the customer of the necessary repairs. Brooks refused to sign this form. (Tr. 109, 327-28; Resp. Exh. 12; PH Stip, p.5) McDaniel capped the gas connection to the range, plugged the range, and placed the Report of Hazardous Condition or Corrective Action Required and a red tag on the range. (Tr. 109-10, 327-28; Resp. Exh. 12; PH Stip, p.5) McDaniel determined that the fryer could be operated safely, so he lit its pilot before exiting the restaurant. (Tr. 109-110, 330)

k. McDaniel spoke with Keitt by radio and told her that he had located a gas leak and that Brooks refused to authorize its repair. (Tr. 276, 333) Keitt then called Troy for instructions on how to handle the account. (Tr. 276-77, 424) Troy felt that Brooks did not believe a gas leak was present on the range. Troy was concerned that someone at the restaurant may attempt to

reconnect the range, so he instructed Keitt to have the meter turned off and locked. (Tr. 277, 425-27) The meter was turned off and locked due only to safety concerns; Byrd's request to discontinue service to the restaurant played no part in Troy's decision. (Tr. 277, 425-28)

1. Keitt contacted McDaniel by radio and instructed him to turn the meter off and lock it. (Tr. 277, 330-31) McDaniel turned off the meter and locked it. (Tr. 331) McDaniel then notified Brooks that he had turned off the meter and locked it upon instructions from Keitt. (Tr. 110, 331) McDaniel left the restaurant at approximately 10:00am. (Tr. 337)

m. That afternoon, Brooks, in person at FPUC's Sanford office, requested that Keitt provide him a refund of the \$261.04 payment made September 12, 1996. (Tr. 277, 292) Keitt refused to refund this amount. (Tr. 277)

35. No record evidence exists to show that MK paid a \$500 deposit, or a deposit of any amount, to establish a new account with FPUC after gas service to Mother's Kitchen Restaurant was disconnected on September 12, 1996.

36. On September 16, 1996, McDaniel took a final reading from the gas meter at Mother's Kitchen Restaurant and officially turned off the meter. (Tr. 410)

37. On September 16, 1996, FPUC charged \$100.50 to the "Alfred Byrd d/b/a Mother's Kitchen" account for gas usage from

August 29, 1996, through September 16, 1996, to final the account.
(Tr. 406, 410; Resp. Exh. 18 and 32)

38. On September 19, 1996, FPUC applied MK's \$200.00 deposit from March 21, 1996, to the outstanding, final balance of \$310.75 on the "Alfred Byrd d/b/a Mother's Kitchen" account. (Tr. 406; Resp. Exh. 18 and 32)

39. No record evidence exists to show that any person paid a \$500 deposit, or a deposit of any amount, on behalf of MK to establish a new account with FPUC for gas service to Mother's Kitchen Restaurant since the "Alfred Byrd d/b/a Mother's Kitchen" account was established on March 21, 1996.

CONCLUSIONS OF LAW

1. Respondent FPUC is a natural gas utility regulated by the PSC pursuant to Chapter 366, Florida Statutes (F.S.), and Chapter 25-7, Florida Administrative Code (F.A.C.). Section 366.04(1), F.S. establishes the PSC's jurisdiction to regulate and supervise each public utility's rates and service.

2. The PSC referred this matter to the Division of Administrative Hearings (DOAH) pursuant to Section 120.569(2)(a), F.S. DOAH has jurisdiction over the parties to, and the subject matter of, this proceeding under Section 120.57(1), F.S.

3. Section 120.80(13)(b) provides that "a hearing on an objection to proposed action of the Florida Public Service Commission may only address the issues in dispute. Issues in the

proposed action which are not in dispute are deemed stipulated." Thus, this proceeding may only address the issues disputed in MK's petition for a formal hearing. The parties stipulated to the language of the factual and legal issues that remain in dispute.

4. First, DOAH has been asked to determine whether FPUC complied with all applicable statutes and PSC rules concerning establishment of service and customer deposits, including Rule 25-7.083(4)(a), F.A.C., when the account for Mother's Kitchen Restaurant was established. Rule 25-7.083(4)(a), F.A.C., provides that "[e]ach utility having on hand deposits from customers . . . shall keep records to show the name of each customer making the deposit." MK contends that the gas account for Mother's Kitchen Restaurant was inappropriately established in the name of "Alfred Byrd d/b/a Mother's Kitchen." The preponderance of the record evidence shows, however, that FPUC established the gas account for Mother's Kitchen Restaurant pursuant to the instructions of Alfred Byrd, a partner in Mother's Kitchen Ltd., who made the deposit. In addition, the evidence shows that FPUC complied with Rule 25-7.083(4)(a), F.A.C., by keeping records which show that Alfred Byrd made the deposit. No evidence has been offered to show that FPUC failed to comply with any other statute or PSC rule concerning establishment of service or customer deposits when the Mother's Kitchen Restaurant account was established.

5. Second, DOAH has been asked to determine whether MK made

a deposit of \$500.00 at any time to establish a new account for Mother's Kitchen Restaurant and whether FPUC complied with all applicable PSC rules concerning establishment of service and customer deposits, including Rule 25-7.083(4)(a), as concerns such a deposit. MK contends that it paid a separate \$500.00 deposit to FPUC on July 11, 1996, in order to establish a new account for Mother's Kitchen Restaurant, but that FPUC never opened a new account for the restaurant. The preponderance of the record evidence, however, shows that MK did not pay a separate \$500.00 deposit to FPUC at any time: FPUC's regularly-kept business records revealed no deposit or payment of \$500 during the month of July, 1996; MK offered no receipt, canceled check, or other documentation as proof of such a deposit; and MK's initial written complaint (Resp. Exh. 1) to the PSC discussed in detail the events of July 11, 1996, but made no mention of any deposit made that day or at any other time. Further, no record evidence exists to indicate that the \$521.72 credit on August 28, 1996, represented a deposit to establish a new account for Mother's Kitchen Restaurant. Accordingly, no statute or PSC rule concerning establishment of service or customer deposits is applicable here.

6. Third, DOAH has been asked to determine whether FPUC complied with Rule 25-7.089(2)(g), F.A.C., which provides that a utility may discontinue service for nonpayment of bills "only after there has been a diligent attempt to have the customer comply,

including 5 working days' written notice to the customer, such notice being separate and apart from any bill for service." MK contends that FPUC did not give notice before discontinuing its gas service on September 12, 1996. The record evidence, however, shows that FPUC made frequent phone calls to MK seeking payment on the account and mailed a written turn-off notice dated August 30, 1996, separate from any bill for service, to MK at the physical address of Mother's Kitchen Restaurant. Accordingly, FPUC provided notice in accordance with the requirements of Rule 25-7.089(2)(g), F.A.C.

7. Fourth, DOAH has been asked to determine whether Rule 25-7.089(3), F.A.C., is applicable to the facts of this case, and if so, whether FPUC violated its provisions, which state: "[s]ervice shall be restored when cause for discontinuance has been satisfactorily adjusted." MK contends that its service should have been restored on September 13, 1996, the day after it made payment to bring the Mother's Kitchen Restaurant account current and have service restored. MK further contends that the FPUC serviceman sent to restore service on September 13, 1996, intentionally created a leak on the restaurant's range in order to avoid restoring service to the restaurant.

8. Rule 25-7.037, F.A.C., requires all gas utilities to make a general inspection and adjustment of all appliances affected by a change in character of service, including a change in gas pressure or any other condition or characteristic which would

impair the safe and efficient use of the gas in the customer's appliances. The preponderance of the record evidence shows that FPUC's serviceman did not create a leak on the range, either intentionally or otherwise, but detected a leak on the range during a routine meter test designed to check for leaks before restoring service to MK. Beyond mere suspicions, MK offered only uncorroborated hearsay in support of its contention.

9. Rule 25-7.089(2)(h), F.A.C., provides that a utility may refuse or discontinue service "[w]ithout notice in the event of a condition known to the utility to be hazardous." The preponderance of the evidence shows that FPUC, on September 13, 1996, was justified in refusing to restore service under this rule. Anthony Brooks, the MK representative who dealt with FPUC that day, testified that he was upset and screaming about not having service restored to the restaurant. Anthony Brooks further testified that he refused to sign a Hazardous Condition Report prepared by the FPUC serviceman. FPUC feared that he or someone else at MK would attempt to reconnect and operate the range before repairing the leak. Accordingly, FPUC did not violate Rule 25-7.089(3), F.A.C., because cause for discontinuance of service had not been satisfactorily adjusted.

10. Fifth, DOAH has been asked to determine whether Rule 25-7.089(5), F.A.C., is applicable to the facts of this case, and if so, whether FPUC violated its provisions, which state: "[i]n case

of refusal to establish service, or whenever service is discontinued, the utility shall notify the applicant or customer in writing of the reason for such refusal or discontinuance." MK contends that FPUC did not give notice before discontinuing its gas service on September 12, 1996. As stated above, however, the record evidence shows that FPUC mailed a written turn-off notice dated August 30, 1996, to MK at the physical address of Mother's Kitchen Restaurant. Further, no record evidence exists to indicate that FPUC failed to comply with Rule 25-7.089(5), F.A.C., on any other occasion.

11. Sixth, DOAH has been asked to determine whether Rule 25-7.089(6)(a), F.A.C., is applicable to the facts of this case, and, if so, whether FPUC violated its provisions, which state that "[d]elinquency in payment for service by a previous occupant of the premises" does not constitute sufficient cause for refusal or discontinuance of service to an applicant or customer "unless the current applicant or customer occupied the premises at the time the delinquency occurred and the previous customer continues to occupy the premises and such previous customer will receive benefit from such service." This rule is not applicable to the facts of this case. No record evidence exists to show that FPUC refused or discontinued service to Mother's Kitchen Restaurant for the delinquency of a previous tenant. The preponderance of the evidence shows that Alfred Byrd was the account's customer-of-

record and "current occupant" from the inception of the account until its termination, and that MK never opened another account with FPUC separate from the account established by Byrd.

12. Seventh, DOAH has been asked to determine whether Rule 25-7.089(6)(e), F.A.C., is applicable to the facts of this case, and, if so, whether FPUC violated its provisions, which state: "[f]ailure to pay the bill of another customer as guarantor thereof" does not constitute sufficient cause for refusal or discontinuance of service. This rule is not applicable to the facts of this case. No record evidence exists to indicate that MK was a guarantor of the Mother's Kitchen Restaurant account or that FPUC discontinued service on the basis stated in Rule 25-7.089(6)(e), F.A.C.

13. In accordance with the above conclusions of law, FPUC should not be required to provide a refund of all or any part of the deposit made to establish an account for Mother's Kitchen Restaurant or any amounts paid for natural gas usage, service charges, returned check charges, or other fees charged to that account.


RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby

RECOMMENDED that the Florida Public Service Commission enter a final order finding that Florida Public Utilities Company administered the account of Mother's Kitchen Restaurant in compliance with all applicable statutes and PSC rules concerning establishment of service, customer deposits, and refusal or discontinuance of service. It is further

RECOMMENDED that the Florida Public Service Commission enter a final order finding that Florida Public Utilities Company should not be required to provide a refund of all or any part of the deposit made to establish an account for Mother's Kitchen Restaurant or any amounts paid for natural gas usage, service charges, returned check charges, or other fees charged to that account.

Respectfully submitted this 30 day of April, 1998.



WM. COCHRAN KEATING, IV
Florida Bar No. 0064017
Staff Counsel

FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard Oak Boulevard, Rm. 370
Tallahassee, Florida 32399

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS


MOTHER'S KITCHEN LTD.,)
)
Petitioner,)
)
vs.) Case No. 97-4990
)
FLORIDA PUBLIC UTILITIES)
COMPANY,)
)
Respondent,)
)
and)
)
PUBLIC SERVICE COMMISSION,)
)
Intervenor.)

CERTIFICATE OF SERVICE

I hereby certify that one true and correct copy of the Florida Public Service Commission's Proposed Recommended order has been furnished by U.S. Mail this 30th day of April, 1998, to the following:

Anthony Brooks, II
Mother's Kitchen Ltd.
Post Office Box 1363
Sanford, FL 32772

Kathryn Cowdery, Esquire
Gatlin Schiefelbein & Cowdery
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WM. COCHRAN KEATING, IV
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