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July 8, 1998

Blanca S. Bayo, Director
Division of Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

HAND DELIVERY

Re: Docket No. 970365-GU
Complaint of Mother's Kitchen Ltd. against Florida Public Utilities Company regarding refusal or discontinuance of service.

Dear Ms. Bayo:

Enclosed are an original and fifteen (15) copies of Florida Public Utilities Company's Response to Petitioners' "Submission of Written Exceptions to Recommended Order of Administrative Law Judge" for filing in the above-referenced case.

Please acknowledge receipt of the foregoing by stamping the enclosed extra copy of this letter and returning same to my attention.

Thank you.

Sincerely,

Kathryn G.W. Cowdery

ACK _____
AFA _____
APP _____
CAF Pleasow
CMU _____
CTR _____
EAG McKin -
LEG 1
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OPC _____
RCH _____
SEC 1
WAS _____
OTH _____

KGWC/ldv
Enclosures

ORIGINAL

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Complaint of Mother's Kitchen Ltd. against Florida Public Utilities Company regarding refusal or discontinuance of service.

Docket No. 970365-GU
DOAH Case NO. 97-4990

RESPONSE TO PETITIONERS' "SUBMISSION OF WRITTEN EXCEPTIONS TO RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE"

COMES NOW FLORIDA PUBLIC UTILITIES COMPANY (FPUC), pursuant to Fla. Admin. Code R. 28-106.217(2), by and through its undersigned counsel, and hereby files this response to the Petitioners' "Submission Of Written Exceptions to Recommended Order Of Administrative Law Judge" (hereinafter, "exceptions"). Although FPUC has moved to strike the exceptions, this response does not constitute a waiver of any objection stated in the Motion to Strike. However, Rule 28-106.217(2) mandates that this response be filed 10 days of the exceptions.

MEMORANDUM

On June 29, 1998, the Petitioners filed exceptions to the Administrative Law Judge's (ALJ) Recommended Order. The exceptions, however, amount to nothing more than one more bite at the apple; that is, the Petitioners' exceptions are simply an attempt to reargue the merits of its case. Furthermore, the exceptions contain misstatements of facts in the record.

Nonetheless, the findings contained in the Recommended Order are founded on competent, substantial evidence, and the legal

conclusions are proper interpretations of Florida law. As such, the findings are not subject to rejection based on any of the grounds asserted by the Petitioners.

In order to reject the findings of fact complained of by Petitioners, it must be shown that those findings are not supported by competent, substantial evidence, and, in so doing, this Commission cannot reweigh the evidence or reassess the credibility of the witnesses presented. See, e.g., Schrimser v. School Bd. of Palm Beach County, 694 So. 2d 856 (Fla. 4th DCA 1997), rev. den. 703 So. 2d 477 (Fla. 1997). "Substantial evidence" is "such relevant evidence as a reasonable mind would accept as adequate to support a conclusion." Id. at 861 (citation omitted). "Substantial" evidence is "competent" when it is sufficiently material and relevant to satisfy the reasonable mind. Id.

Petitioners' general basis for complaint, however, is not that the factual findings at issue are not properly supported. Instead, the theme interwoven throughout Petitioners' exceptions is that the ALJ should have believed their evidence, and not FPUC's evidence. As noted above, weighing the evidence is the province of the ALJ. Id. at 860. In any event, Petitioners' exceptions do not justify rejecting any of the findings in the Recommended Order.

With the proper legal standard in mind, FPUC responds to Petitioners' exceptions as follows:

Location of the Hearing

Paragraph 5 of the exceptions declares that "[b]y asserting that both hearings were held in Orlando, Florida, when they were not creates a flaw in the Recommended Order." However, this is merely a recitation of the procedural history of the case and is not a "finding of fact." Petitioner fails to cite any authority for the proposition that a "flaw" of this nature invalidates or in any way voids the findings contained in a Recommended Order.

Petitioners also allege that both FPUC and this Commission "were apparently given opportunity to provide packaged exhibit [sic], case law and other documentation to the judge ... without prior disclosure to the Petitioner." This is a misstatement of fact. Copies of all direct evidence received by the ALJ were provided to Petitioners during discovery. Documentary evidence submitted to the ALJ prior to the second hearing was sent in advance as a matter of practicality: in order to rule on the admissibility of evidence at the second hearing, the ALJ had to be able to review that evidence. Since the ALJ was in Tallahassee and the parties in Sanford, copies had to be made available to the ALJ in Tallahassee. A copy of the cover letter accompanying those documents is annexed hereto as Exhibit "A". Every item listed thereon was provided well in advance, via discovery or otherwise, to the Petitioners.

The Petitioners' innuendo of an improper conspiracy between this Commission, FPUC, and the ALJ are wholly without merit and

do not constitute a proper exception to the Recommended Order.

The Pretrial Stipulation

In Paragraph 6, Petitioners take issue with the ALJ's "[a]rbitrary and inappropriate departure from the stipulation." Petitioners claim that "the Recommended Order on page two (2) of said order makes use of the word specifically throughout this page in citing rule violations ..." (emphasis in original). Apparently, as the Petitioner reads the Recommended Order, the use of the word "specifically" implies that the ALJ only concerned himself with certain provisions of the law, rather than all applicable rules and statutes, as set out in the Stipulation.

However, the Recommended Order's plain language reveals that the ALJ considered not only the specific rules mentioned in the stipulation, but also, all applicable laws and rules. The Conclusions of Law are replete with reference to all applicable PSC rules and Florida Statutes, and in each instance, FPUC was found not to have violated any applicable rule or law concerning this matter.

In any event, the ALJ did not depart from the prehearing stipulation. The parties agreed to limit this case to several key disputed issues of material fact. The first issue was whether, with regard to the establishment of the original account, "FPUC acted in compliance with all applicable Statutes and Commission rules, *including Rule 25-7.083(4)(a)*." (Emphasis

added). As to that first issue, the ALJ concluded, as a matter of law, that "the evidence shows that [FPUC] complied with Rule 25-7.083(4)(a) ..." (Rec. Ord. p. 14) The ALJ also found that "no evidence has been offered to show that [FPUC] failed to comply with any other statute or PSC rule ..." (Id.)

The second issue to which the parties stipulated concerned establishment of a new account, and "whether FPUC acted in compliance with all applicable statues and Commission rules, *including 25-7.083(4)(a).*" (Emphasis added). As to that issue, the ALJ concluded that "no statute or PSC rule concerning establishment of service or customer deposits is applicable here," indicating that the ALJ considered all relevant rules and statutes, and found no violation. (Rec. Ord. p. 15)

Finally, regarding the disconnection and refusal to reconnect, the parties agreed that the following rules were relevant: 25-7.089(2)(g), 25-7.089(3), 25-7.089(5), 25-7.089(6)(a), and 25-7.089(6)(e). In his conclusions of law as to disconnection and refusal to reconnect, the ALJ made a thorough, reasoned analysis of these rules and the evidence submitted by each party.

In sum, Petitioners' exception that the ALJ committed "judicial error" and "improperly biased and wrongfully confined Petitioner's rights" is refuted by the plain language of the Recommended Order. The Recommended Order contains findings with

regard to both the specific rules mentioned in the stipulation, as well as all applicable rules and statutes. This exception is utterly without merit.

Establishment of the Original Account

In Paragraph 7, Petitioners assail the findings regarding the initial set-up of the account. This exception is nothing more than an attempt to reargue the merits of the case. Petitioners' contention is that the ALJ should have believed its evidence, and not FPUC's evidence. Petitioners argue that the ALJ acted arbitrarily in failing to accept Petitioners' evidence as conclusive proof.

However, it is well-settled that "[i]t is the [ALJ's] function to consider all the evidence presented, resolve conflicts, judge credibility of witnesses, and reach ultimate findings of fact based on competent substantial evidence." Heifetz v. Department of Business Regulation, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985). Petitioners do not, nor could they, in good faith, assert that the findings of fact are not based on competent, substantial evidence. FPUC submitted numerous records and several witnesses in defense of this action. "If, as is often the case, the evidence presented supports two inconsistent findings, it is the ALJ's role to decide the issue one way or the other. The agency may not reject the ... finding unless there is no competent, substantial evidence from which the finding could reasonably be inferred." Id.

The ALJ's conclusions in this regard, indeed, his conclusions regarding every issue in this case, reflect that he considered the evidence submitted by both sides. The ALJ repeatedly refers to the Petitioners' various contentions, and then rules thereon with reference to the sufficiency of the evidence produced, and, where appropriate, the lack of any proof adduced by Petitioners to support some of their claims.

For instance, Finding No. 58 concludes that, despite Petitioners' contention, "[t]he preponderance of the record evidence shows ... that [FPUC] established the gas account for Mother's Kitchen pursuant to the instructions of Alfred Byrd ..." and, further, that "[n]o evidence has been offered to show that [FPUC] failed to comply with any other statute or PSC rule ..." (Rec. Ord. p. 14)

Finding No. 59 concludes that "Petitioner has failed to prove by a preponderance of the evidence that they ever paid a $500 deposit ..." (Id.) And, again, Finding No. 61 states that "[t]he preponderance of the record evidence ... shows that Petitioner did not pay a separate $500.00 deposit to [FPUC] at any time: [FPUC's] regularly-kept business records revealed no deposit ... of $500 ..." (Id. at 15)

That the ALJ considered all the evidence is evident in the language of his Recommended Order. That the ALJ's findings were based only on certain evidence believed to be more sufficient, credible, or believable, is no basis for attack; indeed, that is

the province of the ALJ. Heifetz, its progeny, and its legal antecedents could not be any clearer in their collective mandate on this point: the ALJ's deliberative process is not subject to rejection, so long as the findings produced are based on competent, substantial evidence. The findings objected to in the exceptions are based on competent, substantial evidence.

This exception fails to provide any basis on which to reject any finding of fact.

The $290 Payment

Petitioner takes issue with Finding No. 25 of the Recommended Order, because "Factfinder in drawing this conclusion totally ignores sworn affidavits submitted unopposed by Respondent." Again, Petitioners misstate the facts. The affidavits referred to were excluded from evidence, not "ignored." Petitioners, at the close of the case, attempted to introduce some affidavits into evidence as rebuttal. Annexed hereto as Exhibit "B" is a portion of the hearing transcript regarding those affidavits, and the basis for their exclusion. Thus, the ALJ did not improperly "ignore" Petitioners' evidence; the ALJ ruled those affidavits inadmissible.

In any event, due to the deference afforded the properly supported factual conclusions of an ALJ in the APA, an administrative agency "does not have 'substantive jurisdiction' over the procedural, evidentiary question the hearing officer would have to decide, if objection to the [evidence] had been

made during the hearing. Even if [the agency] properly rejects some conclusions of law, it is not at liberty to alter findings of fact for that reason." Florida Power & Light Co. v. State, 693 So. 2d 1025 (Fla. 1st DCA 1997)(Benton, J, concurring). The fact that Petitioners chose a layman to present their case entitles them to no special treatment. Burke v. Harbor Estates Assocs., Inc., 591 So. 2d 1034 (Fla. 1st DCA 1991).

Petitioners also complain of the ALJ's refusal to admit into evidence an alleged tape recording of a conversation with an FPUC employee. Annexed hereto as Exhibit "C" is a portion of the hearing transcript wherein Petitioner attempted to introduce the tape. Petitioners would not produce the tape during discovery, their excuses notwithstanding, and, as a result, the tape was excluded.

Again, this exception is an attempt to reargue the case. The standard set forth in Heifetz, as discussed above, has not been overcome, and this exception is wholly without merit. The finding of fact complained of is supported by competent, substantial evidence.

The Alleged $500 Deposit

Again, Petitioners assert that "Factfinder instead of adhering to documented records choose [sic] to leap to conclusion [sic] based solely upon oral representations by the Respondent and cotradictory [sic] documentation admittedly created in 98 [sic]." In other words, Petitioners are of the opinion that only

their evidence should have been considered and that the ALJ was wrong in basing his conclusion on competent, substantial evidence submitted by FPUC.

Again, Petitioners ask this Commission to reweigh the evidence, which would violate the Heifetz mandate. The bases for the ALJ's conclusions regarding this issue and all other issues are contained in the Recommended Order; the ALJ justified his conclusions and refers to specific evidence to support them (and the insufficiency of evidence as well).

With regard to "documentation admittedly created in 98," Petitioners undoubtedly refer to a summary prepared to aid in the presentation of FPUC's case which outlined the various events, dates, monies received, etc. A copy thereof is annexed hereto as Exhibit "D". Under § 90.401 of the Florida Evidence Code, demonstrative evidence such as this summary is merely an aid to the finder of fact and is not substantive evidence. In response to Petitioners' objection, the Court attempted to explain the nature of the summary: "Mr. Brooks, as far as this document is concerned, this is an aid to the judge ... I understand there's certain disputes as to what happened between August 12th and August 30 with some of the money ... [b]ut this is -- so I understand that, and this doesn't make this an official document per se, it's a summary to assist me from [FPUC's] point of view." (R. p. 365-6) If this summary aided in the ALJ's understanding of the dates, times, and amounts involved in this case, that does

not constitute a basis for overturning the ALJ's findings. Petitioners have failed to provide any authority to the contrary.

The Hazardous Condition Report

In Petitioners' words, "[t]his is prehaps [sic] the most absurb [sic] departure from actual fact in record of this matter Factfinder makes." The substance of this exception is yet another attempt to argue the merits, and nothing more. There is no basis for rejecting the findings of fact complained of because they were supported by competent, substantial evidence. The ALJ's ruling, regarding the refusal to connect and the hazardous condition report, was based, in part, on testimony offered by Petitioners:

> The preponderance of the evidence shows that [FPUC], on September 13, 1996, was justified in refusing to restore service under [Rule 25-7.089(2)(h)]. Anthony Brooks, the Petitioners' representative who dealt with [FPUC] that day, testified that he was upset and screaming about not having service restored to the restaurant. Brooks further testified that he refused to sign a Hazardous Condition Report prepared by [FPUC's] serviceman.

(Rec. Ord. p. 18)

Thus, Petitioners' own evidence supports this finding, and was, in part, a basis for the ruling. This conclusion, as well as each conclusion contained in the Recommended Order, is supported by competent, substantial evidence and must not be disturbed.

However, Petitioners also assert that "... Troy's testimony in open hearing that he and his lawyer had discussed this matter

and had agreed that Brooks' actions were irrational and therefore the basis for the decision to terminate service." This is a material misstatement of the record of which the Commission should be aware.

Annexed hereto as Exhibit "E" are portions of the hearing transcript, which contain the relevant portions of Mr. Troy's testimony. Petitioners are referring to the following exchange, elicited by Petitioner Brooks during cross-examination of Mr. Troy:

> A: The repair was not accomplished, was not finalized on the range. And in my view, my judgment, even though the range was disconnected, there was still a hazardous condition and threat there in the premise of Mother's Kitchen.
>
> Q: On what do you base that assumption?
>
> A: I went over that with my attorney, you know, in a previous conversation. It was your demeanor, your attitude, your rationality. I mean, literally shouting and screaming over the phone. ..."

(See Exhibit "E")

Troy's response is making reference to his earlier direct testimony and not to a conspiracy between FPUC and its counsel to fabricate evidence. (See Exhibit "F") Petitioners' allegation of impropriety is one of many that Petitioner has levied against the undersigned, FPUC, this Commission and staff, and now, the judge.

Petitioner's List of "Judicial Errors"

Finally, Petitioner, purportedly pursuant to Fla. R. Civ. P. 1.470, assert "judicial error" in certain aspects of the hearing. Rule 1.470 has absolutely no bearing in this cause, and, instead, simply eliminates the need for a party to make exceptions after an objection has been overruled at trial.

The list of "judicial errors" is redundant and adds little to Petitioners' exceptions, and, in any event, each "error" asserts the wrong legal standard.

Conclusion

The law is unambiguous in setting out the burden faced by one who seeks to overturn the findings contained in a recommended order. Exceptions are not an appropriate forum for rearguing the merits of a losing case. As Heifetz and many cases both before and after Heifetz have shown, factual conclusions made by an administrative law judge are not easily cast aside. Those conclusions are to be sustained if supported by competent substantial evidence. Petitioner has failed to demonstrate how any of the judge's findings were not supported by competent, substantial evidence. Petitioner has not adduced any legal authority that holds only a petitioner's evidence can be considered "competent and substantial."

Indeed, Petitioners have made clear their position that they are entitled to a ruling in their favor, without regard for the legal process. The exceptions are nothing more than a complaint

that the judge deliberately ignored Petitioners' evidence. The record and the Recommended Order prove otherwise. Petitioners made a similar objection to the PAA issued by this Commission, alleging that the PSC and FPUC had colluded to deprive Petitioners of its rights. (See Exhibit "G")

This Commission was presented with, and properly rejected, a similar assault on an ALJ's findings and the integrity of the administrative process in In re: Complaint of Roy A. Day against GTE Florida Inc., Docket No. 921249-TL, Order No. PSC-93-0892-FOF-TL. Petitioners' choice of representative notwithstanding, the merits of their case have been fully heard, yet, in the face of adverse rulings, they nonetheless file exceptions which, in essence, reargue this matter yet again. Petitioners have not shown that the findings complained of are unsupported by competent, substantial evidence.

The exceptions provide no basis on which to overturn any finding of fact contained in the Recommended Order.

WHEREFORE, FLORIDA PUBLIC UTILITIES COMPANY respectfully asks this Commission to deny the Petitioners' exceptions and to adopt the Recommended Order as its Final Order, for all the reasons aforestated.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the forgoing has been sent, via U.S. Mail, to: Anthony Brooks, II, Qualified Representative, P.O. Box 1363, Sanford, Florida, 32772, and to Robert Elias, Public Service Commission, Division of Legal Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399, on this 8th day of July, 1998.

Respectfully submitted,

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March 31, 1998

HAND DELIVERY

The Honorable Daniel M. Kilbride
Division of Administrative Hearings
1230 Apalachee Parkway
Tallahassee, FL 32300-1550

RE: Mother's Kitchen Ltd. vs. Florida Public Utilities Company
Case No. 97-4990
970365-GU

Dear Judge Kilbride:

Enclosed pursuant to my conversation with your secretary this same date are copies of the documents I intend to offer as exhibits as part of the direct testimony of Respondent's witness Darryl Troy at the April 1, 1998 hearing in Orlando. Please note the following:

1. A copy of Respondent's Prehearing Statement is enclosed, which lists Respondent's exhibits.

2. For your convenience, a list of "Darryl Troy Hearing Exhibits" is enclosed, which identifies the exhibits according to their numbering in the prehearing statement, or by the hearing exhibit number, if previously entered into evidence in this case (previously entered exhibits are not enclosed).

3. Each exhibit is in a file folder labeled with the prehearing statement number and short description.

4. An extra copy of each exhibit is included in each file folder for PSC attorney Mr. Keating, who I understand will also attend the hearing at DOAH in Tallahassee.

Possible rebuttal exhibits which might be offered into

EXHIBIT "A"

evidence during redirect of Mr. Troy, or during any rebuttal or surrebuttal are not included, since I cannot anticipate their need at this time.

Thank you.

Sincerely,

Kathryn G.W. Cowdery

KGWC/pav
Enclosures

cc: Cochran Keating (w/o enc.)
Anthony Brooks (w/o enc.)

A Because I had a watch then somebody stole.
Q So you're saying you looked at your watch?
A Always look at my watch.
Q And you remember that?
A Uh-huh.
Q Okay.

MS. COWDERY: I have no questions, Your Honor.

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

MR. BROOKS: No, sir.

THE COURT: Can the witness be released?

MR. BROOKS: Yes, sir, he can.

THE COURT: Thank you, sir. You are excused.

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

WITNESS SINGLETARY: Yes.

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

Anything else, Mr. Brooks?

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

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

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

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

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

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

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

THE COURT: Response, Ms. Cowdery?

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

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

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

MR. BROOKS: Sir?

THE COURT: Yes.

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

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

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

Anything else?

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

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

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

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

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

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

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

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

MR. BROOKS: At the time of the testimony in

maybe one other time, you don't remember?

A That's possible, but I don't remember.

Q But it was on August 12th that I supposedly gave you some monies and was supposed to bring back additional monies?

A No. It was August 12th that you gave money to Dino and he gave it to me and you were coming back with the balance.

Q Do you have a document or a billing statement that would show what that balance was supposed to be?

A No, I don't.

MR. BROOKS: Your Honor, the witness has testified that she did not speak to me, I did not come into that office on July 11th, and at this point, at this point I would like to offer as rebuttal evidence, the tape recording that was brought up earlier.

THE COURT: The time that you produced it to the witness?

MR. BROOKS: No, sir.

THE COURT: Was the witness aware that you were taping?

MR. BROOKS: Yes, sir.

THE COURT: When did she --

EXHIBIT "C"

MR. BROOKS: Or, let me put it this way. When I called her office, the party answering the phone, I told them that I was calling for Ms. Keitt and to make sure that they informed her that the line was being recorded. Yes, sir. That's clearly shown on the tape.

THE COURT: This is a tape recording of a telephone conversation, not your presence with her in the office?

MR. BROOKS: No, sir. It goes directly to this July 11 issue and it is of a telephone conversation between Ms. Keitt and I from Orlando, Florida.

THE COURT: Ms. Cowdery?

MS. COWDERY: I believe this is the tape that was already questioned here earlier today and it was ruled upon as being inadmissible evidence.

MR. BROOKS: He reserved --

THE COURT: Uh-huh.

MS. COWDERY: Is it the same tape?

MR. BROOKS: He reserved his ruling on it, ma'am. He did not rule. He said that we would approach it at the time when ms. Keitt got on the stand and she, her account was not the same as mine of that day.

MS. COWDERY: Okay. Well, I'm going to object very strongly, because that was part of discovery that I had requested, as I had said before. That I have had absolutely no opportunity to review it, even though it was requested back in December as part of the subpoena. It's something we haven't even questioned the witness on, at this point, as to her knowledge.

Like I said, I don't know about the legality of taping without knowledge and I've never -- I've just never even heard about it. I have no way of, you know, authenticating or being prepared for my case on it.

THE COURT: I have that problem. The other problem is you're trying to use it for impeachment purposes and my recollection is the witness' testimony is that she received a telephone call from you on July 11th.

MR. BROOKS: No, sir. She -- her testimony regarding my supposedly coming back in there with additional money and my being at a building in Orlando, Florida, she directs towards August 12th.

THE COURT: No, that's not my recollection. She's been consistent in saying that you called from Orlando on July 11th. That you came to the

office and paid $290 on August 12th. That's the testimony.

MR. BROOKS: Your Honor, --

THE COURT: You need to check your notes, but that's my recollection. If the purpose of the tape is to show that you called her from Orlando on July 11th, she said that.

MR. BROOKS: This -- no, sir. It's not just to show that I called her. It's to show the content of the conversations we were having.

The tape clearly shows that this security deposit is that this lady is talking about occurred on July 11th, not on August 12, as she -- this 290 -- this $290 payment on August 12 had nothing at all to do with the payments and the demands made on July 11th.

THE COURT: But, your statement as far as the recording -- his concern that an employee other than Ms. Keitt answered the phone and you told that employee that you were recording the conversation?

MR. BROOKS: Yes, sir. I did.

THE COURT: And your statement is that you did not ask Ms. Keitt, you did not inform her specifically that you were recording the

conversation and received her permission?

MR. BROOKS: The reason that the statement was made to the employee answering the phone, the first woman answering the phone --

THE COURT: Well, it doesn't matter. My question to you is, when Ms. Keitt came to the phone, did you inform her that you were recording the conversation and ask her permission?

MR. BROOKS: Ms. Keitt came on the line, sir, yelling my name. I did not get a chance to get a word in edgewise through the first minute of this particular tape.

THE COURT: All right. Yes or no. My question is very simple, yes or no.

MR. BROOKS: I could not. I could not, because the lady was talking, sir.

THE COURT: That's an explanation and you can -- but, the answer is, no?

MR. BROOKS: If immediately when she came on there talking, if I was able to tell her that it was being recorded, yes, sir, the answer is, no.

THE COURT: And the reason for that is because she came on and talked and then is there any further explanation as far as you advising her about the conversation?

MR. BROOKS: I finally did try to get a word in with this lady. She was yelling at me about Dino said and not caring about Mr. Byrd and stuff like this and I was not -- the tape would -- the tape would speak for itself.

THE COURT: Any other, as far as the discovery response to the objection, because of failure to provide discovery? And, I think you did so in writing, as far as your explanation about that. Any further response to Ms. Cowdery's objection because of failure to produce the discovery?

MR. BROOKS: Ms. Cowdery, that issue was addressed with Ms. Cowdery twice. Once when we had -- when we were under the impression that the tape, along with the other tapes, had been destroyed.

As soon as we found that this particular tape was not destroyed, we informed Ms. Cowdery and affidavits were even supplied concerning the circumstances around these tapes. Ms. Cowdery was informed that as soon as I had an opportunity to copy the tape, she would be furnished with a copy of the tape.

Unfortunately, at the time that the thing

was found, it was near a weekend leading up to us being here today. So, if I had over-nighted it to Ms. Cowdery, Ms. Cowdery would have been here and the tape would have been there. So, I brought it in here with their copies into this court today with me.

THE COURT: Any further response?

MS. COWDERY: I don't have any further response.

THE COURT: I'm going to sustain the objection on failure to provide discovery, but also on, I believe it's a violation of federal law to tape recording without both parties' consent. Any additional questions for the witness?

BY MR. BROOKS:

Q Ms. Keitt, with regards to this $290 payment, --

A Uh-huh.

Q -- you stated that -- you stated that the money was placed in your cash box.

A That's correct.

Q Did you keep records showing entry and exits of funds from your cash box?

A Yes, I do.

Q Is there a record showing $290 going into

DOCKET NO. 970365-GU
DATE: JANUARY 30, 1998

ACCOUNT SUMMARY

DATE	GAS USAGE	BILL	PAYMENT	NSF CHECK RETURN	BALANCE	EXPLANATION
MAR. 21, 1996			$200.00			Original cash deposit, paid by Alfred Byrd.
APR. 9, 1996	$46.32	$67.32			$67.32	Bill consists of $46.32 current gas charge, plus $21 turn-on charge.
MAY 8, 1996	$229.75	$297.07			$297.07	Bill for gas service includes past due balance.
MAY 23, 1996			$150.00		$147.07	Payment made by check signed by Anthony Brooks.
JUN. 3, 1996					$147.07	Service call made by FPU.
JUN. 4, 1996					$147.07	Disconnect notice mailed for past due amount $147.07
JUN. 7, 1996	$244.65	$391.72			$391.72	Bill for gas service includes past due balance.
JUN. 7, 1996				$170.00	$561.72	5/23/96 check returned for $150 and $20 NSF charge.
JUN. 10, 1996			$170.00		$391.72	Payment for gas service.
JUL. 3, 1996					$391.72	Disconnect notice mailed for past due amount $371.72.
JUL. 9, 1996	$265.64	$657.38			$657.36	Bill for gas service includes past due balance.
JUL. 11, 1996			$160.00		$497.36	Cash payment.
JUL. 15, 1996					$527.36	Service charge of $30 added to account for service call on 6/3/96.
JUL. 24, 1996			$211.72		$315.64	Payment made by check by Alfred Byrd.
AUG. 2, 1996					$315.64	Disconnect notice mailed for past due amount $285.64.
AUG. 7, 1996	$224.40	$540.04			$540.04	Bill for gas service includes past due balance.
AUG. 8, 1996				$231.72	$771.76	7/25/96 check returned for $211.72 and $20 NSF charge.
AUG. 12, 1996					$771.76	Meter shut-off for non-payment of $285.64.
AUG. 12, 1996					$771.76	Mailing address changed to 1744 Airport Blvd per Anthony Brooks request.
AUG. 12, 1996			$290.00		$771.76	Cash payment received but not credited until 8/28/96
AUG. 13, 1996					$771.76	Gas turned on by T. Love
AUG. 28, 1996			$231.72		$250.04	Cash payment.
AUG. 30, 1996					$250.04	Disconnect notice mailed for past due amount $230.04.
SEP. 9, 1996	$221.25	$471.29			$471.29	Bill for gas service includes past due balance.
SEP. 12, 1996					$471.29	Meter shut-off for non-payment of $230.04.
SEP. 12, 1996			$261.04		$210.25	Cash payment for past due amount and $31 reconnect fee.
SEP. 19, 1996			$200.00		$10.25	Deposit applied to past due amount.
SEP. 19, 1996	$100.50	$110.75			$110.75	Bill for gas service includes past due balance.
MAR. 3, 1997			$22.75		$88.00	Outstanding balance of $88.00 remains on the account

Account Recap

Total Billing for Gas Usage	$1,332.51
Total Service Charges	$91.00
Total Payments that Cleared Bank	$1,335.51
Balance Due	$88.00

EXHIBIT "D"

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

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

Q On what do you base that assumption?

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

Q Okay, sir. Take your assumption here. You

out of Alfred Byrd's name?

A No.

Q Did he mention anything about having paid a deposit?

A No.

Q Why did you decide to have the gas turned off and locked?

A The abusive nature of Mr. Brooks. He acted very irrational; yelling, screaming. Blaming us for causing the leak; messing with the range. It was just as though he did not believe there was a leak on the range. And for safety reasons -- he also had threatened to sue us. For safety reasons, I ordered them to leave the gas off.

Q What do you mean "for safety reasons"? What was the problem?

A Even though the range was disconnected, it could have been connected fairly easy by somebody that possibly didn't believe there was a leak.

Q By that you mean --

A Put it back in service.

Q Did you think there was a possibility that somebody from Mother's Kitchen could have reconnected the range?

A When I reflect back on his state of mind, I

 EXHIBIT "F"

STATE OF FLORIDA: FLORIDA PUBLIC SERVICE COMMISSION
HONORABLE JULIA L. JOHNSON, CHAIRMAN, COMMISSIONERS
J. TERRY DEASON, SUSAN F. CLARK, DIANE K. KIESLING
AND JOE GARCIA
2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399

MOTHER'S KITCHEN LTD.,
POST OFFICE BOX 1363
SANFORD, FLORIDA 32772
TELEPHONE NO. 407-672-4328
407-323-3675.

DOCKET NO.: 970365-GU
ORDER NO. : PSC-97-1133-FOF-GU
ISSUE DATE: 29 SEPTEMBER 1977

COMPLAINANT,

AGAINST,

FLORIDA PUBLIC UTILITIES COMPANY,
POST OFFICE BOX 3395
WEST PALM BEACH, FLORIDA 33402
TELEPHONE NO.407-322-5733

RESPONDENT.

PETITION FOR 120.57 HEARING ON PROPOSED AGENCY ACTION RELATIVE TO THE ABOVE STYLED ORDER IN THIS MATTER

COMES NOW, DANIELE M. DOW-BROOKS, EDDIE HODGES AND ARTHUR L. BROOKS, WHO ARE PARTIES WITH A SUBSTANTUAL INTEREST IN THIS MATTER AND WHO ARE OR WILL BE SUBSTANTIALLY AFFECTED BY THE PROPOSED AGENCY ACTION PURSUANT TO THE ABOVE-STYLED ORDER NUMBER; AND WHO WOULD PETITION PURSUANT TO FLORIDA ADMINISTRATIVE CODE RULE 25-22.029(4), FOR A 120.57 HEARING IN THIS MATTER, AND WOULD OFFER THE FOLLOWING AS GROUNDS:

1. DANIELE M. DOW-BROOKS, EDDIE HODGES AND ARTHUR L. BROOKS ALONG WITH ALFRED BYRD WERE CUSTOMERS OF FLORIDA PUBLIC UTILITIES COMPANY AT ALL TIMES MATERIAL HERETO.

2. DANIELE M. DOW-BROOKS WAS THE PRIMARY OWNER OF MOTHER'S KITCHEN LTD. AND EDDIE HODGES, ARTHUR L. BROOKS AND ALFRED BYRD WERE MINORITY PARTNERS AT ALL TIMES MATERIAL HERETO.

3. AT ALL TIMES MATERIAL HERETO ALL FUNDS PAID TO FLORIDA PUBLIC UTILITIES COMPANY FOR SERVICE CAME DIRECTLY FROM DANIELE M. DOW-BROOKS, EDDIE HODGES, AND ARTHUR L. BROOKS.

4. ALL TELEPHONIC COMMUNICATIONS CONCERNING SERVICE AND PAYMENT FOR SERVICE WERE HAD BETWEEN FLORIDA PUBLIC UTILITIES COMPANY AND ANTHONY L. BROOKS(FOR) DANIELE M. DOW-BROOKS, EDDIE HODGES AND ARTHUR L. BROOKS; AT ALL TIMES MATERIAL HEERTO.

EXHIBIT "6"

5. ALL PAYMENTS AFTER JULY 1996 WERE PAID BY ARTHUR L. BROOKS, EDDIE HODGES AND/OR ANTHONY L. BROOKS(FOR DANIELE M. DOW- BROOKS).

6. PRIOR TO JULY 1996 ALFRED BYRD WAS GIVEN CASH BY ARTHUR L. BROOKS, EDDIE HODGES AND/OR ANTHONY L. BROOKS TO MAKE PAYMENTS FOR SERVICE. HOWEVER IT WAS LATER FOUND THAT BYRD TOOK THE CASH GIVEN HIM AND MADE PAYMENTS ON HIS PERSONAL DEBTS INCLUDING A PERSONAL ACCOUNT WITH THE FLORIDA PUBLIC UTILITIES COMPANY AND ISSUED BAD CHECKS TO PAY THE MOTHER'S KITCHEN ACCOUNT.

7. DANIELE M. DOW-BROOKS, EDDIE HODGES AND ARTHUR L. BROOKS PAID THE FLORIDA PUBLIC UTILITIES COMPANY A SUBSTANTIAL AMOUNT OF FUNDS FOR SERVICE; IN RETURN FLORIDA PUBLIC UTILITIES COMPANY INAPPROPRIATELY FAILED TO PROVIDE THAT SERVICE IN A MANNER AS SET FORTH BY RULES AND STAGED INTENTIONAL AND MALICE INTERRUPTIONS OF SAID SERVICES THROUGH IT'S OFFICE MANAGER WHO HAD CONSPIRED WITH BYRD TO PUT THE MOTHER'S KITCHEN OPERATION ABSENCE BYRD'S PRESENCE OUT OF BUSINESS WHILE CONTINUING BYRD'S PERSONAL ACCOUNT TO GO UNINTERRUPTED SO THAT HE COULD PUT OUT PRODUCT IN DIRECT COMPETITION WITH MOTHER'S KITCHEN.

8. AS A RESULT OF FLORIDA PUBLIC UTILITIES COMPANY'S ACTIONS MOTHER'S KITCHEN LTD. SUFFERED APPROXIMATELY $39.500.00 IN LOSSES.

8. BY THE ABOVE PARAGRAPHS ONE(1) THROUGH SEVEN(7) ABOVE DANIELE M. DOW-BROOKS, EDDIE HODGES AND ARTHUR L. BROOKS HAVE DEMONSTRATED AND ASSERT THAT THEY ARE PARTIES WITH SUBSTANTUAL INTERE[illegible]S AND THEIR INTERESTS WILL BE AFFECTED BY THE PROPOSED AGENCY ACTION.

STATEMENT OF DISPUTED ISSUES

1. THE FLORIDA PUBLIC SERVICE COMMISSION BY AND THROUGH INCORPORATION OF STAFF RECOMMENDATIONS IN IT'S ORDER/OR PROPOSED ORDER WOULD PUT FORTH AS FACT THE FOLLOWING:

(A). COMMISSIONERS DEASON, CLARK AND KIESLING WOULD AFFIRM THAT ON PAGE 2 PARAGRAPH THREE(3) OF THEIR ORDER: "THE COMPLAINANTS STATED THEN THEY SOUGHT PAYMENT OF $862.00, WHICH INCLUDED MOSTLY AMOUNTS PAID ON IT'S ACCOUNT FOR SERVICES RECEIVED.....".

DISPUTE: DANIELE AND ANTHONY BROOKS, EDDIE HODGES AND ARTHUR L. BROOKS WERE THEN AS THEY DO NOW SEEK RETURN OF DEPOSITS AND MONEY EXPENDED TO FLORIDA PUBLIC UTILITIES COMPANY; WHO TOOK THE FUNDS AND AFTER TAKING THEM MAINTAINED THE PARTIES HAD NO ACCOUNT WITH THEM. STAFF AND THE ABOVE REFERENCED COMMISSIONERS SEEK TO APPLY TWO(2) DIFFERENT REALITIES TO THIS MATTER. WHEN IT SUITS THEM AND THEIR ATTEMPTS TO COVER THE COMPANY'S UNETHICAL ACTIONS; THEY MAINTAIN THAT WE HAD NO ACCOUNT AND THE ACCOUNT WAS BYRD'S TO DO WITH AS HE PLEASED BUT WHEN IT CAME TO FUNDS IT WAS OURS TO PAY.

THE STATE NOR THE RULES DO NOT PROVIDE FOR A CIRCUMSTANCE WHEREIN A COMPANY CAN OSSILATE BACK AND FORTH IN SUCH INSTANCE.

PAGE TWO(2) PARAGRAPH FIVE(5) OF THE PROPOSED ORDER: COMMISSIONERS ASSERT THAT "THE COMPLAINANTS SEEK PAYMENT OF $1072.72.....".

DISPUTE: PARTIES NEVER ASKED FOR, DEMANDED, NOR STATED THE AMOUNT OF $1072.72 IS WHAT THEY SOUGHT.

PAGE TWO(2) PARAGRAPH SEVEN(7) OF THE PROPOSED ORDER: COMMISSIONERS ASSERT THAT "AT NO TIME WAS THE ACCOUNT LISTED IN ANY OTHER MANNER."

DISPUTE: STAFF'S OWN EXHIBIT SHOW THIS TO BE FALSE. IN IT'S EXHIBIT THE RECEIPT FOR DEPOSIT CLEARLY SHOWS THE ACCOUNT IN THE NAME OF MOTHER'S KITCHEN LTD. WITH BYRD'S NAME AND ADDRESS LISTED FOR MAILING PURPOSES.

PAGE THREE(3) PARAGRAPH ONE(1) OF THE PROPOSED ORDER: COMMISSIONERS ASSERT THAT "...A DISPUTE AROSE BETWEEN MR. ALFRED BYRD AND HIS PARTNERS. THIS DISPUTE CONCERNED IN PART CONTROL OVER THE ACCOUNT."

DISPUTE: AT NO TIME DID DANIELE M. DOW-BROOKS, EDDIE HODGES AND/OR ARTHUR L. BROOKS HAVE A DISPUTE WITH BYRD OVER THIS ACCOUNT. MR. BYRD WAS STEALING ASSETS USING THEM FOR HIS PERSONAL USE; PLAIN AND SIMPLE. THE ACCOUNT WAS NEVER AN ISSUE AS WE ASSUMED FPU HAD THE ACCOUNT ESTABLISHED PROPERLY. MR. BYRD WAS EJECTED OFFICIALLY FROM THE PARTNERSHIP IN JULY 96 WHEN HIS THEFT CAME TO LIGHT AND AFTER HE WAS CONFRONTED IN THE LAST WEEK OF JUNE 96 ABOUT OTHER ILLEGAL DEALING.

ON JULY 3 96 BYRD ADVISED THE OTHER PARTIES WHEN DEMAND WAS MADE FOR REPAYMENT OF MONIES HE HAD TAKEN; "THAT HE HAD WENT TO HIS FRIEND DINO AND THAT HE WOULD HAVE US PUT OUT OF BUSINESS BECAUSE THE GAS SUPPLY WOULD BE CUT OFF." WE DID NOT TAKE HIM SERIOUSLY. PROOF IS NOT ONE OF US CONTACTED THE GAS COMPANY. BYRD WOULD RETURN WITH A SIMILAR THREAT LATER ON BUT AGAIN NOONE TOOK HIM SERIOUSLY AND NO CONTACT WAS HAD WITH THE GAS COMPANY.

FINALLY MS. KEITT OF THE GAS COMPANY DID CALL US AND ADVISE THAT THE SERVICE WOULD BE TERMINATED BECAUSE BYRD HAD REQUESTED IT TURNED OFF; THIS OCCURRED IN JULY 96 AND SHE DID SEND A PERSON OUT TO TURN IT OFF AT BYRD'S REQUEST STATING THE ACCOUNT WAS IN HIS NAME AND HE HAD THE RIGHT TO HAVE IT DISCONTINUED.

POINT OF FACT: IF AS FPU NOW MAINTAINS AND THE THREE COMMISSIONERS AFFIRM THAT THE ACCOUNT WAS BYRD'S TO CONTROL: WHY WAS IT NOT TURNED OFF AND LEFT OFF AND A NEW ACCOUNT ESTABLISHED AT THAT POINT.

THIS IS AN IMPORTANT PART OF THE COMPLAINT THAT STAFF, THE COMMISSIONERS AND FPU WOULD JUST SWEEP UNDER THE RUG IN AN ATTEMPT TO COVER VIOLATION OF RULES.

"ALTHOUGH MR. BYRD ALLEGEDLY DID NOT PARTICIPATE IN THE DAY TO DAY OPERATIONS OF MOTHER'S KITCHEN AFTER JULY 11, 1996 HE REMAINED A PARTNER."...
DISPUTE: BYRD HAS NOT NOR WOULD HE EVER AGAIN PARTICIPATE IN ANY ACTIONS OF MOTHER'S KITCHEN. BYRD WAS EJECTED AS A PARTNER AND WAS ONLY CONSIDERED FOR PAST OCCURANCES AND PROFITS.

PAGE THREE(3) PARAGRAPH TWO(2): OF THE PROPOSED ORDER: COMMISSIONERS ASSERT THAT: "DURING THE MONTHS OF JUNE, JULY AND AUGUST 1996..... IN EACH OF THOSE MONTHS, MOTHER'S KITCHEN MADE LAST MINUTE PAYMENTS TO AVOID DISCONTINUANCE OF SERVICE."
DISPUTE: ALL PAYMENTS WERE MADE WHEN WE WERE GIVEN NOTICE THAT THEY WERE DUE IN JULY AND AUGUST 96. FLORIDA PUBLIC UTILITIES REFUSED DESPITE REQUESTS TO SEND BILLS TO THE BUSINESS PHYSICAL LOCATION; AFTER BEING SHOWN THAT THE REASON THE JUNE PAYMENT WAS LATE WAS DUE TO THEIR SENDING IT TO BYRD AND NOT THE BUSINESS. THEIR PRACTICE INTENTIONALLY CAUSED THE LATENESS OF PAYMENTS.
PAGE THREE(3) PARAGRAPH THREE(3): OF THE PROPOSED ORDER: COMMISSIONERS ASSERT THAT: "ON SEPTEMBER 12, 1996 FPU DISCONTINUED SERVICE TO MOTHER'S KITCHEN DUE TO NON-PAYMENT OF $230.04 FOR PAST DUE AMOUNTS FOR SERVICE AND $31.00 FOR RECONNECT FEE AND FPU SCHEDULED RECONNECTION FOR THE FOLLOWING MORNING..... MR. BYRD REQUESTED THAT FPU DISCONNECT SERVICE.....THE GAS SERVICE WAS NOT RECONNECTED THAT DAY."
DISPUTE: BYRD HAD NO RIGHT TO A DISCONNECTION. BYRD HAD MADE SIMILAR REQUEST IN JULY 96 YET SERVICE WAS CONTINUED. BYRD DID NOT PAY FPU WE DID. SERVICE WAS IMN INDEED RECONNECTED THAT DAY AS VERIFIED BY THE SERVICEMAN AND TROY'S OWN ADMISSION. ONLY AFTER FPU OBTAINED MONIES FROM US DID THEY THEN DISCONNECT SERVICE.

2. THE ABOVE AS WELL AS OUR OFFICIAL PROTEST OF PROPOSED AGENCY ACTION ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE DEMONSTRATE SLATED DISPUTE ISSUES OF MATERIAL FACTS.

STATEMENT OF ULTIMATE FACTS ALLEGED

1. IN MARCH 1996 EDDIE HODGES, ARTHUR L. BROOKS PROVIDED TWO ONE HUNDRED DOLLAR BILLS FOR DEPOSIT FOR GAS SERVICE. THE MONIES WERE TAKEN AND GIVEN TO FPU'S SANFORD OFFICE BY ANTHONY L. BROOKS AND ALFRED BYRD IN THE COMPANY OF OTHERS ALONG WITH DOCUMENTS SHOWING THE ESTABLISHMENT OF MOTHER'S KITCHEN LTD.
A RECEIPT WAS GIVEN IN THE NAME OF MOTHER'S KITCHEN LTD. ALONE
WITH NOTATION FOR MAILING TO ALFRED BYRD AT P.O. BOX 134 SANFORD, FLORIDA 32772 AS A MAILING ADDRESS. THE MAILING ADDRESS NOTATION WAS MADE DUE TO NO OTHER MAIL BOX ASSIGNMENT FOR THE BUSINESS AT THAT TIME.

FLORIDA PUBLIC UTILITIES COMPANY FOR WHATEVER REASON FAILED TO PROPERLY MAINTAIN RECORDS IN VIOLATION OF RULE 25-7-083(4)(A).

FPU IN IT'S DEFENSE OFFERS GENERAL HERESAY THROUGH TROY MAINTAINING IN IT'S WRITINGS AND ORAL STATEMENTS THREE(3) DIFFERENT UNWEIGHTED REFERENCES TO HOW, WHEN AND WHERE THIS DEPOSIT MADE.

STAFF AND THE THREE COMMISSIONERS IN APPARENT ZEAL TO COVER FPU'S VIOLATION BRUSHES ASIDE THE FACTS; THAT THE DEPOSIT RECEIPT MAKES NO MENTION OF ALFRED BYRD D/B/A MOTHER'S KITCHEN. IT DOES IN FACT HOWEVER SHOW THE NAME OF THE ACCOUNT AS MOTHER'S KITCHEN LTD.

ADDITIONALLY THE COMPLAINANTS OFFERED WEIGHTED (NOTARIZED AND SWORN STATEMENTS) DEMONSTRATING THAT THE DEPOSIT WAS INDEED MADE AS STATED IN THE COMPLAINT.

2. IN JULY 96 MOTHER'S KITCHEN LTD. DID PROVIDE A SECOND DEPOSIT DEMANDED BY MS. KEITT OF THE SANFORD OFFICE OF FPU. SAID SECOND DEPOSIT OF $500.00 WAS MADE ALONG WITH A $2100 DEMAND PAYMENT REQUESTED BY MS. KEITT. AS WE WERE NOT RECEIVING ACTUAL BILLS AND PAYING AMOUNTS MS. KEITT WAS DEMANDING WE DID NOT QUESTION AMOUNTS WE WERE BEING TOLD TO PAY. SAID PAYMENT DESCRIBED ABOVE WAS MADE AND FOR SOME REASON NOT RECORDED UNTIL AUGUST 96.

FPU IN IT'S DEFENSE OFFERS GENERAL HERESAY THROUGH TROY MAINTAINING THAT THE $521.00 PAYMENT SHOWN IN IT'S RECORDS AS A SINGLE CASH PAYMENT; WAS ACTUALLY A COMBINATION PAYMENT FROM $290.00 PAID TO THEM IN JULY 96 WHICH WAS SUPPOBEDLY PLACED IN PETTY CASH AND NOT RECORDED FOR SOME SIXTEEN DAYS LATER AT WHICH TIME IT WAS SUPPOSEDLY COMBINED WITH ANOTHER PAYMENT AT THAT TIME.

STAFF AND THED THREE COMMISSIONERS DO NOT ASK FOR PETTY CASH RECORDS OR ANY FORM OF DOCUMENTATION TO VERIFY HIS RIDICULOUS ASSERTION AND THEY CHOSE TO COMPLETELY OVERLOOK THE VIOLATION OF TAKING PAYMENTS AND PLACING THEM IN PETTY CASH INSTEAD OF IMMEDIATELY CREDITING THE ACCOUNT IF TROY'S STORY WERE TRUE.

COMPLAINANTS OFFERED VALID RECEIPT FOR FUNDS WHICH WERE NOT CREDITED TO THEIR ACCOUNT. WEIGHTED DOCUMENTATION OF HOW THE DEPOSIT MONIES WERE OBTAINED AND HOW THEY WERE PAID.

FPU ONLY OFFERS STORIES ABOUT INEPT EMPLOYEES AND FAILURE TO ADHERE TO RULES. 25-7.083(4)(A) WAS CLEARLY VIOLATED.

3. FLORIDA PUBLIC UTILITIES COMPANY VIOLATED RULE 25-7.089(2)(G) IN THAT FPU DISCONNECTED SERVICE NO LESS THAN FOUR TIMES WITHIN A THREE MONTH PERIOD WITH

NO WRITTEN NOTICE BEING GIVEN TO US PRIOR TO THEIR PERSON COMING OUT TO DISCONNECT SERVICE.

FPU WAS INTENTIONALLY AND MALICOUSLY CREATING THESE SITUATIONS BY FAILING TO ADDRESS BILLINGS PROPERLY AND PUTTING THE PROPER NAMES ON THE BILLINGS AFTER BEING REQUESTED TO DO SO.

STAFF AND THE COMMISSIONERS CHOOSE TO IGNORE THE HISTORY OF THE RECORD AND ADDRESS ONE SINGLE INCIDENT GIVING THE FPU THE EXCUSE THAT IF THE MAIL WAS IMPROPERLY DIRECTED BY THE POSTAL SERVICE; FPU CAN NOT BE HELD ACCOUNTABLE. COMPLAINANTS MAINTAIN THAT HAD FPU ACTED PROPERLY NO SUCH SITUATION WOULD HAVE EXISTED.

STAFF AND THE THREE COMMISSIONERS ONCE AGIN TAKE TROY'S WORD WITHOUT WEIGHTED DOCUMENTATION AS TO THE CIRCUMSTANCES WITH NO INDEPENDENT PROOF.

HOWEVER THE COMPLAINANTS FIND IT VERY STRANGE THAT WHATEVER DCOUMENTATION IS PROVIDED BY TROY COMES AFTER HE IS CONFRONTED AND AT THAT TIME HAS NO DOCUMENTS TO OFFER BUT AFTER GOING BACK TO HIS OFFICE IS ABLE TO PRODUCE SOMETHING THAT DID NOT PREVIOUSLY EXIST.

4. FLORIDA PUBLIC UTILITIES COMPANY VIOLATED RULE 25-7.089(3) IN THAT FPU DID IN FACT DISCONNECT SERVICE ON SEPTEMBER 12, 1996 CLAIMING PAST DUE AMOUNTS. COMPLAINANTS DID IN FACT PAY THE REQUESTED AMOUNTS ON THAT SAME DAY.

THE REASON AS REPORTED FOR THE DISCONTINUANCE OF SERVICE WAS SATISFACTORY ADJUSTED AS PROVIDED BY RULE.

HOWEVER INSTEAD OF ADMINISTERING A RECONNECTION AS PROVIDED BY RULE; FPU SENT A SERVICEMAN OUT WHO FIRST DISABLED THE BUSINESS' APPLIANCE AND REFUSED TO REPAIR SAME DISPITE BEING REQUESTED TO DO SO. (TROY IN INFORMAL CONFERENCE WHEN CONFRONTED BY ANTHONY BROOKS WITH REFERENCE TO THE REQUESTED REPAIR STATED OPENLY HE HAD NO REASON TO DOUBT MR. BROOKS' ACCOUNT OF THAT CONVERSATION WITH REGARDS TO THE DEMAND FOR REPAIR.

ADDITIONALLY, THE BUSINESS HAD ANOTHER APPLIANCE ON HAND WHICH COULD HAVE BEEN USED TO MITIGATE LOSSES FPU AND IT'S SERVICEMEN WERE CAUSING AS THEY AGREED IT WAS NOT DEFECTIVE. THE SERVICEMAN HAD EFFECTIVELY CAPPED OFF AND SHUT OFF GAS SUPPLY TO THE PIECE OF EQUIPMENT THEY WERE CLAIMING TO BE DEFECTIVE. THEY HAD NO REASON TO SHUT OFF THE SERVICABLE ONE.

FPU ADMITTED IN INFORMAL CONFERENCE THAT "THEY HAD NO REASON TO TURN OFF SERVICE TO THE SERVICABLE PIECE OF EQUIPMENT. THUS ADMITTING VIOLATION OF THIS RULE.

FPU SOUGHT TO COVER THE SECOND PART OF THE COMPLAINT WITH REGARDS TO VIOLATION OF THIS RULE BY SUBMITTING A STATEMENT FROM THE SERVICEMAN. COMPLAINANTS RESPONDED WITHSWORN STATEMENTS FROM WITNESSES WHO OBSERVED THE SERVICEMAN ON THE DATE IN QUESTION.

STAFF AND THE THREE COMMISSIONERS SEEK TO COVER THIS VIOLATION BY TAKING THE SERVICEMAN STATEMENT AS FACT DISPITE DIRECT REFUTING DOCUMENTATION AND TO TOTALLY IGNORE TROY'S ADMISSION.

5. FPU VIOLATED RULE 25-7.089(5) IN THAT THE CUSTOMERS OF THE ACCOUNT NEVER REQUESTED A DISCONNECTION; AND AT NO TIME DID FPU PROVIDE IN WRITING A REASON FOR SUCH REFUSAL OR DISCONTINUANCE.

FPU ASSERTS IN IT'S DEFENSE THAT WE WERE NOT THE CUSTOMER OF RECORD. HOWEVER THROUGHOUT THE MONTHS OF JULY, AUGUST AND THE EARLY PART OF SEPTEMBER 96 THEIR DEMANDS FOR PAYMENTS WERE DIRECTED TO US MOST TIMES AT OUR HOMES. AT NO TIME AFTER JULY 96 DID THEY TRY TO CONTACT BYRD ABOUT THE ACCOUNT.
BY THEIR OWN ADMISSION COMMUNICATIONS ABOUT THE STOVE AND OTHER MATTERS WERE HAD WITH US. IF IT WAS NOT OUR ACCOUNT WHY DID THEY BOTHER TO CALL, TALK TO OR THREATEN US; WHY DID THEY NOT JUST DO WHAT THEY PLEASED AND TALK TO BYRD. THEIR ASSERTIONS OF NOT KNOWING ABOUT A PARTNERSHIP IN MARCH IF BELIEVED CAN ACCOUNT FOR FAILURE TO CONTACT US ABOUTG PAST PROBLEMS OR CONFUSION ABOUT THE PEOPLE ON THE ACCOUNT BUT AFTER JULY 96 THERE COULD BE NO CONFUSION ABOUT THE ACCOUNT AND EXACTLY WHOSE ACCOUNT IT WAS.

STAFF AND THE THREE COMMISSIONERS SEEK TO COVER THIS VIOLATION BY ONCE AGAIN TAKING TROY'S WORD WITHOUT DOCUMENTED VERIFICATION AND IGNORE DOCUMENTATION TO THE CONTRARY.

6. FPU VIOLATED RULE 25-7.089(6)(A) IN THAT THEY SOUGHT DISCONNECTION AND/OR DISCONTINUANCE OF SERVICE FOR LATE PAYMENTS WHICH THEY OFF AND ON CLAIMED WAS BYRD'S ACCOUNT. WE WERE BEING FORCED TO PAY BYRD'S BILL EVEN THOUGH BYRD WAS NO LONGER THERE AND WE HAD PAID A DEPOSIT.

FPU IN IT'S DEFENSE SEEKS TO PURPORT AT ONE INSTANCE THAT DISCONNECTION WAS MADE FIRST BECAUSE WE WERE DELIQUENT; THEN SECONDLY BECAUSE OF FAULTY EQUIPMENT AND WHEN THEY SAW A CLEARING OF ONE AND OPPOSITION TO THE SECOND; THEN THEY CAME UP WITH BYRD REQUESTING DISCONNECTION. AFTER TAKING FUNDS FROM US TO BRING THE ACCOUNT CURRENT; THEY THEN MAINTAINED DISCONNECTION BECAUSE BYRD AFTER MONTHS SUPPOSEDLY CAME UP AND ASK FOR DISCONNECTION.

COMPLAINANTS MAINTAIN THAT FPU TOOK THEIR DEPOSITS IN MARCH AND JULY96 AND THEY WERE THE RIGHTFUL CUSTOMERS OF RECORD AT BOTH POINTS. HOWEVER: IF AS FPU MAINTAINS THEY MADE BYRD THE CUSTOMER OF RECORD IN MARCH THEN THEY SHOULD NOT HAVE FORCED PAYMENT OF BYRD'S ACCOUNT ON THEM. NOTE: THE BUILDING THE BUSINESS WAS IN HAD A SIGN APPROXIMATELY SIX FEET HIGH AND TEN FEET WIDE DEPLICTING MOTHER'S KITCHEN LTD. AND THE NAME OF EACH AND EVERY PARTNER ON IT THERE IS ABSOLUTELY NO WAY A GAS COMPANY OFFICER OR SERVICEMAN COULD HAVE ENTERED THE BUILDING WITHOUT SEEING IT.

7. FPU VIOLATED RULE 27-7.089(6)(E) IN THAT THEY IMPROPERLY SOUGHT PAYMENT OF AN ACCOUNT WHICH THEY WERE MAINTAINING IN JULY 96 WAS BYRD'S ALONE BUT BEFORE THEY WOULD ALLOW US AN ACCOUNT WE HAD TO PAY ALL OF BYRD'S BILL AND OUR OWN DEPOSIT.

FPU IN IT'S DEFENSE SEEKS TO MAINTAIN THAT THE ACCOUNT WAS NOT PAST DUE WHEN THIS OCCURRED. HOWEVER THE REASON THE CONVERSATION WAS TAKING PLACE IN JULY 96 WAS BECAUSE THE ACCOUNT WAS NOT ONLY PAST DUE BUT FPU HAD A BAD CHECK FROM BYRD THEY WANTED US TO PAY FOR.

8. MATERIAL FACTS DEMONSTRATE FPU VIOLATED ALL OF THE RULES PUT FORTH ABOVE.

DEMAND FOR RELIEF

COMPLAINT AGAINST THE FLORIDA PUBLIC UTILITIES COMPANY IS WEIGHTED AND CONSIDERABLE COMPLAINANTS ARE DESERVING OF SANCTIONS AND REFUND OF DAMAGES, DEPOSITS AND UNRECORDED PAYMENTS. COMPLAINANTS ARE ALSO DESERVING OF A FINDING IN THEIR FAVOR.

COMPLAINANTS WOULD SEEK AND DEMAND REFUND OF $521.00 TAKEN IN JULY 96 AS A DEPOSIT, $290.00 IN U.S. CURRENCY TAKEN AND NOT RECORDED BY FPU, $261.00 PAID IN SEPTEMBER 96, $160.00 PAID IN JULY 96, $172.00 PAID IN AUGUST 96 AND $110.00 PAID IN AUGUST 96 ALONG WITH INTEREST.

ANTHONY L. BROOKS
DANIELE M. DOW-BROOKS
EDDIE HODGES
ARTHUR L. BROOKS

CERTIFICATE OF SERVICE:

I HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE FOREGOING WITH ATTACHMENTS WAS MAILED TO THE FLORIDA PUBLIC UTILITIES COMPANY AT POST OFFICE BOX 3395 WEST PALM BEACH, FLORIDA 33402 THIS 15th DAY OF OCTOBER 1997.

ANTHONY L. BROOKS

EXPRESS MAIL
UNITED STATES POSTAL SERVICE TM

POST OFFICE TO ADDRESSEE

970365-GU
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ORIGIN (POSTAL USE ONLY)

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	Acceptance Clerk Initials	Total Postage & Fees $ 13.80

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Delivery Attempt Mo. Day	Time ☐ AM ☐ PM	Employee Signature
Delivery Date Mo. 7 Day 22	Time ☐ AM ☒ PM 1547	Employee Signature

Signature of Addressee or Agent
X

Name - Please Print
X Brent Johnson

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☐ WAIVER OF SIGNATURE (Domestic Only): Additional merchandise insurance is void if waiver of signature is requested. I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery.

NO DELIVERY ☐ Weekend ☐ Holiday

Customer Signature

FROM: (PLEASE PRINT) PHONE (407) 323-3251

MOTHER'S KITCHEN LTD.
P.O. BOX 1363
SANFORD, FL 32772-1363

TO: (PLEASE PRINT) PHONE ( )

MR. ROBERT ELIAS
DIVISION OF LEGAL SERVICES
PUBLIC SERVICE COMMISSION
2540 SHUMARD OAK BLVD.
TALLAHASSEE, FL 32399-0850

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