

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center • 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

MEMORANDUM

APRIL 24, 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (KEATING) *wex RVE*
DIVISION OF CONSUMER AFFAIRS (PLESCOW) *BA*
DIVISION OF ELECTRIC & GAS (MAKIN) *JP*

RE: DOCKET NO. 970365-GU - COMPLAINT OF MOTHER'S KITCHEN LTD.
AGAINST FLORIDA PUBLIC UTILITIES COMPANY REGARDING
REFUSAL OR DISCONTINUANCE OF SERVICE.

AGENDA: 05/06/97 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\LEG\WP\970365GU.RCM

CASE BACKGROUND

On September 17, 1996, Mr. Anthony Brooks II filed a complaint with the Division of Consumer Affairs ("CAF") of the Florida Public Service Commission ("Commission") against Florida Public Utilities Company ("FPUC" or "Company"). Mr. Brooks claimed that gas service to his business, Mother's Kitchen Restaurant ("Mother's Kitchen"), was improperly disconnected by FPUC. The following correspondence was provided to CAF:

- On September 20, 1996, CAF received a letter from Mr. Brooks that set forth the factual allegations of his complaint against FPUC ("initial written complaint").
- By letter dated September 19, 1996, FPUC responded to the complaint ("initial response").
- On November 6, 1996, CAF received by fax a letter from Mother's Kitchen that set forth allegations of specific rules violations by FPUC ("second written complaint").
- By letter dated November 26, 1996, FPUC responded to each specific allegation ("second response").

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- By letter dated November 30, 1996, Mother's Kitchen offered rebuttal to FPUC's letter of November 26 ("November 30 letter").

At the heart of this complaint is an ongoing dispute between Mr. Alfred Byrd and his business associates, including Mr. Brooks. This dispute concerns, in part, control over the FPUC account for Mother's Kitchen. Mother's Kitchen appears to be operated by a partnership, but Staff is uncertain of whom the partners are. The complaining parties will simply be referred to as "the Customer" in this recommendation.

On March 21, 1996, FPUC received a deposit of \$200.00 to commence service for Mother's Kitchen. On March 22, 1996, an account was turned on in the name of Alfred Byrd, d/b/a Mother's Kitchen. At no time was the account listed in any other manner. On September 12, 1996, FPUC discontinued service to Mother's Kitchen due to nonpayment of past due amounts for service received. Payment of \$230.04 for past due amounts and \$31.00 for a reconnect fee was made later that day by the Customer, and FPUC scheduled reconnection for the following morning. On September 13, 1996, Mr. Byrd requested that FPUC disconnect service to Mother's Kitchen. The Customer alleges that FPUC improperly disconnected gas service to Mother's Kitchen and improperly established the account in Mr. Byrd's name.

An informal conference on the complaint was held February 24, 1997, and was attended by representatives from Mother's Kitchen, FPUC, and CAF. The parties did not reach a settlement agreement at the informal conference and, to date, settlement offers by FPUC have been rejected by the Customer. The Customer seeks payment from FPUC of \$862.00, which includes mostly amounts paid on its account for service received.

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ISSUE 1: Did FPUC administer the Mother's Kitchen account in compliance with all applicable statutes and Commission rules concerning establishment of service and customer deposits?

RECOMMENDATION: Yes. FPUC properly established service in the name of Alfred Byrd, d/b/a Mother's Kitchen, and managed the deposit for the Mother's Kitchen account in compliance with Commission rules concerning customer deposits. FPUC should not be required to provide a refund of all or any part of the deposit made on the Mother's Kitchen account.

STAFF ANALYSIS: The Customer alleges that the Mother's Kitchen account was inappropriately established in the name of Alfred Byrd. The Customer cites Rule 25-7.083(4)(a), which provides that "[e]ach utility having on hand deposits from customers . . . shall keep records to show the name of each customer making the deposit." Throughout its complaints, the Customer asserts that Mr. Brooks, in the presence of George Byrd, Leonard Brooks, and Alfred Byrd, presented to FPUC a security deposit of \$200 to establish gas service for Mother's Kitchen. The Customer further asserts that it presented to FPUC, with the deposit, a state license naming Alfred Byrd, Eddie Hodges, and Daniele Dow-Brooks as owners of Mother's Kitchen. The Customer claims that Alfred Byrd was left by the others to obtain a receipt for the deposit, and, at that time, FPUC inappropriately added his name to the receipt as the customer-of-record.

In its responses, FPUC maintains that on March 21, 1996, a cash deposit was made in person by Alfred Byrd alone. FPUC has provided Staff a copy of a work order for Mother's Kitchen, signed by Alfred Byrd. FPUC asserts that it was provided no documentation showing the organization of Mother's Kitchen or the involvement in the business of individuals other than Alfred Byrd at any time before discontinuance of service on September 13, 1996.

Staff recommends that the Commission find that FPUC acted in compliance with all applicable statutes and Commission rules concerning establishment of service and customer deposits. FPUC should not be required to provide a refund of all or any part of the deposit made on the Mother's Kitchen account. Staff believes that the deposit receipt on file with FPUC is the best evidence of who established the account. The deposit receipt for this account indicates that the account was established in the names of Alfred Byrd and Mother's Kitchen. The individuals with a recognizable interest in Mother's Kitchen had the opportunity at any time to change the name on the account or to establish a new account. The state license allegedly presented with the deposit by the Customer gives no indication of the nature of Mother's Kitchen's business organization.

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ISSUE 2: Did FPUC administer the Mother's Kitchen account in compliance with Commission rules concerning refusal or discontinuance of service and other applicable Commission rules?

RECOMMENDATION: Yes. FPUC administered the Mother's Kitchen account in compliance with Commission rules concerning refusal or discontinuance of service and all other applicable Commission rules. FPUC should not be required to provide a refund of any amounts paid for service or fees on the Mother's Kitchen account.

STAFF ANALYSIS: In its second written complaint, the Customer cites five subsections of Rule 25-7.089, Florida Administrative Code, that were allegedly violated by FPUC. Based on the information reviewed, Staff believes that FPUC acted in compliance with each of the rules cited by the Customer. FPUC should not be required to provide a refund of any amounts paid for service or fees on the Mother's Kitchen account.

1. The Customer alleges that FPUC violated Rule 25-7.089(2)(g), Florida Administrative Code, which provides that a utility may refuse or discontinue service "[f]or 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."

In its second response, FPUC states that a disconnect notice for September 10, 1996, in the amount of \$230.04 was mailed to the Customer on August 30, 1996. A copy of this notice was provided to Staff. Payment was not made on the account, and service was disconnected on September 12, 1996. Based on this evidence, Staff believes that FPUC acted in compliance with Rule 25-7.089(2)(g), Florida Administrative Code.

2. The Customer alleges that FPUC violated Rule 25-7.089(3), Florida Administrative Code, which provides that "[s]ervice shall be restored when cause for discontinuance has been satisfactorily adjusted." The Customer alleges that FPUC's serviceman intentionally damaged a control knob, thereby creating a leak on the restaurant's stove, in order to avoid reinstating service on the account after payment was made on September 12, 1996. The Customer alleges that it offered to pay for any repair necessary to reinstate service, but that FPUC's serviceman refused. As an attachment to its November 30 letter, the Customer offers the statement of a patron who allegedly witnessed these events, and a copy of a completed FPUC "Report of Hazardous Condition or Corrective Action Required" form.

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In its initial response, FPUC states that its serviceman located a gas leak when attempting to reinstate service, then notified employees at Mother's Kitchen that, for safety reasons, repair of the leak was required before he could reconnect service. FPUC claims that Mr. Brooks, who was present at that time, blamed the Company for the leak and requested that it be repaired at the Company's expense. FPUC claims that Mr. Brooks was told that the Customer needed to authorize and pay for the repair, but he refused to provide authorization.

Based on the evidence, Staff believes that FPUC's refusal to reinstate service to Mother's Kitchen was reasonable and was not in violation of Rule 25-7.089(3), Florida Administrative Code. The patron's statement provided by the Customer supports FPUC's position as much as it supports the Customer's position. In addition, the completed "Report of Hazardous Condition" form serves to support FPUC's version of the facts; it provides documentation that the serviceman located a leak and that the Customer refused to sign the form.

Staff notes that pursuant to Rule 25-7.037, Florida Administrative Code, gas utilities are required 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. Such an inspection is required for safety purposes after any outage or disconnection of service.

3. The Customer alleges that FPUC violated Rule 25-7.089(5), Florida Administrative Code, which provides that "[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."

In its second response, FPUC states that the Customer was never refused service. FPUC asserts that Mr. Byrd requested service to Mother's Kitchen be discontinued in his name on September 13, 1996. FPUC further asserts that the Customer refused to provide the deposit required to establish service under a new account.

Staff is uncertain as to what the Customer's allegation relates. If, as FPUC appears to assume, the allegation relates to refusal of service, Staff believes that FPUC acted in compliance with the Rule. After Mr. Byrd requested disconnection of service for the Mother's Kitchen account on September 13, 1996, the Customer had the opportunity to establish service under a new

account, provided that it pay the necessary deposit, but it chose not to do so. If the allegation relates to discontinuance of service for nonpayment, Staff believes that FPUC acted in compliance with the Rule for reasons stated previously. If the allegation relates to discontinuance of service at the request of Mr. Byrd, the Rule is inapplicable. When a customer voluntarily requests discontinuance of service from a utility, the utility is not required to notify that customer of the discontinuance. Rule 25-7.089(5), Florida Administrative Code, is not intended to govern voluntary disconnections.

4. The Customer alleges that FPUC violated Rule 25-7.089(6)(a), Florida Administrative Code. Rule 25-7.089(6) lists grounds which do not constitute sufficient cause for refusal or discontinuance of service to an applicant or customer. Subparagraph (a) of the Rule provides that one of those grounds is "[d]elinquency in payment for service by a previous occupant of the premises 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."

In its second response, FPUC states that the Customer was not refused service because of the delinquency of a previous tenant. FPUC notes that the account was not delinquent on September 13, 1996, when Mr. Byrd requested disconnection. FPUC also notes that Mr. Byrd was the "current tenant" through September 13, 1996.

Staff believes that Rule 25-7.089(6)(a), Florida Administrative Code, is inapplicable to this situation. Mr. Byrd was the customer-of-record and "current occupant" from the inception of the Mother's Kitchen account until he requested disconnection on September 13, 1996. The Customer never opened an account separate from the original Mother's Kitchen account. In addition, FPUC is not restricted to accept payment on an account only from the account's customer-of-record. If an individual other than Mr. Byrd made payments on the Mother's Kitchen account, that individual would not, thereby, become the customer-of-record.

5. The Customer alleges that FPUC violated Rule 25-7.089(6)(e), Florida Administrative Code. This Rule states that one of the grounds which does not constitute sufficient cause for refusal or discontinuance of service is "[f]ailure to pay the bill of another customer as guarantor thereof."

In its second response, FPUC notes that Mr. Byrd was the customer-of-record and the account was not delinquent on September 13, 1996. Staff believes that Rule 25-7.089(6)(e), Florida

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Administrative Code, is inapplicable to this situation. Mr. Byrd was the customer-of-record on this account from inception until termination. There is no allegation and no evidence that the Customer was a guarantor of the Mother's Kitchen account.

6. Staff notes that the Customer also alleges that FPUC violated Rule 25-7.048, Florida Administrative Code, concerning continuity of service. This Rule concerns unplanned service interruptions, not the type of planned discontinuance of service at issue in this docket. Staff believes that this Rule is inapplicable to this situation.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes. If no person whose substantial interests are affected by the Commission's proposed agency action files a protest within 21 days of the order, this docket should be closed.

STAFF ANALYSIS: If no person whose substantial interests are affected by the Commission's proposed agency action files a request for a hearing within 21 days of the order, no further action will be required and this docket should be closed.