

STATE OF FLORIDA
DEPARTMENT OF ADMINISTRATIVE HEARINGS

Mother's Kitchen Ltd.,

Petitioner,

v.

Case No. 97-4990

Florida Public Utilities
Company, a Florida
Corporation,

PSC DOCKET NO. 970365-GU

Respondent.

PROCEEDINGS:	PREHEARING CONFERENCE
BEFORE:	DANIEL M. KILBRIDE
DATE:	February 23, 1998
TIME:	Commenced at 1:05 p.m. Concluded at 2:15 p.m.
PLACE:	DOAH Hearing Room 3 DeSoto Building 1230 Apalachee Parkway Tallahassee, Florida
REPORTED BY:	LISA GIROD JONES, RPR, RMR

BUREAU OF REPORTING

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1 APPEARANCES:

2 On behalf of the Petitioner:

3 ANTHONY LEONARD BROOKS, II
4 P. O. Box 1363
5 Sanford, Florida 32772

6 Also Present: HARRY JOHNSON

7 On behalf of the Respondent:

8 KATHRYN G.W. COWDERY
9 Attorney At Law
10 Gatlin, Schiefelbein & Cowdery, P. A.
11 3301 Thomasville Road, Suite 300
12 Tallahassee, Florida 32312

13 Also Present: DARRYL TROY
14 Vice President
15 Florida Public Utilities Company

16 CHRIS SPRINGLE, Law Clerk
17 Gatlin, Schiefelbein & Cowdery

18 On behalf of the Intervenor:

19 COCHRAN KEATING
20 Staff Counsel
21 Florida Public Service Commission
22 2540 Shumard Oak Boulevard
23 Tallahassee, Florida 32399-0850
24
25

PROCEEDINGS

1
2 THE COURT: All right, we have everyone here this
3 afternoon?

4 MS. COWDERY: Yes, we do.

5 THE COURT: This is a prehearing conference before
6 the Division of Administrative Hearings in the matter
7 of Mother's Kitchen Limited, Petitioner, vs. Florida
8 Public Utilities Company, Respondent, and Public
9 Service Commission, Intervenor. DOAH Case No.
10 97-4990.

11 I'm Daniel M. Kilbride. I'm the administrative
12 law judge assigned to hear this matter.

13 For the record, would you identify yourself for
14 the petitioner? Who is here representing the
15 petitioner?

16 MR. BROOKS: I'm sorry, Anthony L. Brooks, sir.

17 THE COURT: Good afternoon, Mr. Brooks. Anyone
18 else here with you, that's --

19 MR. BROOKS: Harry Johnson, sir.

20 THE COURT: All right, and for the public
21 utilities -- or Florida Public Utilities Company?

22 MS. COWDERY: I'm Kathryn Cowdery. With me is
23 Mr. Chris Springle, the firm's law clerk, and
24 Mr. Darrell Troy, vice president of the company.

25 MR. KEATING: I'm Cochran Keating for the Florida

1 Public Service Commission.

2 THE COURT: All right. Looks like we have a few
3 things to take care of here, and hopefully we can get
4 this matter ready so that we can have a smooth hearing
5 on the 4th.

6 All right, as far as -- I would like to deal with
7 pending motions at this time that need to be dealt
8 with.

9 MS. COWDERY: I think I've got the only pending
10 motions, unless I've forgotten something. I have a
11 Motion For Protective Order and Attorney's Fees and
12 Costs and then in reply to the response I filed a
13 Motion to Strike certain portions of the petitioner's
14 response.

15 The Motion For Protective Order and Attorney's
16 Fees and Costs goes to two questions which were asked
17 in the Notice to Produce. We have today filed our
18 response to that Notice to Produce, and our objections
19 to No. 5 and 7 as they're set forth in my motion for
20 protective order are identical. The first --

21 THE COURT: Was it filed today or Friday?

22 MS. COWDERY: The interrogatory responses were
23 filed today. But this -- they would -- they have the
24 same response as is shown on the second page of my
25 Motion For Protective Order. And do you have that

1 Motion For Protective Order? I have a filing letter on
2 the front. What was that, was the top one?

3 THE COURT: Top one was a response you filed on
4 Friday to the --

5 MS. COWDERY: Right. The Motion For Protective
6 Order was filed on the 16th of February.

7 THE COURT: All right, I have that. Mr. Brooks,
8 do you have it?

9 MR. BROOKS: Yes, sir.

10 THE COURT: And Mr. Keating?

11 MR. KEATING: Yes, I'm sorry, that was the
12 motion --

13 MS. COWDERY: For protective order.

14 MR. KEATING: Yes, I do.

15 THE COURT: Go ahead.

16 MS. COWDERY: The two items to which we object,
17 basically it boils down to relevance. The first one
18 asks for all claims received of protest or complaint
19 against the Sanford office of Florida Public Utilities
20 with regard to billings, payments, misdirection of
21 payments and/or any other complaint or claim whatsoever
22 involving handling or recording of payments to customer
23 accounts.

24 The second one, which is Item No. 7, is: Please
25 state if Florida Public Utilities Company, with special

1 reference to Darryl Troy and Diane Keitt, have ever
2 been a party, either plaintiff or defendant, in any
3 lawsuits or administrative hearings other than the
4 present matter, and goes on, if so, please state nature
5 of action, date and administrative action, agency in
6 which such suit was filed.

7 Now, as far as I can tell, looking at the
8 response, which was filed by petitioners, the reason
9 that these questions were asked is because the
10 petitioners did not like the response they got to our
11 first response, which had to do with complaints filed
12 against the office.

13 In a previous question, respondent was asked by
14 petitioner: How many customer complaints have you had
15 filed against your Sanford office and its office
16 manager in the past three years.

17 And our response was: Other than the Mother's
18 Kitchen complaint, which we understand now to be a
19 complaint against the Sanford office manager, we have
20 had no complaints filed with the PSC against our
21 Sanford office and its office manager in the past three
22 years.

23 Now, petitioners take exception to this and call
24 it lies. And what they're trying to do with this even
25 broader request, as far as I can tell, is ferret out

1 information which would prove their statements that we
2 are lying in that regard.

3 Now, okay, they don't make any argument as to
4 relevance. As far as I can tell, all these requests
5 are doing is giving a broader request that somehow in
6 their minds would turn up more information. And it's
7 just not appropriate.

8 In the response, in addition to this argument,
9 petitioners state that the items complained of in
10 respondent's motion are items that if they exist would
11 be part of public record.

12 Well, I read the request much broader than that,
13 but if in fact what petitioners were looking for were
14 complaints which were actually filed with the Florida
15 Public Service Commission, that would be public record,
16 and on that basis, that is not an appropriate discovery
17 request because that would be as available to
18 petitioners as it would be to respondent. And on that
19 grounds, it should be denied.

20 But as I say, the original response that they're
21 looking for would remain the same. There would be no
22 additional -- there wouldn't be anything found that
23 would alter our response. Our response to the first
24 request would still be the answer is none.

25 The only other thing that I could find that seemed

1 to be raised by response had to do with an idea that
2 somehow or another there were some similar -- they
3 might be looking for similar acts or similar
4 occurrences.

5 Well, under the -- if in fact this is something
6 that petitioner is looking for, the closest I can come
7 to is, in the evidence code, Section 90.404, character
8 evidence when admissible.

9 And just reading right from the rule, "Other
10 crimes, wrongs or acts" -- which is, you know, is as
11 close as I can come to what is being requested here --
12 "Similar fact evidence of other acts is admissible
13 when relevant to prove a material fact in issue, such
14 as proof of motive, opportunity, intent, preparation,
15 plan, knowledge, identity or absence of mistake or
16 accident. But it is inadmissible when the evidence is
17 relevant solely to prove bad character or propensity."
18 It appears that petitioners are trying to find some
19 kind of a conspiracy, trying to show some kind of a bad
20 character. And even under the Rules of Evidence, this
21 would be inadmissible.

22 We go on to file a Motion to Strike. And as our
23 motion sets forth, under Rule 1.140, redundant,
24 immaterial, impertinent or scandalous matters should be
25 struck from pleadings. And this is within the

1 tribunal's discretion. We have had an ongoing problem
2 with this type of approach to litigation in this case.
3 We have attached a copy of what we would consider to be
4 appropriately marked out -- you know, you would have to
5 compare it to the petitioner's response to see what
6 we've marked out. But basically it all goes to
7 allegations that what has been stated by respondent are
8 lies.

9 And in some cases there is some discussion that I
10 just can't find any relevance to, and I've asked to
11 have that stricken because it doesn't seem to have any
12 bearing on any of the issues in the case.

13 The issues in the case are all relating to whether
14 or not there are certain rule violations by the company
15 of Florida Public Service Commission rules, and I have
16 attached copies of these rules. And when you look at
17 those rules, there is simply nothing in the rules that
18 would give a connection of relevance to what the
19 petitioners are asking for and this case.

20 I have asked for attorney's fees and costs in the
21 case because the nature of the request of information
22 regarding Diane Keitt and Darryl Troy is of the same
23 nature that petitioners have already come to this
24 court, that we've already had a hearing before this
25 tribunal on, and that goes to personal information that

1 has no bearing on the issues of the case.

2 There is no relevance to the issues of the case.
3 And on that basis I'm asking for attorney's fees and
4 I'm asking for protective order against petitioners to
5 have them cease this type of behavior against the
6 employees of Florida Public Utilities Company and to
7 ask them to behave in an appropriate manner in this
8 case. Thank you.

9 THE COURT: Mr. Brooks?

10 MR. BROOKS: Yes, sir. Sir, the request was based
11 on three things. Part and parcel of the issues in this
12 matter, when you go to the rules violations, centers
13 around the fact that we have three incidences here
14 where Florida Public Utilities failed to maintain
15 proper records, and therefore are unable to produce
16 them to the court today. We're asked to take the word
17 of Diane Keitt and Darryl Troy as to particular and
18 specific transactions involving the account of Mother's
19 Kitchen. In response to our Notice to Produce,
20 Mr. Troy and Ms. Keitt were assigned by the utility as
21 the parties answering -- making direct responses to
22 those particular questions.

23 Now, in particular, the question, when asked about
24 prior complaints, we had obtained information from
25 other individuals who are in similar circumstances that

1 we were, in the City of Sanford there. These
2 individuals had supplied us information about
3 complaints against the utility that were not only
4 similar in nature, but when it came to the issue of
5 misplaced payments and the response of the respondent
6 that the misplaced payment went to petty cash, and from
7 petty cash was later on down the road combined with
8 another payment to produce record of receipt for a sum
9 which they now -- which all of their records show was a
10 cash receipt on a particular day.

11 They now, through their pleadings, maintain that
12 this particular receipt was generated by a combination
13 of their going to petty cash, taking money out of petty
14 cash and combining it with another payment which no
15 receipt exists for, that Mother's Kitchen was supposed
16 to have made.

17 Now central to the issue of violation of the rules
18 is an accounting of those particular funds. In this
19 particular case, the court is going to have to make a
20 determination based primarily -- absent of any
21 documentation, based primarily on the back and forth
22 assertions by both petitioner and respondent.

23 Now, in Ms. Cowdery's argument as to the
24 admissibility, that rule clearly states that it is
25 admissible when it goes to -- when it goes to the

1 relevance where motive, intent or absence of mistake.

2 Now, one of the other responses in pleadings in
3 this matter comes from Mr. Troy, who asserts that it
4 was an honest mistake, that there was no record
5 generated for petty cash, that there was no record
6 generated for the receipt of those monies. And there
7 are no records to indicate what happened to those funds
8 after they were received into that Sanford office up
9 and to a point that some days down the road, half a
10 month down the road -- and at that juncture, we're not
11 even certain that that is even -- that is even a
12 remotely viable excuse in itself, because up until the
13 point that we produced the receipt at a hearing,
14 Mr. Troy and employees of Florida Public Utilities
15 didn't even know -- didn't even know that the \$290 had
16 been paid there.

17 Now, if an issue in this matter is going to be
18 decided by an undocumented series of supposed actions
19 on the part of the utility to cover their absence of
20 proper documentation for a payment received from a
21 customer, then the relevance of false or invasive
22 responses to notices to produce, to interrogatories,
23 which are sworn to under oath, certainly is relevant in
24 this matter since the court is going to be making the
25 decision based upon the word of the utility or the word

1 of the petitioner, with the petitioner's word being
2 weighted with the receipt that they obtained when they
3 paid the money. On the respondent's side, all you have
4 is the word of Mr. Troy and Ms. Keitt as to where that
5 money went and what actually happened to it.

6 Now, it seems -- it seems -- it seems that logic
7 would dictate if a customer came into their Sanford
8 office, made a payment, and by some honest mistake the
9 payment was placed in an area where it should not have
10 been placed, then when it was found and the funds were
11 moved about after that point, some chronological
12 record, some kind of documentation would have been made
13 to show that this occurred, and we would not be sitting
14 here today back and forth over oral comments about
15 where the monies went after we paid it.

16 Their assertion that that particular payment was
17 combined with a later payment to create a
18 500-some-dollar cash payment is also very central to
19 the issues in this case because we are maintaining that
20 we paid a 500-and-some-dollar payment all at once, not
21 in two separate parts, but all at once. There is a
22 cash receipt showing a one-time payment of that
23 520-some dollars. There is a cash receipt of record
24 in this case showing a payment of \$290.

25 Now, the -- if the \$290 were supposed to be

1 combined elsewhere to create the 5-, then certainly
2 there should be some record, some document, to show
3 that that had -- that that type of scenario had
4 occurred. But there is none. We requested numerous
5 times the documents from the company, and there is
6 none. They have produced none. In response to our
7 request for the petty cash record, we got a redundant
8 amount of records that had -- that contained six copies
9 of the same sheet of paper. Those were the type
10 responses we were getting.

11 Now, in regards -- also in that regards, to the --
12 Ms. Cowdery's mention of the admissibility. In
13 deposition of Mr. Kramsky, Mr. Kramsky even makes
14 mention of records being there at that Sanford office
15 that were not produced in response to our Notice to
16 Produce. And those records -- those records certainly
17 would have a bearing on our -- on our contention of the
18 violation of the rules.

19 But the most central point to this whole case is
20 going to revolve around an issue where all the court
21 will have is the word of members of the utility to
22 counter documented receipts that are of record here.

23 And if the court is going to have to consider the
24 taking of -- the taking of their word to counter
25 documented evidence, then, certainly anything --

1 anything that is a part of any evidence or anything
2 that is impeachable in nature or goes counter to what
3 they maintain orally is -- should certainly be a part
4 of admissible evidence in this matter.

5 THE COURT: Well, Mr. Brooks, if -- I mean that --
6 the purpose of the interrogatory is to find out what
7 their defense is and what evidence they have to support
8 their side of the story. Right?

9 MR. BROOKS: Yes, sir.

10 THE COURT: And if you're saying -- if their
11 answer to your question, have you ever had any
12 complaints in the past, and their answer is no, and yet
13 you have some witnesses that would indicate they've
14 made some complaints, are those witnesses on your
15 witness list?

16 MR. BROOKS: Yes, sir.

17 THE COURT: If -- but I mean, it's
18 interrogatories. It's not a deposition. I mean, have
19 you scheduled a deposition of Mr. Troy or Ms. Keitt, so
20 that you can go back and forth and flesh that out if
21 you choose to? You're not required to, of course.

22 MR. BROOKS: Sir, the reason for the Notice to
23 Produce, the third Notice to Produce, was to eliminate,
24 just as Ms. Cowdery quoted the rule, to eliminate the
25 possibility of a mistake in their response to the

1 interrogatory.

2 Now, if there was no contradiction between the
3 two, then it was a simple matter of answering no,
4 already answered in interrogatories. There would be --
5 there certainly was no attempt to harass, oppress or
6 put undue burden on them, because the answer no on a
7 pen written or typed does not constitute undue burden.
8 It was given --

9 THE COURT: Of course it takes -- you understand,
10 before they can answer under oath, yes or no, they have
11 to do the research, and that's the burden, is the time
12 it would take to complete the answer, right?

13 MR. BROOKS: But the argument, sir, is that they
14 had already answered it in the interrogatory. Now that
15 was given -- our whole intention was to give them an
16 opportunity, one, to show that their response in the
17 interrogatory was not -- was -- to admit it was a
18 mistake, or to either show that it was not a mistake,
19 their answer to the interrogatory.

20 THE COURT: All right. I understand. Let's look
21 specifically at Question No. 5 in the -- Request No. 5,
22 in your Third Notice to Produce. Is it Notice to
23 Produce or is it interrogatories?

24 MS. COWDERY: It's called a Notice to Produce.

25 THE COURT: It's really more towards an

1 interrogatory, right?

2 MS. COWDERY: Right.

3 MR. BROOKS: Okay, sir.

4 THE COURT: If you look at Question 5 and 7 in
5 that Notice to Produce -- you understand the difference
6 between an interrogatory and a Notice to Produce?

7 MR. BROOKS: Yes, sir.

8 THE COURT: Wouldn't you agree that Question No. 5
9 is really more of an interrogatory? It's a question
10 that requires an answer, not a production of
11 documents?

12 MR. BROOKS: Yes, sir.

13 THE COURT: And would you be happy with just an
14 answer?

15 MR. BROOKS: Yes, sir.

16 THE COURT: I mean you're not asking them to
17 create a document? You're asking them to answer the
18 question; is that right?

19 MR. BROOKS: Yes, sir. As I stated, the whole
20 purpose behind this was to give them an opportunity to
21 correct either a mistake or to flat out respond here
22 and say that they stand by their answer in the other
23 document.

24 MS. COWDERY: I can do that now. I can say we
25 stand by our answer in the other document, that there

1 was no mistake.

2 THE COURT: As far as question No. 5?

3 MS. COWDERY: Well, as far as how Mr. Brooks is
4 portraying his intent at this time. Going back to
5 Question 13 in the previous Notice to Produce: How
6 many customer complaints have you had filed against
7 your Sanford office and its office manager in the past
8 three years? Our answer that we gave there is the
9 correct answer.

10 And if by restating it in No. 5 he wanted to find
11 out whether or not that answer was a mistake, my answer
12 is no, that answer was not a mistake.

13 THE COURT: And No. 7? As to Question No. 7?

14 MS. COWDERY: I don't know that he's -- If that's
15 the same question, my answer is the same. It certainly
16 looks a lot broader than that. It brings in Darryl
17 Troy, who wasn't a part of 13 whatsoever. It's an
18 awful lot broader. But if that's the same question --

19 THE COURT: The question does go to whether the
20 respondent has been a party as a plaintiff or defendant
21 in any lawsuit or administrative hearing. How far back
22 are you asking them to do it? Like the last five
23 years, or forever?

24 MR. BROOKS: No, sir. As I stated -- and I
25 believe at one juncture was when I was speaking with

1 Ms. Cowdery on the telephone. This particular document
2 here was utilized for verification of the
3 interrogatories. Interrogatories stated, I believe the
4 last three years, or whatever -- last three years on
5 there. So that was the sole intent of this document.

6 THE COURT: So the last three years would be
7 satisfactory?

8 MR. BROOKS: Yes, sir.

9 THE COURT: If you get an answer to that?

10 MR. BROOKS: Yes, sir.

11 MS. COWDERY: My -- I don't remember any kind of
12 discussion like that, but if Mr. Brooks is wanting to
13 know if our answer to No. 13 has changed, my answer is
14 no. I will repeat that my argument with regard to the
15 question itself, that that question itself is not
16 appropriate, that it has no bearing on the case. It
17 cannot lead, in my opinion, to any -- it is not
18 reasonably expected to lead to the discovery of any
19 admissible evidence in this case.

20 And if he is asking for any kind of public
21 documents, he has access to those, but the question is
22 just far, far broader. As to Diane Keitt and Darryl
23 Troy, there is simply no basis for requesting that
24 information.

25 THE COURT: I see. All right. Mr. Keating, any

1 response on behalf of the Commission?

2 MR. KEATING: I don't think the Commission has any
3 position on this particular dispute.

4 THE COURT: All right, as far as the Motion For
5 Protective Order as to Question No. 5 and No. 7 on the
6 third Notice to Produce, I think Mr. Brooks has been
7 mis -- misdesignated it as a Notice to Produce. From
8 what he's stated today, it's a question, it's an
9 interrogatory that requires an answer.

10 In view of the -- amending it to read the --
11 within the last three years, I don't think that a
12 response to either 5 or 7 is oppressive and it may lead
13 to admissible evidence, so I'm going to require a --
14 just a written response to those questions. And I
15 think you've given a verbal one, but I would like you
16 to do so in writing.

17 MS. COWDERY: Is my response to No. 5 acceptable
18 to Mr. Brooks --

19 MR. BROOKS: Yes, sir.

20 MS. COWDERY: -- that the answer to No. 13 remains
21 the same?

22 MR. BROOKS: Yes, ma'am, it is.

23 MS. COWDERY: Does that also apply to No. 7?

24 MR. BROOKS: Yes, ma'am, it would be.

25 THE COURT: Would you follow that up with a

1 written response please?

2 MS. COWDERY: Yes, I will. As I said, I did --
3 although our responses were not due until Wednesday, we
4 did file them today, but I will file an amended answer
5 as to 5 and 7.

6 THE COURT: Fine. All right on the Motion to
7 Strike -- anything else on this, before I move on, on
8 the Motion For Protective Order? Anything else we need
9 to deal with at this time?

10 Prefer to reserve ruling on fees and costs.

11 MS. COWDERY: Then that would do it as far as I
12 could tell.

13 THE COURT: On the Motion to Strike, I have read
14 the reply, and Mr. Brooks, in looking at your
15 Petitioner's Response to Respondent's Motion For
16 Protective Order and Attorney's Fees, you know, because
17 they -- you don't like their answer, or because you
18 don't agree with their answer doesn't make it
19 necessarily a lie. I mean what -- when we get to
20 hearing, you have a right to cross-examine, and you
21 have the right to present evidence to disagree with it,
22 but it's not -- that kind of verbiage in this kind
23 of -- in motion practice, is not professional, and I
24 don't think it's appropriate.

25 Would you like to reply?

1 MR. BROOKS: Yes, sir.

2 THE COURT: Go ahead.

3 MR. BROOKS: There is no response to this Motion
4 to Strike because I just got this thing this morning.
5 In regards to the response to the respondent's motion,
6 while -- while the words themselves -- a lie is a lie,
7 sir. A lie is a lie. And there is no -- while I might
8 disagree with their response, the response is a lie.
9 It's a fact. You -- I apologize to the court if
10 they -- if the court takes offense at the -- at the
11 wording, but to be quite honest with you, the term
12 "falsehood" here -- "falsehood" and "lie" is correct.
13 It is linguistically correct.

14 This -- and the reason that I took such a hard
15 tone in this particular -- in this particular matter,
16 is because petitioner -- petitioner had attempted to
17 cooperate with the respondent regarding this Dennis
18 Kramsky matter. And at the time of deposition with
19 Mr. Kramsky, Mr. Kramsky's -- if the court were to look
20 at Mr. Kramsky's deposition, Mr. Kramsky's deposition
21 was laced with direct spiteful remarks directed
22 directly towards me. Questions about the petitioner --
23 petitioner's action on each and every occasion,
24 Mr. Kramsky made his remarks directly across towards
25 me. At the juncture when I made an objection to those

1 actions, Ms. Cowdery stepped in and Ms. Cowdery tried
2 to justify Mr. Kramsky's personal attack.

3 And the thing that -- the thing that -- the thing
4 that really went beyond conduct -- professional
5 conduct, the term you want to put to it, is that
6 Mr. Kramsky set there and deliberately lied and tried
7 to use my granddaughter as a basis for one of those
8 lies.

9 Now, in all other pleadings that I have entered in
10 this case, even at junctures when I thought it
11 pertained to a falsehood, I did not go to this extent.
12 The reason I went to this extent is because of what
13 they did at that deposition. These particular items
14 where you see the word "lie" in this response, that
15 word is accurate. That word is a complete truth.

16 Now, if it offends the court, then I apologize,
17 and I will -- I can reword the thing, but I would just
18 like it known that words used there, it is an accurate
19 and completely truthful statement.

20 THE COURT: Ms. Cowdery.

21 MS. COWDERY: I would like to make two comments.
22 One is I did talk to -- by telephone to Mr. Brooks on
23 Friday, and I did ask him if the fax number that I had
24 used previously to fax him a copy of this would work,
25 and he told me that there was a five-page limit to

1 using that fax number. And I asked him if I could do
2 it in five-page increments, and he didn't know, and he
3 would call me back and find out where I could fax it to
4 him if possible, and we did not get a response. So I
5 did try to get this to him, the Motion to Strike, on
6 Friday, just for the record.

7 I think Mr. Kramsky's deposition speaks for
8 itself. We have filed it with the court. There were
9 no personal attacks. There were no spiteful remarks
10 directed toward Mr. Brooks. There certainly was some
11 disagreement. Mr. Kramsky's deposition has nothing to
12 do with the matter before the court having to do with
13 the Notice to Produce in Nos. 5 and 7. And I would
14 still ask to have all that language struck from the
15 pleading.

16 THE COURT: And who is Mr. Kramsky?

17 MS. COWDERY: Mr. Kramsky is a former employee of
18 Florida Public Utilities Company. He was the division
19 manager at the time of the events that took place.
20 When the notice of hearing came out, he was already
21 scheduled to be in Atlanta on the day of the hearing.
22 I talked to Mr. Brooks and we agreed to have his
23 deposition taken and used at hearing, which of course
24 would be subject to all objections. So we took his
25 deposition on the 17th of February, very recently, for

1 that purpose. And I have filed it with the court
2 pursuant to the Rules of Civil Procedure.

3 THE COURT: All right. Well, Mr. Brooks, I
4 haven't read that, of course, and I'm not going to read
5 it until it's offered in evidence. But the thing you
6 need to separate is former employees don't represent
7 the company, and if they make you mad, or insult, or
8 act inappropriately, as a qualified representative
9 you're still charged with -- to act professionally.

10 As far as the wording, we're here because there's
11 a disputed issue of fact. And you're getting responses
12 from the other side that you don't agree with. And
13 whether they're deliberate or not, I don't know yet,
14 but it's not necessary or professional to do -- to
15 refer to them as lies or falsehoods.

16 It just means, basically, you know what you need
17 to do next week, is if you think that point is
18 important and you know what their answer is going to
19 be, then you need to have some facts -- some witnesses'
20 testimony or documents to counter that answer so that
21 you can show that your position is correct, but you
22 don't -- let's act professionally in the meantime.

23 MR. BROOKS: All right, sir. I apologize to the
24 court.

25 THE COURT: Any response from Mr. Keating?

1 MR. KEATING: No, the Commission doesn't have a
2 horse in this race either.

3 THE COURT: As far as the Motion to Strike --
4 anything else, specifically, Mr. Brooks, that you --
5 you saw what Ms. Cowdery suggests be removed. Is there
6 anything in there that's critical to your case as far
7 as that really needs to stay in? We're talking
8 primarily about motion practice here.

9 MR. BROOKS: No, sir, other -- I believe she
10 left -- where she crossed out -- Page -- on Page 7,
11 after the word -- let's see. Beginning at Paragraph 3,
12 after the lines and where it says: "Once respondent
13 put forth the issue as fact and truth, petitioner" --

14 THE COURT: I'm looking at a different page,
15 then. What is the first numbered paragraph at the top
16 of the page?

17 MR. BROOKS: Six, 6, sir.

18 THE COURT: Paragraph No. 6, yeah, okay.

19 MR. BROOKS: Okay, and after "expected its request
20 to lead to admissible evidence," I do not believe that
21 these particular sentences should have been struck --
22 should have been crossed out here.

23 THE COURT: We're looking at what paragraph in
24 particular?

25 MR. BROOKS: It's --

1 THE COURT: The last sentence of paragraph 6?

2 MR. BROOKS: The last eight sentences of
3 paragraph 8.

4 THE COURT: All of those that are in bold caps?

5 MR. BROOKS: I think you still have the wrong --

6 THE COURT: I'm looking at a document that begins
7 with the first numbered paragraph at the top of the
8 page is paragraph 6, begins on Line 3, and there's 6, 7
9 and 8 on that page, is that --

10 MR. BROOKS: Yes, sir. Okay, after the wording:
11 "Once the respondent put forth the issue as fact and
12 truth, petitioner has every right to pursue, and if the
13 petitioner had reason to believe it was false and
14 expected its request to lead to admissible evidence."

15 THE COURT: Then the remaining --

16 MR. BROOKS: The remaining eight lines petitioner
17 does not feel should be stricken.

18 THE COURT: Okay. Let me look at that.

19 MS. COWDERY: Our basis was irrelevance.

20 THE COURT: Just a moment.

21 I'm sorry, Ms. Cowdery, go ahead.

22 MS. COWDERY: Our basis for asking that that be
23 stricken was the irrelevance of it. The motion went to
24 two specific questions that were posed, and I just
25 didn't see any relevance whatsoever with this language,

1 and that's why I asked to have it stricken.

2 THE COURT: Well, I think it goes -- it's really
3 more in the nature of an argument or issuing -- what
4 issues are in controversy, but I don't see any harm in
5 it. So I'll grant the Motion to Strike except for the
6 last eight lines in paragraph 8 of the petitioner's
7 response to -- Respondent's Motion For Protective Order
8 and Attorney's Fees and Costs, and grant the motion.

9 Ms. Cowdery, anything else?

10 MS. COWDERY: Again, we asked for attorney's fees
11 and costs in the motion.

12 THE COURT: I'll reserve ruling on that.

13 MS. COWDERY: And I think that disposes of the
14 motion.

15 THE COURT: All right, Mr. Keating, you have some
16 motions?

17 MR. KEATING: We have the motion for protective
18 order and objections that related to a notice of taking
19 depositions of Staff members by Florida Public
20 Utilities Company. They have filed a notice of
21 cancellation of those depositions, so we will be
22 withdrawing our motion.

23 MS. COWDERY: That's it.

24 THE COURT: That's fine. I mean Staff may have
25 done a good job or whatever, but it's not relevant

1 because this is a de novo proceeding. Any other
2 pending motions by any party?

3 MS. COWDERY: I don't believe so.

4 THE COURT: All right, hold on.

5 All right, as far as the preparation of a
6 prehearing stipulation, Ms. Cowdery are you taking the
7 lead in that?

8 MS. COWDERY: I believe I am. I have a proposed
9 prehearing stipulation that I brought with me. We had
10 a little bit of communication regarding a prehearing
11 stipulation before this time. This is brand new and I
12 brought it today for both of the parties based upon
13 previous communications that we had had. We have not
14 had a chance to discuss this. So I don't know at this
15 point, as far as the Public Service Commission, if as
16 to certain of these undisputed facts they can stipulate
17 with them or not. I don't know what their position has
18 become at this point.

19 MR. KEATING: I'm not sure if that's something --
20 if it's our position to stipulate to some of the facts,
21 and I would like to --

22 MS. COWDERY: Or the issues?

23 MR. KEATING: I think perhaps we could to the
24 issues. I would like to confer with the division
25 director.

1 THE COURT: I think you want to stipulate to the
2 issues.

3 MR. KEATING: We don't want to hold anything up if
4 there is a stipulation, but because we don't have any
5 firsthand knowledge, we don't want to --

6 THE COURT: You can simply take no position.

7 MR. KEATING: Correct.

8 THE COURT: And since you're intervening. As far
9 as proposed prehearing stip, I don't think it's
10 appropriate to file it at this time.

11 MS. COWDERY: Okay. I didn't know what your
12 pleasure was on it.

13 THE COURT: My pleasure is you negotiate it, and
14 what you don't agree you include in the stipulation.
15 What you do agree to, you sign off on, and what you
16 don't agree on, you put in and say, this is the
17 petitioner's position that the respondent doesn't join,
18 or the intervenor doesn't join.

19 MS. COWDERY: Mr. Brooks and I will get together
20 and see what we can hash out, if anything.

21 THE COURT: Mr. Brooks, do you understand?

22 MR. BROOKS: Yes, sir, I do. Yes, sir.

23 THE COURT: So if there are certain issues, or
24 particularly facts that you can agree to that doesn't
25 require additional proof -- the more you can agree to,

1 the quicker we can move on and just cover issues that
2 are in dispute. So the more we can do, the quicker we
3 can deal with the nitty gritty.

4 MR. BROOKS: Yes, sir.

5 THE COURT: Hopefully we can agree as far as what
6 are critical issues, and if there are certain issues
7 that one party or the other believes is important but
8 the other doesn't agree, then we'll include that as an
9 issue that only one party thinks should be
10 determinative, or dealt with at the final hearing.
11 Okay?

12 MR. BROOKS: Yes, sir.

13 THE COURT: It will help everyone understand what
14 position they're taking and move along.

15 As far as witnesses, this is also a critical
16 time. Basically, have you, as the respondent,
17 disclosed all potential witnesses?

18 MS. COWDERY: Yes, I have. I've got my prehearing
19 statement, which I filed if you want a copy of that, or
20 not. But we've got our list of all known witnesses,
21 identification of all known exhibits.

22 I wanted to verify that documents which we might
23 use, depending on petitioner's case, solely for the
24 purposes of impeachment, we have not listed, because we
25 can't anticipate what we might need for impeachment

1 purposes. It would be solely impeachment. So anything
2 I've listed would be anything that would go to any kind
3 of thing I want to prove. But I wanted to make sure
4 that that's consistent with how you would have things
5 listed on the exhibit list.

6 THE COURT: Yes. The exhibit list should include
7 every document that you're going to use in your case in
8 chief.

9 MS. COWDERY: Right.

10 THE COURT: But not necessarily any documents
11 you're going to use for rebuttal. Purely rebuttal.

12 Mr. Brooks, you understand what I've just said?

13 MR. BROOKS: Yes, sir, I do.

14 THE COURT: You've done the same, your list --
15 have you provided the parties?

16 MR. BROOKS: Yes, sir, I have a witness and
17 exhibit list for Ms. Cowdery.

18 THE COURT: Okay. You want to provide that to her
19 now if you have it done, sir?

20 MR. BROOKS: Yes, sir.

21 THE COURT: And a copy for the Public Service
22 Commission?

23 MR. BROOKS: Yes, sir, I do.

24 MS. COWDERY: Thank you.

25 THE COURT: So that list will be included in the

1 prehearing stip when that's filed, unless there's
2 objections or something that we'll deal with -- we can
3 do by telephone conference if it's necessary between
4 now and the hearing.

5 MS. COWDERY: I know that I will have an objection
6 to some of these witnesses who are listed as -- he's
7 got them listed as rebuttal witnesses. And I don't
8 know if that's appropriate to bring up at this point or
9 if we should just, you know --

10 THE COURT: Rebuttal -- okay, Mr. Brooks, you're
11 the petitioner, so you're going to go first.

12 MR. BROOKS: I understand.

13 THE COURT: And you have to put on your case in
14 chief, which means to prove the issues that are
15 relevant, you need to give me all of the live
16 witnesses' testimony, plus any documentation that you
17 believe you can prove your case. And so when you rest,
18 you should be -- you should have sufficient evidence
19 where you say, if this was it, you win, right?

20 MR. BROOKS: Uh-huh.

21 THE COURT: Okay. Rebuttal witnesses simply are
22 for the purpose of -- not as part of your case in
23 chief, but basically you're anticipating what the
24 respondent's defense will be, since you've had
25 interrogatories, and you have -- you know what it's

1 going to be, that their witnesses are going to give a
2 different version of facts, obviously, and the
3 rebuttals are simply to rebut or to counter those
4 facts, but are not part of your case in chief. Is
5 that --

6 MR. BROOKS: Yes, sir.

7 MS. COWDERY: Well, I have not been in this
8 situation before, so I'm going to go ahead and let you
9 know about my objections here. I attempted to
10 depose -- no?

11 THE COURT: Well, the question is -- I'm going to
12 give you an opportunity in a moment, but if he's saying
13 they're only rebuttal, okay, and do you believe that
14 you need an opportunity to depose them? Is that what
15 you were going to say, or --

16 MS. COWDERY: It's hard to say. I tried to have
17 them deposed, and service -- the sheriff couldn't serve
18 them. We had an arrangement as far as how service
19 would occur, which would be at the 1204 Pomegranate
20 address, and the service return that I got and the
21 discussion I had with the sheriff, was that there was
22 numerous attempts made and there was this Howard
23 Brooks -- person identifying himself as Howard Brooks'
24 brother wouldn't accept service.

25 So I had my deposition of Dino Kramsky on the

1 17th, but not these other two gentlemen, because I was
2 not able to effect service in the manner that we had
3 agreed upon. And you know, do I need their depositions
4 for sure? I don't know. I just know that I was, I
5 believe, denied that opportunity through lack of
6 cooperation. So I bring that up.

7 THE COURT: The question is, unless they are
8 available for deposition, they certainly can't be --
9 they can't be part of your case in chief for certain.
10 You understand that, Mr. Brooks?

11 MR. BROOKS: I don't have them as part of my case
12 in chief, sir. And if I may -- I want to clarify
13 something that Ms. Cowdery just said.

14 THE COURT: Go ahead.

15 MR. BROOKS: The witnesses that are listed as my
16 primary witnesses for my case in chief, I did agree
17 with her to arrange for service of these people, and
18 they did -- they were served. And they went over,
19 submitted to her deposition.

20 The other parties that became known to me, as fast
21 as they did become known to me, I imparted that
22 information to her telephonically, and when I found out
23 that the sheriff was having problems serving them, I
24 went and personally found them one day, brought them to
25 that house, contacted the Sheriff's office, and I

1 personally sat there with them all day waiting for the
2 promised deputy to show up to serve them. He did not.
3 So I did not do that again.

4 But I never promised her that I was going to do
5 the same thing with these other witnesses, as I did
6 with the first ones. And I did do just as I told her I
7 would do with my primary ones. Now that's why these
8 people are listed as rebuttal, because she didn't get a
9 chance to depose them.

10 And I'm not even certain -- matter of fact, if she
11 looked at the proposed witness list, these people are
12 just proposed rebuttal witnesses, because I'm not even
13 certain that it would be necessary to use them once the
14 evidence is put on. But as I told Ms. Cowdery in one
15 of my last conversations with her, if the parties that
16 she put on as witnesses do as I anticipate, then these
17 people -- you know, I do fully intend to call these
18 people to rebut what they say.

19 MS. COWDERY: I don't think it's very helpful, but
20 for the record, I do want to say that Mr. Brooks did
21 represent to me that we would have service effected at
22 1204 Pomegranate Avenue, and I sent the same letter to
23 the sheriff as I did the last time, and he would
24 coordinate it with Mr. Brooks, and that did not occur.
25 But I don't think it's productive to go any further.

1 THE COURT: Okay. But as far as any Motion to
2 Strike or whatever at this point, I mean, I don't --

3 MS. COWDERY: They're listed as rebuttal
4 witnesses.

5 THE COURT: I don't see a need to do that until
6 and unless they're called.

7 MS. COWDERY: Right.

8 THE COURT: Mr. Keating, any response by the
9 Commission?

10 MR. KEATING: No. We don't intend to present any
11 witnesses or exhibits at the hearing.

12 THE COURT: Okay. You do intend to attend?

13 MR. KEATING: Yes, sir, I will be there, and a
14 reporter.

15 MS. COWDERY: And participate in the
16 cross-examination, primarily, if at all?

17 MR. KEATING: If at all, but yes, we will be
18 present.

19 THE COURT: But at this time you don't intend to
20 call witnesses?

21 MR. KEATING: No.

22 THE COURT: So Mr. Brooks, you understand
23 basically the Commission is there as a passive
24 participant, primarily?

25 MR. BROOKS: No, sir. Sir, I wanted to ask you a

1 question previously. When Mr. Keating talked of
2 stipulating to issues, what particular issues is it
3 that he's talking about stipulating to?

4 THE COURT: No, facts, he was concerned about
5 stipulating to certain facts.

6 MS. COWDERY: More like the disputed issues of
7 ultimate facts.

8 MR. KEATING: I'm not so much concerned about
9 stipulating to -- agreeing that these are the issues
10 that need to be decided, just to the essential facts,
11 to prove those issues one way or the other.

12 THE COURT: Basically he's here, Mr. Brooks, he's
13 here to represent the Commission, because my order will
14 be a recommended order back to the Public Service
15 Commission. And those facts are essentially, with
16 reservations, binding on the Commission, right?

17 So what he's -- the reason the Commission is
18 participating is in a passive role just to be sure all
19 of the bases are covered so that when it comes back to
20 the Commission they have a complete record. That's --
21 they're not here to take sides. They're not on either
22 side. They're -- yeah, that's enough said. I think
23 that --

24 MR. KEATING: I would agree.

25 MS. COWDERY: Looking at Mr. Brooks' exhibit list,

1 I would like a little more detail on certain of the
2 exhibits in order to prepare for my case. Deposit
3 payment receipt -- okay, deposit payment receipt. I
4 assume that's the \$200 deposit payment receipt? The
5 initial \$321.96?

6 THE COURT: Let's not do this right now.
7 Basically, since we're all here in the same room, and
8 you've been kind enough to come up from Sanford, you
9 know, if we finish the conference, if you want to stay
10 a few more minutes and do that kind of thing where you
11 can iron out, make sure that both parties have it, so
12 that Ms. Cowdery can prepare a proposed order that
13 everybody agrees can be signed off, so we can get it in
14 and make each side a little bit better prepared, I
15 think that would be a productive use of time.

16 MR. BROOKS: Yes, sir.

17 THE COURT: Let's deal with any other -- anything
18 else that we need to deal with this afternoon.

19 First of all, as far as evidence is concerned and
20 witnesses, documentation, everybody has a copy of all
21 of the documents referred to?

22 MS. COWDERY: I do not have all the documents
23 which are referred to. I would like to get a copy -- I
24 need to talk with Mr. Keating and find out what he
25 doesn't have copies of, and I can get him all of that

1 by tomorrow, certainly. And I have three documents
2 here that I know that -- or that I believe that
3 Mr. Brooks does not have copies of, and I'll give that
4 to him afterwards.

5 THE COURT: As soon as we finish you can exchange
6 that. There's a copier out front.

7 MS. COWDERY: I've got my copies, but I would like
8 to know if Mr. Brooks is able to exchange -- give me
9 copies of his exhibits too.

10 MR. BROOKS: Yes, ma'am, I am.

11 MS. COWDERY: Great.

12 THE COURT: Anything else, Mr. Brooks?

13 MR. BROOKS: No, sir.

14 THE COURT: Mr. Keating?

15 MR. KEATING: I just have one question, just to
16 clarify. There were subpoenas issued for the
17 depositions of the Staff members. Do we need to take
18 any official action as to those subpoenas?

19 MS. COWDERY: No, no, they are released from the
20 subpoenas.

21 THE COURT: You filed a notice that you canceled
22 the deposition?

23 MS. COWDERY: Yes.

24 THE COURT: And if they're released from the
25 subpoena, that should be sufficient.

1 MS. COWDERY: Will we be -- in my prehearing
2 statement, I have put a basic position as to the
3 proceeding, and I've stated each question of fact I
4 consider at issue, and question of law that I
5 considered at issue, and I didn't know if Mr. Brooks
6 was able to similarly provide that information for
7 petitioners at this time, as set forth in the order for
8 prehearing conference.

9 THE COURT: We can do that --

10 MR. BROOKS: Yes, ma'am, I can. I can do that.

11 MS. COWDERY: Do you have it in writing?

12 MR. BROOKS: No, I do not have it in writing at
13 this time, but I can get it to you this afternoon in
14 writing.

15 MS. COWDERY: That might be more productive.

16 THE COURT: I think so.

17 I've set aside two hours for this, so if
18 there's -- after you work on it, if there's a problem,
19 I can be available, if I need to become further
20 involved.

21 MS. COWDERY: Okay.

22 THE COURT: Hopefully we can move it right along.
23 Anything else?

24 MS. COWDERY: I think that's all I've got.

25 THE COURT: Mr. Brooks?

1 MR. BROOKS: No, sir.

2 THE COURT: Mr. Keating?

3 MR. KEATING: Commission has nothing.

4 THE COURT: Then at this time, I think that will
5 conclude the prehearing conference. If the parties
6 want to take a break and get back together and hammer
7 out those issues and see if you can help Ms. Cowdery
8 get to the point where she can go back to her office
9 and get a prehearing stipulation that everyone can
10 sign, before the end of the week, hopefully. She'll be
11 able to get back to me by then. All right?

12 MS. COWDERY: All right.

13 THE COURT: Anything else? If there's nothing
14 further, we're adjourned.

15 (Hearing concluded at 2:12 p.m.)

16

17

18

19 I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

20

21

22 
Lisa Girod Jones, RPR, RMR

23 2-26-98
Date

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25

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