



1 **APPEARANCES:**

2           **ANTHONY BROOKS, II**, Mother's Kitchen, Ltd.,  
3 Post Office Box 1363, Sanford, Florida 32772,  
4 appearing for Mother's Kitchen, videoconferencing from  
5 the Zora Neal Hurston Building in Orlando, Florida.

6           **KATHERYN G. W. COWDERY**, Gatlin, Schiefelbein  
7 and Cowdery, 3301 Thomasville Road, Suite 300,  
8 Tallahassee, Florida 32312, appearing on behalf of  
9 Florida Public Utilities Company, videoconferencing  
10 from the Zora Neal Hurston Building in Orlando,  
11 Florida.

12           **WILLIAM COCHRAN KEATING, IV**, Legal Division,  
13 Florida Public Service Commission, 2540 Shumard Oak  
14 Boulevard, Tallahassee, Florida 32399, appearing on  
15 behalf of the Public Service Commission, present in  
16 Tallahassee.

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1 hearing room with you in Orlando?

2           **MR. BROOKS:** Yes, sir, they are. Yes, sir,  
3 they are.

4           **THE COURT:** For the respondent?

5           **MS. COWDERY:** Yes. For Florida Public  
6 Utilities Company, Kathryn Cowdery, Gatlin  
7 Schiefelbein and Cowdery, and Mr. Darryl Troy is the  
8 corporate representative.

9           **THE COURT:** And as I indicated, Mr. William  
10 Keating.

11           **MR. KEATING:** Cochran Keating for the  
12 Florida Public Service Commission.

13           **THE COURT:** All right. This matter was  
14 adjourned at the last session, and with the Respondent  
15 putting on your case. Are you ready to call your next  
16 witness?

17           **MS. COWDERY:** I am. I'd first like to  
18 invoke, again, the rule of sequestration of witnesses  
19 in the event that either Mr. Hodges or Mr. Arthur  
20 Brooks are intended to be called as rebuttal  
21 witnesses -- or one of them -- somebody was staying  
22 with Mr. Brooks, Arthur was. But if Mr. Hodges is  
23 going to be called again, I would like him to be  
24 sequestered.

25           **THE COURT:** Mr. Brooks, do you see any

1 possibility that Mr. Hodges would be called as a  
2 rebuttal witness? What I mean by that --

3 MR. BROOKS: Not --

4 THE COURT: Pardon?

5 MR. BROOKS: Not at this time, sir. No,  
6 sir.

7 MS. COWDERY: Okay.

8 THE COURT: All right. Then I don't believe  
9 it's necessary.

10 MS. COWDERY: All right.

11 THE COURT: Any other preliminary matters?

12 MS. COWDERY: No, sir.

13 THE COURT: All right. Then call your next  
14 witness.

15 MS. COWDERY: Well, next I'd like to go  
16 ahead and introduce the deposition of Dennis Kramsky  
17 into the record. Pursuant to the prehearing  
18 stipulation, the parties agreed to use his deposition.

19 I also, because of the fact that this  
20 hearing was split from last time, contacted --  
21 actually the company contacted Mr. Kramsky to find out  
22 his availability for today. He is in San Juan, Puerto  
23 Rico. I have an affidavit of Mr. Kramsky to that  
24 effect, so for the record I'd like to introduce his  
25 affidavit which does show that he is out of the

1 country today.

2           **THE COURT:** All right. You're ready to  
3 proceed nevertheless? Oh, I see.

4           **MS. COWDERY:** Oh, yes, I want to  
5 introduce --

6           **THE COURT:** The deposition instead.

7           **MS. COWDERY:** If it's appropriate at this  
8 time, I'd like to put his deposition into the record,  
9 or as an exhibit, however you handle that.

10           **THE COURT:** Yes. Okay. You did forward a  
11 copy of the deposition?

12           **MS. COWDERY:** Yes. I had sent over to your  
13 secretary a package of information, and I believe that  
14 both the affidavit and the deposition, two copies of  
15 each are in that package.

16           **THE COURT:** Okay.

17           **MS. COWDERY:** I do want to exclude something  
18 so --

19           **THE COURT:** Yes, I have received the  
20 package.

21           **MS. COWDERY:** Okay. Deponent's Exhibit B.

22           **THE COURT:** Let's deal with Mr. Kramsky  
23 first.

24           **MS. COWDERY:** Right.

25           **THE COURT:** All right. I have a copy of the



1 deposition of Dennis Dino Kramsky taken on Tuesday,  
2 February 17th, 1998.

3           **MS. COWDERY:** Yes, sir. There are two  
4 exhibits attached thereto.

5           **THE COURT:** I have an Exhibit A and an  
6 Exhibit B attached to the copy of the deposition.

7           **MS. COWDERY:** Yes. Now, Exhibit B, I  
8 introduced for the purpose of anticipatory rebuttal,  
9 if you will, since Mr. Kramsky wasn't going to be  
10 here. Mr. Brooks did not address that letter so I  
11 have no need to introduce Exhibit B. My purpose was  
12 to rebut anything which might be raised by Mr. Brooks.  
13 So I would like to exclude Deponent's Exhibit B from  
14 the record as being unnecessary. And there are  
15 certain lines of the transcript which I would like to  
16 identify which go only to that deposition, which I  
17 would also like to strike from the deposition.

18           And that is on Page 11, Lines 4 through 25,  
19 and Page 12, Lines 1 through 3. Other than that, I  
20 would include everything else.

21           **THE COURT:** All right. Thank you.

22           Mr. Brooks, first of all, any objection to  
23 the admission of the deposition of Dennis Kramsky in  
24 lieu of his testimony here today?

25           **MR. BROOKS:** Yes, sir, I would have. At the

1 time that the parties agreed to Mr. Kramsky's  
2 deposition being used in lieu of actual testimony it  
3 was to accommodate Mr. Kramsky in a previously  
4 arranged trip that was supposed to concur with the  
5 date of the last hearing.

6 Now, since Mr. Kramsky -- since that date of  
7 the last hearing, we have had an ample amount of time  
8 for Mr. Kramsky obviously to return and then depart  
9 and go somewhere else. Respondent could have arranged  
10 for Mr. Kramsky to be here today.

11 I would also -- if the Court allows this, if  
12 the Court feels that it should allow this deposition  
13 in, I would also object to any deletions or --  
14 deletions of entries on this deposition because the  
15 Petitione. has already been placed in a position to  
16 where Petitioner is denied its right to cross examine  
17 Mr. Kramsky in the courtroom, as well as -- if  
18 Mr. Kramsky hadn't been present as a witness,  
19 Petitioner would have had Mr. Kramsky address certain  
20 exhibits and other items that were entered by both  
21 Respondent as well as Petitioner.

22 So if the Court deems it proper to allow the  
23 deposition in, then the Petitioner would also request  
24 that no deletions or changes be made to the  
25 deposition.

1           **THE COURT:** All right. Response?

2           **MS. COWDERY:** Your Honor, when we -- as soon  
3 as we determined that we had a second hearing date  
4 lined up, I contacted -- the company contacted for  
5 me -- contacted Mr. Kramsky. Mr. Kramsky already had  
6 plans for Puerto Rico. And it is for this reason that  
7 I secured his affidavit to show that he will be, or he  
8 is, in Puerto Rico today so I couldn't have him  
9 instead of a live witness.

10                   Secondly, at the time the whole reason his  
11 deposition was taken was because at that time I knew  
12 that he would not be available for the March 4th  
13 hearing. I called the deposition for that reason.  
14 Mr. Brooks agreed informally to use Mr. Kramsky's  
15 deposition at that time. He was aware that when we  
16 were taking the deposition, at that time he had the  
17 opportunity to do any examination of Mr. Kramsky  
18 through cross examination that he wished.

19                   Again, I would point out that the deposition  
20 exhibit that I wish to delete I gave to Mr. Kramsky  
21 and I asked him some questions about it in  
22 anticipatory rebuttal. But there's nothing for him to  
23 rebut. There's been nothing in the case-in-chief of  
24 Petitioners which would make it necessary. And I just  
25 feel that it avoids confusion to leave it out at this

1 point.

2           **THE COURT:** Mr. Brooks, you were present for  
3 the deposition, correct, of Mr. Kramsky?

4           **MR. BROOKS:** Yes, sir, I was.

5           **THE COURT:** Okay. And at that time you knew  
6 you needed to ask all of the questions on cross  
7 examination because Mr. Kramsky was not expected to  
8 attend the hearing; isn't that correct?

9           **MR. BROOKS:** Yes, sir, I knew that.

10           **THE COURT:** Okay. All right. I'm going to  
11 overrule your objection on the admission, but on the  
12 request to exclude Exhibit B and to strike certain  
13 lines from Page 11 and Page 12, I'll sustain the  
14 objection.

15           **MS. COWDERY:** That's fine.

16           **THE COURT:** Okay. I'm going to admit the  
17 deposition as the next numbered exhibit for Petitioner  
18 which --

19           **MS. COWDERY:** That would be Respondent's 13.

20           **THE COURT:** Yes, that's correct. So the  
21 deposition of Dennis Dino Kramsky is admitted into  
22 evidence as Respondent's Exhibit 13. And the  
23 Affidavit of Unavailability, any objection,  
24 Mr. Brooks?

25                           (Respondent's Exhibit 13)

1 received into evidence.)

2 MR. BROOKS: I have not seen it, sir.

3 MS. COWDERY: Oh, I'm sorry.

4 MR. BROOKS: No prior knowledge that this  
5 affidavit existed prior to just a few minutes ago.

6 (Counsel hands document to Mr. Brooks.)

7 THE COURT: Do you have a copy now?

8 MR. BROOKS: Yes, sir. I do have a copy  
9 now. (Pause)

10 Sir, this letter would just serve to support  
11 what I said previously. In the body of this thing  
12 he's saying he's going to be in San Juan from April 1  
13 through April 3. So by virtue of the fact him saying  
14 from April 1 meant that he had time enough to alter  
15 this travel, and if he was such an important witness  
16 to Respondent, Respondent had the responsibility to  
17 ensure that the witness is present. I would reiterate  
18 my objection to this thing.

19 THE COURT: Okay. All right. Thank you. I  
20 understand. But I'm overruling the objection. I will  
21 admit the affidavit, or a copy of the affidavit into  
22 evidence as Respondent's Exhibit 14.

23 (Respondent's Exhibit 14  
24 received into evidence.)

25 Ms. Cowdery, would you call your witness.

1           **MS. COWDERY:** I will call Mr. Darryl Troy.

2           **THE COURT:** Mr. Troy, would you raise your  
3 right hand to be sworn.

4                                 - - - - -

5                                 **DARRYL TROY**

6 was called as a witness on behalf of Florida Public  
7 Utilities Company and, having been duly sworn,  
8 testified as follows:

9                                 **DIRECT EXAMINATION**

10 **BY MS. COWDERY:**

11           **Q**     Mr. Troy, please state your name and  
12 business address for the record.

13           **A**     Darryl Troy, 401 South Dixie Highway, West  
14 Palm Beach, Florida 33401.

15           **Q**     How many years have you worked with Florida  
16 Public Utilities Company?

17           **A**     34 years.

18           **Q**     And what is your position with Florida  
19 Public Utilities Company?

20           **A**     Vice president.

21           **Q**     What are your responsibilities in that  
22 position?

23           **A**     To oversee the activities of the county and  
24 the Customer Service Department.

25           **Q**     Okay. During the past 34 years how many

1 years of that time period have you had  
2 responsibilities with the company involving the  
3 requirements of the Florida Public Service Commission?

4 A Approximately 27 years.

5 Q Do you have any professional degrees?

6 A I have a BBA from Florida Atlantic  
7 University with a major in accounting.

8 Q Okay. During the past 34 years have you had  
9 any responsibilities with Florida Public Utilities  
10 Company involving the rules at issue in this case,  
11 that is Rules 25-7.0834 and 20-7.089?

12 A Yes, I have. Being in charge of the  
13 Customer Service Departments these rules fall into  
14 this area and I developed procedures -- implemented  
15 procedures in the area of these rules for the Customer  
16 Service Departments.

17 Q How many divisions of the company does this  
18 involve?

19 A Four divisions.

20 Q Okay. Are these in different geographic  
21 locations?

22 A Yes.

23 Q Okay. And about how many years have you had  
24 these responsibilities?

25 A Approximately seven years.

1 Q Okay. Have you ever been qualified as an  
2 expert witness in PSC proceedings with regard to PSC  
3 rule requirements?

4 A Yes, I have, in the area of filing of rate  
5 cases. Also the PGA dockets and fuel dockets.

6 Q What are PGA dockets?

7 A Purchased gas adjustments.

8 Q Are you familiar with the facts of this  
9 case?

10 A Yes, I am.

11 Q Were you involved -- were you responsible  
12 for handling the complaint before the Florida Public  
13 Service Commission?

14 A Yes, I was.

15 Q Okay. Mr. Troy, have you reviewed the  
16 exhibit list which was submitted in the prehearing  
17 statement in this case?

18 A Yes.

19 Q Okay. Did you prepare for this case an  
20 account summary for the Petitioner's account in this  
21 case?

22 A Yes. I have a copy of it here, which I can  
23 put on the stand. (Witness puts chart up on easel.)

24 MS. COWDERY: I would like to have  
25 identified at this time the Account Summary that was



1 listed in the Prehearing Statement of Respondent as  
2 No. 4. Do you have that, Your Honor?

3 THE COURT: Yes.

4 MS. COWDERY: Okay.

5 THE COURT: I have that in front of me.

6 MS. COWDERY: Okay. Could I have that  
7 identified, marked for identification at this time?

8 THE COURT: Yes. I'm going to mark the  
9 document for identification, as Respondent's Exhibit  
10 A.

11 Q (By Ms. Cowdery) Mr. Troy, upon what  
12 documents did you base the entries on this account  
13 summary?

14 A The entries are based on different documents  
15 derived from the company records concerned in the  
16 Mother's Kitchen account. This is the summary of the  
17 Mother's Kitchen gas account for the approximately six  
18 months that they were on.

19 Q Okay. Now, with regard to the company  
20 documents that you used and the documents to support  
21 this summary, was it the regular practice of Florida  
22 Public Utilities Company to keep these records in the  
23 course of its business?

24 A These are the regular records of the company  
25 in the course of business.

1 Q Okay. Are you familiar with the records of  
2 regularly conducted business activity of the Florida  
3 Public Utilities Company's Sanford office?

4 A Yes, I am.

5 Q Are you familiar with the computer generated  
6 records of the Florida Public Utilities Company  
7 related to the Mother's Kitchen commercial gas  
8 account?

9 A Yes.

10 Q Are you familiar with the way those records  
11 are kept by Florida Public Utilities Company?

12 A Yes.

13 Q Okay.

14 MS. COWDERY: I would like to have this  
15 summary identified as an exhibit and entered into the  
16 record. I think Respondent's 15.

17 THE COURT: Mr. Brooks, any objection?

18 MR. BROOKS: Yes, sir. I would object to  
19 the entry of this document into the record.

20 The document has a date on it showing  
21 January 30th, 1998. Mr. Troy has entered several  
22 documents entitled "Chronological Summary, Summary of  
23 Account -- Summary of Account as well as two  
24 Chronological Summaries in the record in this case  
25 already, with different notations shown in different

1 areas. This is a completely different referral to --  
2 and, in particular, references to the entry next to  
3 August 8th and -- I'm sorry, August 30th, and August  
4 12th on this particular document.

5           Prior to the prehearing conference here we  
6 had in Tallahassee, no such -- this document did not  
7 exist in the record. This document was -- shoved at  
8 us at that particular hearing up there.

9           **MS. COWDERY:** Objection to the  
10 characterization.

11           **MR. BROOKS:** Well, it was thrown across the  
12 table at us at that particular hearing up there. This  
13 document was not a part of the record prior to that  
14 time.

15           Mr. Troy has entered several such documents  
16 already that are a part of the record. And if we're  
17 going to use anything for an official summary of  
18 account, then if those particular summaries that  
19 Mr. Troy has already entered are not utilized, then  
20 this particular document certainly should not be  
21 utilized.

22           Furthermore, in Ms. Cowdery's lead in to  
23 this document, in response to what documents were used  
24 to create this particular exhibit, the answer was  
25 different documents involving the Mother's Kitchen

1 account. There's no clear -- there's no clear  
2 definition of exactly what document was utilized.

3 **THE COURT:** Response?

4 **MS. COWDERY:** Mr. Brooks has not offered a  
5 valid objection to this document. Mr. Troy has  
6 testified that he prepared this document using various  
7 information that he had that he was aware of, that  
8 were business documents of the company. This document  
9 was identified on Respondent's exhibit list as Item  
10 No. 4. It was provided to Mr. Brooks appropriately.  
11 The witness is allowed to present a summary of  
12 information and has laid a proper foundation for its  
13 use.

14 **THE COURT:** I'm going to overrule the  
15 objection and admit the document.

16 Mr. Brooks, as far as this document is  
17 concerned, this is an aid to the Judge to -- in  
18 looking at the account, based on the Respondent's view  
19 of the evidence. So I understand there's certain  
20 disputes as to what happened between August 12th and  
21 August 30th with some of the money. You've offered --  
22 some of your witnesses have offered different  
23 testimony as to what money was offered and what  
24 happened to it. But this is -- so I understand that,  
25 and this doesn't make this an official document per

1 se, it's a summary to assist me from the Respondent's  
2 point of view.

3 So just as a way of explanation. So I'll  
4 admit the document in evidence as Respondent's Exhibit  
5 15.

6 All right. Continue.

7 (Respondent's Exhibit 15  
8 received into evidence.)

9 Q (By Ms. Cowdery) Mr. Troy, in general,  
10 what does this document show?

11 A It shows the -- again, like I said, it's the  
12 gas billing of Mother's Kitchen for the about  
13 six-month period.

14 In the first two columns we see gas usage  
15 and the amount of the bill. In the next column we  
16 show payments that came in throughout the six-month  
17 period. Next column there's any nonsufficient fund  
18 check return charges, return of checks. It shows  
19 balances at various days throughout the life of the  
20 account, and there's an explanation of the entries  
21 also included there.

22 Q Okay. Is there a reason that you chose this  
23 format for your account summary?

24 A Yes. This format was used by the Public  
25 Service Commission. The staff of the Public Service

1 Commission submitted this with their staff  
2 recommendation to the Commissioners, which they based  
3 their proposed agency action on in I believe it was  
4 September.

5 Q Okay. Is your exhibit here, Exhibit 15, is  
6 it identical to the account summary which staff  
7 prepared?

8 A It is not identical to the staff summary.

9 Q Okay. Can you point out to us any entries  
10 which are different?

11 A Yes, I can. We added a few entries on  
12 August 12th. The meter shut off for nonpayment --  
13 excuse me, was August 12th mailing address change,  
14 1744 Airport Boulevard, and also the meter shut-off  
15 for nonpayment. First two August 12 entries. The  
16 August 13th entry, which was gas turned back on by  
17 T. Love. That's basically the entries that were  
18 added.

19 Q Okay. Were there any changes that you can  
20 think of at the moment to amounts of money?

21 A Yeah. Staff had a typo error. On September  
22 19th, the 11075 which shows on my summary, they had  
23 11025. It should be 11075.

24 Q Which column is that in?

25 A That's in the bill column under September

1 19th. 11075; on their's said 11025.

2 Q Is the balance column correct?

3 A Yes.

4 Q All right. Is there anything else you can  
5 think of?

6 A I think there were two minor date changes.  
7 And also on May 23rd, there was an explanation of a  
8 check signed by Arthur Brooks on their's, it was  
9 determined that was Anthony Brooks that signed that  
10 check on May 23rd

11 Q So that's on the May 23rd date. Is your  
12 entry correct to your knowledge?

13 A To my knowledge that check was signed by  
14 Anthony Brooks.

15 Q Okay. All right.

16 MS. COWDERY: I have -- would like to have  
17 identified for the record what is listed on  
18 Respondent's Prehearing Statement as Exhibit 7. It's  
19 a 4-22-96 Mother's Kitchen check, No. 1013.

20 THE COURT: I'm going to mark the document  
21 for identification as Respondent's Exhibit B.

22 Q (By Ms. Cowdery) Okay? Mr. Troy, do you  
23 recognize this copy of a check?

24 A Yes, I do.

25 Q What was this check for?

1           **A**       This was a payment by Mother's Kitchen for  
2 the original installation of the gas equipment at  
3 their location on March 22nd.

4           **Q**       Okay. Now, I want to refer you to another  
5 exhibit in this case, which is Respondent's Hearing  
6 Exhibit No. 1. Wait a minute. I've got a wrong  
7 number. (Pause) I'm sorry. Respondent's No. 5, Job  
8 Work Contract dated 3-22-96.

9                   **THE COURT:** Just a moment.

10                   **MS. COWDERY:** Respondent's Hearing  
11 Exhibit No. 5.

12                   **THE COURT:** I don't seem to have that at  
13 this time.

14                   **MS. COWDERY:** Okay.

15                   **THE COURT:** At least not the way it's  
16 marked, or you've indicated that it's marked.

17                   **MS. COWDERY:** Let me double-check on my list  
18 here, sir.

19                   **THE COURT:** Is this the billing registers?

20                   **MS. COWDERY:** No. It's the actual hearing  
21 exhibit entered into the record at the March 4th  
22 hearing, and I've got it showing as Respondent's  
23 Hearing Exhibit 5 in my file folder.

24                   **THE COURT:** Okay. I misunderstood what you  
25 were directing to. You're referring to the document



1 previously admitted as Respondent's 5.

2 MS. COWDERY: Yes.

3 THE COURT: Job Work Contract for 3-22-96.

4 I have it in front of me now.

5 Q (By Ms. Cowdery) Mr. Troy, did that check  
6 No. 1013, was that in payment of the work done  
7 pursuant to Respondent's Exhibit 5 job order?

8 A Yes, it was.

9 Q Okay.

10 MS. COWDERY: I would like to have  
11 Respondent's B entered into the record.

12 THE COURT: Any objection, Mr. Brooks?

13 MR. BROOKS: No, sir.

14 THE COURT: Without objection, the document  
15 previously marked for identification as Respondent B  
16 is admitted into evidence as Respondent's Exhibit 16.

17 MS. COWDERY: Okay.

18 (Respondent's Exhibit 16  
19 received into evidence.)

20 Q (By Ms. Cowdery) Okay. Mr. Troy, I would  
21 like to have you look at a 4-23-96 bill stub in the  
22 amount of \$126.59, and I would like to have that  
23 marked for identification.

24 THE COURT: This is in the folder you  
25 provided to me, Ms. Cowdery?

1           **MS. COWDERY:** It's No. 8. 4-23-96 bill stub  
2 for \$126.59.

3           **THE COURT:** Yes, I have it now. And mark it  
4 for identification as Respondent's C.

5           **Q**        **(By Ms. Cowdery)** Mr. Troy, do you  
6 recognize this bill stub?

7           **A**        Yes.

8           **Q**        I'm sorry. Do you recognize this document?

9           **A**        Yes, I do. This is the bill stub from the  
10 bill we sent to Mother's Kitchen on installing the  
11 merchandise that cost 126.59. The date on the bill is  
12 3-31-96 and it was paid on April 23rd, 1996. A check  
13 came with this to pay it.

14          **Q**        Okay.

15          **MS. COWDERY:** I would like to have that bill  
16 stub entered into the record as Exhibit 17.

17          **THE COURT:** Without objection I'll admit the  
18 document into evidence as Respondent's Exhibit 17.

19                    (Respondent's Exhibit 17  
20 received into evidence.)

21          **MS. COWDERY:** Now I'd like to have marked  
22 for identification the billing registers. They are  
23 identified in a folder with a number 5 on them.

24          **THE COURT:** Okay, I have that document.

25          **MS. COWDERY:** Have it identified as

1 Respondent's D, I believe.

2 THE COURT: Yes.

3 Q (By Ms. Cowdery) Mr. Troy, do you  
4 recognize these billing registers?

5 A Yes, I do.

6 Q What do they show?

7 A These billing registers show the information  
8 that was on the bill that went out to the customers.  
9 The billing register date would be the date the bills  
10 were mailed. It would show who the bills were mailed  
11 to, what the account number was, how much was owed.  
12 There was one of these dated 4-3-96 which says  
13 merchandise bill and register, which was the 126.95 we  
14 have been discussing.

15 Q Is that the first document in the stack?

16 A Yes, that's the first document.

17 Q Okay.

18 A Following that you have a series of about  
19 seven of them, one for each month, which would be the  
20 gas bills that were rendered to the Alfred Byrd  
21 account d/b/a Mother's Kitchen, showing -- again, the  
22 date the bills are rendered are shown at the top of  
23 the register. The total bill, the current bill, any  
24 arrears is all shown on these documents.

25 Q Okay. Do these registers show where the

1 bills were mailed?

2           A     Yes, they do. They all show both the  
3 service address, and if there's a mailing address that  
4 is different from the service address, it will show  
5 under the "care of" name, which is to the right. And  
6 looking at the 4-9 register, what's called the billing  
7 register dated 4-9-96.

8           Q     That's the second page?

9           A     Second page. You'll see under "service  
10 address" at the top, 1744 Airport Boulevard. But  
11 under the "care of" name you'll see d/b/a Mother's  
12 Kitchen, P. O. Box 134, on what is called the overflow  
13 address; that becomes the mailing address.

14          Q     So on this month, to what address or what  
15 location was the bill mailed?

16          A     The April bill would have been mailed to  
17 P. O. Box 134.

18          Q     Okay. For the rest of these registers,  
19 would you please tell us where a bill was mailed?

20          A     The May bill on the May 8th register shows  
21 P. O. Box 134. June bill on June 7th register shows  
22 P. O. Box 134. The July bill on the 7-9 register  
23 shows a P. O. Box 134. The August bill on the 8-07  
24 register shows P. O. Box 134.

25          Q     So when would that bill have been mailed in

1 August?

2 A The August bill was mailed the same date  
3 that's up there, August the 7th.

4 Q Okay.

5 A The September bill, which was mailed 9-9 of  
6 '96, does not have the P.O. 134, so it went to the  
7 service address, 1744 Airport Boulevard.

8 Q Okay. Does that mailing in September to the  
9 1744 Airport Boulevard address correspond to anything  
10 on your account summary?

11 A Yes. Our account summary shows on August  
12 12th the mailing address changed to 1744 Airport  
13 Boulevard per Anthony Brooks' request.

14 Q Okay. Now, what about October, what does  
15 that show?

16 A The October bill, back on -- was mailed on  
17 10-9-96 referred it back to P. O. Box 134, back to the  
18 Alfred Byrd account.

19 Q Why was that?

20 A It was filed in Alfred Byrd's name. It was  
21 his responsibility.

22 Q Okay.

23 A And that was his P. O. Box from what I  
24 understand.

25 Q Okay. Is there anything on these billing

1 registers that links up to the account summary  
2 regarding billing dates or balances due?

3 A Yes. The billing date should tie into the  
4 date on the summary. The amount of the bill, both the  
5 current and the total bill will tie in also to the  
6 summary.

7 Q Okay. Anything about arrearages, past due?

8 A If there's arrears shown on the bill, it  
9 will also be shown on the balance there as being past  
10 due.

11 Q Okay. Mr. Troy, if anyone from Mother's  
12 Kitchen had given Florida Public Utilities money as a  
13 deposit to set up a new account, would it have  
14 generated a new account on the billing register  
15 similar to the April 9th, 1996, gas billing register  
16 in this exhibit? The second page?

17 A Yes, it would have.

18 Q Is there any such additional account shown  
19 on the billing register?

20 A There's no such additional account shown on  
21 the billing register.

22 MS. COWDERY: I'd like to enter this  
23 document, billing register as Composite Exhibit 18.

24 THE COURT: Any objection, Mr. Brooks?

25 MR. BROOKS: I've not seen the documents.

1           **MS. COWDERY:** Mr. Brooks, I sent you a  
2 complete copy of these documents after a prehearing  
3 conference. Just so I know, do you have those with  
4 you?

5           **MR. BROOKS:** I have not seen the documents  
6 you're referring to.

7           **MS. COWDERY:** All right. For the record, I  
8 submitted a complete set of these to Mr. Brooks, but I  
9 have copies to give him today. (Counsel hands  
10 documents to Mr. Brooks.)

11           **MR. BROOKS:** Yes, sir, I do have an  
12 objection to these documents based solely upon, and  
13 for one reason only: Mr. Troy states that per these  
14 documents he was able to correspond a line on his  
15 summary where it shows address change requested by --  
16 requested -- mailing address changed to 1744 Airport  
17 Boulevard per Anthony Brooks' request. There's  
18 nothing, absolutely nothing on these documents that  
19 shows any record of such a request. And there  
20 certainly isn't anything on these documents that show  
21 that I ever requested such an entry. And if these  
22 documents are offered into the record as support for  
23 that particular line on that summary, they are  
24 therefore in error because they do not show such a  
25 notation as Mr. Troy alludes to. It's an error. On

1 that one line there's absolutely nothing here to show  
2 that -- that would show why there would not be an  
3 error regarding any other line.

4 So I would object to these documents on that  
5 basis, unless Mr. Troy can show me a code, or  
6 something on one of these items that's different than  
7 the other, which would indicate to him that by that  
8 particular code that Anthony Brooks requested anything  
9 of Florida Public Utilities.

10 **THE COURT:** Ms. Cowdery.

11 **MS. COWDERY:** That's not a proper objection  
12 to the document. Mr. Brooks appears to be disagreeing  
13 with what Mr. Troy testified to, which he can address  
14 on cross examination of Mr. Troy. But his belief that  
15 this document is in error is not a proper objection  
16 for leaving it -- for not admitting it.

17 **MR. BROOKS:** Sir, if I may?

18 **THE COURT:** Go ahead.

19 **MR. BROOKS:** Ms, Cowdery, in her questioning  
20 of Mr. Troy, went to specific portions of this  
21 document. And Mr. Troy, in response to Ms. Cowdery,  
22 alluded to the entry on this line on his account  
23 summary document here. And he responded -- he  
24 responded by saying that the August 12 entry on this  
25 document showed an address change per Anthony Brooks'



1 request.

2 Now, like I said, unless there's a code on  
3 here that somehow let's him know that, then I can't  
4 see how the entry of this document, as a means to show  
5 that entry on that form, would be acceptable.

6 **THE COURT:** I'm going to overrule the  
7 objection. I think that's proper to inquire under  
8 cross examination. I'll admit the document into  
9 evidence as Respondent's Exhibit 18.

10 (Respondent's Exhibit 18  
11 received into evidence.)

12 **MS. COWDERY:** I would like next to have  
13 marked for identification Mother's Kitchen check  
14 No. 1074. It is in a folder with a number 10 on it  
15 because it was identified as Respondent's Exhibit 10  
16 in the prehearing statement. Dated 5-20-96.

17 **THE COURT:** I'll mark the document for  
18 identification as Respondent's Exhibit E.

19 **MS. COWDERY:** Okay.

20 **Q** (By Ms. Cowdery) Mr. Troy, do you  
21 recognize this check?

22 **A** Yes, I do.

23 **Q** What do you know about this check?

24 **A** It was a check received by Florida Public  
25 Utilities. It's \$150, face amount. We received it on

1 May 23rd, 1996, and it shows on our summary sheet  
2 posted \$150; payment coming in on that amount. The  
3 check signed by Anthony Brooks.

4 Q Was there anything else about what happened  
5 to this check?

6 A Later on we found that, after it was  
7 received by us, it came back from the bank stamped  
8 NSF.

9 Q What does "NSF" mean?

10 A Nonsufficient funds.

11 Q Okay. Do you know when that check was  
12 returned, more or less?

13 A It was returned from the bank in early June.

14 Q Okay. Is there anything on this summary of  
15 account that corresponds to this check?

16 A You'll see in the NSF check return column a  
17 \$170 item on June 7. That represents the \$150 check  
18 being charged back to the account, plus a \$20 service  
19 charge for issuing a NSF check. Total of \$170 charged  
20 to the account.

21 Q Okay. I'd like to have this document  
22 entered as Respondent's Exhibit No. 19.

23 THE COURT: Any objection? Without  
24 objection the document is admitted into evidence as  
25 Respondent's Exhibit 19.

1 (Respondent's Exhibit 19  
2 received into evidence.)

3 MS. COWDERY: I'd like to have marked for  
4 identification the 5-23-96 Florida Public Utilities  
5 Company receipt for \$150.

6 THE COURT: Is that marked as Folder No. 9?

7 MS. COWDERY: Correct.

8 THE COURT: I'll mark the document for  
9 identification as Respondent's Exhibit F.

10 Q (By Ms. Cowdery) Mr. Troy, do you  
11 recognize this document?

12 A Yes.

13 Q What is it?

14 A It's a receipt issued by the company to  
15 Mother's Kitchen for a \$150 payment on May 23rd.

16 Q And where does this show up on your account  
17 summary?

18 A That shows up on the payment of \$150, May  
19 23rd. This is the stub -- not the stub, but the  
20 receipt we issued when the check came in.

21 MS. COWDERY: I would like to have this  
22 document entered as Respondent's Exhibit 20.

23 THE COURT: Without objection, the document  
24 is admitted into evidence as Respondent's Exhibit 20.

25 (Respondent's Exhibit 20

1 received into evidence.)

2           **MS. COWDERY:** I'd like to have marked for  
3 identification what is in Folder 11. It is the  
4 6-10-96 receipt for \$170.

5           **THE COURT:** I have the document and I'm  
6 marking it as Respondent's Exhibit G.

7           **Q**        **(By Ms. Cowdery)** Mr. Troy, do you  
8 recognize this document?

9           **A**        Yes, I do.

10          **Q**        What is it?

11          **A**        It's a payment coming in of \$170, and being  
12 that it's 170 it's reimbursement for the bad check  
13 charge of \$170. They broke it down on the receipt,  
14 the two amounts, 150 utility and \$20, which was the  
15 service charge.

16          **Q**        Okay. And where does this show on your  
17 account summary?

18          **A**        It shows an a June 10th payment of \$170 paid  
19 for gas services.

20                **MS. COWDERY:** Okay. I'd like to have this  
21 entered as Respondent's 21.

22                **MR. BROOKS:** No objection.

23                **THE COURT:** Without objection, the document  
24 is admitted into evidence as Respondent's Exhibit 21.

25                    **(Respondent's Exhibit 21**

1 received into evidence.)

2 MS. COWDERY: I'd like to have marked for  
3 identification from Folder 12 the 7-11-96 receipt for  
4 \$160.

5 THE COURT: Document's marked for  
6 identification Respondent's Exhibit H.

7 Q (By Ms. Cowdery) Mr. Troy, do you  
8 recognize this document?

9 A Yes. This is a receipt issued for cash  
10 payment, \$160, to the Al Byrd, Mother's Kitchen  
11 account. It shows on the summary as the payment of  
12 \$160 on the July 11th, 1996.

13 Q Okay.

14 MS. COWDERY: I would like to have this  
15 entered as Respondent's 23.

16 MR. BROOKS: No objection.

17 MS. COWDERY: Wait.

18 THE COURT: It's 22.

19 MS. COWDERY: 22, I'm sorry.

20 THE COURT: Right. Without objection the  
21 document is admitted into evidence as Respondent's  
22 Exhibit 22.

23 (Respondent's Exhibit 22  
24 received into evidence.)

25 Q (By Ms. Cowdery) Now, I would like to

1 refer back to an exhibit already entered into the  
2 record, Respondent's Hearing Exhibit 4. It's a copy  
3 of a July 24th Mother's Kitchen check.

4 **THE COURT:** I have that document.

5 **Q** (By Ms. Cowdery) Do you recognize this  
6 check, Mr. Troy?

7 **A** Yes, I do.

8 **Q** Could you tell me about it?

9 **A** This is a check issued from Mother's Kitchen  
10 signed Al Byrd in the amount of \$211.72, dated 7-24-96  
11 and it shows on our account summary as the 2-11-72  
12 payment on July 24th.

13 **Q** Okay. And what happened to this check?

14 **A** This check was returned from the bank  
15 unpaid.

16 **Q** Okay. About when was that returned?

17 **A** That was returned early August.

18 **Q** And is there an entry corresponding to the  
19 return of this check on your account summary?

20 **A** Yes. On August 8th you'll see an entry  
21 under the NSF check returned column, 231.72. This  
22 represents the charge-back of this check of 211.72  
23 plus, again, the \$20 service charge.

24 **Q** Okay. Thank you.

25 **MS. COWDERY:** I'd like to have marked for

1 identification from Folder 13 the 7-24-96 receipt for  
2 2-11-72.

3           **THE COURT:** I'll mark for identification the  
4 document as Respondent's Exhibit I.

5           **Q** (By Ms. Cowdery) Do you recognize this  
6 receipt, Mr. Troy?

7           **A** Yes, I do.

8           **Q** Would you tell me about it?

9           **A** This is the receipt issued on receipt of a  
10 check, on the top check No. 1131. Amount of the check  
11 is 211.72. The check went to the credit of Mother's  
12 Kitchen account on 7-24-96, and it is reflected on  
13 that date, July 24th, '96, under the payment column  
14 211.72.

15           **Q** Okay.

16           **MS. COWDERY:** I'd like to have this entered  
17 as Respondent's 23.

18           **THE COURT:** Without objection it's admitted  
19 into evidence as Respondents Exhibit 23.

20           (Respondent's Exhibit 23  
21 received into evidence.)

22           **MS. COWDERY:** I'd like to have marked for  
23 identification from Folder 15 a copy of Petitioner's  
24 8-7-96 gas bill for \$540.04.

25           **THE COURT:** Document is being marked for

1           **A**     This bill is obtained through discovery. I  
2 believe we got it at a deposition of Mr. Brooks in  
3 December.

4           **Q**     Okay. This came from Mother's Kitchen?

5           **A**     Yes.

6           **Q**     Okay.

7           **MS. COWDERY:** I would like to have this  
8 entered as Respondent's Exhibit No. 24.

9           **THE COURT:** Without objection the document  
10 is admitted into evidence as Respondent's Exhibit 24.

11                   (Respondent's Exhibit 24  
12 received into evidence.)

13           **MS. COWDERY:** I'd like to have marked for  
14 identification from File 16, the 8-12-96 door-hanger  
15 notice, past due amount, \$285.64.

16           **THE COURT:** The document is marked for  
17 identification as Respondent's Exhibit K.

18           **Q**     **(By Ms. Cowdery)** Do you recognize this  
19 notice, Mr. Troy?

20           **A**     Yes, I do.

21           **Q**     Okay. And would you explain it?

22           **A**     This is a door hanger that we put on the  
23 customer's door explaining why we turned off the gas.  
24 On this notice here it says for an amount of \$285.64.  
25 The date at the top is 8-12.



1 identification from Folder 13 the 7-24-96 receipt for  
2 2-11-72.

3           **THE COURT:** I'll mark for identification the  
4 document as Respondent's Exhibit I.

5           **Q** (By Ms. Cowdery) Do you recognize this  
6 receipt, Mr. Troy?

7           **A** Yes, I do.

8           **Q** Would you tell me about it?

9           **A** This is the receipt issued on receipt of a  
10 check, on the top check No. 1131. Amount of the check  
11 is 211.72. The check went to the credit of Mother's  
12 Kitchen account on 7-24-96, and it is reflected on  
13 that date, July 24th, '96, under the payment column  
14 211.72.

15           **Q** Okay.

16           **MS. COWDERY:** I'd like to have this entered  
17 as Respondent's 23.

18           **THE COURT:** Without objection it's admitted  
19 into evidence as Respondents Exhibit 23.

20           (Respondent's Exhibit 23  
21 received into evidence.)

22           **MS. COWDERY:** I'd like to have marked for  
23 identification from Folder 15 a copy of Petitioner's  
24 8-7-96 gas bill for \$540.04.

25           **THE COURT:** Document is being marked for

1 identification as Respondent's Exhibit J.

2 MS. COWDERY: Okay.

3 Q (By Ms. Cowdery) Do you recognize this  
4 exhibit, Mr. Troy?

5 A Yes, I do.

6 Q And what is it?

7 A It's the bill for gas service that we  
8 rendered in early August for -- total of the bill is  
9 \$540.04.

10 Q Okay. What does it correspond to on your  
11 account summary?

12 A This would correspond to the August 7th  
13 line, showing \$540.04 total bill rendered.

14 Q Is this the billing format which is sent out  
15 to all customers, including Mother's Kitchen, every  
16 month?

17 A Yes.

18 Q Does it show all amounts due on the account?

19 A Right. It will show the current charges and  
20 any past due amounts.

21 Q Okay. Does the utility keep a copy of this  
22 bill?

23 A No, we do not.

24 Q Okay. Where did Florida Public Utilities  
25 Company get a copy of this bill?

1           **A**     This bill is obtained through discovery. I  
2 believe we got it at a deposition of Mr. Brooks in  
3 December.

4           **Q**     Okay. This came from Mother's Kitchen?

5           **A**     Yes.

6           **Q**     Okay.

7           **MS. COWDERY:** I would like to have this  
8 entered as Respondent's Exhibit No. 24.

9           **THE COURT:** Without objection the document  
10 is admitted into evidence as Respondent's Exhibit 24.

11                   (Respondent's Exhibit 24  
12 received into evidence.)

13           **MS. COWDERY:** I'd like to have marked for  
14 identification from File 16, the 8-12-96 door-hanger  
15 notice, past due amount, \$285.64.

16           **THE COURT:** The document is marked for  
17 identification as Respondent's Exhibit K.

18           **Q**     (By Ms. Cowdery) Do you recognize this  
19 notice, Mr. Troy?

20           **A**     Yes, I do.

21           **Q**     Okay. And would you explain it?

22           **A**     This is a door hanger that we put on the  
23 customer's door explaining why we turned off the gas.  
24 On this notice here it says for an amount of \$285.64.  
25 The date at the top is 8-12.

1 Q Okay. So if somebody got this door hanger,  
2 it means the gas was turned off?

3 A Yes.

4 Q Okay. Does the Company keep a copy of this  
5 notice?

6 A No.

7 Q And where did Florida Public Utilities  
8 Company receive this document?

9 A We got this also through discovery from  
10 Mr. Brooks in December.

11 Q Okay. And what does this document  
12 correspond to on your account summary?

13 A The first August 12th line, which shows  
14 under "description" column, "meter shut off for  
15 nonpayment of \$285.64."

16 Q Okay.

17 MS. COWDERY: I'd like to have this entered  
18 as Respondent's 25.

19 THE COURT: Without objection the document  
20 is admitted into evidence as Respondent's Exhibit 25.

21 (Respondent's Exhibit 25  
22 received into evidence.)

23 MS. COWDERY: I'd like to have marked for  
24 identification from Folder 8, receipt for \$290 dated  
25 8-12. I'm sorry. I'm sorry. I'm referring to what

1 has been previously entered in the record as  
2 Respondent's Exhibit 8. Previously entered into the  
3 record.

4 THE COURT: Okay. I have that document.

5 MS. COWDERY: Okay.

6 Q (By Ms. Cowdery) Mr. Troy, do you  
7 recognize this receipt?

8 A Yes, I do.

9 Q What is it and to what does it refer in your  
10 account summary?

11 A It's a cash receipt for \$290 received from  
12 the Mother's Kitchen account on August 13th. This  
13 receipt is shown on the August 12th entry here where  
14 you see \$290 under the payment column.

15 Q Would you explain, when was the payment  
16 received?

17 A The payment was received August 12th. It's  
18 stamped "paid" on August 13 but it was received August  
19 12 at the office.

20 Q Why is there a difference between the  
21 payment date and stamped-in date?

22 A When the cashiers close out for the day, and  
23 they will close out prior to Wells Fargo coming  
24 picking up the bank deposit, which is round 11:30,  
25 noon. They close out before noon, before 11:30.

1           After they close out, they will advance the  
2 date on their stamp at the computer screen to agree  
3 with the deposits that will be going into the next  
4 day's deposits to the bank, so if you bring in an  
5 payment they advance the date. But on the receipt  
6 they will show the actual date that they got it from  
7 the customer, as this one shows.

8           Q       Okay. Thank you.

9           MS. COWDERY: I'd like to have marked for  
10 identification item Folder 18, the 8-13-96 time log of  
11 Tim Love.

12           THE COURT: All right. Mark the document  
13 for identification as Respondent's Exhibit L.

14           Q       (By Ms. Cowdery) Mr. Troy, do you  
15 recognize this document? And to what does it  
16 correspond on the account summary?

17           A       Tim Love's time log for the day of August  
18 13th, 1996. On the about sixth line down you'll see  
19 1744 Airport Boulevard. The next column it says SONP,  
20 which is shut off for nonpaid; TON, turn on.

21                   That means early that morning, in the next  
22 column it shows the time, where 11:15 he arrived to  
23 turn on account that had been shut off for nonpaid.  
24 This ties into the summary. On the August 13th line  
25 it shows gas turned on by T. Love.

1 Q Okay.

2 MS. COWDERY: I'd like to have this entered  
3 as exhibit Respondent's 26.

4 THE COURT: Without objection the document  
5 is admitted into evidence as Respondent's Exhibit 26.

6 (Respondent's Exhibit 26  
7 received into evidence.)

8 MS. COWDERY: Okay. I'd like to have marked  
9 for identification from Folder 20 the turn-off notice  
10 dated 8-30-96 for \$230.04.

11 THE COURT: Document is marked for  
12 identification as Respondent's Exhibit N.

13 Q (By Ms. Cowdery) Mr. Troy, do you  
14 recognize this document?

15 A Yes.

16 Q And what is it?

17 A This is a notice that we send out to our  
18 customers advising them that they have to make a  
19 payment by a certain date to avoid disconnection of  
20 the gas. This notice here shows a turn-off date of  
21 September 10th, 1996. The date of the notice or when  
22 it was mailed August 30th, '96. At the bottom it  
23 shows the total amount that was due to avoid turn off,  
24 \$230.04. It has the customer's name and address  
25 Alfred Byrd d/b/a Mother's Kitchen, 1744 Airport

1 Boulevard, Sanford, Florida. It was sent to the  
2 service address; not the P. O. Box.

3 It also shows when the serviceman worked on  
4 this card he put down the date he terminates service,  
5 which was September 12th. He locked the meter. The  
6 meter was reading 5365 at the time.

7 Q What does that handwritten note under  
8 "remarks" say?

9 A "Locked 5365."

10 Q What does "locked" mean?

11 A He turned off the meter and locked it.

12 Q Okay. To what on your account summary does  
13 this notice correspond?

14 A On August 30th we show the disconnect notice  
15 being mailed for a past due amount \$230.04. And then  
16 on September the 12th, meter shut off for nonpayment,  
17 \$230.04.

18 Q Okay.

19 MS. COWDERY: I'd like to have this entered  
20 as Respondent's 27.

21 THE COURT: Without objection, it's admitted  
22 into evidence as Respondent's 27.

23 (Respondent's Exhibit 27  
24 received into evidence.)

25 Q (By Ms. Cowdery) Mr. Troy, I'd like to



1 have --

2 MS. COWDERY: I'd like to have marked for  
3 identification what's marked as Folder 44, which is a  
4 Turn-off Notice form.

5 THE COURT: This is a blank form with the  
6 carbon copies attached and everything?

7 MS. COWDERY: Yes, sir. You have an  
8 original. Everyone else has copies of all three  
9 pages.

10 THE COURT: All right. I'll mark the  
11 original for identification as Respondent's Exhibit N.

12 Q (By Ms. Cowdery) Okay. Mr. Troy, could  
13 you identify and explain what this is?

14 A Yes. This is a blank Turn-off Notice form  
15 that we send out to the customers.

16 Q What is the purpose of sending it to them?

17 A To encourage payment, to avoid shut off for  
18 nonpaid. It basically comes in two parts. You have  
19 the front copy. On the back side of the front copy is  
20 the narrative that you see on the second page that's  
21 on the back side. And then there's the -- what is  
22 called hard copy on the back end which the company  
23 keeps.

24 Q In general, what information is conveyed to  
25 the customer on the back side of that form?

1           **A**     It just warns them of the seriousness. That  
2 to avoid service -- the total due on the other side of  
3 the form must be paid by the turn-off date. And it  
4 tells them if they can't get to the office during work  
5 hours, there's a night deposit box available. It  
6 gives them some recourse if they're not happy with  
7 what they are hearing from the company. It gives the  
8 Public Service Commission's number also.

9           It also warns them if they do get cut of one  
10 day, we cannot guarantee reconnection that day. Upon  
11 payment of the past due amount and the reconnect  
12 charge, that service could be restored the following  
13 day.

14           **Q**     Was this the type form which was sent to the  
15 Mother's Kitchen restaurant?

16           **A**     Yes.

17           **MS. COWDERY:** I'd like to have this entered  
18 as Respondent's 28.

19           **MR. BROOKS:** I object to this, Your Honor.  
20 There's nothing on this document which would indicate  
21 that this document was mailed to Mother's Kitchen  
22 restaurant. And Ms. Cowdery's question was, was this  
23 the type form sent to Mother's Kitchen restaurant? To  
24 which the witness responded yes.

25           However, she says type form. There's

1 absolutely nothing on this document, and even in the  
2 text of the -- even in the text of the paragraphs on  
3 the reverse side to which she was referring to, makes  
4 no mention of this thing ever being sent to Mother's  
5 Kitchen restaurant.

6           **MS. COWDERY:** Your Honor, the testimony of  
7 Mr. Troy was not that this particular document was  
8 sent, but this is the form which would have been  
9 filled out and sent to Mother's Kitchen restaurant.  
10 This is the form that was used. The purpose being to  
11 show what information was sent to Mother's Kitchen  
12 restaurant, which included that customer information.

13           Again, it is not a proper objection if  
14 Mr. Brooks disagrees that it may or may not have been  
15 sent.

16           **MR. BROOKS:** No, sir. What Ms. Cowdery's  
17 statement just did, indicates is, is that she's saying  
18 this item is introduced as a document which would  
19 reflect what the customer would have received.

20           Now, this document -- while I'm holding  
21 three different pages here, copies, I assume that this  
22 document is a one-piece document, with carbon copies  
23 behind, based upon the description Ms. Cowdery was  
24 using. There's nothing on this document that would  
25 indicate that this information in the back or the

1 information in the front was ever sent to Mother's  
2 Kitchen. And this document -- unless she has such a  
3 document to indicate that it was sent to Mother's  
4 Kitchen, then this document has absolutely no  
5 significance to the case at hand here.

6 **THE COURT:** I understand. And I'll reserve  
7 ruling as to relevance, but I understand it's a blank  
8 form, and unless there's a tie-in to indicate that  
9 there was such a notice sent to Mother's Kitchen, it  
10 wouldn't be relevant. So I'll admitted it, subject to  
11 relevance, as Respondent's Exhibit 28.

12 (Respondent's Exhibit 28  
13 received into evidence.)

14 **Q** (By Ms. Cowdery) Mr. Troy, looking at  
15 Respondent's Exhibit 28, was such a document sent to  
16 Mother's Kitchen on four occasions?

17 **A** Yes. We only have one type of document that  
18 is a Disconnect Notice. This is the document. On at  
19 least four occasions, maybe five, it was sent to  
20 Mother's Kitchen.

21 **MS. COWDERY:** I'd like to have marked for  
22 identification from Folder 21 a copy of the 9-9-96 gas  
23 bill for \$471.29.

24 **THE COURT:** The document is being marked for  
25 identification as Respondent's Exhibit O.

1 Q (By Ms. Cowdery) Do you recognize this  
2 document, Mr. Troy?

3 A Yes. This is the September bill that was  
4 sent to Mother's Kitchen.

5 Q Okay. And to what does it correspond on the  
6 account summary?

7 A The September 9th, 1996, line showing a  
8 bill, the bill column of \$471.29.

9 Q Okay. Once again, does Florida Public  
10 Utilities Company save a copy of this bill, this  
11 particular bill in its records?

12 A No, it does not.

13 Q Okay. Where did Florida Public Utilities  
14 Company obtain a copy of this bill for this case?

15 A We got this through -- from the Petitioner  
16 and through the course of the investigation with the  
17 Florida Public Service Commission.

18 MS. COWDERY: Okay. I would like to have  
19 this marked -- I mean entered as Respondent's No. 29.

20 MR. BROOKS: No objection.

21 THE COURT: Without objection, it's admitted  
22 into evidence as Respondent's Exhibit 29.

23 (Respondent's Exhibit 29  
24 received into evidence.)

25 MS. COWDERY: I'd like to have marked for

1 identification from Folder 22 the 9-12-96 door-hanger  
2 notice for SONP for \$230.04.

3           **THE COURT:** The document is being marked for  
4 identification as Respondent's Exhibit P.

5           **Q**        **(By Ms. Cowdery)** Mr. Troy, do you  
6 recognize this document?

7           **A**        Yes. This is the door hanger that is put on  
8 a customer's account when a meter has been turned off  
9 for nonpaid. This one shows amount owed of \$230.04  
10 which was the reason the gas was turned off. Date of  
11 the notice is 9-12, 1996. It's for the Mother's  
12 Kitchen account. And it reflects on the summary as  
13 September 12th, the first September 12th date under  
14 the explanation "meter shut off for nonpayment  
15 \$230.04."

16           **MS. COWDERY:** I would like to have this  
17 entered as Respondent's Exhibit 30.

18           **MR. BROOKS:** No objection.

19           **THE COURT:** Without objection, the document  
20 is admitted into evidence as Respondent's Exhibit 30.

21                    (Respondent's Exhibit 30  
22 received into evidence.)

23           **Q**        **(By Ms. Cowdery)** And Mr. Troy, where did  
24 Florida Public Utilities Company receive a copy of  
25 this door-hanger notice?

1           A     We got that from Petitioner, I believe it  
2 was at the time of the deposition but -- I'm not sure,  
3 but it did come from the Petitioner. We would not  
4 retain a copy of it.

5           Q     Okay. Thank you.

6                     Now, I would like to once again refer to an  
7 exhibit already entered into the record. It's  
8 Respondent's Hearing Exhibit No. 10. It is the  
9 9-12-96 receipt for \$261.04. That's Respondent's  
10 Exhibit 10.

11           THE COURT: Okay. I have that document.

12           Q     (By Ms. Cowdery) Do you recognize this  
13 particular document?

14           A     Yes, I do.

15           Q     What is this document?

16           A     This is a receipt issued after payment of  
17 \$261.04 cash payment made on September 12th, 1996, by  
18 Mother's Kitchen.

19           Q     Okay. And to what does it correspond on the  
20 account summary?

21           A     It would correspond to the September 12th  
22 payment column of 261.04.

23                     MS. COWDERY: I'd like to have marked for  
24 identification from Folder 27 the Merchandise and Gas  
25 Service 20-day Cycle Records.

1           **THE COURT:** Be marked -- the document for  
2 identification as Respondent's Exhibit Q.

3           **Q**        **(By Ms. Cowdery)** Mr. Troy, do you  
4 recognize these documents?

5           **A**        Yes.

6           **Q**        Would you please explain what they are?

7           **A**        These are 20-day cycle records, one for  
8 merchandise on top; the ones underneath, probably  
9 about eight or ten of them, are all gas account  
10 balances.

11                    What a cycle balance shows is the  
12 transactions that have been on account, registered on  
13 the account within the last 20-day cycle. A 20-day  
14 cycle is done every month one day prior to billing so  
15 it represents activity since the last bill went out.

16           **Q**        So do these cycle records represent the  
17 status of an account the day before billing?

18           **A**        Yes.

19           **Q**        Okay. Where does the information come from  
20 for these records? And how is it inputted?

21           **A**        Information will come from the transactions,  
22 such as the cash receipts, checks returned from the  
23 bank, service charges; whatever affects an account  
24 will be in a transaction. There will be, of course,  
25 hard copy. It's inputted by the customer reps in the



1 local divisions or data process personnel in our West  
2 Palm Beach corporate office.

3 Q Now, these particular records -- what  
4 account are these records for?

5 A Okay. The top one is for the merchandise  
6 account. It shows -- if you look at the first one  
7 it's dated 5-1. It says "merchandise." It's hard to  
8 read, but it says "merchandise" about halfway cross.  
9 It shows the account number over there, which was the  
10 account number that the job order was billed on for  
11 the original connection of appliances. It shows a  
12 126.59 payment coming in on 4-23. The source code 59  
13 on the left of it means "cash." Right below it, it  
14 shows a billing transaction date of 3-22, which is  
15 when they hooked up the appliances. And total bill of  
16 \$126.59.

17 Q Okay. Now, what customer do these cycle  
18 records apply to?

19 A They apply to -- it just shows account  
20 number but they apply to the Alfred Byrd d/b/a  
21 Mother's Kitchen. The account number for that account  
22 is 013107252, which shows up on the second page of the  
23 gas account.

24 Q Is there a different account number for the  
25 merchandise record on the first page?

1           A     Yes.  You'll see a 3331-92286.

2           Q     Okay.  Mr. Troy, I would like you to look  
3 for the 9-6-96, 20-day cycle records.  It's about five  
4 from the end.  The date is on the upper left-hand  
5 corner.  9-6-96.  Do you have that?

6           A     Yes.

7           Q     Okay.  Is there a 20-day cycle record for  
8 9-6-96 consistent with how Ms. Keitt in this case  
9 testified that she reported the August 12th, 1996, and  
10 the August 28th, 1996, payments from Mother's Kitchen?

11          A     Yes, it is.

12          Q     Would you explain that?

13          A     This report shows that -- the last line down  
14 shows a source code 90 on transaction date of 8-28 of  
15 payment amount of 521.72.  And she testified that she  
16 took in cash of 521.72 to this account on that date  
17 which represented two cash payments, a \$290 cash  
18 payment and a \$231.72.  Let me explain.  231.72.  Cash  
19 payment totalling 521.72.

20          Q     Okay.  Now, in these 20-day cycle records,  
21 beside that 5-21-72 entry, are there any separate  
22 entries shown for uncombined amounts of \$231.72 or  
23 \$290?

24          A     No.  It's just one payment shown for the  
25 transactions for the month of August.

1 Q Okay. If there had been an entry -- if  
2 there had been a payment of \$231.72, or \$290 that was  
3 in addition to this 5-21-72, would they have shown up  
4 in these 20-day cycle records?

5 A They would be on this page, yes.

6 Q Okay. Mr. Troy, are you familiar with how  
7 Diane Keitt handled the entry of the payments for \$290  
8 and \$231.72 from Mother's Kitchen?

9 A Yes.

10 Q Okay. Did Ms. Keitt's handling of the 290  
11 and 231.72 payment from Mother's Kitchen violate any  
12 generally accepted accounting principles or any rule  
13 of the Florida Public Service Commission?

14 A No.

15 Q All right. Now, do these cycle records also  
16 show -- you may have to look -- the \$150 NSF check  
17 being charged back to the account?

18 A Yes, it does. On the cycle dated 7-8-96  
19 you'll see \$150 with a source 62. A source 62 is a  
20 bad check.

21 Q Okay. And where does that correspond on  
22 your account summary?

23 A On June 7th you'll see \$170 posting which  
24 represents \$150 bad check and \$20 service charge.

25 MS. COWDERY: Okay. I'd like to have these

1 20-day cycle records entered as Respondent's 31.

2           **THE COURT:** Without objection, the document  
3 is submitted into evidence as Respondent's Exhibit 31,  
4 composite exhibit consisting of 13 pages.

5           (Respondent's Exhibit 31  
6 received into evidence.)

7           **MS. COWDERY:** Okay. I'd like to have marked  
8 for identification a composite computer record  
9 exhibit, I believe consisting of three pages.

10           **THE COURT:** Is that in Folder number 41.

11           **MS. COWDERY:** Yes, it is.

12           **THE COURT:** Marked for identification as  
13 Respondent's Exhibit R.

14           **Q**        **(By Ms. Cowdery)** Okay. Mr. Troy, do you  
15 recognize the documents identified as computer  
16 records?

17           **A**        Yes, I do.

18           **Q**        Okay. I would like to go through page by  
19 page and have you briefly review what the document is,  
20 and explain how the document supports the information  
21 on the account summary, starting with Page 1.

22           **A**        Okay. Page 1 is an accounts receivable  
23 computer screen which we can pull up on any account  
24 and it shows the status of that account as of that  
25 date.

1           This computer screen here, some of the  
2 information on it shows, of course, the Alfred Byrd  
3 d/b/a Mother's Kitchen account, 1744 Airport Boulevard  
4 Sanford, Florida, as the mailing address that's left  
5 blank. At this time the bill was going to the 1744  
6 Airport Boulevard address.

7           If you look about a quarter of the way down  
8 the bill you see last SONP, that's shut off for  
9 nonpay. See two dates, which corresponds to the  
10 account summary of 9-12-96 and 8-12-96 when the  
11 account was shut off for nonpay. This is the  
12 September bill, which was \$471.29. It shows the  
13 account summary and it shows here also.

14           Q     When did you print this page?

15           A     This page would have been printed on  
16 September 13th or the 16th. That was a Friday or  
17 Monday.

18           Q     Okay. And how do you know that?

19           A     The backup sheet that goes with this --  
20 well, let me explain it this way. This is the  
21 September bill. We already had the 9-12 show up for  
22 nonpay on there, so it had to be done after 9-12. Up  
23 two lines you'll see an account on date, 3-22-96. Off  
24 date is still left blank. It was turned off on 9-16.  
25 We entered that two days later. So it had to be done

1 around the 13th, or following Monday, or even possibly  
2 Tuesday. From what I recollect is I ran this on the  
3 13th.

4 Q And why did you do that?

5 A To address the customer on that day. And  
6 when I do that, I generally pull up the account, hit  
7 the print button and print it out.

8 Q Was this computer page then printed before  
9 or after you had any contact with the Florida Public  
10 Service Commission?

11 A It would have been before.

12 Q Okay. And would you please tell us what  
13 those notes represent?

14 A These are notes I made on the account that  
15 date at my conversations with the local office and  
16 Mr. Brooks.

17 Q Okay.

18 A And that's Pages 1 and 2.

19 Q Do you generally take notes of telephone  
20 conversations with customers?

21 A Yes.

22 Q Okay. Would you continue with Page 3?

23 A Page 3, it's the same screen. You bring it  
24 up. This one was brought up in December '96 showing a  
25 balance of 110.75, which on the sheet shows 110.75.

1 That balance was carried from September 19th forward.  
2 It also shows account was off up there in the top  
3 right, says off date 9-16 is when we finalled it.

4           The screen right behind it -- or excuse me,  
5 the page right behind it, which is the next screen we  
6 print out, shows all of the transactions. It lists  
7 consumption on the left-hand side showing the  
8 consumption each month. The account was on the amount  
9 of the current bill. On the left-hand side it shows  
10 payments, it shows service charges, it shows return  
11 checks being charged back. Deposits being applied.  
12 The last entry of 9-19 showed a \$200 credit for a  
13 deposit applied to the account since it was final.

14           If you add up all of the entries, the gas  
15 bills, all of the entries, debits and credits on the  
16 right-hand side, the total will come to \$110.75 which  
17 is on the first sheet. In other words, it's a detail  
18 of all transactions. You can tie in most of these to  
19 the account summary; the payments, the bad check  
20 charges, service charges can all be tied into the  
21 account summary, as well as the bills.

22           Q     Okay. Mr. Troy, are these -- is this page  
23 consistent with how Ms. Keitt testified that she  
24 recorded the August 12 and August 28th payments by  
25 Mother's Kitchen?

1           A     Yes.  If you look on Page 4 you'll see  
2 August 28th, source 90, which is payment coming in at  
3 5-21-72 which is two combined payments.

4           Q     Are there any additional separate payments  
5 of \$290 or \$231.72?

6           A     No.

7           Q     Okay.  Page 5 is the next screen that can  
8 come up on a computer.  Just keep pushing a button to  
9 get these additional screens.  The whole bottom is a  
10 repeat of all the source codes, with the exception of  
11 no billing on there.  It just shows the last 18  
12 transactions.  What this account shows, about the  
13 middle of the screen, you'll see delinquent notice  
14 dates, you'll see 9-96, 8-96, 7-96, 6-96.  These are  
15 the dates that the machine printed a Disconnect Notice  
16 and mailed it to the customers.

17                     Mr. Byrd, doing business as Mother's  
18 Kitchen, was in the first circle, so it would have  
19 went out early in the month.  In other words, the  
20 9-96, that was the one dated August 30th; went out  
21 right at the first of September, and so on.  But it  
22 shows four disconnect notices going out July, August  
23 and September.

24           Q     Okay.  Back up one second.

25                     Were the Pages 3 through 31 printed at a



1 different time than the first two pages, different  
2 date?

3 A Yes.

4 Q Okay. Continue.

5 A Okay. The next one is at Page 6 is detailed  
6 gas bills. Gives a little more detail than that other  
7 sheet did showing the actual read on the meter,  
8 consumption, state municipal tax and total bill for  
9 that month. Current charges only. Any arrears would  
10 not show on here, just the current billing.

11 Q Okay. Page 7 shows we're getting further  
12 into time now. At the top left you'll see a date,  
13 12-11-97 we ran a printout of the account to see what  
14 the status of this account was. It shows a total  
15 amount due zero in both columns, meaning the account  
16 was clean at this time at December 11th, 1997. The  
17 next page, Page 8 shows what happened. Again, you're  
18 going to see -- when you pull up the same account,  
19 even though you're pulling up a later day, you see all  
20 the same transaction. Any additional transactions  
21 that took place would be on the sheet.

22 Here we see March 4th, 1997, there was a  
23 payment of 22.75 received by Al Byrd; brought the  
24 110.75 down to \$88. This is the last entry here.

25 On 6-27, after repeated billings and not

1 getting any response of Mr. Byrd, we charged it off.  
2 363 as a charge off. It's charged off and turned over  
3 to collection, outside collection agency.

4 Q What page are you on now?

5 A Page 8.

6 Q What is the 363 you referred to?

7 A That is a source code for a charge off,  
8 uncollectible.

9 Q And where does that show up on this page?

10 A The top of the right column. As 6-27-97  
11 source 363, amount \$88, which was the balance was  
12 charged off. So the account was brought to zero and  
13 turned over to collections.

14 Q Okay.

15 A Page 9 is a brief history of the account as  
16 to service. Here again, it's a screen that the  
17 customer reps can look at to get a bird's eye view of  
18 the service that took place on this account. Alfred  
19 Byrd, Mother's Kitchen account.

20 We see on -- let's start at the bottom of  
21 the section there, 3-22 we had a 10G06, which is  
22 connect range by Polizzi (ph). On the middle section  
23 we have a 22B07, investigate oven on 6-3-96 which was  
24 done by McDaniel. At the top we see a dummy order,  
25 which means it was done in the field, on 9-13-96. It

1 was a disconnect range, a 15G06 by McDaniel. Again, a  
2 bird's eye view what went on in the account for these  
3 customers.

4 Q Whose notations are showing up on this  
5 document?

6 A That's my writing.

7 Q Okay.

8 A To describe what a 15G06 is and a 22B07 and  
9 a 10G06. That's the coding that we use.

10 Q Okay. Page 10?

11 A Page 10 is a more bird's eye view  
12 information about the account. It shows the meter was  
13 turned off on 9-16-96 by McDaniel. That's the  
14 official turn-off date. We actually went by there on  
15 the 16th of September 1996, again read the meter and  
16 officially turned it off.

17 Q Okay. And why didn't you do it before the  
18 16th?

19 A There was some option for the present owners  
20 of Mother's Kitchen to come in and establish a new  
21 account.

22 Q And did they do that?

23 A No.

24 Q Did they contact the company at all about  
25 establishing a new account after the 13th?

1           A     No.

2           Q     Okay.

3           A     The Page 11 and 12 are the merchandise  
4 summary sheets showing the connection of appliances.  
5 This is either merchandise goes on these sheets or  
6 servicing of merchandise. Here they connected  
7 appliances. Shows the total of 126.50. It also shows  
8 on the second page a payment coming in on 4-23 of  
9 126.59, and source 659 is cash payment or check,  
10 payment coming in.

11          Q     That's Page 12 of 31?

12          A     11 and 12 show additional connection in  
13 appliances. On Page 11 you can see the date of  
14 3-22-96 and the total billing 126.59. There's a  
15 breakdown on the left side which shows material 62.30,  
16 labor \$56, sales tax 8.29, the which totals 126.59.

17          Q     Page 13?

18          A     Page 13 through 22 reflect entries in the  
19 computer system of service work done at the -- well,  
20 any account here is the Mother's Kitchen account. And  
21 there's a lot of coding on here, but it's basically  
22 the information that's punched in the computer to get  
23 a record in the computer.

24                 The first one is initial connection of  
25 appliances.

1 Q What page is that?

2 A This is Page 13. It's two parts, 13 and 14  
3 are all the same. It's a service request to connect  
4 prior. Makes reference to the job order 599286. The  
5 work was done -- on the front you see completed by  
6 Polizzi 3-22-96.

7 Q Okay.

8 A And again it shows Alfred Byrd on the first  
9 page, 13, P. O. Box 134, Sanford, Florida.

10 The next two, 15 and 16, shows the turn-on  
11 in the account, Mother's Kitchen. It was turned on --  
12 taken by Johnson, Roberta Johnson, at the bottom of 15  
13 there you see Johnson as "J-O-H-N-O-O." Completed by  
14 Polizzi dated 3-22-96. Right above it 1-21 turn on  
15 account, Mother's Kitchen.

16 Next two, 17 and 18, there's another service  
17 request. See a 9-9-9 service request on 17. It was  
18 done on 6-3-96 by McDaniel. On the second page it  
19 just says "Commercial account. Need as soon as  
20 possible. Knock loud on door." I think I explained  
21 already you'll see also on Page 18, 22P07, which was,  
22 I think, investigate oven. It's repetition.

23 Q Mr. Troy, on Page 17 there's a listing with  
24 the name "Alfred Byrd" and to the left there's "NNAM."  
25 Do you offhand know what that NNAM means as opposed to

1 the -- like NCAM for the d/b/a Mother's Kitchen?

2 A Probably NC is probably "care of" name, and  
3 the name above the account is NNAM. N-A-M.

4 There's a lot of coding on here. I'm pretty  
5 sure that's what that means. D/b/a is the "care of"  
6 section of the billing records.

7 Q Okay.

8 A The last one for the -- 19 and 20, represent  
9 other service requests by McDaniel, 9-13-96 was the  
10 date, and this was the dummy order to disconnect the  
11 range.

12 21, 22 was the turn off the meter on -- 21  
13 was the 101, turn off meter, completed by McDaniel on  
14 the bottom there, the date, 9-16-96. On the second  
15 page you can see the actual post date. 9-18-96 was  
16 when it was posted to the records. That's when it  
17 would have shown on the accounts receivable we talked  
18 about earlier.

19 Q Okay.

20 A Okay. Now, the rest of these, 23 through 31  
21 are record changes, billing record corrections or  
22 changes that are put in the system.

23 Q Mr. Troy, I'm just going to ask you a  
24 question right now.

25 There's a lot of computer records here. Are

1 there any other computer records anywhere with regard  
2 to the Mother's Kitchen account?

3 A Not that I know of. We dumped just about  
4 everything we can get out of the computer.

5 Q Was it your intent this be a complete set of  
6 all of the computer information you have on Mother's  
7 Kitchen?

8 A Yes.

9 Q Okay.

10 A That's why we dumped some of these -- kind  
11 of confusing because of all the coding, but it's stuff  
12 that's in the system. We would have dumped it anyway.  
13 It ties in and supports our summary and our position.

14 Q Okay.

15 A Page 23 it shows -- you can tell the account  
16 by the number at the top. 13107252 is the Mother's  
17 Kitchen account. It shows -- we have terminals in the  
18 office, and that was Diane Keitt's terminal. 5-10-96  
19 it says -- there's as W data and a C data. C data is  
20 what was changed. It was blank, but they put in a 1  
21 for the credit code.

22 Q And what does that mean?

23 A Credit code 1 is what we expect all  
24 businesses to do. To be on this, this requires a  
25 monthly payment of the gas bill. We feel that all

1 businesses should be paying monthly. So on 5-10-96 a  
2 credit code 1 was put there.

3 Q All right. The next one, Page 24, again,  
4 the same account. Johnson's computer, Roberta  
5 Johnson's computer, on August 12th, 1996, data on the  
6 account showed P. O. Box 134 in the mailing address,  
7 is their mailing address. It was changed to blank.  
8 In other words, they took off the P. O. Box 134 off  
9 the mailing address, which would cause it to revert to  
10 the service address.

11 Q Okay. So does this page correspond to  
12 anything on the account summary?

13 A August 12th. There's a mailing address  
14 change on August 12th. That's what this represents.

15 Q Okay.

16 A There was a request on August 12th to change  
17 the mainland address from the P. O. Box to the service  
18 address on the account.

19 Q Okay. Tell me again why you didn't need to  
20 put 1744 Airport Boulevard on this document?

21 A Because when you take out the mailing  
22 address, it reverts back to the service address.

23 Q For billing purposes?

24 A For billing purposes, cut-off notices,  
25 anything we send out to the county, reverted to the



1 service address. It's only when there's a different  
2 address to send the bills to that we give a mailing  
3 address.

4 It also shows the clock, the time they did  
5 it. It's a -- what do you call it? Service time or  
6 armed services time, whatever; 24-hour clock, 1600:20  
7 would be 4:00 in the afternoon.

8 Q So what does 4 o'clock in the afternoon have  
9 to do with this page?

10 A This is when the address was changed. Late  
11 afternoon, on the 12th.

12 The next one, Page 25, is a continuation.  
13 Johnson also removed the mailing city-state of  
14 Sanford, Florida on there at the same time. Took off  
15 P. O. Box, Sanford, Florida, and the Zip; was reverted  
16 back to the service address. All at 4:00 that  
17 afternoon.

18 Q And that's the same on Page 26 is the Zip  
19 code?

20 A Right. They just removed the Zip code.

21 On Page 27, at Diane Keitt's desk, on 8-16  
22 she entered the last SONP, which was 8-12-96. In  
23 other words, it was blank. I call that data 0000.  
24 She put in, changed it to 8-12-96. She entered a shut  
25 off for nonpay date, which corresponds to the shut off

1 for nonpay for August 12. And she did that on August  
2 16<sup>th</sup>, a couple of days later.

3 Q What is Page 28?

4 A Page 28 also is a change data on 9-13-96.  
5 The last SONP was changed from 8-12 to 9-12.

6 Q Now, what does that mean? Now, what would  
7 the records reflect as of 9-13?

8 A As of 9-13, there would be a shut off for  
9 nonpaid shown as 9-12-96.

10 Q That would represent the most recent SONP?

11 A The most recent SONP.

12 Q Would the screens at that point still show a  
13 12-96 as an SONP?

14 A No, not at that point. The next sheet puts  
15 the 8-12 on the previous SONP. Sheet 29, on same date  
16 9-13-96, the data was 0000. It was changed to  
17 8-12-96, and the column was previous SONP. Now the  
18 way it reflects is current SONP, 9-12-96. Previous  
19 SONP, 8-12-96.

20 Q And would this correspond to the SONP's  
21 listed on Page 1 of 31?

22 A Yes, it would.

23 Q Okay.

24 A On Page 30, of 31, also on Diane's terminal,  
25 on 9-19 he changed the date of the previous SONP from

1 8-12 to 8-21.

2 Q Okay. Do we know why this was done?

3 A I have no idea why it was done.

4 Q Does it appear to be a mistake?

5 A It looks like it was a mistake.

6 Q Okay. Does that explain why on Page 3 of 31  
7 an SONP of 8-21-96 appears?

8 A Yes. That date will show up.

9 Q Did you investigate to see whether or not  
10 there was a SONP on 8-21?

11 A Yeah. We looked at field records to  
12 determine when the shut-offs were. We could find  
13 nothing on 8-21, so we felt it was a mistake; put in  
14 the records.

15 Q Okay. So at this point what do you believe  
16 the records show as far as the dates when the Mother's  
17 Kitchen account was shut off for nonpay?

18 A The first one was 8-12-96; the second one  
19 was 9-12-96, and we have documents to back it up.

20 Q Let me ask you about these changes that are  
21 shown in these computer records. If there were any  
22 changes made to the account, do they show up in these  
23 computer records?

24 A Yes.

25 Q Okay. Does this mean that there were no

1 other changes made to the computer records; that they  
2 are all right here?

3 A Right.

4 Q This is a complete set of the changes?

5 A When they dumped the file, everything that  
6 was in there came out. And people can't get in to  
7 change these without it being recorded.

8 Q If they make a change, the computer records  
9 show that change?

10 A It would show a change being made.

11 Q Okay. I'm not sure you finished. Did I  
12 interrupt you?

13 A One more. Page 31, Cathy Reid made an entry  
14 on 11-20-96 which entered Alfred Byrd's social  
15 security number on the account. It was kind of  
16 evident that we were having a problem with  
17 collections. And collection agency said that we have  
18 the social security number on the account, and print  
19 it out and charge it off. So we went ahead and put it  
20 on there.

21 MS. COWDERY: I'd like to have these  
22 computer records entered as Respondent's No. 32.

23 MR. BROOKS: No objection.

24 THE COURT: Without objection, the document  
25 is admitted into evidence as Respondent's Exhibit 32.

1 (Respondent's Exhibit 32  
2 received into evidence.)

3 MS. COWDERY: I'd like to have marked for  
4 identification -- no, I don't want to have anything  
5 marked for identification at this time. Excuse me.

6 Q (By Ms. Cowdery) Okay. Mr. Troy, were you  
7 involved in the events of September 13th, 1996,  
8 regarding Mother's Kitchen?

9 A Yes.

10 Q How were you involved?

11 A I had received phone calls that morning from  
12 Diane and one from Mr. Brooks.

13 Q Okay. Would you explain what happened that  
14 morning as far as your involvement goes, to the best  
15 of your recollection?

16 A Yes. On September 13th, 1996, it was  
17 approximately, I'm guessing, at 9:30 in the morning I  
18 got a call from Diane Keitt -- she's our office  
19 manager, Sanford office -- saying she had an upset  
20 customer. And she gave me some particulars about the  
21 account. Gave me an account number.

22 I pulled it up on my screen. It was the  
23 Alfred Byrd d/b/a Mother's Kitchen account. She had  
24 said that Mr. Brooks of the account was upset and  
25 possibly would be giving me a call. She told me it

1 had been shut off for nonpaid. That he had come in,  
2 made payment the previous day. That she had already  
3 dispatched a man out to turn it back on.

4 Earlier that morning, the customer of  
5 record, Alfred Byrd, had come into the office and  
6 asked that the account be turned off in his name.  
7 Meaning he was the customer of record, he has the  
8 right to do that. So we contacted Mr. Brooks. A  
9 message was given to our serviceman to have him call  
10 into the office. And Diane said he was very upset, Al  
11 Byrd coming in and having that account turned off, and  
12 Mr. Brooks having to come in and set up a new account  
13 and paying a deposit. I possibly would be getting a  
14 call from him.

15 Q Mr. Troy, do you remember if Ms. Keitt told  
16 you who made at \$261.04 payment? Do you remember if  
17 she said who made it?

18 A No. She told me it was made. Probably on  
19 the screen it showed it being made, too, by that time,  
20 but she told me it was made by -- well, I don't know  
21 who. Just said Mother's Kitchen personnel; somebody  
22 came in and made the payment. And the gas was to be  
23 turned on first call that morning.

24 Q Is that all that you can recall regarding  
25 what Ms. Keitt told you on the phone?

1           A     That's about it, yes.

2           Q     Okay. So what did you do next?

3           A     I was standing by. I figured I might be  
4 getting a call from -- on the Mother's Kitchen  
5 account. And I did get a call from Mr. Brooks shortly  
6 afterward, maybe five, ten minutes. And he was very  
7 upset.

8           Q     What was upsetting him?

9           A     I think it was the Al Byrd insistence that  
10 the account be turned off. "How could Al Byrd do  
11 this?" That he would have to go in and make a deposit  
12 on the account.

13          Q     Do you recall him talking about being upset  
14 about having to do that? Do you recall that  
15 specifically?

16          A     Right. Right.

17          Q     What else do you remember?

18          A     I told him that the man had come in. That  
19 the account would have to be changed over. He was a  
20 customer of record. That Mr. Brooks -- I told him,  
21 Mr. Brooks, he would have to go in the office and give  
22 the information to change the account over to the  
23 proper name and make the deposit.

24          Q     Okay. What else happened?

25          A     About that time -- the serviceman must have

1 been on location, because about that time Mr. Brooks  
2 told me that the serviceman now says there's a leak on  
3 the account. He was very upset about that. He was to  
4 the point of screaming, yelling at me that "something  
5 is wrong here." The man's been messing around with  
6 the front of his range -- taking the range apart.  
7 "This shouldn't have been necessary. The range was  
8 working fine before they turned off the gas. How  
9 could it be having a leak problem now? The man is  
10 messing with it and possibly caused the leak."

11 I told him if there's a leak on the  
12 appliance, for us to leave the gas on we would have to  
13 fix the leak. I think he said, "Well, fix it then."  
14 He was getting pretty abusive. He said fix that. I  
15 told him he would have to authorize the repair. He  
16 would have to pay for it. And I also told him that  
17 the Sanford office might require cash because I had  
18 the account up; there was two bad checks on the  
19 account.

20 He was extremely abusive about that. He  
21 felt that we should fix it. He started telling me  
22 about food that he had prepared to cook; that range  
23 had to be working. He would lose money. And he would  
24 sue us for lost business, and slammed down the  
25 receiver. Hung up on me. Extremely irritated.



1 Q And what was your next involvement?

2 A A short time later, it probably was just a  
3 matter of minutes, probably close to ten o'clock now,  
4 I got a call from Diane. She was bringing me  
5 up-to-date what happened there.

6 She had McDaniel possibly on the radio -- I  
7 don't think she had him on the phone -- it was not a  
8 three-way conversation. I was just talking to Diane.  
9 But McDaniel had brought her up-to-date on what  
10 happened. The stove was not repaired. Mr. Brooks was  
11 not signing anything.

12 Q Did she tell you that Mr. McDaniel told her  
13 that?

14 A Yeah. She had no way of knowing. She was  
15 getting the information from Bill McDaniel.

16 Q And she told you that?

17 A Right. That the leak had not been repaired.  
18 And Brooks was not signing anything. What he was  
19 required to sign would be a service order to repair  
20 the range and also a -- since the range was repaired,  
21 a Hazardous Condition Report.

22 Q Why did she call you?

23 A She wasn't sure what to do because of the  
24 problem -- the abuse that both McDaniel -- both that  
25 she had received and McDaniel had received from

1 Mr. Brooks. She wasn't sure what to do about the  
2 account.

3 Q What happened next in the phone call?

4 A I told her if that was the situation, we  
5 best lock the meter, or turn the meter off and lock  
6 it. She said okay. We will do that. I guess she  
7 gave that information to Bill McDaniel and he did the  
8 same, I believe -- all I know is at that point he did  
9 turn off the meter and lock it and left.

10 Q Did you talk to anybody about the Mother's  
11 Kitchen account any more that day?

12 A Yes. Diane called me later that day and  
13 told me Mr. Brooks had been in the office and wanted  
14 his \$261.04 back since we had not turned the account  
15 on. And she just told him she could not give it back.  
16 Money was due on the account for gas service.

17 Q She told you that she told him that?

18 A She told me that she told him she would not  
19 give him the money back; that the money was due on the  
20 account. And he said -- she said that he had a tape  
21 recorder with him and told her he was taping all of  
22 this, and he left.

23 Q Okay. At any time during that conversation  
24 with Mr. Brooks, did Mr. Brooks tell you that he had  
25 already paid a new deposit to have the account taken

1 out of Alfred Byrd's name?

2 A No.

3 Q Did he mention anything about having paid a  
4 deposit?

5 A No.

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

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

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

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

20 Q By that you mean --

21 A Put it back in service.

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

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

1 thought this was a possibility, that they would  
2 reconnect the range and proceed with business.

3 Q Okay. In your mind did you believe that  
4 this account was in any way hazardous or dangerous if  
5 you had left the gas on?

6 A Yes. Because if the range was reconnected,  
7 it would have been very dangerous to Mr. Brooks, his  
8 employees and any customers that were in the  
9 restaurant. It did present a present danger. When  
10 you take into consideration his frame of mind and his  
11 attitude at the time towards the leak, it's just as  
12 though he didn't accept it.

13 Q Okay. Was the gas at Mother's Kitchen  
14 disconnected having anything to do with Mr. Byrd's  
15 request to have the gas disconnected?

16 A No. I understood that Mr. Byrd wanted the  
17 account off of his name, but it's only reasonable that  
18 we give time for -- the people that are operating the  
19 business, in this case there were people who were  
20 going to continue operating the business, to come in,  
21 give us the new name on the account and put up the  
22 deposit. So it would not have been turned off because  
23 Mr. Byrd requested it be turned off at that date.  
24 We'd give them a reasonable time to come in.

25 Q And it could have been turned off for that

1 reason in the future?

2 A In the future, yes.

3 Q And at this point, what was the date that  
4 the Mother's Kitchen folks were allowed to come in  
5 with a new deposit?

6 A They were given a period of time to come in  
7 with a new deposit by Diane. Whether I knew it at  
8 that time I'm not sure. At the time of the telephone  
9 call, I'm not sure whether I knew it. I can't  
10 remember if she told me she had given them so many  
11 days. But it's standard business procedure for us to  
12 give people that are operating the entity some time to  
13 come in.

14 Q Is there a rule requirement to that effect?

15 A I believe there would be a three-day notice  
16 to that effect.

17 Q Okay. Mr. Troy, after September 13th, when  
18 was the next time anybody contacted you about the  
19 Alfred Byrd d/b/a Mother's Kitchen account?

20 A It had to be when I got a complaint from the  
21 Public Service Commission. They faxed me a complaint.  
22 I believe it was on the 17th.

23 MS. COWDERY: I'd like to have marked for  
24 identification the FPSC Consumer Request form and the  
25 9-19-96 response. This is Folder 24.

1           **THE COURT:** Document is being marked for  
2 identification as Respondent's Exhibit S.

3           **Q**       **(By Ms. Cowdery)** Do you recognize the  
4 first page of this, entitled "Consumer Request"?

5           **A**       Yes. This is the complaint filed with the  
6 Public Service Commission dated September 17th, 1996,  
7 by Mother's Kitchen restaurant.

8           **Q**       Okay. Do you know where this -- where did  
9 this document come from?

10          **A**       Public Service Commission.

11          **Q**       Okay. And do you see the information that's  
12 typed on the first page that says "See attached  
13 response dated 9-19-96." Do you know who typed that?

14          **A**       Yes, we did. The Company did.

15          **Q**       Okay. Is the attached response how you  
16 responded?

17          **A**       Yes.

18          **Q**       Okay. Now, when you received this  
19 response -- I mean when you received this complaint,  
20 was there any allegation of any wrongdoing having to  
21 do with a deposit?

22          **A**       There was nothing on this complaint about a  
23 deposit.

24          **Q**       Okay. And was that consistent with your  
25 involvement on September 13th?

1           **A**     Yes.

2           **Q**     Okay. Then in neither case did anybody say  
3 anything to you about a new account having been set  
4 up?

5           **A**     Right.

6           **Q**     Okay.

7           **MS. COWDERY:** I would like to have this  
8 entered as Respondent's 33.

9           **MR. BROOKS:** No objection, Your Honor.

10          **THE COURT:** Without objection, the document  
11 is admitted into evidence as Respondent's Exhibit 33.

12                   (Respondent's Exhibit 33  
13 received into evidence.)

14          **Q**     (By Ms. Cowdery) Okay. Did you handle  
15 this complaint before the Florida Public Service  
16 Commission yourself?

17          **A**     Yes.

18          **Q**     And what did your involvement consist of?

19          **A**     Responding to Commission inquiries about the  
20 complaint and responding to a letter Mr. Brooks had  
21 written either to myself or the Commission concerning  
22 the complaint.

23          **Q**     Okay. Now, Mr. Troy, you showed us a lot of  
24 documents from the Company. Some of them are computer  
25 documents and 20-day cycles and billing registers.

1 And a number of them show information of a 8-28-97  
2 payment entry of \$521.72.

3 My question is when was the first time that  
4 the company supplied information about a payment entry  
5 of 521.72 to Mr. Brooks, or anyone from Mother's  
6 Kitchen?

7 A It would have been at the first informal  
8 conference in Orlando in -- I believe, it was February  
9 24th, 1997.

10 Q Okay. And to the best of your recollection,  
11 before that informal staff conference, that  
12 information had not been supplied to Mr. Brooks?

13 A Not by my office, no.

14 Q Okay. Now, at that February 24th, 1997,  
15 informal staff meeting -- well, first let me ask, what  
16 was the purpose of that meeting?

17 A It was -- Mr. Brooks had requested an  
18 informal conference with the Florida Public Utilities  
19 and the Florida Public Service Commission trying to  
20 resolve the complaint. So they set it up for a  
21 meeting in Orlando on February 24th, get the parties  
22 together, a videoconference to resolve the matter.

23 Q And who was participating from Tallahassee  
24 by video?

25 A That was John Plescow and a Mr. Raspberry.



1 Q Okay. And to the best of your recollection  
2 who was together in Orlando participating?

3 A Mr. Brooks and some of his employees from  
4 Mother's Kitchen, or partners from Mother's Kitchen,  
5 and myself. And we had some of our employees there  
6 that were involved in the complaint.

7 Q Okay.

8 THE COURT: Ms. Cowdery, I know there hasn't  
9 been an objection, but how is this going to be  
10 relevant? I mean, this is a de novo proceeding, and  
11 what happened at an --

12 MS. COWDERY: Correct.

13 THE COURT: -- informal staff conference --

14 MS. COWDERY: What I'm attempting to show is  
15 when -- okay.

16 Mr. Brooks is alleging as part of his  
17 complaint that on July 11th of 1996, he came to  
18 Florida Public Utilities and gave a \$500 deposit to  
19 set up a new account. I have shown, attempted to show  
20 through the testimony and through the records, that  
21 during that time period that never happened.

22 Now, what I'm additionally showing are facts  
23 and testimony and admissions by Mr. Brooks that not  
24 only did that not occur, that Mr. Brooks never even  
25 raised that as an argument until after he was given

1 some information from the Company that showed a \$521  
2 payment. And that when first -- the testimony would  
3 show that when -- that that payment was discussed, and  
4 that Mr. Brooks, even at that point, never said that a  
5 deposit had been made, even though it is an admission.  
6 And that the first time that that argument was ever  
7 even raised was on May 6th, 1997, before the Florida  
8 Public Service Commission at an agenda conference.  
9 That's the first time Mr. Brooks ever even raised that  
10 argument.

11           The reason I'm pursuing this, not only the  
12 substance of this argument, to show that Mr. Brooks'  
13 case -- he's not proving his case, I've also filed a  
14 motion for attorney fees; that this case was brought  
15 for improper purpose. And I think that additionally  
16 goes to show the improper purpose behind Mr. Brooks'  
17 case.

18           These are admissions of Mr. Brooks that are  
19 allowed to come into a case like this as substantive  
20 evidence.

21           **THE COURT:** Mr. Brooks, a response?

22           **MR. BROOKS:** Sir, I would raise an objection  
23 to Ms. Cowdery's assertions as far as to what she has  
24 proven.

25           Secondly, with regard to her bringing in the

1 Public Service Commission, bringing this de novo, all  
2 we have to do is go to her last exhibit. And in the  
3 body of that last exhibit, if you look at the text to  
4 which she was questioning Mr. Troy about, there's a  
5 sentence in here, and it says "to show that the  
6 business was a partnership. Then, after service was  
7 interrupted for the second time due to past-due bills,  
8 employees paid --" and this is Mr. Martin's reference  
9 to that deposit, the assertion that the deposit was  
10 paid in full.

11 Now, this document should not even -- per  
12 the Court's order at the initial hearing we had in  
13 this case, the Court made the ruling that this was to  
14 be a de novo case. As a matter of fact, the Court  
15 asserted it to me to -- directed at me, that this was  
16 to be a de novo case. And anything during that public  
17 service proceedings, prior to the initiation of this  
18 petition, would not be admissible in this proceeding.

19 Now, it was done to me, directed to me, at  
20 Ms. Cowdery's insistence, in a objection she was  
21 making. So now she can not turn around and have it be  
22 her way because she simply feels the need to go  
23 towards the old proceedings under the PSC. The PSC's  
24 documentation.

25 **THE COURT:** Further response?

1 MS. COWDERY: Okay. A de novo means that  
2 we're having the hearing anew. And in a de novo that  
3 means any conclusions reached by the Public Service  
4 Commission has no meaning here. Any conclusions they  
5 come to do not matter because we're trying it anew, in  
6 front of the Administrative Law Judge. However, does  
7 that mean if Mr. Brooks made admissions of fact that I  
8 can use to prove my case that I shouldn't be allowed  
9 to use them?

10 I am not claiming here that at the -- that  
11 the Florida Public Service Commission reached any  
12 particular conclusion, and, therefore, we are bound by  
13 it. I am not stating that. I'm not stating they've  
14 done an investigation that we should be bound by. I'm  
15 simply proving facts. I'm proving through admissions.  
16 And the testimony that I am trying to elicit here  
17 would be considered substantive, allowable under  
18 90.8039(18) of the Evidence Code, regarding a  
19 statement that is offered against a party, which is  
20 what I would be doing; against Mr. Brooks, against the  
21 Petitioner's. A statement of which the party has  
22 manifested his adoption for belief in the truth.  
23 Actually, it's the party's own statement in either an  
24 individual or representative capacity. And an  
25 admission like this of a party opponent is admissible.

1           Now, even if that were not the case, if we  
2 said it's in the admission and I truly believe it was  
3 an admission, under 120 we're allowed to have hearsay  
4 in support of other testimony. But I don't think we  
5 have to go there. I think we've got admissions. You  
6 can't -- don't have to ignore admissions. And that is  
7 why I'm arguing it.

8           De novo doesn't mean these as artificial  
9 barriers erected at a certain point of time. It means  
10 I can not tell you to rely on a conclusion of the  
11 agency. So I'm not trying to do that. All I'm trying  
12 to do is show admissions by Mr. Brooks.

13           **THE COURT:** Mr. Keating, any response or  
14 comment?

15           **MR. KEATING:** I don't know that I have a lot  
16 to add. I know that --

17           **THE COURT:** Well, the question is -- the  
18 only issue that I'm concerned about is, assuming the  
19 direction she's going is seeking an admission against  
20 interest as an exception under the Florida Evidence  
21 Code -- if she can elicit such, that's the direction  
22 she's going from this witness -- whether that's  
23 appropriate or not.

24           **MR. KEATING:** I guess I don't have anything  
25 to add on that specific question then.

1           **THE COURT:** Okay. Mr. Brooks, was there  
2 something else? Very briefly.

3           **MR. BROOKS:** Yes, sir. In order -- pursuant  
4 to that rule under the Evidence Code, in order for  
5 Ms. Cowdery to make the claim of admissions, she has  
6 to show a specific -- specific statements to which she  
7 is seeking entry under this section.

8           Now, Ms. Cowdery has sat there through this  
9 long diatribe with Mr. Troy here, and she's making --  
10 she's made wholesale assertions. Mr. Troy -- even the  
11 testimony so far has been a whole lot of references to  
12 things that other parties have done with no  
13 substantiating documentation or testimony of record  
14 from those other parties to show they actually did  
15 those things.

16           But her attempt at so-called admissions by  
17 myself, before the Public Service Commission -- during  
18 the time before the Public Service Commission I was  
19 never designated as a representative of the  
20 partnership. During the time before the Public  
21 Service Commission, in the prehearing meetings in  
22 Orlando here, I did act as spokesman, relaying the  
23 feelings and expressions of the partnership as a  
24 whole. But at no juncture or at any point during any  
25 of those proceedings were there any sworn proceedings

1 taken, or any direct court reporting, or any other  
2 documentation done to set out the particular --  
3 concrete particular statements made by any individual  
4 during that entire proceeding. Portions of the  
5 proceeding were recorded, I believe, in a couple of  
6 instances on tape. Some of the proceedings I don't  
7 believe were. I could be mistaken about that, but I  
8 don't believe were based upon the way the  
9 conversations went.

10 But for her to make reference to admissions  
11 by me, she has to address specific -- specific  
12 admissions by me. And in referring to Respondent's  
13 Exhibit 33, which she has stated she presented these  
14 exhibits as Mr. Troy's testimony in a attempt to reach  
15 those admissions, this Exhibit 33 shows that the  
16 conclusion she was drawing is incorrect. Because it  
17 states right here that there was reference to a  
18 deposit and that it was paid in full.

19 MS. COWDERY: Your Honor, may I have --

20 THE COURT: We're not going to go back and  
21 forth anymore. We're done.

22 On this -- I can't see how this can be an  
23 admission against interest exception.

24 MS. COWDERY: Your Honor, we need to clarify  
25 that.

1           **THE COURT:** I'll allow it as a proffer.

2           **MS. COWDERY:** I'm not look for a declaration  
3 against interest, that's what I need to clarify -- but  
4 as an admission of a party opponent. Okay. Admission  
5 of a party opponent.

6           I have also given you a case, I think it's  
7 in your packet, Hunt vs Seaboard Coastline Railroad  
8 Company. I know I'm getting an extra little shot  
9 here, and I know you didn't intend that -- we'll allow  
10 as a proffer -- it is for an admission of a party  
11 opponent's statement. Not a declaration against  
12 interest which requires a foundation be laid. I'm not  
13 going that way. I'm going admissions under  
14 90.803(18)(A). That's Hunt vs Seaboard Coastline  
15 Railroad distinguishes declaration against interests  
16 which relate to nonparties and admissions which relate  
17 to parties.

18           **THE COURT:** You may offer it as a proffer.

19           **MS. COWDERY:** Thank you, Your Honor.

20           **Q**       **(By Ms. Cowdery)** Mr. Troy, we were talking  
21 about the February 24th, 1997, informal staff  
22 conference. Okay. Now, at the February 24th, 1997,  
23 informal staff meeting, did you discuss the Mother's  
24 Kitchen payment history?

25           **A**       Yes.



1 Q Okay. Now, did Florida Public Utilities  
2 provide any information, any written information?

3 A We did provide written information of the  
4 transactions on the account.

5 Q Okay. In what format was it?

6 A There is a computer printout which showed  
7 all of the payments, and -- there was a narrative that  
8 I sent to Mr. Plescow, I believe. I believe you might  
9 have that available too. A computer printout.

10 THE REPORTER: Could we get the witness a  
11 little closer to the mike?

12 THE COURT: Just a moment. Mr. Troy, would  
13 you lean -- you're leaning way back there. We need to  
14 hear you a little better. Thank you.

15 MS. COWDERY: Does he need to repeat that  
16 for the court reporter?

17 THE COURT: No.

18 Q (By Ms. Cowdery) Okay. Was the \$521.72  
19 payment entry reported on August 28th discussed at the  
20 February 24th, 1997, informal staff conference?

21 A Yes.

22 Q At that time did Mr. Brooks make any  
23 allegation that the \$521.72, or \$500 of that amount,  
24 had been paid as a deposit?

25 A No.

1 Q Did he make any statement about the \$521.72?

2 A The statement that he didn't understand what  
3 that payment was, what it was all about. There was a  
4 record in there of a payment and he didn't understand  
5 it.

6 Q Okay. And did Ms. Keitt -- I'm sorry,  
7 strike that.

8 Did anyone from the Company respond to  
9 Mr. Brooks?

10 A Diane Keitt, who understood about the  
11 payment, responded that it was a compilation of  
12 payments. In other words, it was more than one  
13 payment.

14 Q Did Mr. Brooks respond?

15 A Not that I remember, no.

16 Q Did he make a statement that that was a  
17 deposit?

18 A No.

19 MS. COWDERY: Okay. Now, at this time I  
20 would like to make another proffer, Your Honor.

21 I would like to make a proffer of a  
22 transcript of the Florida Public Service Commission  
23 informal staff conference of February 24th, 1997. I  
24 can identify the certain pages, and I will do so,  
25 where Mr. Brooks made admissions. However, I will

1 proffer the whole thing, you know, so that nothing can  
2 be said to have been taken out of context. I have  
3 included this transcript in your packet. For the  
4 record --

5 **THE COURT:** This will only be as a proffer.

6 **MS. COWDERY:** Correct. As a proffer. Well,  
7 I guess I need to -- I need to go through the steps  
8 here.

9 I would like to offer it as an exhibit, as  
10 an admission by Mr. Brooks with regard to what  
11 Mr. Troy has testified. I think this transcript  
12 shows, and I can identify the pages that -- I have to  
13 find the pages.

14 On pages, specifically, 42 to 43, in  
15 discussing payment history, the \$521.72 payment was  
16 discussed. Ms. Keitt's response. And that Mr. Brooks  
17 did not in any way challenge that.

18 The other reason I want to put the entire  
19 document in is because of the fact that nowhere in  
20 here, nowhere at the conference did Mr. Brooks talk  
21 about setting up a new deposit. And I take that as a  
22 tacit admission. In addition --

23 **THE COURT:** Yes.

24 **MS. COWDERY:** -- now, I have several more  
25 questions for Mr. Troy, and again -- rather than going

1 back and forth testimony and transcript, I suppose at  
2 this point I should do it all at once.

3           There are three other admissions within this  
4 transcript, which Mr. Troy can testify about. And I  
5 don't know, I've asked the Court if I should just  
6 address this all at once.

7           **THE COURT:** Address it all at once.

8           **MS. COWDERY:** Okay. Let's do that then.  
9 Okay.

10           **Q**       **(By Ms. Cowdery)** Mr. Troy, at that  
11 February 24th staff conference do you recall  
12 Mr. Brooks talking about the events of September 13th?

13           **A**       Yes.

14           **Q**       Okay. Do you recall whether or not he said  
15 that he called Diane Keitt at the Florida Public  
16 Utilities office the morning of September 13th?

17           **A**       He called Diane Keitt, yes.

18           **Q**       Do you remember if he said he called Diane  
19 Keitt?

20           **A**       Yes.

21           **Q**       Okay. And that is on Pages 8 through 10 of  
22 the transcript.

23           **MS. COWDERY:** And I don't give line numbers  
24 because it's a rolling narrative, and it's too  
25 difficult to specifically cut it -- put -- you know,

1 narrow it down. But he says in there he did call  
2 Diane and he keeps referencing Diane Keitt, okay?

3 Q (By Ms. Cowdery) Mr. Troy, do you recall  
4 the conversation during that staff conference where  
5 the payment history of the Mother's Kitchen account  
6 was discussed?

7 A Yes.

8 Q Do you recall Mr. Brooks admitting that a  
9 payment of \$231.72 was made?

10 A Yes. He said he had made good on the bad  
11 check that was issued to us by Al Byrd, 211.72, and  
12 there was a service charge attached to it.

13 Q Okay. Do you remember any particulars about  
14 anything he said about the date of when he paid that?

15 A I don't think it was an agreement with our  
16 schedule here. He might have said it was paid at a  
17 different time, but he did say he made good on that  
18 check of 211.72; went in the office and made the  
19 payment on it.

20 I don't remember the particulars or anything  
21 when he said it was made.

22 Q But you remember he said he made good on the  
23 check?

24 A Yes.

25 Q Okay. And that would be found on Page 36 of

1 this transcript of February 24. Okay.

2 Now, my last question is whether or not you  
3 recall if Mr. Brooks discussed making a payment of  
4 \$160. Do you remember that offhand?

5 A He was relating all of his payments -- he  
6 had had receipts or -- looking at our schedule, he was  
7 relating a lot of the payments -- about the 160? I  
8 can't say for sure about that.

9 MS. COWDERY: At this time I would like to  
10 let Mr. Troy review this transcript to refresh his  
11 recollection. And he understands if it doesn't  
12 refresh his recollection, that he will let us know.

13 THE COURT: Go ahead. (Pause)

14 A I've read it over I don't know that I can  
15 say for sure that I recollect 160.

16 Q That's fine.

17 A It's not --

18 Q That's fine.

19 MS. COWDERY: I would like to have the  
20 information on Pages 6 and 7 of this transcript  
21 separate and apart from the testimony of Mr. Troy also  
22 identified as an admission, this written document,  
23 this transcript, also identified as an admission,  
24 notwithstanding Mr. Troy's inability to remember that  
25 conversation. This document I'm offering into

1 evidence as an admission on the various matters I have  
2 brought up.

3           **THE COURT:** The transcript of the informal  
4 staff conference of February 24th, 1997, I've marked  
5 for identification as Respondent's Exhibit T, and the  
6 particular pages noted regarding the admissions. But  
7 I'm denying the request for it to be admitted in  
8 evidence. It's a proffer. It's in the record as  
9 such. But I don't believe it meets the exception  
10 under the Evidence Code that you referred to as an  
11 admission.

12           **MS. COWDERY:** Okay. Now, looking at the  
13 Hunt vs Seaboard case, which I have referred to you, I  
14 understand that a document not admitted on one basis,  
15 may yet to be admitted on another basis. And in this  
16 regard, I would also ask that the Court to recognize  
17 that under Chapter 120, that hearsay is admissible to  
18 supplement -- hearsay is admissible to supplement  
19 other testimony in the record.

20           I think all of the information in here goes  
21 to supplementing testimony which Florida Public  
22 Utilities Company has offered in the record, and on  
23 that basis I would also ask for it to be admitted as  
24 hearsay under 120, notwithstanding the fact that I  
25 would brief the issue of the proffer and its

1 availability as actual substantive evidence.

2 I would ask that it be allowed under the 120  
3 allowance that hearsay is admissible in DOAH  
4 proceedings.

5 THE COURT: I don't believe it meets that  
6 standard either. I'll deny admission.

7 Q (By Ms. Cowdery) Okay. Mr. Troy, when was  
8 the first time that you had heard an allegation from  
9 Mother's Kitchen that it had paid a deposit of \$500 or  
10 more to set up a new account?

11 A It was from the recording, or transcript,  
12 from the May agenda conference.

13 Q Okay. Did you attend the May agenda  
14 conference?

15 A I attended the May agenda conference. When  
16 the item came up for discussion and vote, Mr. Brooks  
17 wasn't present. The Commissioners voted in favor of  
18 the staff recommendation that the Company had done --  
19 violated no rules. I hung around for a few minutes  
20 and left. Later that day Mr. Brooks did show up, ask  
21 to address the Commission.

22 Q How did you find that out?

23 A One of the staff members called me. They  
24 called the office.

25 Q And what was the purpose for them calling



1 you?

2 A To let me know that Mr. Brooks had come in  
3 and had testified; had spoken to the Commissioners.

4 Q Did staff want you to do anything?

5 A They said he had brought up some new claims  
6 or charges, and that I needed to respond to it. And  
7 that they did tape it and that I could get a tape of  
8 it, which I did. I listened to the tape. I had one  
9 of our secretaries transcribe the tape. And on that  
10 tape Mr. Brooks had stated that he made a deposit of  
11 \$500 to the Commissioners.

12 Q Was that the first time you had ever heard  
13 that allegation?

14 A That was the first time I had heard about a  
15 \$500 deposit being made to the Company.

16 Q Okay.

17 MS. COWDERY: I'd like to have marked for  
18 identification Tariffs of Florida Public Utilities  
19 Company. It's marked as Folder 43.

20 THE COURT: I'll mark it for identification  
21 as Respondent's Exhibit U.

22 Q (By Ms. Cowdery) Mr. Troy, do you  
23 recognize these tariffs?

24 A Yes.

25 Q Would you tell us what these tariffs are?

1           **A**     These are operating tariffs.  These are on  
2 file with the Florida Public Service Commission.  
3 Every page is approved by the Public Service  
4 Commission.  These pages that are before me deal with  
5 customer deposits, billing, collecting and  
6 discontinuance of service.

7           **Q**     Okay.  On sheet No. 8 does that show a  
8 service classification that applies to the Mother's  
9 Kitchen account?

10          **A**     Yes.  It would be D2, commercial service.

11                   **MR. BROOKS:**  What page was that?

12                   **MS. COWDERY:**  Tariff sheet 8.

13                   **MR. BROOKS:**  First page?

14                   **MS. COWDERY:**  First page, yes.  It's  
15 entitled "First Revised Sheet No. 8."

16          **Q**     (By Ms. Cowdery) So do these tariffs apply  
17 to any activities that you had to do with Alfred Byrd  
18 d/b/a Mother's Kitchen account?

19          **A**     Yes.

20          **Q**     Okay.

21                   **MS. COWDERY:**  Excuse me one minute.  I'm  
22 trying for find something.  (Pause)

23          **Q**     (By Ms. Cowdery) Mr. Troy, would you turn  
24 to the tariff sheet entitled "First Revised Sheet  
25 No. 19" under the Rules and Regulations.

1           A     Okay.

2           Q     Would you read into the record Tariff  
3 Paragraph 13(A)(1).

4           A     13 is "Discontinuance of service. The  
5 Company reserves the right, but assumes no liability  
6 for failure to do so, to discontinue service to any  
7 customer for cause as follows: A) Without notice."  
8 And (1) says "If a dangerous condition exists on  
9 customer premises in piping or gas consuming devices."

10          Q     Okay. Now, in this case was -- on September  
11 13th were you familiar with whether or not any notice  
12 was left with Mother's Kitchen regarding the  
13 disconnect?

14          A     A hazardous condition notice.

15          Q     Is that considered a form of notice?

16          A     Yes.

17          Q     Okay. But under this particular 13(A)(1),  
18 do you think technically that this provision would  
19 apply to the incident on September 13th?

20          A     Yes.

21          Q     Okay.

22          A     The "without notice" there, if that's what  
23 you're concerned about, means a time delay notice of  
24 we're going to disconnect in five days, you know,  
25 unless you fix this, or three days, or something like

1 that. There are certain conditions which require a  
2 notice. But those that are required -- are without  
3 notice are the ones I just wrote in red there, "if a  
4 dangerous condition exists at the customer premises in  
5 piping or gas consuming devices" you don't have to  
6 leave a notice.

7 Q Okay. You're right.

8 Do you believe that Florida Public Utilities  
9 Company's actions with regard to the Alfred Byrd d/b/a  
10 Mother's Kitchen account were in conformance with  
11 these tariffs?

12 A Yes.

13 Q Okay. Did the Company keep records which  
14 show the name of the customer who made the deposit?

15 A Yes. The deposit receipt record.

16 Q Okay. After the Alfred Byrd d/b/a Mother's  
17 Kitchen account was established, did FPUC ever receive  
18 a deposit of anyone on behalf of Mother's Kitchen to  
19 set up a new account?

20 A No.

21 Q What does the term "customer of record"  
22 mean?

23 A This shows in our records the customer that  
24 is assigned to that account, that belonged to that  
25 account; official customer for that account. It also

1 reflects the customer that has sole authority over  
2 turn-offs for that account.

3 Q Okay. Why would an individual be treated as  
4 a customer of record on a commercial account?

5 A If an individual comes in, sets up the  
6 account, says "This is how I want it set up." We will  
7 put it in the individual's name.

8 Q Is it your understanding that that's what  
9 happened in this case?

10 A That's my understanding.

11 Q Okay. When is a "d/b/a" designation used on  
12 an account?

13 A When a business account, commercial account,  
14 is set up in an individual's name, we need to identify  
15 the business and we'll put a "d/b/a," doing business  
16 as, and list the name of the business for  
17 identification purposes.

18 Q Okay. Was the Alfred Byrd d/b/a Mother's  
19 Kitchen account set up consistent with these  
20 principles?

21 A Yes.

22 Q Are there other accounts that are set up in  
23 this manner?

24 A Yes.

25 Q Okay.

1           **MS. COWDERY:** I have no further questions at  
2 this time.

3           **THE COURT:** Okay. Thank you. Did you wish  
4 to offer the tariffs?

5           **MS. COWDERY:** I do, yes. I'd like to have  
6 those identified.

7           **THE COURT:** It's been marked for  
8 identification as U.

9           **MS. COWDERY:** Yes, to enter into the record  
10 as Respondent's 34, I think.

11           **THE COURT:** Any objection, Mr. Brooks?

12           **MR. BROOKS:** No, sir.

13           **THE COURT:** Without objection, the document  
14 is admitted into evidence as Respondent's Exhibit 34.

15           (Respondent's Exhibit 34  
16 received into evidence.)

17           **THE COURT:** All right. Okay. We'll take a  
18 ten-minute recess at this time.

19           (Brief recess taken.)

20           - - - - -

21           (Transcript continues in sequence in  
22 Volume 4.)

23           - - - - -

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