



matter to the Division of Administrative Hearings to conduct a formal hearing on October 27, 1997.

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A formal hearing was held on March 4, 1998, in Sanford, Florida, and was continued on April 1, 1998, by video teleconference between Orlando, Florida, and Tallahassee, Florida. Petitioner presented the testimony of Eddie Hodges, Arthur L. Brooks; Linda D. Brooks Jackson; Anthony L. Brooks, II; Harry L. Johnson; and Christopher Singletary. Respondent presented the testimony of Alfred Byrd; Donald Middleton; Diane Keitt; William R. McDaniel; and Darryl Troy. Petitioner's Exhibits 1 through 7 and Respondent's Exhibits 1 through 34 were offered and received into evidence. Intervenor presented no witnesses and offered no evidence. The transcript of the hearing was filed on April 20, 1998. Petitioner filed its proposed finding of fact and conclusions of law and final argument on April 30, 1998. Respondent and Intervenor also filed their proposals on April 30, 1998. Respondent filed a Motion to Strike Petitioner's Proposals. The motion is DENIED. Respondent also filed a Motion for Attorney's Fees under Sections 120.595(1) and 120.569(2)(c), Florida Statutes. The motion is DENIED.

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

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

RECOMMENDED ORDER

A formal hearing was held by the Division of Administrative Hearings, before Administrative Law Judge, Daniel M. Kilbride, in Orlando, Florida, on March 4, 1998, and April 1, 1998. The following appearances were entered:

APPEARANCES

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

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

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

DOCUMENT NUMBER-DATE

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TPSC-RECORDS/REPORTING

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with a mailing address of "P. O. Box 134, Sanford, Florida 32772-0134." This was based on the information provided by and the instructions of Byrd.

7. On March 22, 1996, Respondent's serviceman prepared and connected a range and a fryer at Mother's Kitchen Restaurant for gas service, pursuant to the March 21, 1996, Job-Work Contract, and turned on the gas supply to Mother's Kitchen Restaurant.

8. On March 31, 1996, Respondent billed Byrd \$126.59 for the labor and materials required to prepare and connect the appliances under the March 21, 1996, Job-Work Contract.

9. On April 9, 1996, Respondent billed the "Alfred Byrd d/b/a Mother's Kitchen" account \$67.32, consisting of \$46.32 for gas usage from March 22, 1996, through April 2, 1996, and a \$21.00 turn on charge from March 22, 1996.

10. On April 23, 1996, Respondent credited \$126.59 to the "Alfred Byrd d/b/a Mother's Kitchen" account, paid by Mother's Kitchen check No. 1013, dated April 22, 1996.

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

12. On May 23, 1996, Respondent credited \$150.00 to the "Alfred Byrd d/b/a Mother's Kitchen" account, paid by Mother's Kitchen check No. 1074, dated May 20, 1996, and signed by Anthony Brooks (Brooks). Respondent issued a receipt in the name of "Mother's Kitchen" for this payment.

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Mother's Kitchen Restaurant on July 11, 1996. At no time during the month of July did any person pay such a deposit.

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

21. On July 25, 1996, Respondent credited \$211.72 to the "Alfred Byrd d/b/a Mother's Kitchen" account, paid by Mother's Kitchen check No. 1131, dated July 24, 1996, and signed by Alfred Byrd. Respondent issued a receipt in the name of "Mother's Kitchen" for this payment.

22. On August 7, 1996, Respondent billed the "Alfred Byrd d/b/a Mother's Kitchen" account \$540.04, consisting of \$224.40 for gas usage from July 1, 1996, through July 31, 1996, \$285.64 in arrears and the \$30 service charge added on July 15, 1996.

23. On August 8, 1996, Mother's Kitchen check No. 1131 was returned for insufficient funds. Respondent imposed a \$20.00 service charge on the "Alfred Byrd d/b/a Mother's Kitchen" account for the returned check.

24. On August 12, 1996, Respondent discontinued gas service to Mother's Kitchen Restaurant for nonpayment of \$285.64 in arrears on the "Alfred Byrd d/b/a Mother's Kitchen" account.

25. On August 12, 1996, Brooks hand-delivered a \$290.00 cash payment to Respondent's Sanford Office to be applied to the "Alfred Byrd d/b/a Mother's Kitchen" account. Respondent issued a receipt in the name of "Mother's Kitchen" for this payment. This payment was not credited to the account until August 28,

\$221.25 for gas usage from July 31, 1996, through August 29, 1996, and \$230.04 in arrears. This bill was mailed to the physical address of Mother's Kitchen Restaurant.

32. On September 12, 1996, Respondent discontinued gas service to Mother's Kitchen Restaurant for nonpayment of \$230.04 in arrears on the "Alfred Byrd d/b/a Mother's Kitchen" account.

33. On September 12, 1996, Harry Johnson, an employee of Petitioner, hand-delivered a \$261.04 cash payment, consisting of payments for the \$230.04 in arrears and a \$31 reconnect fee, to Respondent's Sanford office to be applied to the "Alfred Byrd d/b/a Mother's Kitchen" account. Respondent issued a receipt in the name of "Mother's Kitchen" for this payment.

34. On September 13, 1996, Respondent's serviceman was dispatched between 8:30 a.m. and 9:00 a.m. to reconnect gas service to Mother's Kitchen Restaurant.

35. On September 13, 1996, between 8:30 a.m. and 9:00 a.m., Byrd, in person at Respondent's Sanford office, spoke to Diane Keitt (Keitt) and requested that gas service be discontinued on the "Alfred Byrd d/b/a Mother's Kitchen" account. Keitt contacted the serviceman by radio as he was en route to Mother's Kitchen Restaurant and instructed him to tell someone at the restaurant to call Keitt at Respondent's Sanford office.

36. The serviceman arrived at Mother's Kitchen Restaurant at approximately 9:00 a.m. Upon entering the restaurant's kitchen, the serviceman told the occupants that someone needed to call Keitt immediately at the Respondent's Sanford office. Next, he inspected the restaurant's natural gas appliances to make sure

The serviceman interrupted this phone conversation to tell Brooks that there was a gas leak on the restaurant's range. Brooks was upset that the serviceman had not yet restored gas service. Brooks refused to authorize or pay for repairs to the range.

42. The serviceman prepared a Report of Hazardous Condition or Corrective Action Required to document the gas leak on the range and inform the customer of the necessary repairs. Brooks refused to sign this form.

43. The serviceman capped the gas connection to the range, plugged the range, and placed the Report of Hazardous Condition or Corrective Action Required and a red tag on the range. He determined that the fryer could be operated safely, so he lit its pilot before exiting the restaurant.

44. The serviceman spoke with Keitt by radio and told her that he had located a gas leak and that Brooks refused to authorize its repair. Keitt then called Troy for instructions on how to handle the account. Troy felt that Brooks did not believe a gas leak was present on the range. Troy was concerned that someone at the restaurant may attempt to reconnect the range, so he instructed Keitt to have the meter turned off and locked. The meter was turned off and locked due only to safety concerns; Byrd's request to discontinue service to the restaurant played no part in Troy's decision.

45. Keitt contacted the serviceman by radio and instructed him to turn the meter off and lock it. The serviceman turned off the meter and locked it. He then notified Brooks that he had

### CONCLUSIONS OF LAW

52. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this cause, pursuant to Sections 120.569(2)(a) and 120.57(1), Florida Statutes.

53. Respondent is a natural gas utility regulated by the PSC pursuant to Chapter 366, Florida Statutes, and Chapter 25-7, Florida Administrative Code. Section 366.07(1), Florida Statutes, establishes the PSC's jurisdiction to regulate and supervise each public utility's rates and service.

54. Section 120.80(13)(b) provides that "a hearing on an objection to proposed action of the Florida Public Service Commission may only address the issues in dispute. Issues in the proposed action which are not in dispute are deemed stipulated." Therefore, this proceeding may only address the issues disputed in Petitioner's petition for a formal hearing.

55. Petitioner has the burden of establishing evidence on the record which supports their claim. Golfcrest Nursing Home v. Agency for Health Care Admin., 662 So. 2d 1330, 1334 (Fla. 1st DCA 1995). Petitioner must prove, by a preponderance of the evidence, that Respondent has violated the rule provisions stipulated to be at issue. Section 120.57(1)(h), Florida Statutes.

56. A "preponderance" is "[the] greater weight of evidence, or evidence which is more credible and convincing to the mind. That which best accords with reason and probability." Black's Law Dictionary 1064 (5th ed. 1979). See Department of Health and

60. Petitioner contends that it paid a separate \$500.00 deposit to Respondent on July 11, 1996, in order to establish a new account for Mother's Kitchen Restaurant, but that Respondent never opened a new account for the restaurant.

61. The preponderance of the record evidence, however, shows that Petitioner did not pay a separate \$500.00 deposit to Respondent at any time: Respondent's regularly-kept business records revealed no deposit or payment of \$500 during the month of July 1996. Respondent offered no receipt, cancelled check, or other documentation as proof of such a deposit; and Petitioner's initial written complaint to the PSC discussed in detail the events of July 11, 1996, but made no mention of any deposit made that day or at any other time. Further, no record evidence exists to indicate that the \$521.72 credit on August 28, 1996, represented a deposit to establish a new account for Mother's Kitchen Restaurant. Accordingly, no statute or PSC rule concerning establishment of service or customer deposits is applicable here.

#### Discontinuance of Service

62. Rule 25-7.089, Florida Administrative Code, Refusal or Discontinuance of Service by Utility, states in pertinent part:

(2) If the utility refuses service for any reason specified in this subsection, the utility shall notify the applicant for service as soon as practicable, pursuant to subsection (5), of the reason for refusal of service. . . . The 5-day notice provision does not apply to paragraphs (h). . . . As applicable, each utility may refuse or discontinue service under the following conditions:

\* \* \*

with the five-day notice requirement, in accordance with the requirements of Rule 25-7.089(2)(g), Florida Administrative Code.

Reconnection of Service

64. Also at issue is whether Rule 25-7.089(3), Florida Administrative Code, is applicable to the facts of this case, and if so, whether Respondent violated its provisions, which state: "[s]ervice shall be restored when cause for discontinuance has been satisfactorily adjusted."

65. Petitioner contends that its service should have been restored on September 13, 1996, the day after it made payment to bring the Mother's Kitchen Restaurant account current and have service restored. Petitioner further contends that the Respondent serviceman sent to restore service on September 13, 1996, intentionally created a leak on the restaurant's range in order to avoid restoring service to the restaurant.

66. Rule 25-7.037, Florida Administrative Code, requires all gas utilities to make a general inspection and adjustment of all appliances affected by a change in character of service, including a change in gas pressure or any other condition or characteristic which would impair the safe and efficient use of the gas in the customer's appliances. The preponderance of the record evidence shows that Respondent's serviceman did not create a leak on the range, either intentionally or otherwise, but detected a leak on the range during a routine meter test designed to check for leaks before restoring service to Petitioner. Beyond mere suspicions, Petitioner offered only uncorroborated hearsay in support of its contention.

Petitioner at the physical address of Mother's Kitchen Restaurant. Further, no record evidence exists to indicate that Respondent failed to comply with Rule 25-7.089(5), Florida Administrative Code, on any other occasion.

Refusing New Service

70. Petitioner alleged a violation of Rule 25-7.089(6)(a), Florida Administrative Code. The Rule, which states that "[d]elinquency in payment for service by a previous occupant of the premises" does not constitute sufficient cause for refusal or discontinuance of service to an applicant or customer "unless the current applicant or customer occupied the premises at the time the delinquency occurred and the previous customer will receive benefit from such service."

71. This rule is not applicable to the facts of this case. No record evidence exists to show that Respondent refused or discontinued service to Mother's Kitchen Restaurant for the delinquency of a previous tenant. The preponderance of the evidence shows that Alfred Byrd was the account's customer-of-record and "current occupant" from the inception of the account until its termination. Petitioner never opened another account with Respondent separate from the account established by Byrd.

72. Furthermore, the account was not delinquent on September 13, 1996, and Respondent never refused to grant Petitioner new service after that date.

73. Petitioner's argument that Respondent should have substituted Brooks, or some other partner, as customer-of-record whenever one of the partners made payments on this account is

establishment of new service and management of customer deposits when service was established in the name of Alfred Byrd, d/b/a Mother's Kitchen on March 21, 1996. It is further

RECOMMENDED the Respondent be found to have properly administered the account at issue here at all times leading up to its disconnection on September 13, 1996, and that Respondent be found to have acted in compliance with all Commission rules regarding that disconnection and refusal to reconnect. It is further

RECOMMENDED that Respondent not be required to provide a refund of any part of the deposit made on this account or any amounts paid for service or fees on the account.

DONE AND ENTERED this 11th day of June, 1998, at Tallahassee, Leon County, Florida.

  
DANIEL M. KILBRIDE  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847

Filed with the Clerk of the  
Division of Administrative Hearings  
this 11th day of June, 1998.

COPIES FURNISHED:

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

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