

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

RECEIVED ORIGINAL
FLORIDA PUBLIC SERVICE COMMISSION

IN RE: COMPLAINT OF MOTHER'S KITCHEN }
LTD. AGAINST FLORIDA PUBLIC UTILITIES }
COMPANY: _____

98 OCT 26 AM 9:49
DOCKET No. 970365-GU
MAIL ROOM

PETITIONERS' RESPONSE TO THE RESPONDENT'S
MOTION TO STRIKE PORTIONS OF PETITIONERS'
MOTION FOR RECONSIDERATION OF THE ORDER
DENYING COMPLAINT

PETITIONERS, MOTHER'S KITCHEN LTD., HEREBY FILES THIS IT'S RESPONSE TO THE RESPONDENT'S MOTION TO STRIKE PORTIONS OF PETITIONERS' MOTION FOR RECONSIDERATION OF THE ORDER DENYING COMPLAINT; AND AS GROUNDS STATE AS FOLLOWS:

1. ON SEPTEMBER 22, 1998, THE FLORIDA PUBLIC SERVICE COMMISSION IN THIS DOCKET ISSUED IT'S ORDER DENYING COMPLAINT, ORDER No. PSC-98-1254-FOF-GU.

2. ON OCTOBER 6, 1998, PETITIONERS FILED THEIR MOTION FOR RECONSIDERATION OF THE PSC ORDER ISSUED SEPTEMBER 22, 1998. ON OCTOBER 19, 1998 THE PETITIONERS RECEIVED FROM RESPONDENT A PLEADING ENTITLED FLORIDA PUBLIC UTILITIES COMPANY'S RESPONSE TO PETITIONERS' MOTION FOR RECONSIDERATION WITH A DOCUMENT ENTITLED MOTION TO STRIKE PORTIONS OF PETITIONERS MOTION FOR

RECONSIDERATION OF ORDER DENYING COMPLAINT; BOTH DOCUMENTS CONTAINING THE CERTIFICATION THAT THEY WERE FORWARDED BY U.S. MAIL TO PETITIONERS ON THE 15TH DAY OF OCTOBER 1998.

3. RESPONDENT ASSERTS IN IT'S MOTION TO STRIKE THAT PETITIONERS CITATIONS WERE IN ERROR WITH REGARDS TO NEW OR ADDITIONAL EVIDENCE; IN DIAMOND CAB COMPANY OF MIAMI V. KING, 146 So. 2d 889(FLA. 1962); CLEARLY COVERS SITUATIONS WHEREIN A RECONSIDERATION IS BROUGHT TO BRING THE AGENCY'S ATTENTION A POINT WHICH WAS OVERLOOKED OR WHICH THE AGENCY FAILED TO CONSIDER

ACK _____
AFA _____
APP _____
CAF _____
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FPSC-RECORDS/REPORTING

WHEN IT RENDERED IT'S ORDER. THROUGHOUT THE ENTIRE RECORD OF THESE PROCEEDINGS, THE PETITIONERS HAVE VOICED OBJECTIONS AT WHAT THEY PERCEIVED TO BE BIAS AND UNJUST ACTIONS ON THE PART OF THE COMMISSION STAFF; AND SINCE STAFF IS A PART OF THE COMMISSION; AND THE DECISION MAKING PROCESS UPON WHICH COMMISSION ORDERS ARE BASED; THE COMMISSION WAS OBLIGATED TO ADDRESS ANY ASSERTION OR ALLEGATION OF BIAS DURING PROCEEDINGS PRIOR TO MAKING A FINAL DECISIONS IN THIS MATTER. A FACT WHICH IS SUPPORTED BY PREVAILING LAW AND JUDICIAL STANDARDS WHICH CALL FOR A CLEAR AND PRECISE RESPONSE FROM THE FACTFINDER WHENEVER BIAS OR PREDJUDICE IS RAISED REGARDING THAT FACT FINDER; SAID RESPONSE MUST BE ON THE RECORD.

4. IN HENRY V. DEPARTMENT OF ADMINISTRATION, 431 So. 2d 677, 680(FLA. 1ST DCA 1983); IT WAS HELD THAT "WAIVER.. MUST BE CLEARLY DEMONSTRATED BY THE AGENCY CLAIMING BENEFIT". IN FLORIDA STATE BOARD OF MEDICAL EXAMINERS V. JAMES AND DEPARTMENT OF ENVIRONMENTAL REGULATION V. PUCKETT OIL Co. 577 So. 2d 988, 999(FLA. 1ST DCA 1991); THE PREMISE OF A CLEAR SHOWING OR ESTABLISHMENT THAT A PARTY "RECEIVED" NOTICE INFORMING HIM OR HER OF THE REQUIREMENT OF TAKING CERTAIN ACTION WITHIN A SPECIFIED PERIOD OF TIME, AND SUCH PARTY DELAYS FOR A "PROTRACTED LENGTH OF TIME", AND IN TAKING THE REQUIRED ACTION THE PARTY MAYBE DEEMED TO HAVE WAIVED HIS OR HER RIGHT TO SO ACT. IN FILING IT'S EXCEPTIONS AND IT'S RESPONSES TO THE MOTIONS TO STRIKE THE PETITIONERS DID NOT DELAY FOR ANY PROTRACTED TIMES. MOREOVER IT WAS NOTED THAT THE LATE FILING WAS MERELY 4 DAYS LATE. NO DOCUMENT IN THIS INSTANT CASE PASSED ANY PROTRACTED LENGTH OF TIME AND RESPONDENT FAILED TO SHOW ANY PRE-JUDICED ACTIONS OR HARM SUFFERED. THE PSC WAS IN ERROR TO GRANT THE RESPONDENT MOTIONS. PETITIONERS' MOTION FOR RECONSIDERATION WAS WELL BASED.

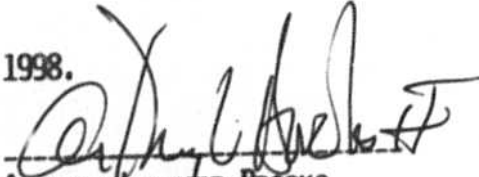
5. IN DARTT V. SHELL OIL Co. 539 F.2d 1256; IT WAS HELD THAT THE TOLLING DOCTRINE WAS APPLICABLE DUE TO IT NOT BEING A CASE OF A PLAINTIFF

SLEEPING ON HER RIGHTS NOR A DEFENDANT IN ANY WAY BEING PREJUDICED THEREBY EITHER PRESUMPTIVELY OR IN FACT. IN LIGHT OF THESE CIRCUMSTANCES AND THE DE FACTO FULFILLMENT OF THE MAIN PURPOSES OF THE ACT, WE HOLD THAT THE TIME LIMITATION WAS TOLLED UNTIL THE FILING OF DARTT'S NOTICE...

THE LEGISLATIVE INTENT OF THE ESTABLISHMENT OF THIS BODY; IS THE CONTROLL OF AND OVERSIGHT OF THE RESPONDENT'S INDUSTRY; AND TO ENSURE THE PROTECTION OF THE THE PUBLIC CITIZENTRY SUCH AS THE PETITIONERS. THE ESTABLISHMENT OF RULES AND PROCEDURES FOR HEARINGS ON COMPLAINTS WAS NOT MEANT TO BE AN EXERCISE IN TRYING TO CIRCUMVENT TRUTH NOR AN AVENUE TO VENT BIAS AND PREJUDICIAL ACTS TOWARDS ANY CITIZEN; IT IS RATHER AN AVENUE FOR THE SEARCH FOR TRUTH AND FACT. FOR THE PSC TO TRY AND CLOAK WRONGFUL ACTS BY A UTILITIES COMPANY BEHIND STRICT INTERPETATION OF A RULE IS CONTRARY TO JUSTICE AND IT'S VERY REASON FOR BEING.

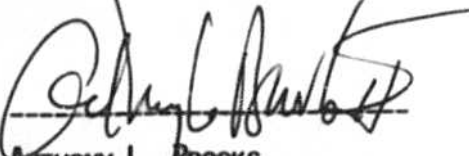
THE PETITIONER HAS DEMONSTRATED HEREIN AND IN IT'S EXCEPTIONS AS WELL AS IT'S MOTION FOR RECONSIDERATION OMISSION OR TURNING OF A BLIND EYE TO FACT BY THE ADMINISTRATIVE LAW JUDGE; AND BY COMMISSION THROUGH IT'S STAFF AND IT'S SUBSEQUENT ORDER. IT'S MOTION FOR RECONSIDERATION HAS MERIT AND SHOULD NOT BE STRIKEN.

RESPECTFULLY SUBMITTED THIS 23RD DAY OF OCTOBER 1998.


ANTHONY LEONARD BROOKS
REPRESENTATIVE OF
PETITIONERS
POST OFFICE BOX 1363
SANFORD, FLORIDA 32772
407)323-3657

CERTIFICATE OF SERVICE:

I HEREBY CERTIFY THAT A TRUE COPY OF THE FOREGOING WAS FURNISHED BY U.S. MAIL DELIVERY TO: KATHRYN CONDERY, ATTORNEY FOR THE RESPONDENT AT 215 S. MONROE ST. SUITE 815 TALLAHASSEE FLORIDA 32301; THIS 23rd DAY OF OCTOBER 1998.


ANTHONY L. BROOKS