



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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RECORDS AND REPORTING

DATE: JANUARY 7, 1999

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

FROM: DIVISION OF LEGAL SERVICES (ELIAS)
DIVISION OF CONSUMER AFFAIRS (PLESCOW)
DIVISION OF ELECTRIC AND GAS (MAKIN) *RVE CBB BO*

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

AGENDA: 01/19/99 - REGULAR AGENDA - POST HEARING DECISION - PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\970365.RCM

CASE BACKGROUND

On September 17, 1996, Mr. Anthony Brooks II, on behalf of Mother's Kitchen, Ltd. (Mother's Kitchen or Petitioners or Complainant) filed a complaint with the Division of Consumer Affairs (CAF) of the Florida Public Service Commission (Commission) against Florida Public Utilities Company (FPUC or the company). Mother's Kitchen claimed that gas service was improperly disconnected by FPUC.

By Proposed Agency Action Order No. PSC-97-1133-FOF-GU, issued September 29, 1997, the Commission found that FPUC acted in compliance with the applicable provisions of Florida Administrative Code in all aspects of its handling of this account. Mother's Kitchen timely protested the Commission's proposed action. The matter was referred to the Division of Administrative Hearings for assignment of an Administrative Law Judge. A formal hearing was held in Sanford, Florida, on March 4, 1998, and continued by video

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teleconference between Orlando, Florida, and Tallahassee, Florida, on April 1, 1998.

On June 11, 1998, the Administrative Law Judge entered his Recommended Order. The Recommended Order recommended that FPUC: 1) "acted in compliance with Public Service Commission rules concerning the establishment of service and management of customer deposits"; 2) "properly administered the account at issue here at all times leading up to its disconnection on September 13, 1996"; and 3) "acted in compliance with all Commission rules regarding that disconnection and refusal to reconnect". The Administrative Law Judge further recommended that FPUC should not be required to provide a refund of any part of the deposit made on this account or any amount paid for service or fees on the account.

After the entry of the Recommended Order, the parties filed several pleadings with the Commission. On June 29, 1998, Mother's Kitchen filed Exceptions to the Recommended Order. On July 2, 1998, FPUC filed a Motion to Strike those exceptions. On July 24, 1998, Mother's Kitchen filed a Response to FPUC's Motion to Strike. On July 28, 1998, FPUC filed a Motion to Strike Mother's Kitchen's July 24, 1998, response.

On September 22, 1998 the Commission entered its final order, Order No. PSC-98-1254-FOF-GU, adopting (with a correction for a scrivener's error concerning the location of the first hearing) the Administrative Law Judge's Recommended Order. The final order also granted both Motions to Strike.

On October 6, 1998, Mother's Kitchen timely filed a Motion for Reconsideration. Included as an attachment to that motion are more than 50 pages of what the Petitioners refer to as exhibits.

On October 15, 1998, FPUC filed a Response to the Motion for Reconsideration and a Motion to Strike Portions of the Motion for Reconsideration.

On October 26, 1998, Mother's Kitchen filed a Response to the Motion Strike. This recommendation addresses the Motion to Strike, the Motion for Reconsideration and the responses thereto.

DISCUSSION OF ISSUES

ISSUE 1: Should Florida Public Utilities Company's Motion to Strike Portions of Petitioners' Motion for Reconsideration of the Order Denying Complaint be granted?

RECOMMENDATION: Yes. Mother's Kitchen has appended to its Motion for Reconsideration, numerous documents not in the record of this proceeding. Consideration of such extra-record matters in the context of a Motion for Reconsideration is precluded by several provisions of Chapter 120, Florida Statutes.

STAFF ANALYSIS: On October 15, 1998, FPUC filed a Motion to Strike Portions of Petitioner's Motion for Reconsideration. FPUC moved to strike most of the documents attached to Mother's Kitchen's Motion for Reconsideration. FPUC claims that the subject documents are not part of the evidentiary record of this proceeding and are therefore, not appropriate for consideration by the Commission.

As support for its motion, FPUC asserts that Section 120.57(1)(h), Florida Statutes limits the basis for Findings of Fact to the evidence of record and to matters officially recognized. Further, FPUC suggests that consideration of these matters in the context of a Motion for Reconsideration would be violative of Section 120.57(1)(j), Florida Statutes, which only permits an agency to reject or modify the findings in a Recommended Order if it first determines from a review of the entire record that those findings were not based on competent substantial evidence, or that the proceeding did not comply with the essential requirements of law.

FPUC also cites several court opinions as authority for its motion. In Plante v. Dept. Of Business and Professional Regulation, 716 So.2d 790 (Fla. 4th DCA 1998), the court affirmed an agency order striking a non-record document in the context of a remand for reconsideration. FPUC states "(t)he Court reasoned that the information consisted of "additional facts which were not before the hearing officer, and therefore, cannot be considered by the Division." Id. At 792." FPUC also notes two cases where appellate courts have stricken non-record documents from court filings where such documents were not record documents in the administrative hearing Agency for Health Care Administration v. Orlando Regional Health Services, 617 So.2d 385, 389 (Fla. 1st DCA 1993); and Arlotta v. Florida Parole and Probation Commission, 419 So.2d, 1159 (Fla. 1st DCA 1982).

FPUC notes that some of the documents attached to Mother's Kitchen's Motion for Reconsideration are part of the evidentiary record. Except where one of those documents has been annotated by the Petitioner, FPUC does not seek to have those documents stricken.

On October 26, 1998, Mother's Kitchen filed a response to the motion titled Petitioners' Response to the Respondent's Motion to Strike Portions of Petitioners' Motion for Reconsideration of the Order Denying Complaint. To assist the Commissioners in evaluating Mother's Kitchen's arguments, staff has included this pleading as Attachment A to this Recommendation. The pleading states in part:

Throughout the entire record of these proceedings, the Petitioners have voiced objections to what they perceived to be bias and unjust actions on the part of 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 decision in this matter.

Mother's Kitchen's response does not address any of the statutes or cases cited by FPUC in its Motion to Strike. The cases cited by Mother's Kitchen (paragraphs 4 and 5 of the response) appear to be irrelevant and non-responsive to the question of whether or not the consideration of extra-record documents in the context of a Motion for Reconsideration is permitted pursuant to Chapter 120, Florida Statutes.

The only possible relevant argument in the Response is found in paragraph 3. The Petitioners infer that Diamond Cab Company of Miami v. King, 146 So.2d, 889 (Fla. 1962) is authority for the proposition that it is appropriate to raise matters outside the record in the context of a Motion for Reconsideration. Staff disagrees. The matters which were "overlooked or which the agency failed to consider" are limited to evidence of record or applicable law. Mother's Kitchen does not dispute FPUC's assertion the subject documents are not part of the evidentiary record.

Staff believes the authority cited by FPUC is controlling and dispositive. Under the Administrative Procedures Act, it simply is not permitted for an agency to reconsider a Recommended Order based on extra-record material. Additionally, Section 120.57(1)(b), Florida Statutes mandates that all parties have an "opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination, and submit rebuttal evidence."

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Consideration of these documents in this context would deny FPUC these rights. Further, some of the material included with Mother's Kitchen's motion appears to be hearsay, which pursuant to section 120.57(1)(c), Florida Statutes, could be excluded from consideration by the fact-finder. Therefore, staff recommends that FPUC's Motion to Strike be granted.

ISSUE 2: Should Mother's Kitchen's Motion for Reconsideration be granted?

RECOMMENDATION: No. Mother's Kitchen has failed to demonstrate any matter which the Commission overlooked or failed to consider when it rendered its Order.

STAFF ANALYSIS: On October 6, 1998, Mother's Kitchen timely filed a Motion for Reconsideration. To assist the Commissioners in evaluating Mother's Kitchen's arguments, staff has included this pleading, without the attached exhibits, as Attachment B to this Recommendation. Mother's Kitchen requests that the Commission:

1. Find that Mother's kitchen's exceptions were timely filed, or in the alternative, that equitable circumstances prevented timely filing;
2. Find that FPUC's two Motions to Strike post Recommended Order filings which were granted in the Commission's final order should be denied;
3. Find that Mother's Kitchens' exceptions were based on "sound principles"; and
4. Find that Mother's Kitchen's complaint should be sustained.

On October 15, 1998, FPUC filed a response to the Motion for Reconsideration. On page 2 of its response, FPUC states:

Petitioners' motion is an inflammatory, argumentative, version of certain facts perceived by Plaintiffs, which alleges Staff bias in the proceedings, wrongful and arbitrary rulings by the ALJ, and reargument of Petitioners' arguments made during various filings preceding Petitioners' exceptions being stricken as untimely. Petitioners do not allege an overlooked or mistaken point of law relating to the issues and facts which were before the ALJ.

FPUC further states that "A motion for reconsideration is not intended as a procedure for rearguing the whole case merely because the losing party disagrees with the order." Response at page 3.

In addition, FPUC states on pages 3 and 4 of its response that:

Petitioners argue that staff had a "racially motivated" bias against their case, and that the Final Order should be reconsidered on this basis. However, the so-called "evidence of this bias and discriminatory action" is merely that the ALJ accepted FPUC's evidence and made findings of fact in FPUC's favor and against Petitioners, that staff did not accept Petitioners' version of the facts, and that staff is to blame for Petitioners' belief that their exceptions did not have to be filed with the agency, but that service would suffice (pp. 6-11). There is no mistake of law or fact in this regard, no merit to Petitioner's argument, and no support whatsoever for reconsideration on this basis.

In at least 11 statements in Mother's Kitchen's Motion for Reconsideration, Mother's Kitchen has alleged bias on the part of staff. Staff categorically denies any bias whatsoever in favor of or against either party to this proceeding. Moreover, such allegations are belied by the procedural history of this proceeding and the safeguards explicit in the Administrative Procedures Act.

Mother's Kitchen did raise the issue of bias in its protest of Proposed Agency Action Order No. PSC-97-1133-FOF-GU, issued September 29, 1997. With due regard for this allegation, staff recommended that this matter be referred to the Division of Administrative Hearings, so that the evidentiary hearing could be conducted by a neutral Administrative Law Judge, not employed by or associated with this agency. Staff's memorandum reflecting this action is attached to this Recommendation as Attachment C.

The evidentiary hearing was conducted by an Administrative Law Judge, assigned by the Division of Administrative Hearings. The matter was vigorously litigated by Mother's Kitchen and FPUC. Both parties conducted extensive discovery. Over two full days of hearing, both parties offered extensive testimony and numerous exhibits. Both parties submitted Proposed Recommended Orders. The ALJ then issued his Recommended Order, which was based on extensive consideration of the evidence and argument of both Mother's Kitchen and Florida Public Utilities Company. As previously discussed in Issue 1, an agency has extremely limited authority to overrule the findings of fact made by an Administrative Law Judge. In the instant case, those findings of fact were adopted in full by the agency. Further, as provided by Section 120.57, Florida Statutes, the attorney who represented the Commission at the hearing had no involvement in either the presentation to the Commission of the Recommended Order, or the issuance of the Final Order.

Much of Mother's Kitchen Motion for Reconsideration discusses actions which took place before the protest of the PAA Order. A formal proceeding pursuant to Chapter 120, Florida Statutes, is a de novo proceeding. The Commission's decision may only be based on the record before the Administrative Law Judge. Mother's Kitchen disputes the findings made by the Administrative Law Judge. However, Mother's Kitchen has not shown that those findings were not based on competent substantial evidence. As such, Mother's Kitchen has not made the showing necessary to grant a motion for Reconsideration. Further, Mother's Kitchen has not shown error in the Commission's decision to grant FPUC's motions to strike.

For the first time, FPUC argues that equitable circumstances prevented the timely filing of its exceptions, specifically, the ill health of its qualified representative in late June, when the exceptions were due. Staff does not find this argument credible. In its post hearing filings made June 29, 1998, July 24, 1998, and August 11, 1998, Mother's Kitchen repeatedly insisted that its filings were timely. No mention of any illness is found until after staff analyzed the issue of equitable circumstances in its August 24, 1998, Recommendation.

The purpose of a motion for reconsideration is to bring to the attention of the agency some matter which it overlooked or failed to consider when it rendered its Order. Diamond Cab Co. v. King, 146 So.2d 889 (Fla. 1962). The mere fact that a party disagrees with the Order is not a basis for rearguing the case. Id. Nor is reweighing the evidence a sufficient basis for reconsideration. State v. Green, 104 So.2d 817 (Fla. 1st DCA 1958).

Mother's Kitchen's Motion For Reconsideration fails to demonstrate mistake, inadvertence, or some matter which the Commission overlooked or failed to consider when the Commission rendered the Order. Therefore, staff recommends that the motion for reconsideration be denied.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: The docket should be closed after the time for filing an appeal has run.

STAFF ANALYSIS: The docket should be closed 32 days after issuance of the order, to allow the time for filing an appeal to run.

Legal
ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

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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 _____
CMU _____
CTR _____
EAG _____
LEG _____
LWN _____
OPC _____
RCH _____
SEC _____
WAS _____
OTH _____

DOCUMENT NUMBER DATE
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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 ON 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 PREDIJDICE 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 PREJUDICED 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 PRE-JUDICIAL 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.

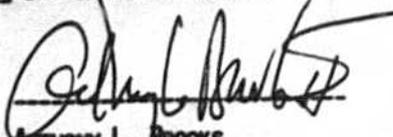
THE PETITIONER HAS DEMONSTRATED HEREIN AND IN IT'S EXCEPTIONS AS WELL AS IT'S MOTION FOR RECONSIDERATION OMISSION OR TURNING OF A BLIND EYE TO FACT BY THE ADMINISTRATIVE LAW JUDGE; AND BY COMMISSION THROUGH IT'S STAFF AND IT'S SUBSEQUENT ORDER. IT'S MOTION FOR RECONSIDERATION HAS MERIT AND SHOULD NOT 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 DELIVER, TO: KATHRYN CONDERY, ATTORNEY FOR THE RESPONDENT AT 215 S. MONROE ST. SUITE 215 TALLAHASSEE FLORIDA 32301; THIS 23rd DAY OF OCTOBER 1998.


ANTHONY L. BROOKS

legal

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION **ORIGINAL**

IN RE:)
COMPLAINT OF MOTHER'S KITCHEN)
LTD.,)
AGAINST,)
FLORIDA PUBLIC UTILITIES COMPANY)
REGARDING REFUSAL OR)
DISCONTINUANCE OF SERVICE.)

DOCKET NO. 970365-GU
ORDER NO. PSC-98-1254-FOF-GU
ISSUED: SEPTEMBER 22, 1998.



MOTION FOR RECONSIDERATION OF PSC ORDER
ISSUED SEPTEMBER 22, 1998 DENYING THE
COMPLAINT UNDER DOCKET NO. 970365GJ

COMES NOW, THE COMPLAINANT, MOTHER'S KITCHEN LTD., WHO WOULD MOVE THE FLORIDA PUBLIC SERVICE COMMISSION TO RECONSIDER IT'S ORDER ISSUED ON SEPTEMBER 22, 1998, DENYING COMPLAINANT'S COMPLAINT, AND AS GROUNDS FOR SUCH WOULD SUBMIT THE FOLLOWING:

CASE BACKGROUND

ON SEPTEMBER 16TH 1996, MOTHER'S KITCHEN LTD. FILED A COMPLAINT WITH THE FLORIDA PUBLIC SERVICE COMMISSION, DIVISION OF CONSUMER AFFAIRS AGAINST THE FLORIDA PUBLIC UTILITIES COMPANY ALLEGING DESPITE MAKING DEPOSIT PAYMENTS AND PAYMENTS FOR SERVICE AS HAD BEEN REQUESTED BY FLORIDA PUBLIC UTILITIES COMPANY (FPUC) EMPLOYEE DIANE KEITT, THE FPUC'S SANFORD OFFICE MANAGER; FPUC HAD ENGAGED IN A PRACTICE OF SYSTEMATIC TURN OFFS OF SERVICE AND

MCK _____ UNWARRANTED REFUSAL OF SERVICE TO THE COMPLAINANT'S BUSINESS.
MFA _____ ON SEPTEMBER 17, 1998 IN RESPONSE TO SPECIFIC QUESTIONS BY
MPP _____ CONSUMER AFFAIRS REPRESENTATIVE MOTHER'S KITCHEN LTD. PROVIDED
MAF 1 FOLLOW UP INFORMATION REGARDING THE COMPLAINT.
MMU _____
MTR _____ IN LATE 1996 AND EARLY 1997, FPUC PROVIDED THE PUBLIC
MAG 1 SERVICE COMMISSION WITH SEVERAL DOCUMENTS ENTITLED CRONOLOGY OF
MEG 1 SERVICE FOR MOTHER'S KITCHEN; ALONG WITH OTHER DOCUMENTS PUR-
MIN 5 PORTED TO BE TRUTHFUL AND EXACT ACCOUNT RECORDS AND FACTUAL
MPC _____ EVENTS CONCERNING THEIR HANDLING OF THE ACCOUNT OF MOTHER'S
MCH _____ KITCHEN.
MEC 1 ON SEPTEMBER 29, 1997, DESPITE COMPLAINANT DISPLAYING BOTH
MAS _____ DOCUMENTATION AND LIVE ACCOUNT CLEARLY SHOWING THE DOCUMENTS AND
MTH _____

DOCUMENT NUMBER-DATE
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VERBAL ASSERTIONS OF FPUC AND IT'S REPRESENTATIVES TO BE IN ERROR, FLAWED AND FALSE. PSC'S STAFF TOOK A BIAS AND SLANTED POSTURE AGAINST THE COMPLAINANT AND ARBITRARILY ISSUED A RECOMMENDED ORDER UPON WHICH THE PSC ISSUED PROPOSED AGENCY ACTION ORDER No. 92-1133-FOF-GU.

MOTHER'S KITCHEN PROTESTED THE PSC'S PROPOSED ACTION AND THE MATTER WAS REFERRED TO THE DIVISION OF ADMINISTRATIVE HEARINGS FOR ASSIGNMENT OF AN ADMINISTRATIVE LAW JUDGE.

COMPLAINANT IN WHAT WAS TERMED TO BE A DI NOVO PROCEEDING BY THE ADMINISTRATIVE LAW JUDGE; WENT ABOUT DISPLAYING FURTHER FLAWS IN FPUC'S POSITION. UNWIT WELL INTO THE PROCESS; PSC STAFF CHOSE TO INTERJECT THEIR BIAS AND SLANTED POSITIONS INTO THE PROCESS AS AN INTERVENOR.

EVIDENCE OF THE BIAS AND SLANTED POSITION OF PSC'S STAFF CAN BE DEMONSTRATED BY REVIEW OF THE RECORD, WHEREIN THROUGHOUT THE WHOLE PROCESS, IT'S REPRESENTATIVE ASKED ONLY ONE QUESTION IN HEARINGS, WHILE ESPOUSING IT'S PREVIOUS BIAS CONCLUSIONS ON THE RECORD. DESPITE NUMEROUS SHOWINGS THAT DOCUMENTS AND STATEMENTS PREVIOUSLY MADE TO STAFF BY FPUC WERE FLAWED, FALSE AND MISREPRESENTED. YET STAFF'S COUNSEL DID NOT PUT FORTH ONE QUESTION OR COMMENT ABOUT THAT FACT.

THE ADMINISTRATIVE LAW JUDGE, AT THE URGING OF PSC COUNSEL AND FPUC'S COUNSEL WRONGFULLY AND ARBITRARILY DENIED COMPLAINANT THE RIGHT TO ENTER INTO EVIDENCE THE DOCUMENTS CONCOCTED BY FPUC IN 1996 AND 1997 WHICH WERE DIRECTLY OPPOSED TO THE DOCUMENTS CREATED BY THEM IN LATE 1997 AND 1998 AND WHICH WERE NOW BEING OFFERED AS OFFICIAL RECORD OF AN ACCOUNT ESTABLISHED IN 1996. A CLEAR VIOLATION OF ESTABLISHED LAW; WHICH REQUIRES THE USE OF ACTUAL DOCUMENTS CREATED AT THE TIME OF EVENT RATHER THAN SOME SELF SERVING DOCUMENT CREATED TWO YEARS LATER.

THE ADMINISTRATIVE LAW JUDGE, AT THE URGING OF PSC COUNSEL AND FPUC'S COUNSEL, WRONGFULLY AND ARBITRARILY DENIED THE COMPLAINANT'S INTRODUCTION OF EVIDENCE AND EXHIBITS WHICH SHOWED THE FALSITY OF SWORN TESTIMONY BY FPUC'S WITNESSES. WHILE TOTALLY IGNORING ADMISSIONS ON THE PART OF FPUC WITNESS; THAT WHILE HOLDING CONVERSATIONS WITH HIS ATTORNEY THEY FORMULATED RESPONSES WHICH WERE CONTRARY TO THE RECORD.

(2)

THIS CONCLUDED WITH A RECOMMENDED ORDER BEING ISSUED BY THE ADMINISTRATIVE LAW JUDGE ON JUNE 11, 1998 AFTER HEARINGS BEING HAD ON APRIL 1, 1998 BY VIDEO TELECONFERENCE BETWEEN ORLANDO, FLORIDA AND TALLAHASSEE, FLORIDA AND IN SANFORD, FLORIDA ON MARCH 4, 1998. THE RECOMMENDED ORDER, RECOMMENDING FPUC ACTED IN COMPLIANCE WITH PUBLIC SERVICE COMMISSION RULES AND SHOULD NOT BE REQUIRED TO PROVIDE A REFUND OF ANY PART OF THE DEPOSIT OR PAYMENTS MADE FOR SERVICE OR FEES ON THIS ACCOUNT

SINCE THE ENTRY OF THE RECOMMENDED ORDER THE PARTIES DID THE FOLLOWING:

A) ON JUNE 26TH 1998, MOTHER'S KITCHEN FILED IT'S EXCEPTIONS TO THE ALJ'S RECOMMENDED ORDER BY FOLLOWING THE EXACT INSTRUCTIONS FROM THE ALJ AT THE CONCLUSION OF HIS RECOMMENDED ORDER.

"PARTIES SHOULD FILE ANY EXCEPTIONS WITH THE AGENCY HAVING FINAL ORDER AUTHORITY."

ALTHOUGH COMPLAINANT'S REPRESENTATIVE WAS SERIOUSLY ILL, WITH A CARDIAC CONDITION; COMPLAINANT MEMBERS ON JUNE 25, 1998 OVERNIGHTED IT'S OBJECTIONS AND EXCEPTIONS TO:

ALJ'S CLERK OFFICE WITH THE U.S. POSTAL SERVICE SHOWING DELIVERY ON THE MORNING OF THE 26TH.

AND,

FLORIDA PUBLIC SERVICE COMMISSION (AGENCY HAVING FINAL ORDER AUTHORITY) THROUGH IT'S PURPORTED COUNSEL OF RECORD AS PUT FORTH IN THE ADMINISTRATIVE PROCEEDINGS, MR. KEATING. U.S. POSTAL SERVICE SHOWS DELIVERY MADE ON THE MORNING OF THE 26TH.

UNLIKE INSTRUCTIONS FROM THE ALJ'S OFFICE DESIGNATING HIS CLERK'S OFFICE SITE BY ADDRESS AND TELEPHONE NUMBER. NO MATERIAL EVER PROVIDED BY THE PSC OR IT'S REPRESENTATIVES SHOWED A "CLERK" DESIGNATION. FURTHERMORE IF KEATING IS THE LEGAL REPRESENTATIVE OF THE PSC IN THIS ACTION; THEN CANNONS OF LAW MANDATE ANY CORRESPONDENCE FOR THE PSC IN LEGAL PROCEEDINGS MUST BE DIRECTED TO COUNSEL. ~~THEREFORE DELIVERY TO KEATING IS DELIVERY TO PSC.~~

COMPLAINANT'S EXCEPTIONS WERE TIMELY FILED.

B) ON JUNE 29, 1998 AFTER PSC REPRESENTATIVE HAD IN IT'S POSSESSION COMPLAINANT'S EXCEPTIONS FOR THREE DAYS, PSC

(3)

REPRESENTATIVE THEN PLACED IT IN THE RECORD AS BEING FILED ON JUNE 29, 1998. A COMPLETE AND OPENLY BIAS ASSERTION AS HE HAD IT IN HIS POSSESSION FOR THREE DAYS.

C) ON JULY 2, 1998 FPUC CERTIFIED IT MAILED TO COMPLAINANT IT'S MOTION TO STRIKE COMPLAINANT'S EXCEPTIONS CLAIMING EXCEPTIONS WERE UNTIMELY FILED. IN IT'S MOTION FPUC CITED THE DATE IT RECEIVED THE EXCEPTIONS BY REGULAR MAIL; WHICH WAS A FEW DAYS LATER THAN THE OVERNIGHT DELIVERY TO THE ALJ'S CLERK AND MR. KEATING. LATE RECEIPT WHILE IT SHOULD BE DULY NOTED, WHEN CAUSE IS THE PERFORMANCE OF THE U.S. POSTAL SERVICE CAN NOT BE AFFIXED TO COMPLAINANT.

D). ON JULY 8, 1998 FPUC FILED A RESPONSE TO MOTHER'S KITCHEN EXCEPTIONS; ASSERTING THE ALJ'S FINDINGS WERE SUPPORTED BY COMPETENT SUBSTANTIAL EVIDENCE AND THAT MOTHER'S KITCHEN FAILED IN IT'S EILING TO DEMONSTRATE OTHERWISE.

E). ON JULY 18, 1998 COMPLAINANT FILED A RESPONSE TO FPUC' MOTION TO STRIKE OF JULY 2, 1998. COMPLAINANT ASSERTS IN IT'S RESPONSE THAT FPUC WHILE CERTIFYING THAT IT'S MOTION TO STRIKE WAS SERVED BY MAIL DELIVERY ON JULY 2, 1998; THE ENVELOPE IN WHICH IT WAS CONTAINED DISPLAYED A POST MARK OF JULY 3, 1998 AND THAT JULY 3 WAS A FRIDAY PRIOR TO JULY 4 A NATIONAL HOLIDAY WITH THAT DAY OCCURRING ON A SATURDAY. IT IS COMMON KNOWLEDGE THAT THE POSTAL SERVICE HAD ADVISED THAT THEY WOULD BE SHUT DOWN ON MONDAY JULY 6TH TO OBSERVE THAT HOLIDAY. IT WAS FOR THOSE REASON THAT THE JULY 2, DATE IS NOT A FACTUAL SERVICE DATE AND THEACTUAL RECEIPT DATE OF THAT MOTION WAS ON OR ABOUT THE 8TH OF JULY. THUS CREATING AN INSUFFICIENCY OF PROCESS. FPUC KNEW OR SHOULD HAVE KNOWN THAT THE FASHION IN WHICH THEY ATTEMPTED TO FILE THEIR MOTION WOULD CREATE AN UNFAIR AND UNJUST MANIPULATION OF THE TIME REQUIREMENTS, AND ACTUAL TIME OF RECEIPT WOULD EXCEED THE ALLOTTED FIVE DAY MAILING ENLARGEMENT.

COCKE V. MERRILL LYNCH CO. 817 F. 2d 1559
1561; NATON V. BANK OF CALIFORNIA 649 F.
2d 691, 696; APPLICATION OF THE ZIPES
RATIONALE 18 U.C. DAVIS L. REV. 749, 779-80
1984, 502 So. 2d 446, 502 So. 2d 444 AND
411 So. 2d 184, 186-87.

WITHREGARDS TO EQUITTABLE TOLLING OF TIME, ADDRESSES

THE DOCTRINE OF EQUITABLE TOLLING SERVES TO AMELIORATE HARSH RESULTS THAT SOMETIMES FLOW FROM A STRICT, LITERALISTIC CONSTRUCTION AND APPLICATION OF ADMINISTRATIVE TIME LIMITS CONTAINED IN STATUTES AND RULES WHEREAS TOLLING MAY ARISE OUT OF A BROADER RANGE OF EVENTS.

COMPLAINANT'S RESPONSE WITHIN THE BROADER SCOPE AND MISREPRESENTATION BY FPUC OF ACTUAL SERVICE; WAS TIMELY FILED. ADDITIONALLY DESPITE STAFF TRYING TO MAKE THE BIAS AND DELIBERATELY FALSE ASSERTION THAT FILING OCCURRED ON JULY 24; THE RESPONSE WAS IN THE HANDS OF THE PSC TWO DAYS PRIOR TO THAT ASSERTION.

F). ON JULY 28, 1998, FPUC FILED A MOTION TO STRIKE PETITIONER'S RESPONSE TO FPUC'S JULY 2 MOTION TO STRIKE CLAIMING THE RESPONSE SHOULD HAVE BEEN FILED NO LATER THAN JULY 14, 1998. FPUC ALSO CLAIMED THAT THE PLEADING CONTAINS DOCUMENTS AND REFER TO DOCUMENTS NOT IN THE RECORD.

G). ON AUGUST 11, 1998 MOTHER'S KITCHEN FILED A PLEADING TITLED COMPLAINANT'S RESPONSE TO RESPONDENT'S MOTION TO STRIKE PETITIONER'S RESPONSE. MOTHER'S KITCHEN IN THIS PLEADING REASSERTED THAT THE POST HEARING FILINGS WERE TIMELY AND THAT ALL DOCUMENTS AND REFERENCES CONTAINED THEREIN WERE INDEED FROM DOCUMENTATION AND VERBAL ASSERTIONS ENTERED BY FPUC DURING THE COURSE OF THIS PROCEEDING.

H). ON AUGUST 31, 1998 MOTHER'S KITCHEN AFTER RECEIVING SHORT NOTICE ON THE PROPOSED COMMISSION HEARING AND DUE TO IT'S REPRESENTATIVE STILL BEING ILL AND UNABLE TO TRAVEL; SUBMITTED IT'S WRITTEN OBJECTIONS TO THE BIAS AND INTENTIONALLY MISLEADING RECOMMENDATIONS PLACED INTO THE RECORD BY STAFF. THIS PLEADING WAS ASKED OR REQUESTED TO BE MADE A PART OF THE RECORD SHOWING COMPLAINANT'S OPPOSITION TO THE RECOMMENDATIONS PUT FORTH BY STAFF AND WAS NOT AN ATTEMPT AT AN EXPARTE COMMUNICATIONS AS STAFF PUT FORTH.

J). ON SEPTEMBER 22, 1998 THE PSC ISSUED AN ORDER DENYING COMPLAINT, ADOPTING THE ALJ'S RECOMMENDED ORDER; GRANTING FPUC'S MOTION TO STRIKE OF JULY 2, 1998; GRANTING FPUC'S MOTION TO STRIKE PETITIONER'S RESPONSE AND OBTIATING THE NEED TO ADDRESS

MOTHER'S KITCHEN EXCEPTIONS.

REQUEST FOR RECONSIDERATION

PURSUANT TO RULING IN PUBLISHERS RESOURCE, INC. v. WALKER-DAVIS PUBLICATIONS, INC., 762 F. 2d 557, 561 (7TH CIR. 1985) IN WHICH IT IS HELD THAT MOTIONS FOR RECONSIDERATIONS GENERALLY SERVE A FUNCTION DESIGNED SOLELY TO CORRECT MANIFEST ERRORS OF LAW OR FACT OR TO PRESENT NEWLY DISCOVERED EVIDENCE.

PAINWEBBER INCOME PROPERTIES THREE LTD. PARTNERSHIP v. MOBIL OIL CORP., 902 F. SUPP. 1514, 1521 (M.D. FLA. 1995); HOLDS THAT A MOTION FOR RECONSIDERATION SHOULD RAISE NEW ISSUES.

1. FROM INCEPTION AND THROUGHOUT THE PROCEEDINGS IN THIS MATTER, COMPLAINANT HAS SET FORTH ALLEGATIONS BEFORE THE AGENCY WITH FINAL ORDER AUTHORITY (PSC) CLAIMING BIAS, DISCRIMINATION AND MISREPRESENTATION, RACIALLY MOTIVATED ON THE PART OF ITS STAFF. THE ONLY ADDRESSING OF THIS ISSUE BY THE COMMISSION CAME IN THE WAY OF COMMENT DURING A FULL COMMISSION HEARING WHEREIN COMPLAINANTS WERE TOLD TO CO-OPERATE WITH STAFF AND THAT STAFF WAS THERE TO HELP COMPLAINANTS. IN FACT STAFF HAS WORKED AGAINST COMPLAINANTS FROM THE BEGINNING. THE ONLY SEMBLANCE OF FAIRNESS CAME WHEN STAFF EMPLOYEE RASPBERRY WAS A PART OF THE PROCESS AND HE WAS QUICKLY REMOVED FROM AN ACTIVE ROLE.

STAFF HAS CONTINUALLY IGNORED WRONGDOING ON THE PART OF FPUC AND MADE MISREPRESENTATIONS BEFORE THE COMMISSION TO AID FPUC.

EVIDENCE OF THIS BIAS AND DISCRIMINATORY ACTION IS DEMONSTRATED AS FOLLOWS:

(A). WHEN ISSUE OF ORIGINAL DEPOSIT WAS BROUGHT UP, FPUC WAS THEN AND STILL IS UNABLE TO PRODUCE DOCUMENTS TO SUBSTANTIATE THEIR CONTENTION OF BYRD OPENING THE ACCOUNT SOLELY IN HIS NAME.

"SINCE THE COMMISSION RULES CALL FOR CREATION OF A CERTIFICATE OF DEPOSIT TO COVER JUST SUCH AN EVENT, STAFF DID NOT ASK FPUC TO PRODUCE SUCH CERTIFICATE, WHICH ANY REASONABLE INVESTIGATOR OR FACT FINDER WOULD HAVE DONE. INSTEAD STAFF ASKED COMPLAINANTS, SOME ONE THEY ARE NOT CHARGED WITH REGULATING, TO PROVE IT."

(6)

WHEN PROVEN BY BOTH ABSENCE OF ANY SUCH CERTIFICATE AND SWORN TESTIMONY FROM BYRD THAT THE ACCOUNT WAS ESTABLISHED FOR THE PARTNERSHIP.

"STAFF CHOSE TO IGNORE THIS VIOLATION AND ISSUE A FORMAL RECOMMENDATION THAT FPUC COMMITTED NO VIOLATION.

SOMETHING ANY UNBIAS REASONABLE PERSON WOULD NOT DO IN THE FACE OF SUCH GLARING APPARENT FACT. (EITHER A CERTIFICATE WAS MADE AS REQUIRED BY RULE OR A RULE WAS VIOLATED BY NOT PRODUCING IT; THE ABSENCE OF SUCH A CERTIFICATE AND FPUC' FAILURE TO PRODUCE IT WHEN REQUESTED LEAVE NO ROOM FOR ANY OTHER CONCLUSION, THAN THEY VIOLATED THE RULE BY NOT ISSUING IT.

WHY WAS THIS NOT DONE; STAFF INTENTIONALLY AND MALICIOUSLY HAD AN OPEN AND CONTINUING BIAS TOWARDS THE COMPLAINANTS.

(B). WHEN STAFF WAS PRESENTED WITH A RECEIPT CLEARLY SHOWING THAT FPUC HAD DELIBERATELY PUT FORTH FALSE AND MISLEADING INFORMATION IN THEIR OFFICIAL CRONOLOGICAL HISTORY OF THE ACCOUNT REQUESTED BY STAFF.

"STAFF DID NOT QUESTION WHY THEIR RECORDS CONTAINED FALSE INFORMATION; WHEN CHARGED WITH ENSURING UTILITY RECORDS BE COMPLETE AND ACCURATE; THEY INSTEAD TRIED TO AID FPUC IN COMING UP WITH AN EXPLANATION. DESPITE THERE BEING NO DOCUMENTATION TO SUPPORT THE VERBAL EXPLANATION FPUC AND STAFF CAME UP. STAFF PUT IT FORTH AS TRUTH IN IT'S RECOMMENDATIONS; DESPITE COMPLAINANT SHOWING BY WAY OF DOCUMENTS OBTAINED FROM FPUC'S RECORDS THAT THEIR VERBAL ASSERTIONS WERE UNTRUE."

STILL STAFF DID NOT PERFORM AN INDEPTH INVESTIGATION NOR QUESTION THE OBVIOUS DISCREPANCY; STAFF DID HOWEVER IN THE FACE OF SUCH AN OBVIOUS ATTEMPT AT MISREPRESENTATION BY FPUC; STAFF ISSUED A RECOMMENDATION THAT FPUC DID NOT VIOLATE ANY RULES. SOMETHING NO PRUDENT OR REASONABLE PERSON WOULD HAVE DONE. WHY; BECAUSE STAFF INTENTIONALLY AND MALICIOUSLY HAD AN OPEN AND CONTINUING BIAS AGAINST THE COMPLAINTS.

(C). WHEN STAFF WAS PRESENTED WITH AN ASSERTION BY FPUC IN MARCH 1997 THAT THE REASON THEY REFUSED TO LEAVE SERVICE ON WHEN PAID; WAS DUE TO COMPLAINANTS REFUSING TO PAY \$200.00 FOR A REPAIR ON DEFECTIVE EQUIPMENT; WHILE ADMITTING THERE WAS

SERVICABLE EQUIPMENT STILL PRESENT. ONLY LATER TO ASSERT THAT REASON THEY REFUSED SERVICE WAS DUE TO REFUSAL TO SIGN A GHOST LIKE WORK ORDER, WHICH NEVER EXISTED; AND WHEN ASKED TO PRODUCE IT FPUC COULD NOT; FINALLY ALTERING THEIR STANCE ON THIS ISSUE BY AFTER HOLDING A MEETING WITH COUNSEL THEY DECIDED THE REASON WAS DUE TO A MEMBER OF THE BUSINESS BEING "IRRATIONAL". DESPITE FPUC GIVING THREE SEPERATE ACCOUNTS ON THREE DIFFERENT OCCASSIONS; STAFF CHOSE TO IGNORE THE FACT THAT IF ONE IS TRUE AS FPUC PUT FORTH THE OTHERS MUST BE LIES. STAFF DID NOT QUESTION FPUC AS TO WHY THEY WERE CONCOCTING VARIED AND DIVERSE REASONS WHEN ONE WAS SUCCESSFULLY REBUTTED. STAFF INSTEAD CHOSE TO WILLINGLY EXCEPT AND AID FPUC IN PUTTING FORTH THE FALSE ASSERTIONS. WHY, BECAUSE STAFF HAD AN OPEN AND CONTINUING BIAS TOWARDS COMPLAINANTS.

(D). WHEN STAFF WAS PRESENTED WITH THE FACT THAT FPUC'S REPRESENTATIVE KEITT TESTIFIED UNDER OATH; THAT SHE PLACED \$290 IN PETTY CASH AND FORGOT ABOUT IT UNTIL THE NEXT TIME SHE ENTERED PETTY CASH AT WHICH TIME SHE TOOK IT AND COMBINED IT WITH ANOTHER PAYMENT TO CREATE THE \$500 PLUS SHOWN ON THEIR RECORDS; AND FPUC'S OWN DOCUMENTS SHOWED THIS TO BE A LIE; WHEN PETTY CASH RECORDS SHOWED KEITT ENTERED THE PETTY CASH ON AT EACH TWO SEPERATE OCCASSIONS AFTER THE DATE OF THE \$290 RECEIPT AND DAYS PRIOR TO THE \$500 PLUS ENTRY AND NO RECEIPT WAS ISSUED OR RECORD MADE. STAFF STILL INTENTIONALLY AND MALICIOUSLY MAINTAINED KEITT' ASSERTIONS WERE TRUE; EVEN WHEN FPUC'S OWN DOCUMENTATION SHOWED OTHERWISE. ANY PRUDENT AND REASONABLE PERSON WOULD HAVE AT LEAST QUESTIONED THIS. HOWEVER, STAFF NOT ONLY DID NOT QUESTION IT BUT AIDED FPUC IN THE FURTHERANCE OF THIS LIE. WHY; BECAUSE STAFF HAD AN OPEN AND CONTINUING BIAS TOWARDS THE COMPLAINANTS.

(E). IN THE HANDLING OF COMPLAINANTS' EXCEPTIONS AND ALL OF THE MOTIONS THAT FOLLOWED; STAFF NOR ANY OTHER MEMBER OF THE PSC ADVISED COMPLAINANTS OF THE DESIGNATION OF A CLERK'S OFFICE

FOR CORRESPONDENCE TO THE PSC POST HEARING. INSTEAD THE ONLY MEANS FOR FORWARDING DOCUMENTATION FOR THE PSC EVER ESPOUSED DURING THE ADMINISTRATIVE HEARING PROCESS; WAS THROUGH OF APPEARANCE OF KEATING AS COUNSEL FOR PSC AND ALL CORRESPONDENCE WAS TO BE DIRECTED THROUGH HIM. STAFF KNEW OR SHOULD HAVE KNOWN FROM THE TEXT OF THE PLEADINGS THAT COMPLAINANTS WERE LULLED INTO THE POSITION OF BY SENDING DOCUMENTS TO THE PSC'S COUNSEL THEY WERE INDEED SENDING THEM TO THE PSC. STAFF IN IT'S RECOMMENDATIONS ASSERT UNTIMELINESS AND LIST SPECIFIC DATES OF RECEIPT OF THE PLEADINGS; HOWEVER IT AND IT'S REPRESENTATIVES HELD ONTO THE PLEADINGS FOR TWO AND THREE DAYS BEFORE ACKNOWLEDGING RECEIPT IN EFFORTS TO AID FPUC IN ATTEMPTS TO AVOID HAVING TO ADDRESS THE EXCEPTIONS BEFORE THE COMMISSION. STAFF ALSO CHOSE TO NOT ADDRESS THE ISSUE OF THE COMPLAINANTS REPRESENTATIVE'S ILLNESS AND ESPOUSING QUALIFICATIONS FOR THE QUALIFIED REPRESENTATIVE; WHILE FAILING TO MENTION THAT COMPLAINANT HAD STATED IN PRIOR PLEADING THAT THE REPRESENTATIVE'S ILLNESS HAD CAUSED THE OTHER MEMBERS WHO WERE NOT QUALIFIED REPRESENTATIVES TO TRY AND RESPOND TO THE PLEADINGS. JUST AS WE DO SO NOW.

WHY DID STAFF HOLD ONTO THE PLEADINGS FOR TWO AND THREE DAYS BEFORE FORMALLY ACKNOWLEDGING THEIR RECEIPT; BECAUSE STAFF HAD AN OPEN AND CONTINUING BIAS AGAINST THE COMPLAINANTS.

WHILE THE ISSUES PUT FORTH IN THE ABOVE DOES NOT CONSTITUTE ALL OF THE INAPPROPRIATE BIAS BASED ACTIONS ON THE PART OF STAFF; THEY DO DEMONSTRATE AN UNREASONABLENESS APPLIED TO THEIR HANDLING OF THIS MATTER AND THEIR WILLINGNESS TO INJECT THOSE BIAS ACTIONS INTO THE OFFICIAL PROCEEDINGS IN THIS MATTER.

THEREFORE: SINCE STAFF REPRESENTATIVE KEATING, WHO PARTICIPATED IN PRE HEARING CONFERENCES AND PRE ADMINISTRATIVE HEARING RECOMMENDATIONS BY STAFF; HIS PRESENT AND CONTACT WITH THE ADMINISTRATIVE LAW JUDGE; AFTER COMPLAINANTS HAD VOICED CLAIMS OF BIAS BASED ON RACE WAS NOT APPROPRIATE AND LEGALLY WRONG.

THE INPUT AND EVALUATION OF EVIDENCE AND EVENTS AND THE OFFERING OF RECOMMENDATIONS(WHICH THE COMMISSION APPARENTLY FOLLOWED) WERE LIKEWISE LEGALLY WRONG.

WHEN THE IMPARTIALITY OF A COURT, MASTER OR AGENCY WITH FINAL ORDER AUTHORITY; POSSESSING RESPONSIBILITY FOR DETERMINING THE RIGHTS OF A PARTY OR RESOLVING DISPUTED FACTS BETWEEN TWO PARTIES IS RAISED, THAT COURT, MASTER OR AGENCY MUST ADDRESS SUCH ALLEGATION PRIOR TO CONTINUING THE FACTFINDING PROCESS. STAFF AND THROUGH THEM THE PSC DEPRIVED COMPLAINANTS OF THEIR DUE PROCESS RIGHTS.

THEREFORE ANY ORDER BASED ON THE BIAS AND DISCRIMINATORY ACTIONS MUST BE SET ASIDE.

ABSENT AN OFFICIAL INSTRUCTION TO THE CONTRARY; SERVICE OF PLEADINGS ON THE COUNSEL OF RECORD FOR THE PSC CONSTITUTES SERVICE ON THE PSC.

SINCE SERVICE WAS MADE ON THE PSC THROUGH IT'S COUNSEL PRIOR TO FILING DEADLINE COMPLAINANTS' EXCEPTIONS MUST BE ADDRESSED AND FPUC'S MOTIONS TO STRIKE DENIED AS MOOT.

COMPLAINANTS OBJECTED ON THE RECORD TO THE ALJ'S ALLOWING FPUC TO ENTER INTO EVIDENCE AS A TRUE CRONOLOGY OF ACCOUNT EVENTS, A DOCUMENT COMPLETED AND FORMULATED A YEAR TO TWO YEARS AFTER THE FACT; AND TO THE ALJ REFUSING TO ALLOW THE ENTRY INTO EVIDENCE DOCUMENTS COMPLETED AT THE TIME OF THE EVENTS PURPORTED TO BE A TRUE CRONOLOGY OF ACCOUNT EVENTS DURING CROSS EXAMINATION OF THE PARTY CLAIMING TO HAVE MADE BOTH SETS OF DOCUMENTS. IN DO THE ALJ WRONGFULLY DENIED COMPLAINANTS RIGHT TO IMPEACH THE WITNESS.

THE ALJ LIKEWISE REFUSED TO ALLOW CERTAIN QUESTIONS TO WITNESSES WHICH WOULD SHOW CAUSE TO DISBELEIVE THE WITNESSES DURING CROSS EXAMINATION AND IN PRE-TRIAL PROCEEDINGS; WRONGFULLY DENYING COMPLAINANTS RIGHT TO IMPEACH THE WITNESS AND DISCOVERABLE FACTS.

THE ALJ GAVE FPUC EXTENSIVE TIME AND LEEWAY IN THE PUTTING ON OF IT'S CASE, WHILE CONTINUALLY LIMITING COMPLAINANTS TIME FOR PUTTING ON IT'S CASE. THE ALJ IN CONCERT WITH FPUC AND THE PSC AS INTERVENOR PREVENTED COMPLAINANTS FROM ENTERING INTO EVIDENCE, MATERIALLY WEIGHTED AND WHICH WOULD CONTRADICT FPUC ASSERTIONS.

COMPLAINANTS' EXCEPTIONS ARE FACTUAL, WEIGHTED AND WELL FOUNDED; AND SHOULD BE ADDRESSABLE.

STAFF GIVES PLENTY OF PLAY TO THE 30 SOME ODD EXHIBITS ENTERED BY FPUC, HOWEVER STAFF AND THE ALJ CHOSE TO IGNORE THE FACT THAT THE MAJORITY OF SUCH EXHIBITS WERE COMPUTER GENERATED DOCUMENTS CREATED IN 1997 AND 1998; NOT ACTUAL DOCUMENTS CREATED IN 1996 DURING THE TIME OF SUCH EVENT.

ANY DOCUMENT ATTEMPTED TO BE ENTERED INTO EVIDENCE WHICH WAS ACTUALLY CREATED AT THE TIME OF EVENT WAS BARRED FROM ENTRY.

ALL OF THE ALJ'S ACTIONS UPON WHICH COMPLAINANTS EXCEPTIONS WERE BASED ARE ACTS OF REVERSIBLE ERROR.

FPUC MAINTAINS IN IT'S MOTION TO STRIKE PETITIONER'S RESPONSE; THAT COMPLAINANTS' PLEADING CONTAINS DOCUMENTS AND REFERS TO DOCUMENTS NOT IN THE RECORD.

BY GRANTING FPUC'S MOTION THE PSC HOLDS THAT STATEMENT TO BE TRUE.

ACCORDINGLY COMPLAINANT, PURSUANT TO THE HOLDINGS OF PUBLISHERS RESOURCE, INC AS CITED ABOVE AND PAINHEBERG INCOME PROPERTIES THREE LTD. AS CITED ABOVE; WOULD OFFER AS NEW EVIDENCE AND NEW ISSUES THE FOLLOWING:

1. NEW ISSUES:

PSC'S FAILURE TO ADDRESS THE ALLEGATIONS OF BIAS ON THE PART OF IT'S STAFF PRIOR TO COMPLETION OF THIS MATTER. SAID ALLEGATIONS BEING WEIGHTED AND TAKING AWAY ANY SEMBLANCE OF FAIRNESS AND JUSTICE IN THIS MATTER.

PSC AND THE ALJ USE OF THE INPUT FROM INDIVIDUALS WITH A PREDISPOSITION TO SEE THEIR ORIGINAL RECOMMENDATIONS CERTIFIED AND SUPPORTED; SAID INDIVIDUALS BEING STAFF MEMBERS WHO ARE THE SUBJECT OF BIAS ALLEGATIONS.

PSC AND THE ALJ USE OF WHAT AMOUNTS TO TAINTED INPUT FROM THOSE INDIVIDUALS IN THE FORMULATION OF THEIR ORDERS; THUS TAINTING THE ORDERS.

COMPLAINANTS' ALLEGATIONS OF BIAS PRECEED THE HEARINGS AS DEMONSTRATED BY EXHIBIT ONE ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE.

2. NEW EVIDENCE:

THE \$500 DEPOSIT WHICH IS HIGHLY CRITICAL TO THIS MATTER; CENTERS AROUND FPUC'S KEITT ASSERTION THAT SHE PLACED A \$290 PAYMENT INTO PETTY CASH ON THE 12TH OF AUGUST 1996 AND FORGOT ABOUT IT UNTIL SHE NEXT WENT INTO PETTY CASH AT WHICH TIME SHE TOOK IT AND COMBINED IT WITH ANOTHER PAYMENT TO EQUATE

TO A \$521.00 ENTRY ON THE ACCOUNT RECORD. EXHIBIT TWO DEMONSTRATES NOT ONLY THIS ASSERTION TO BE FALSE; BUT IT ALSO DEMONSTRATES NO SUCH ENTRY BY KEITT ON AUGUST 12TH AT ALL. .

COMPLAINANTS HAVE MAINTAINED ALL ALONG THAT THEY MADE AN ADDITIONAL DEPOSIT IN JULY '96 AT KEITT'S INSISTENCE; FPUC CLAIMS THE \$521 ENTRY WAS DUE TO THE KEITT'S VERBAL ASSERTION AND ANTHONY BROOKS COMING INTO THE OFFICE ON AUGUST 12.

EXHIBIT THREE DEMONSTRATES THAT ANTHONY BROOKS WAS NO WHERE NEAR FPUC'S SANFORD OFFICE AND MS. KEITT ON THE 12TH OF AUGUST. CONFIRMING WITNESS TESTIMONY ON THE RECORD.

THESE TWO EXHIBITS SHOW THE FALSITY OF KEITT'S ASSERTION AND SHORN TESTIMONY AT HEARING.

EXHIBIT FOUR DEMONSTRATES FPUC'S REPRESENTATIVES PROPENSITY FOR CREATING ASSERTIONS AND RECORD TO FIT ANY GIVEN SITUATION.

WHEN TAKEN SEPERATELY AND IN COMBINATION THE ABOVE WOULD GIVE ANY PRUDENT AND REASONABLE PERSON CAUSE TO DOUBT THE VERASITY OF FPUC'S ASSERTIONS AND FULLY SUPPORT THE COMPLAINT OF THE COMPLAINANTS.

WHEREFORE: COMPLAINANTS WOULD REQUEST THE HONORABLE COMMISSION TO RECONSIDER IT'S ORDER AND FIND THAT:

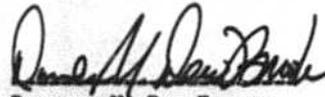
- 1). COMPLAINANTS' EXCEPTIONS WERE TIMELY FILED/ OR IN THE ALTERNATIVE EQUITABLE CIRCUMSTANCES PREVENTED TIMELY FILING.
 - 2). FPUC'S MOTIONS TO STRIKE WERE DENIED.
 - 3). COMPLAINANTS EXCEPTIONS ARE BASED UPON SOUND PRINCIPLES.
- AND,
- 4). COMPLAINANTS' COMPLAINT SHOULD BE SUSTAINED.

RESPECTFULLY SUBMITTED THIS 5th DAY OF OCTOBER 1998.

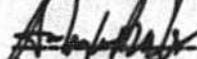


ARTHUR L. BROOKS


EDDIE HODGES



DANJELE M. DON BROOKS



ANTHONY L. BROOKS

COMPLAINANTS
POST OFFICE BOX 1363
SANFORD, FLORIDA 32772
407)323-3657

CERTIFICATE OF SERVICE:

I HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE FOREGOING ALONG WITH ATTACHMENTS WERE MAILED OVERNIGHT DELIVERY TO: KATHRYN CONDERY ATTORNEY FOR FPUC AT 3301 THOMASVILLE ROAD SUITE 300 TALLAHASSEE FLORIDA 32312 THIS 5th DAY OF OCTOBER 1998.


ARTHUR BROOKS

State of Florida.



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: October 16, 1997
TO: Nanette Fisher, Scheduling Unit Coordinator, Division of Records and Reporting
FROM: Division of Legal Services (Keating) *WCK*
Division of Electric and Gas (Dillmore, Makin, Lowery) *RVE*
Division of Consumer Affairs (Durbin, Plescow) *SS*
RE: Docket No. 970365-GU - Complaint of Mother's Kitchen Ltd. against Florida Public Utilities Company regarding refusal or discontinuance of service.

On September 17, 1997, a representative of Mother's Kitchen Ltd. (Mother's Kitchen), a partnership, registered a complaint against Florida Public Utilities Company (FPUC) with the Division of Consumer Affairs. The Mother's Kitchen representative believed that FPUC had improperly disconnected service to the partnership's restaurant. On September 29, 1997, the Commission issued Order No. PSC-97-1133-FOF-GU, Notice of Proposed Agency Action Order Denying Complaint. Mother's Kitchen timely filed its Notice of Protest. In its protest, Mother's Kitchen alleged bias on the part of Commission Staff who participated in the recommendation on this complaint. Further, the issues appear to be primarily factual.

Based on the foregoing, Staff recommends that this matter be set for hearing and referred to the Division of Administrative Hearings.

WCK/js
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