

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

GLOBE INTERNATIONAL REALTY)
AND MORTGAGE, INC.,)
)
Petitioner,)
)
vs.) CASE NO. 95-2514
)
FLORIDA POWER & LIGHT COMPANY,)
)
Respondent,)
and)
)
PUBLIC SERVICE COMMISSION,)
)
Intervenor.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was conducted in this case on September 27, 1995, in Fort Lauderdale, Florida, before Stuart M. Lerner, a duly designated Hearing Officer of the Division of Administrative Hearings.

APPEARANCES

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STATEMENT OF THE ISSUE

Whether Florida Power & Light Company (hereinafter referred to as "FPL") properly refused the request of Globe International Realty & Mortgage, Inc. (hereinafter referred to as "Globe") to supply electric service to the premises located at 808 Northeast Third Avenue, Fort Lauderdale, Florida?

PRELIMINARY STATEMENT

On January 31, 1995, the Florida Public Service Commission (hereinafter referred to as the "PSC") issued a Notice of Proposed Agency Action in which it

announced its intention to find that "FPL was in compliance with applicable Commission rules and its tariffs in refusing to establish service in the name of Globe" at the premises located at 808 Northeast Third Avenue in Fort Lauderdale, Florida. On February 20, 1995, Globe, through its President, Matthew Renda, filed a petition requesting a Section 120.57 formal hearing on the PSC's proposed action. On May 16, 1995, the matter was referred to the Division of Administrative Hearings for the assignment of a hearing officer to conduct the formal hearing Globe had requested.

On July 21, 1995, the PSC filed a petition for leave to intervene in the instant case. By order issued August 9, 1995, the petition was granted.

The formal hearing was held, as scheduled, on September 27, 1995. A total of eleven witnesses testified at the hearing: Matthew Renda; Kenneth V. Hemmerle, Sr.; Bonnie Ammons; Philip Martin; Sandra Lowery; Gigi Marshall; Carol Sue Ryan; Longina Berti; Joy Wimberly; Linda Hart; and Thomas Eichas. In addition to the testimony of these eleven witnesses, twenty-eight exhibits (Respondent's Exhibits 1 through 28) were offered and received into evidence.

At the close of the evidentiary portion of the hearing, the Hearing Officer, on the record, advised the parties of their right to submit post-hearing submittals and established a deadline (30 days from the date of the Hearing Officer's receipt of the transcript of the hearing) for the filing of these submittals.

The Hearing Officer received the hearing transcript on October 16, 1995. On November 15, 1995, Globe, FPL and the PSC each timely filed proposed recommended orders. FPL's proposed recommended order was accompanied by a pleading entitled "Summary of Argument." These post-hearing submittals have been carefully considered by the Hearing Officer.

The parties' proposed recommended orders each contain what are labelled as "findings of fact." These "findings of fact" proposed by the parties are specifically addressed in the Appendix to this Recommended Order.

FINDINGS OF FACT

Based upon the evidence adduced at hearing, and the record as a whole, the following Findings of Fact are made:

1. Kenneth V. Hemmerle, Sr., is a real estate developer.
2. Matthew Renda is a real estate and mortgage broker.
3. Hemmerle and Renda have known each other since about 1986.
4. At the suggestion of Hemmerle, in February of 1993, Renda, along with Hemmerle, formed Globe. At the time, Hemmerle was involved in a development project on the west coast of Florida and he wanted Renda, through Globe, to handle "the selling and so forth for the project."
5. Globe was incorporated under the laws of Florida.
6. The articles of incorporation filed with the Department of State, Division of Corporations (hereinafter referred to as the "Division of Corporations") reflected that: Renda was the president of the corporation; Hemmerle was its secretary; Renda and Hemmerle were the incorporators of the

corporation, owning 250 shares of stock each; they also comprised the corporation's board of directors; and the corporation's place of business, as well as its principal office, were located at 808 Northeast Third Avenue in Fort Lauderdale, Florida (hereinafter referred to as the "808 Building").

7. Globe is now, and has been since its incorporation, an active Florida corporation.

8. Annual reports were filed on behalf of Globe with the Division of Corporations in both 1994 (on April 19th of that year) and 1995 (on March 23rd of that year).

9. The 1994 annual report reflected that Renda and Hemmerle remained the officers and directors of the corporation.

10. The 1995 annual report reflected that Renda was still an officer and director of the corporation, but that Hemmerle had "resigned 9-2-93."

11. Both the 1994 and 1995 annual reports reflected that the 808 Building remained the corporation's place of business and its corporate address.

12. The 808 Building is a concrete block building with a stucco finish housing eight separate offices. The entire building is served by one electric meter.

13. At all times material to the instant case, Southern Atlantic Construction Corporation of Florida (hereinafter referred to as "Southern") owned the 808 Building.

14. Southern was incorporated under the laws of Florida in June of 1973, and administratively dissolved on October 9, 1992. Hemmerle owns a majority of the shares of the corporation's stock. The last annual report that Southern filed with the Division of Corporations (which was filed on June 10, 1991) reflected that: Hemmerle was the corporation's president and registered agent; he also served on the corporation's board of directors; Lynn Nadeau was the corporation's other officer and director; and the corporation's principal office was located in the 808 Building.

15. From 1975 until September 6, 1994, FPL provided electric service to the 808 Building. Charges for such service were billed to an account (hereinafter referred to as the "808 account") that had been established by, and was in the name of, Hemmerle Development Corporation (hereinafter referred to as "HDC").

16. HDC was incorporated under the laws of Florida in 1975, and administratively dissolved on October 9, 1992. At the time of HDC's incorporation, Hemmerle owned 250 of the 500 shares of stock issued by the corporation. The last annual report that HDC filed with the Division of Corporations (which was filed on June 10, 1991) reflected that: Hemmerle was the corporation's president and registered agent; he also served on the corporation's board of directors; Lynn Nadeau was the corporation's other officer and director; and the corporation's principal office was located in the 808 Building. Following the administrative dissolution of the corporation, Hemmerle continued to transact business with FPL in the corporation's name, notwithstanding that he was aware that the corporation had been administratively dissolved.

17. At no time has Renda owned any shares of HDC's stock or served on its board of directors.

18. He and Hemmerle have served together as officers and directors of only two corporations: Globe and Hemmerle's Helpers, Inc. The latter was incorporated under the laws of Florida as a nonprofit corporation in March of 1992, and was administratively dissolved on August 13, 1993. Its articles of incorporation reflected that its place of operation, as well as its principal office, were located in the 808 Building.

19. Pursuant to arrangements Renda and Hemmerle had made (which were not reduced to writing), Globe occupied office space in the 808 Building from March of 1993, through September 6, 1994 (hereinafter referred to as the "rental period"). Renda and Hemmerle had initially agreed that the rent Globe would pay for leasing the space would come from any profits Globe made as a result of its participation in Hemmerle's Florida west coast development project. Renda and Hemmerle subsequently decided, however, that Globe would instead pay a monthly rental fee of \$300 for each office it occupied in the building. 1/ Globe (which occupied only one office in the building during the rental period) did not pay in full the monies it owed under this rental agreement.

20. The office Globe occupied in the 808 Building was the first office to the right upon entering the building. It was across the lobby from the office from which Hemmerle conducted business on behalf of his various enterprises.

21. Globe voluntarily and knowingly accepted, used and benefited from the electric service FPL provided to its office and the common areas in the building during the rental period.

22. Under the agreement Renda and Hemmerle had reached, Globe was not responsible for making any payments (in addition to the \$300 monthly rental fee) for such service.

23. On July 26, 1994, the 808 account was in a collectible status and an FPL field collector was dispatched to the service address. There, he encountered Hemmerle, who gave him a check made out to FPL in the amount of \$2,216.37. Hemmerle had noted the following on the back of the check: "Payment made under protest due to now [sic] owning [sic] of such billing amount to prevent discontinuance of power." The check was drawn on a Sunniland Bank checking account that was in the name of Florida Kenmar, Inc., (hereinafter referred to as "Kenmar"), a Florida corporation that had been incorporated in May of 1984, 2/ and administratively dissolved on November 9, 1990. (The last annual report that Kenmar filed with the Division of Corporations, which was filed on June 10, 1991, reflected that: Hemmerle was the corporation's president and registered agent; he also served on the corporation's board of directors; and the corporation's principal office was located in the 808 Building.) Hemmerle told the field collector, upon handing him the check, that there were no funds in the Kenmar checking account. Nonetheless, the field collector accepted the check.

24. FPL deposited the check in its account at Barnett Bank of South Florida.

25. The check was subsequently returned due to "insufficient funds."

26. On the same day that he was visited by the FPL field collector, Hemmerle telephoned Sandra Lowery, an FPL customer service lead representative

for recovery, complaining about, among other things, a debit that he claimed had been improperly charged to the 808 account.

27. As a result of her conversation with Hemmerle, Lowery authorized the removal of the debit and all late payment charges associated with the debit from the 808 account.

28. Following the July 26, 1994, removal of the debit and associated late payment charges, the balance due on the account was \$1,953.91, an amount that Hemmerle still disputed.

29. In an effort to demonstrate that a lesser amount was owed, Hemmerle sent Lowery copies of cancelled checks that, he claimed, had been remitted to FPL as payment for electric service billed to the 808 account.

30. Some of these checks, however, had been used to pay for charges billed to other accounts that Hemmerle (or corporations with which he was associated) had with FPL.

31. As of August 29, 1994, the 808 account had a balance due of \$2,387.47. These unpaid charges were for service provided between March of 1993 and August 10, 1994.

32. On August 29, 1994, Hemmerle showed Renda a notice that he had received from FPL advising that electric service to the 808 Building would be terminated if the balance owing on the 808 account was not paid within the time frame specified in the notice. Hemmerle suggested to Renda that, in light of FPL's announced intention to close the 808 account and terminate service, Renda should either apply for electric service to the 808 Building in Globe's name or relocate to another office building.

33. Renda decided to initially pursue the former option.

34. Later that same day, Renda telephoned FPL to request that an account for electric service to the 808 Building be opened in Globe's name. Gigi Marshall was the FPL representative to whom he spoke. She obtained from Renda the information FPL requires from an applicant for electric service.

35. During his telephone conversation with Marshall, Renda mentioned, among other things, that Globe had been a tenant at the 808 Building since the previous year and that it was his understanding that FPL was going to discontinue electric service to the building because of the current customer's failure to timely pay its bills. Renda claimed that Globe was not in any way responsible for payment of these past-due bills.

36. From an examination of FPL's computerized records (to which she had access from her work station), Marshall confirmed, while still on the telephone with Renda, that the 808 account was in arrears and that FPL had sent a disconnect notice to the current customer at the service address.

37. Marshall believed that, under such circumstances, it would be imprudent to approve Globe's application for electric service without further investigation. She therefore ended her conversation with Renda by telling him that she would conduct such an investigation and then get back with him.

38. After speaking with Renda, Marshall went to her supervisor, Carol Sue Ryan, for guidance and direction. Like Marshall, Ryan questioned whether

Globe's application for service should be approved. She suggested that Marshall telephone Renda and advise him that FPL needed additional time to complete the investigation related to Globe's application. Some time after 12:30 p.m. on that same day (August 29, 1994), Marshall followed Ryan's suggestion and telephoned Renda. Ryan was on the line when Marshall spoke with Renda and she participated in the conversation. Among the things Ryan told Renda was that a meter reader would be dispatched to the 808 Building the following day to read the meter so that the information gleaned from such a reading would be available in the event that Globe's application for service was approved.

39. At no time did either Marshall or Ryan indicate to Renda that Globe's application was, or would be, approved.

40. Ryan referred Globe's application to Larry Johnson of FPL's Collection Department, who, in turn, brought the matter to the attention of Thomas Eichas, an FPL fraud investigator.

41. After completing his investigation of the matter, which included an examination of the Broward County property tax rolls (which revealed that Southern owned the 808 Building), as well a search of the records relating to Globe, HDC and Southern maintained by the Division of Corporations, Eichas determined that Globe's application for service should be denied on the basis of the "prior indebtedness rule." Eichas informed Johnson of his decision and instructed him to act accordingly.

42. Electric service to the 808 Building was terminated on September 6, 1994.

43. As of that date, the 808 account had a past-due balance that was still in excess of \$2,000.00.

44. Although he conducted his business activities primarily from his home following the termination of electric service to the 808 Building, Hemmerle continued to have access to the building until March of 1995 (as did Renda). 3/ During this period, Hemmerle still had office equipment in the building and he went there on almost a daily basis to see if any mail had been delivered for him. It was his intention to again actively conduct business from his office in the building if electric service to the building was restored. Hemmerle (and the corporations on whose behalf he acted) therefore would have benefited had there been such a restoration of service.

45. After discovering that electric service to the 808 Building had been terminated, Renda telephoned FPL to inquire about the application for service he had made on behalf of Globe. He was advised that, unless FPL was paid the more than \$2,000.00 it was owed for electric service previously supplied to the building, service to the building would not be restored in Globe's name.

46. Thereafter, Renda, on behalf of Globe, telephoned the PSC and complained about FPL's refusal to approve Globe's application for service.

47. FPL responded to the complaint in writing. In its response, it explained why it had refused to approve the application.

48. On or about November 15, 1994, the Chief of PSC's Bureau of Complaint Resolution sent Renda a letter which read as follows:

The staff has completed its review of your complaint concerning Florida Power & Light's (FPL) refusal to establish service in the name of Globe Realty, Inc. at the above-referenced location. Our review indicates that FPL appears to have complied with all applicable Commission Rules in refusing to establish service. Our review of the customer billing history indicates that the past-due balance is for service at this location and not attributable to the judgment against Mr. Hemmerle for service at another location.

The interlocking directorships of Globe International Realty & Mortgage, Inc. and Hemmerle Development, Inc. suggest that the request to establish service in the name of Globe Realty is an artifice to avoid payment of the outstanding balance and not a result of any change in the use or occupancy of the building. Thus, FPL's refusal to establish service is in compliance with Rule 25-6.105(8)(a), Florida Administrative Code.

Please note that this determination is subject to further review by the Florida Public Service Commission. You have the right to request an informal conference pursuant to Rule 25-22.032(4), Florida Administrative Code. Should that conference fail to resolve the matter, the staff will make a recommendation to the Commissioners for decision. If you are dissatisfied with the Commission decision, you may request a formal Administrative hearing pursuant to Section 120.57(1), Florida Statutes.

49. After receiving this letter, Renda, on behalf of Globe, requested an informal conference.

50. The informal conference was held on November 30, 1994.

51. At the informal conference, the parties explained their respective positions on the matter in dispute. No resolution, however, was reached.

52. Adopting the recommendation of its staff, the PSC, in an order issued January 31, 1995, preliminarily held that there was no merit to Globe's complaint that FPL acted improperly in refusing to provide electric service to the 808 Building pursuant to Globe's request.

53. Thereafter, Renda, on behalf of Globe, requested a formal Section 120.57 hearing on the matter.

CONCLUSIONS OF LAW

54. "Any customer of a utility regulated by [the PSC] may file a complaint with the [PSC's] Division of Consumer Affairs whenever he has an unresolved

dispute with the utility regarding his electric . . . service. The complaint may be communicated orally or in writing. Upon receipt of the complaint a staff member designated by the Director of the Division [is required to] notify the utility of the complaint and request a response [which] explain[s] the utility's action in the disputed matter and the extent to which those actions were consistent with the utility's tariffs and procedures, applicable state laws, and [PSC] rules, regulations, and orders." Rule 25-22.032(1), Fla. Admin. Code.

55. It is the responsibility of the designated staff member to "investigate the complaint and attempt to resolve the dispute informally" by "propos[ing] a resolution of the complaint based on his findings, applicable state laws, the utility's tariffs and [PSC] rules, regulations, and orders." Rule 25-22.032(2) and (3), Fla. Admin. Code.

56. "If a party objects to the proposed resolution, he may file a [written] request for an informal conference on the complaint . . . within 30 days after the proposed resolution is mailed or personally communicated to the parties. Upon receipt of the request the Director of the Division may appoint a staff member to conduct the informal conference or the Director may make a recommendation to the Commission for dismissal based on a finding that the complaint states no basis for relief under the Florida Statutes, Commission rules or orders, or the applicable tariffs." Rule 25-22.032(4), Fla. Admin. Code.

57. If an informal conference is held and settlement is not reached "within 20 days following the informal conference or the last post-conference filing, the appointed staff member [is required] to submit a recommendation to the [PSC] and . . . mail copies of the recommendation to the parties. The [PSC will] dispose of the matter at the next available agenda meeting by issuing a notice of proposed agency action or by setting the matter for hearing pursuant to section 120.57." Rule 25-22.032(8), Fla. Admin. Code.

58. In the instant case, Globe, through Renda, filed a complaint against FPL, a PSC-regulated electric utility, contesting FPL's refusal to provide electric service to the 808 Building pursuant to Globe's request. Although the PSC has issued a Notice of Proposed Agency Action announcing its preliminary determination to find Globe's challenge without merit, there has been no final resolution of the matter. A dispute still exists which must be resolved by final agency action.

59. In responding to Globe's complaint, FPL has taken the position that the complained-of refusal to provide service was justified in light of Rule 25-6.105(8)(a), Florida Administrative Code, 4/ which provides as follows:

The following shall not constitute sufficient cause for refusal or discontinuance of service to an applicant or customer:

(a) Delinquency in payment for service by a previous occupant of the premises unless the current applicant or customer occupied the premises at the time the delinquency occurred and the previous customer continues to occupy the premises and such previous customer shall benefit from such service.

60. The preponderance of the record evidence supports FPL's position. It establishes that: at the time FPL refused Globe's request for service, the 808 account had a past-due balance in excess of \$2,000; the monies owed were for electric service supplied to the 808 Building during Globe's occupancy of the building; as a director, officer and agent of HDC who had actual knowledge of HDC's administrative dissolution, but nonetheless purported to act on HDC's behalf in his post-dissolution dealings with FPL in connection with the 808 Account, Hemmerle was personally liable, under Section 607.1421(4), Florida Statutes, 5/ for payment of this debt; and Hemmerle continued to have access to the 808 Building until March of 1995, and thus would have benefited had the electric service requested by Globe been provided. Under such circumstances, FPL was authorized, pursuant to the provisions of Rule 25-6.105(8)(a), Florida Administrative Code, 6/ to refuse to provide such service.

61. Accordingly, Globe's complaint contesting such action 7/ should be dismissed. 8/

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby

RECOMMENDED that the PSC enter a final order dismissing Globe's complaint that FPL acted improperly in refusing to provide electric service to the 808 Building pursuant to Globe's request.

DONE AND ENTERED in Tallahassee, Leon County, Florida, this 4th day of December, 1995.

STUART M. LERNER
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 4th day of December, 1995.

ENDNOTES

1/ There was a possibility that Globe would soon expand its operations and therefore need more than one office in the building.

2/ At the time of Kenmar's incorporation, Hemmerle owned 50 of the 100 shares of stock issued by the corporation.

3/ Both Hemmerle and Renda had keys to the building.

4/ This is a Section 120.57 consumer complaint proceeding, not a Section 120.56 rule challenge proceeding. Accordingly, the validity of Rule 25-6.105(8)(a), Florida Administrative Code, is not at issue. See City of Palm Bay v.

Department of Transportation, 588 So.2d 624, 628 (Fla. 1st DCA 1991)("duly promulgated agency rules . . . will be treated as presumptively valid until invalidated in a section 120.56 rule challenge"); Decarion v. Martinez, 537 So.2d 1083, 1084 (Fla. 1st DCA 1989)("[u]ntil amended or abrogated, an agency must honor its rules").

5/ Section 607.1421(4), Florida Statutes, provides as follows:

A director, officer or agent of a corporation dissolved pursuant to this section, purporting to act on behalf of the corporation, is personally liable for the debts, obligations, and liabilities of the corporation arising from such action and incurred subsequent to the corporation's administrative dissolution only if he has actual notice of the administrative dissolution at the time such action is taken; but such liability shall be terminated upon the ratification of such action by the corporation's board of directors or shareholders subsequent to the reinstatement of the corporation under ss. 607.1401-607.14401.

6/ It need not be determined, and therefore the Hearing Officer will not address, whether, as FPL claims, its refusal to provide service was also authorized by Rule 25-6.105(5)(j), Florida Administrative Code, which allows a regulated utility to refuse service where there has been an "unauthorized or fraudulent use of service."

7/ In addition to contending that FPL improperly refused its request for service, Globe further argues in its proposed recommended order that FPL also acted improperly by failing to notify Globe in writing of the reason for such refusal, as required Rule 25-6.105(5) and (7), Florida Administrative Code. No such allegation, however, was made in the complaint that Globe filed with the PSC and that is the subject of this Section 120.57 consumer complaint proceeding. Accordingly, the allegation warrants no further discussion.

8/ Globe makes the argument in its proposed recommended order that "[t]his case is controlled by the decision of Williams v. City of Mt. Dora, 452 So.2d 1143 (Fla. 5th DCA 1984)," wherein the Fifth District Court of Appeal held that an electric utility acted improperly in "requir[ing] an applicant for service to pay a delinquent bill for service previously rendered to some other occupant or owner of [the] premises as a condition to continuing or reinstating service to the new applicant at the same premises," where the "new applicant" was not "legally liable on any theory to the [utility] for the utility service represented by the delinquent bill." Globe's reliance on Williams is misplaced. Unlike the situation present in the instant case, in Williams, the "new applicant" had not "occupied the premises at the time the delinquency occurred" and the "previous customer" would not have benefited had service been supplied to the premises pursuant to the "new applicant's" request. The two cases are therefore factually distinguishable.

APPENDIX TO THE RECOMMENDED ORDER IN CASE NO. 95-2514

The following are the Hearing Officer's specific rulings on the "findings of facts" proposed by the parties in their proposed recommended orders:

Globe's Proposed Findings

1. Accepted and incorporated in substance, although not necessarily repeated verbatim, in this Recommended Order.

2. First sentence: Accepted and incorporated in substance; Remaining sentences: Rejected as findings of fact because they are more in the nature of summaries of testimony adduced at hearing than findings of fact. See T.S. v. Department of Health and Rehabilitative Services, 654 So.2d 1028, 1030 (Fla. 1st DCA 1995)(hearing officer's factual findings which "merely summarize[d] the testimony of witnesses" were "insufficient").

3-4. Rejected as findings of fact because they are more in the nature of summaries of testimony adduced at hearing than findings of fact.

5-6. Accepted and incorporated in substance.

7. Rejected as a finding of fact because it is more in the nature of a summary of testimony adduced at hearing than a finding of fact.

8. First sentence: Rejected as a finding of fact because it is more in the nature of a summary of testimony adduced at hearing than a finding of fact; Second sentence: Accepted and incorporated in substance.

9. First and last sentences: Rejected as findings of fact because they are more in the nature of summaries of testimony adduced at hearing than findings of fact; Remaining sentences: Accepted and incorporated in substance.

10. First sentence: Rejected as a finding of fact because it is more in the nature of a summary of testimony adduced at hearing than a finding of fact; Remainder: Accepted and incorporated in substance.

11-12. Rejected as findings of fact because they are more in the nature of summaries of testimony adduced at hearing than findings of fact.

13. To the extent that this proposed finding states that there was a dispute between Hemmerle (purporting to act on behalf of HDC) and FPL concerning the amount owed for electric service provided to the 808 Building, it has been accepted and incorporated in substance. Otherwise, it has been rejected as a finding of fact because it is more in the nature of a summary of testimony adduced at hearing than a finding of fact.

14. Rejected as a finding of fact because it is more in the nature of a summary and recitation of, and commentary upon, testimony adduced at hearing than a finding of fact.

FPL's Proposed Findings

1-11. Accepted and incorporated in substance.

12. Not incorporated in this Recommended Order because it would add only unnecessary detail to the factual findings made by the Hearing Officer.

13-14. Accepted and incorporated in substance.

15. Rejected as a finding of fact because it is more in the nature of a summary of testimony adduced at hearing than a finding of fact.

16-17. Accepted and incorporated in substance.

18. Not incorporated in this Recommended Order because it would add only unnecessary detail to the factual findings made by the Hearing Officer.

19. Accepted and incorporated in substance.

20. First sentence: Not incorporated in this Recommended Order because it would add only unnecessary detail to the factual findings made by the Hearing Officer; Second sentence: Accepted and incorporated in substance.

21-22. Not incorporated in this Recommended Order because they would add only unnecessary detail to the factual findings made by the Hearing Officer.

23. Accepted and incorporated in substance.

24-25. Rejected because they lack sufficient evidentiary/record support.

26. Not incorporated in this Recommended Order because it would add only unnecessary detail to the factual findings made by the Hearing Officer.

27-31. Accepted and incorporated in substance.

32. To the extent that this proposed finding refers to telephone calls made on September 6, 1994, by Hemmerle and a Mr. Williams, it has not been incorporated in this Recommended Order because it would add only unnecessary detail to the factual findings made by the Hearing Officer. Otherwise, it has been accepted and incorporated in substance.

33-34. Accepted and incorporated in substance.

35. Not incorporated in this Recommended Order because it would add only unnecessary detail to the factual findings made by the Hearing Officer.

36. Accepted and incorporated in substance.

37-38. Not incorporated in this Recommended Order because they would add only unnecessary detail to the factual findings made by the Hearing Officer.

39-42. Accepted and incorporated in substance.

43. Not incorporated in this Recommended Order because it would add only unnecessary detail to the factual findings made by the Hearing Officer.

44-45. Accepted and incorporated in substance.

46. Not incorporated in this Recommended Order because it would add only unnecessary detail to the factual findings made by the Hearing Officer.

The PSC's Proposed Findings

1-9. Accepted and incorporated in substance.

10-11. Not incorporated in this Recommended Order because they would add only unnecessary detail to the factual findings made by the Hearing Officer.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to this recommended order. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period of time within which to submit written exceptions. You should contact the agency that will issue the final order in this case concerning agency rules on the deadline for filing exceptions to this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.