

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.	)	
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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

STATEMENT OF THE ISSUES

Whether the Respondent, Florida Public Utilities Company, established the natural gas account for Mother's Kitchen Restaurant in compliance with all applicable statutes, and Florida Public Service Commission (PSC) rules concerning establishment of service and customer deposits, specifically Rule 25-7.083(4)(a), Florida Administrative Code.

Whether Petitioner, Mother's Kitchen, Ltd., provided a deposit of \$500 to Respondent at any time to establish a new account for Mother's Kitchen Restaurant.

Whether Respondent administered the account of Mother's Kitchen Restaurant in compliance with all applicable statutes and PSC rules concerning refusal or discontinuance of service, specifically Rules 25-7.089(2)(g), (3), (5), (6)(a) and (e), Florida Administrative Code.

Whether Respondent should be required to provide a refund of all or any part of any deposit made to establish an account for Mother's Kitchen Restaurant or any amounts paid for natural gas usage, service charges, returned check charges, or other fees charged to that account.

PRELIMINARY STATEMENT

Petitioner filed a complaint against Respondent on September 20, 1996, with the PSC's Division of Consumer Affairs.

On September 29, 1997, the PSC issued a Notice of Proposed Agency Action. On October 16, 1997, Petitioner timely filed a petition requesting a Section 120.57(1), Florida Statutes, formal hearing on the PSC's proposed action. The PSC referred this matter to the Division of Administrative Hearings to conduct a formal hearing on October 27, 1997.

On December 17, 1997, a preliminary order was issued in regard to standing and parties.

On December 23, 1997, the PSC filed a Motion for Leave to Intervene in this proceeding. By order issued January 23, 1998, the PSC's motion was granted. A prehearing conference was held on February 23, 1998.

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.

Each of the proposals have been given careful consideration in the preparation of this order.

#### FINDINGS OF FACT

1. Petitioner, Mother's Kitchen, Ltd., is a partnership formed to operate a restaurant under the name of Mother's Kitchen Restaurant. The partners consist of Anthony Brooks, II; Daniele M. Dow-Brooks; Eddie Hodges; and Arthur L. Brooks. Mr. Alford Byrd was an original partner, but has since withdrawn from the partnership. At all times in dispute, Mother's Kitchen Restaurant was physically located at 1744 West Airport Boulevard, Sanford, Florida 32772-0134.

2. Respondent, Florida Public Utilities Company, is a natural gas utility regulated by the Florida Public Service Commission (PSC) pursuant to Chapter 366, Florida Statutes, and Chapter 25-7, Florida Administrative Code.

3. On March 21, 1996, Mr. Alfred Byrd (Byrd), a partner in Mother's Kitchen Ltd., signed a Job-Work Contract authorizing Respondent to prepare and connect appliances at Mother's Kitchen Restaurant to receive natural gas service.

4. On March 21, 1996, Byrd provided, in person at Respondent's Sanford Office, a \$200 deposit on behalf of the partnership to Respondent in order to establish a gas account for Mother's Kitchen Restaurant.

5. Byrd received a deposit receipt from Respondent dated March 21, 1996, in the amount of \$200.

6. On March 21, 1996, Respondent established account number 0131-07252 in the name of "Alfred Byrd, d/b/a Mother's Kitchen" 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.

13. On June 3, 1996, Byrd signed a Job-Work Contract authorizing Respondent to clean the pilot light on the gas oven at Mother's Kitchen Restaurant. Respondent's serviceman completed this work the same day.

14. On June 7, 1996, Respondent billed the "Alfred Byrd d/b/a Mother's Kitchen" account \$391.72, consisting of \$244.65 for gas usage from May 1, 1996, through May 31, 1996, and \$147.07 in arrears.

15. On June 7, 1996, Mother's Kitchen check No. 1074 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.

16. On June 11, 1996, Respondent credited \$170.00 to the "Alfred Byrd d/b/a Mother's Kitchen" account, paid in cash on June 10, 1996, as reimbursement for the \$150.00 returned check

No. 1074 and the corresponding \$20.00 service charge. Respondent issued a receipt in the name of "A. Byrd" for this payment.

17. On July 9, 1996, Respondent billed the "Alfred Byrd d/b/a Mother's Kitchen" account \$657.36, consisting of \$265.64 for gas usage from May 31, 1996, through July 1, 1996, and \$371.72 in arrears.

18. On July 11, 1996, Respondent credited \$160.00 to the "Alfred Byrd d/b/a Mother's Kitchen" account, paid in cash on July 11, 1996. Respondent issued a receipt in the name of "A. Byrd" for this payment.

19. No person paid a \$500.00 deposit on behalf of Petitioner to establish a new gas account with Respondent for 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, 1996. The delayed crediting of this payment had no effect on any notices or bills concerning the account.

26. On August 12, 1996, Brooks, in person at Respondent's Sanford office, requested that the mailing address for the "Alfred Byrd d/b/a Mother's Kitchen" account be changed to the physical address of Mother's Kitchen Restaurant. Respondent made the requested change that same day.

27. On August 13, 1996, Respondent's serviceman reconnected gas service to Mother's Kitchen Restaurant based on the August 12, 1996, cash payment of \$290.00.

28. On August 28, 1996, Respondent credited \$521.72 to the



"Alfred Byrd d/b/a Mother's Kitchen" account. This credit consisted of the \$290 cash payment made August 12, 1996, and a \$231.72 payment made August 28, 1996. The \$231.72 payment was made as reimbursement for the \$211.72 returned check No. 1131 and the corresponding \$20 service charge. Respondent prepared an in-house receipt for this credit.

29. No person made a \$521.72 payment to Respondent for the "Alfred Byrd d/b/a Mother's Kitchen" account on August 28, 1996.

30. On August 30, 1996, Respondent mailed a disconnect notice for the "Alfred Byrd d/b/a Mother's Kitchen" account to the physical address of Mother's Kitchen Restaurant. This notice stated that gas service to the restaurant would be discontinued if payment of \$230.04 in arrears on the account was not made by September 10, 1996.

31. On September 9, 1996, Respondent billed the "Alfred Byrd d/b/a Mother's Kitchen" account \$471.29, consisting of \$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 there were no open gas lines then exited the building to perform a meter test to check for the possibility of a gas leak on the customer's side of the meter.

37. After natural gas service has been discontinued on any existing account, Respondent performs a meter test before reestablishing service in order to determine if there is a leak on the customer's side of the meter.

38. The serviceman's meter test revealed a gas leak on the customer's side of the meter. He searched for the leak by inspecting the gas appliances and applying a soapy solution used to detect leaks to the gas connections on each appliance. The serviceman located the leak on a worn pilot adjustment screw on the range. The leak could not be repaired without replacing the pilot adjustment screw.

39. Brooks was present at the restaurant and called Keitt while the serviceman was performing the meter test. Keitt informed Brooks that Byrd had requested discontinuance of service to the restaurant. Keitt also told Brooks that Respondent would continue providing service on a temporary basis, in order to provide Petitioner time to pay a \$500 deposit to establish a new account.

40. Keitt then called Respondent's Vice President Darryl Troy (Troy) at Respondent's home office in West Palm Beach, Florida, to inform him of the situation.

41. Brooks called Troy, who confirmed Keitt's statements concerning Byrd's desire to have service discontinued and the necessity of providing a new deposit to establish a new account. 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 turned off the meter and locked it upon instructions from Keitt. The serviceman left the restaurant at approximately 10:00 a.m.

46. That afternoon, Brooks, in person at Respondent's

Sanford office, requested that Keitt provide him a refund of the \$261.04 payment made September 12, 1996. Keitt refused to refund this amount.

47. No record evidence exists to show that Petitioner paid a \$500 deposit, or a deposit of any amount, to establish a new account with Respondent after gas service to Mother's Kitchen Restaurant was disconnected on September 12, 1996.

48. On September 16, 1996, a serviceman took a final reading from the gas meter at Mother's Kitchen Restaurant and officially turned off the meter.

49. On September 16, 1996, Respondent charged \$100.50 to the "Alfred Byrd d/b/a Mother's Kitchen" account for gas usage from August 29, 1996, through September 16, 1996, to finalize the account.

50. On September 19, 1996, Respondent applied Petitioner's \$200.00 deposit from March 21, 1996, to the outstanding, final balance of \$310.75 on the "Alfred Byrd d/b/a Mother's Kitchen" account.

51. No record evidence exists to show that any person paid a \$500 deposit, or a deposit of any amount, on behalf of Petitioner to establish a new account with Respondent for gas service to Mother's Kitchen Restaurant since the "Alfred Byrd d/b/a Mother's Kitchen" account was established on March 21, 1996.

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 Rehabilitative Services v. M. B., 701 So. 2d 1155, 1163 n. 12 (Fla. 1997).

Establishment of the Original Account

57. Rule 25-7.083(4), Florida Administrative Code, requires utility companies to keep records of all deposits received, and, specifically, subparagraph (a) requires utilities to keep records to show the name of each customer making the deposit.

58. Petitioner contends that the gas account for Mother's Kitchen Restaurant was inappropriately established in the name of "Alfred Byrd d/b/a Mother's Kitchen." The preponderance of the record evidence shows, however, that Respondent established the gas account for Mother's Kitchen Restaurant pursuant to the instructions of Alfred Byrd, a partner in Mother's Kitchen, Ltd., who made the deposit and signed the work order for the initial service connection. In addition, the evidence shows that Respondent complied with Rule 25-7.083(4)(a), Florida Administrative Code, by keeping records which show that Alfred Byrd made the deposit. At no time did Byrd present any document to support setting up the account in the name of the business entity. No evidence has been offered to show that Respondent failed to comply with any other statute or PSC rule concerning establishment of service or customer deposits when the Mother's Kitchen Restaurant account was established.

Establishment of a New Account

59. Petitioner has failed to prove by a preponderance of the evidence that they ever paid a \$500 deposit for the establishment of a new account in July 1996.

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:

\* \* \*

(g) For nonpayment of bills. . . .

(h) Without notice in the event of a condition known to the utility to be hazardous.

\* \* \*

(3) Service shall be restored when cause for discontinuance has been satisfactorily adjusted.

\* \* \*

(5) In case of refusal to establish service, or whenever service is discontinued, the utility shall notify the applicant or customer in writing of the reason for such refusal or discontinuance.

(6) 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 will receive benefit from such service.

\* \* \*

(e) Failure to pay the bill of another customer as guarantor thereof.

63. Petitioner contends that Respondent did not give notice

before discontinuing its gas service on September 12, 1996. The record evidence, however, shows that Respondent made frequent phone calls to Petitioner seeking payment on the account and mailed a written turn-off notice dated August 30, 1996, separate from any bill for service, to Petitioner at the physical address of Mother's Kitchen Restaurant. Accordingly, Respondent complied

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.

67. Rule 25-7.089(2)(h), Florida Administrative Code, provides that a utility may refuse or discontinue service "[w]ithout notice in the event of a condition known to the utility to be hazardous." The preponderance of the evidence shows that Respondent, on September 13, 1996, was justified in refusing to restore service under this rule. Anthony Brooks, the Petitioner's representative who dealt with Respondent that day, testified that he was upset and screaming about not having service restored to the restaurant. Brooks further testified that he refused to sign a Hazardous Condition Report prepared by the Respondent's serviceman. Respondent feared that he or someone else at the restaurant would attempt to reconnect and operate the range before repairing the leak. Accordingly, Respondent did not violate Rule 25-7.089(3), Florida Administrative Code, since the cause for discontinuance of service had not been satisfactorily adjusted.

Written Reason for Disconnection

68. Petitioner alleged a violation of Rule 25-7.089(5), Florida Administrative Code. The Rule states in pertinent part: "[i]n case of refusal to establish service, or whenever service is discontinued, the utility shall notify the applicant or customer in writing of the reason for such refusal or discontinuance."

69. Petitioner contends that Respondent did not give notice before discontinuing its gas service on September 12, 1996. As stated above, however, the record evidence shows that Respondent mailed a written turn-off notice dated August 30, 1996, to 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 wholly without merit. A utility is under no obligation to do so, under either the Florida Administrative Code or the Florida Statutes. Respondent violated no provision of law by maintaining Byrd as customer-of-record, despite its receipt of payments from other individuals toward the account.

74. The Petitioner failed to prove, in any credible way, misconduct on the part of any Respondent's employee with regard to the handling, set-up, and ultimate disconnection of this account. The Petitioner failed to prove its claim that Respondent's personnel deliberately tampered with Mother's Kitchen cooking equipment.

#### Discontinuance of Service

75. Petitioner has alleged a violation of Rule 25-7.089(6)(e), Florida Administrative Code, which states in pertinent part: "[f]ailure to pay the bill of another customer as guarantor thereof" does not constitute sufficient cause for refusal or discontinuance of service.

76. This rule is not applicable to the facts of this case. No record evidence exists to indicate that Petitioner was a

guarantor of the Mother's Kitchen Restaurant account or that Respondent discontinued service on the basis stated in Rule 25-7.089(6)(e), Florida Administrative Code.

RECOMMENDATION

Upon the foregoing findings of fact and conclusions of law, it is

RECOMMENDED that Respondent be found to have acted in compliance with Public Service Commission rules concerning the 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.

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DANIEL M. KILBRIDE  
Administrative Law Judge  
Division of Administrative Hearings

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

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to



this Recommended Order should be filed with the agency that will issue the final order in this case.