

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

Petitioner,

vs.

Case No. 16-3900

IAN TUTTLE,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, Administrative Law Judge Yolonda Green, of the Division of Administrative Hearings, held a final hearing in this case on September 8, 2016, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Andrew Pietrylo, Jr., Esquire
Roger Maas, Esquire
Department of Business and
Professional Regulation
Capital Commerce Center
2601 Blair Stone Road
Tallahassee, Florida 32399-2202

For Respondent: Ian Tuttle, pro se
46 Gold Finch Way
Crawfordville, Florida 32327

STATEMENT OF THE ISSUES

The issues determined in this proceeding are whether Respondent engaged in construction contracting without a license

as alleged in the Amended Administrative Complaint; and, if so, the appropriate penalty.

PRELIMINARY STATEMENT

On or about June 10, 2016, Petitioner, Department of Business and Professional Regulation ("Petitioner" or "the Department"), filed an Amended Administrative Complaint alleging that Respondent ("Respondent" or "Mr. Tuttle") violated section 489.13(1), Florida Statutes (2014), by engaging in construction contracting without a license. Respondent disputed material facts alleged in the Amended Administrative Complaint and timely requested a formal hearing, pursuant to section 120.57(1), Florida Statutes. On July 13, 2016, Petitioner referred this matter to the Division of Administrative Hearings ("the Division") for assignment of an administrative law judge to conduct a final hearing.

On July 21, 2016, a Notice of Hearing was issued, scheduling the hearing for September 8, 2016. On August 1, 2016, this matter was transferred from Administrative Law Judge Bruce McKibben to the undersigned. A pre-hearing telephone conference was conducted on August 26, 2016, at which time the undersigned explained the procedure for the hearing.

At the commencement of the hearing, Respondent confirmed that he is relying on the exemption in section 489.103(9), and the Department argued the exemption does not apply.

On September 7, 2016, Petitioner filed a Motion for Official Recognition. During preliminary matters, the motion was granted in part and denied in part. The undersigned took official recognition of the Florida Statutes, Florida Administrative Code rules, and applicable sections of the Florida Building Code. The certificate of non-licensure was not officially recognized. Petitioner also renewed its motion for relinquishment of jurisdiction and argued there were no material facts in dispute. That motion was again denied.^{1/}

At hearing, official recognition was taken of In Re: The Petition for Declaratory Statement of City of Tallahassee, File No. 2014-00649 (Feb. 3, 2014), which was marked as Joint Exhibit J-1. Petitioner presented the testimony of John C. Lee, regional administrator for the Department; Frank Hagen, as a plumbing expert; and Respondent. Petitioner's Exhibits P-1 and P-2 were admitted. Respondent presented testimony of John Sowerby, P.E. Respondent did not testify on his own behalf. Respondent's Exhibit R-1 was admitted, over objection. The undersigned took official recognition of In Re: The Petition for Declaratory Statement of Wayne Eseltine, Final Order No. BPR-2007-07317 (Sept. 19, 2007), over objection, which was marked as R-2. Respondent offered an unsigned and unfiled declaratory statement from the State of Florida Building Commission, In Re: Matter of Sarasota County, DCA-04-DEC-040

(July 2004). An objection regarding the relevance of an unsigned declaratory statement was sustained and it was not recognized.

A one-volume Transcript was filed on September 22, 2016. Both parties timely filed Proposed Recommended Orders, which have been considered in preparation of this Recommended Order.

Unless otherwise indicated, all references to the Florida Statutes or rules of the Florida Administrative Code refer to the 2014 versions in effect at the time the alleged violations were committed.

FINDINGS OF FACT

Parties

1. Petitioner is the state agency responsible for regulating the practice of construction contracting pursuant to section 20.165 and chapters 455 and 489, Florida Statutes.

2. Petitioner has jurisdiction over the unlicensed practice of construction contracting pursuant to sections 455.227, 455.228, and 489.13.

3. At all times material to this matter, Respondent was the owner of Advanced Connections, LLC. Neither he nor his company is licensed, registered, or certified to perform construction contracting services in Florida. Respondent holds only certification to perform backflow preventer testing. At the heart of this case is whether Respondent may perform

backflow preventer repair without a license, certification, or registration.

Facts Related to Work Performed

4. It is undisputed that Respondent performed repair of backflow preventers for customers in Tallahassee, Florida.

5. On July 25, 2014, Respondent performed a backflow prevention assembly test on two existing backflow preventers at Old Enrichment Center located at 2344 Lake Bradford Road, Tallahassee, Florida 32301.

6. Respondent provided an invoice to Old Enrichment Center following the backflow test, which described the work performed as follows: "I was able to repair both units and they are Functioning [sic] properly. I had to replace one additional part on, AS #10896, the #2 check cage was cracked. Thank you For [sic] your business. Don't forget to cover the backflows."

7. The invoice reflected that Respondent was compensated \$343.00 for the worked performed and materials.

8. On August 20, 2014, Respondent performed a backflow test on an existing backflow preventer for Li-Ping Zhang at a property located at 2765 West Hannon Hill Drive, Tallahassee, Florida 32309. Respondent provided an invoice to the customer describing the outcome of the test, and he provided an estimate for repair as follows:

Invoice: Thank For this opportunity to serve you. The unit is failing. The #1 check valve is leaking across it. That means it is not holding pressure. The Manufacture of flowmatic no longer makes parts for your unit. But my supplier does have a repair kit available. Due to the Fact are no longer made for your device it may be better to have the unit replaced with a Wilkins 975-XL. Please See Quote

* * *

Quote for repair:
Part: Complete Rubber Kit-\$30.00
Labor: This unit may not be repairable due to the fact that there is a limited supply of parts. If there is damage to the #1 Check. I will not be able to repair the unit. If that happens I can return the parts but a labor charge would still remain. Please call with any questions. Thank you.

(Quoted text from invoice without correction of grammar.)

9. Respondent ultimately performed the repair on August 25, 2014. The invoice issued to Li-Ping Zhang reflected service provided as "[t]he repair was a success. The unit is Passing [sic]. Paid Cash \$115.00 8.25.14 - signed Ian."

10. Both invoices include the Respondent's company name, Advanced Connections, LLC.

11. There was no evidence presented of financial or property harm caused by Respondent's actions.

12. On or about February 2, 2015, Petitioner received a complaint from City of Tallahassee filed against Respondent for his repair of backflow preventers in Tallahassee, Florida.

Petitioner commenced an investigation into Respondent's actions through its unlicensed activity investigation unit. At the conclusion of the investigation, Petitioner filed an Administrative Complaint alleging Respondent engaged in construction contracting without a license.

13. Respondent disagrees with Petitioner and argues that he is eligible for an exemption under section 489.103(9), commonly known as the "handyman" exemption.

Life-Safety Matter

14. Respondent's eligibility for the exemption hinges upon whether repair of a backflow preventer is considered a life-safety matter.

15. The Florida Building Code provides minimum standards for building construction to "safeguard the public health, safety and general welfare." See § 101.3, Florida Building Code, Building.

16. The Florida Building Code, Plumbing, applies to "the installation, alteration, repair and replacement of plumbing systems, including fixtures, fittings and appurtenances where connected to a water or sewage system" See § 101.4.3, Florida Building Code, Building. The plumbing chapter of the Florida Building Code defines a backflow preventer as a device or means to prevent backflow of water from flowing from one system into the potable water system.^{2/}

17. A potable water supply system shall be maintained in such a manner so as to prevent contamination from non-potable liquids, solids, or gases being introduced into the potable water supply through cross-connections or any other piping connections to the system. § 608.1 Building Code, Plumbing.

18. To further explain the purpose of backflow preventers, Petitioner offered Frank Hagen as a plumbing expert. Mr. Hagen, who has 42 years of plumbing experience, has been licensed in Florida since 1981 and is also licensed in Georgia. He holds a certification in backflow preventer testing (issued by the University of Florida TREEO Center) and backflow preventer repair. Mr. Hagen has regularly conducted on-the-job plumbing training for 36 years. Mr. Hagen was accepted as a plumbing expert.

19. Mr. Hagen testified that a backflow preventer is a life-safety device. He explained that this reference is accepted throughout the plumbing industry because the backflow preventer protects water systems by preventing chemicals and poisons from entering the public water system. Mr. Hagen provided examples of potential outcomes if a backflow preventer fails (e.g., three children died as a result of drinking water from a water hose where poison in the sprinkler system contaminated the water). Mr. Hagen also testified that only a

licensed plumber is authorized to perform backflow repairs.
Mr. Hagen's testimony is credible.

20. John Sowerby, P.E., a licensed professional engineer for 35 years, who previously worked in the Department of Environmental Protection's (DEP) Source of Drinking and Water Program, also testified regarding the nature of backflow preventers. He testified that backflow preventers protect public health because they prevent contamination of potable water systems (i.e., water that is satisfactory for human consumption). Mr. Sowerby's testimony is also found to be credible.

21. Respondent's testimony that a backflow preventer is not a life-safety fixture, is not supported by the evidence. Respondent testified that backflow preventers are "plumbing fixtures" that are installed between the public water supply line and the private water supply line. Respondent also testified that if a backflow preventer fails, it could cause contamination of the public water supply and public health would be at risk. More importantly, the applicable building codes and the testimony of Mr. Hagen and Mr. Sowerby establish that backflow preventers prevent contamination of public water supply and protect public health.

22. Given that backflow preventers safeguard public health by protecting the public water supply, they involve life-safety matters.

23. The Department has incurred investigative costs in the amount of \$415.95 related to this matter.

Ultimate Findings of Fact

24. Respondent's repair of a backflow preventer on a water service line is a life-safety matter and as a result, Respondent is not eligible for an exemption under section 489.103(9).

25. The evidence is clear and convincing that Respondent's repair of a backflow preventer at the two properties referenced herein constituted the practice of construction contracting without a license. As a result, Respondent is guilty of unlicensed contracting, as charged in Counts I and II of the Amended Administrative Complaint.

CONCLUSIONS OF LAW

Jurisdiction and Burden of Proof

26. The Division of Administrative Hearings has personal and subject matter jurisdiction in this proceeding, pursuant to sections 120.569 and 120.57(1), Florida Statutes (2016).

27. In this matter, Petitioner seeks to impose an administrative fine against Respondent. As the party asserting the affirmative in this administrative proceeding, Petitioner has the burden of proof.

28. Because Petitioner seeks to impose a fine, which is penal in nature, Petitioner has the burden of proving by clear and convincing evidence the allegations contained in the Administrative Complaint. § 120.57(1)(j), Fla. Stat; See Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932, 935 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); Pou v. Dep't of Ins. and Treasurer, 707 So. 2d 941 (Fla. 3d DCA 1998).

29. Clear and convincing evidence "requires more proof than a 'preponderance of the evidence' but less than 'beyond and to the exclusion of a reasonable doubt.'" In re: Graziano, 696 So. 2d 744, 753 (Fla. 1997). As stated by the Supreme Court of Florida:

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and lacking in confusion as to the facts at issue. The evidence must be of such a weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Henson, 913 So. 2d 579, 590 (Fla. 2005) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)). This burden of proof may be met where the evidence is in conflict; however, "it seems to preclude evidence that is ambiguous."

Westinghouse Elec. Corp. v. Shuler Bros., 590 So. 2d 986, 988
(Fla. 1st DCA 1991).

Exemption

30. Before addressing whether Respondent's conduct constitutes construction contracting, Respondent asserts that he is entitled to the exemption contained in section 474.203(5), Florida Statutes, and Petitioner asserts that the conduct at issue fits within an exception to the exemption. Should Respondent be correct, then he is not subject to disciplinary action as alleged in the Amended Administrative Complaint. Should the Department's position be correct, then Respondent's alleged actions could be the basis for disciplinary action.

31. The burden of proof related to the application of the exemption is on the party asserting the affirmative of the issue. Young v. Dep't of Cmty. Aff., 625 So. 2d 831 (Fla. 1993); Balino v. Dep't of Health & Rehab. Servs., 348 So. 2d 349 (Fla. 1st DCA 1977). Thus, Respondent has the burden to show that he fits within the exemption in section 489.103(9). Then, the Department must show that Respondent's alleged conduct is subject to disciplinary action.

32. Section 489.103, exempts certain contracting activities from regulation. See § 489.103(9), Fla. Stat. ("Any work or operation of a casual, minor, or inconsequential nature

in which the aggregate contract price for labor, materials, and all other items is less than \$1,000”).

33. Official recognition was taken of declaratory statements offered by each party to support their respective position regarding application of the exemption.

34. The applicability of declaratory statements has been established as follows:

The purpose of a declaratory statement is to address the applicability of a statutory provision or an order or rule of the agency in particular circumstances. See § 120.565, Florida Statutes (1996). A party who obtains a statement of the agency's position may avoid costly administrative litigation by selecting the proper course of action in advance. Moreover, the reasoning employed by the agency in support of a declaratory statement may offer useful guidance to others who are likely to interact with the agency in similar circumstances. Another party can expect the agency to apply the rationale for its declaratory statement consistently, or to explain why a different application is required.

Chiles v. Dep't of State, Div. of Elec., 711 So. 2d 151, 154-155 (Fla. 1st DCA 1998), approved Fla. Dep't of Bus. & Prof'l Reg., Div. of Pari-Mutuel Wagering v. Inv. Corp., 747 So. 2d 374 (Fla. 1999).

35. In the declaratory statement in In Re: The Petition for Declaratory Statement of City of Tallahassee, File No. 2014-00649 (Feb. 3, 2014), the City of Tallahassee filed a petition

seeking to determine "whether a business is required to hold a contractor's license to replace or repair an existing backflow preventer on a water service line in which the aggregate contract price for labor, materials and all other items is less than \$1,000." The Construction Industry Licensing Board ("CILB" or "Board") found that "any repair or replacement of an existing backflow preventer on a water service line is a life-safety matter . . . and a contractor's license is required to replace or repair an existing backflow preventer on a water service line." This declaratory statement is accepted as Petitioner's position related to the issue of whether repair of backflow preventers is a life-safety matter.

36. In the declaratory statement in In Re: The Petition for Declaratory Statement of Wayne Eseltine, File No. BPR-2007-07317 (Sept. 19, 2007), Petitioner, Wayne Eseltine, filed a petition indicating his desire to confirm whether replacement of water heaters, showers, tubs, and vanities requires a building permit and a licensed plumbing contractor. The CILB presented the question as "[d]oes a person that engages in the business of changing out plumbing fixtures, such as faucets and toilets, and cleans out clogged drains, have to be licensed as a plumbing contractor?" The CILB determined that "a plumbing license is required, subject to the "handyman" exemption stated at Section 489.103(9), F.S." The declaratory statement is not related to

any issues here. Thus, it has no effect on the conclusions in this case.

37. Here, it is undisputed that Respondent performed work at both properties and the aggregate price for labor, materials, and all other items was less than \$1,000. However, the exemption referenced by Respondent in his testimony is not applicable because the work performed involved a life-safety matter (e.g., protection of public water systems from contamination). Fla. Admin. Code R. 61G4-12.011(2) ("For purposes of the exemption provided in section 489.103(9), activities which are not casual, minor, or inconsequential, include . . . any work affecting life-safety matters as defined in the applicable building code.").

Violations

38. Counts I and II of the Amended Administrative Complaint charged Respondent with violating section 489.13(1) by practicing construction contracting without a license. Contracting is regulated under part I of chapter 489. The relevant portion of section 489.127 provides:

(1) No person shall:

* * *

(f) Engage in the business or act in the capacity of a contractor or advertise himself or herself or a business organization as available to engage in the business or act in the capacity of a

contractor without being duly registered or certified;

39. As referenced in the foregoing statute, the term contractor is defined in section 489.105, which provides in relevant matter:

(3) "Contractor" means the person who . . . for compensation, undertakes to, submits a bid to, or does himself or herself or by others . . . repair, alter, . . . and whose job scope is substantially similar to the job scope described in one of the paragraphs of this subsection.

40. Plumbing contracting is regulated under part I of section 489.105(3), and is defined as follows:

(m) "Plumbing contractor" means a contractor whose services are unlimited in the plumbing trade and includes contracting business consisting of the execution of contracts requiring the experience, financial means, knowledge, and skill to install, maintain, repair, alter, extend, or, if not prohibited by law, design plumbing. A plumbing contractor may install, maintain, repair, alter, extend, or, if not prohibited by law, design the following without obtaining an additional local regulatory license, certificate, or registration: sanitary drainage or storm drainage facilities, water and sewer plants and substations, venting systems, public or private water supply systems, septic tanks, drainage and supply wells, swimming pool piping, irrigation systems, and solar heating water systems and all appurtenances, apparatus, or equipment used in connection therewith, including boilers and pressure process piping and including the installation of water, natural gas, liquefied petroleum gas and related venting, and storm and sanitary sewer lines. The

scope of work of the plumbing contractor also includes the design, if not prohibited by law, and installation, maintenance, repair, alteration, or extension of air-piping, vacuum line piping, oxygen line piping, nitrous oxide piping, and all related medical gas systems; fire line standpipes and fire sprinklers if authorized by law; ink and chemical lines; fuel oil and gasoline piping and tank and pump installation, except bulk storage plants; and pneumatic control piping systems, all in a manner that complies with all plans, specifications, codes, laws, and regulations applicable. The scope of work of the plumbing contractor applies to private property and public property, including any excavation work incidental thereto, and includes the work of the specialty plumbing contractor. Such contractor shall subcontract, with a qualified contractor in the field concerned, all other work incidental to the work but which is specified as being the work of a trade other than that of a plumbing contractor. This definition does not limit the scope of work of any specialty contractor certified pursuant to s. 489.113(6) and does not require certification or registration under this part as a category I liquefied petroleum gas dealer, LP gas installer, or specialty installer who is licensed under chapter 527 or an authorized employee of a public natural gas utility or of a private natural gas utility regulated by the Public Service Commission when disconnecting and reconnecting water lines in the servicing or replacement of an existing water heater. A plumbing contractor may perform drain cleaning and clearing and install or repair rainwater catchment systems; however, a mandatory licensing requirement is not established for the performance of these specific services.

41. Contracting is defined in section 489.105(6) as follows:

(6) "Contracting" means, except as exempted in this part, engaging in business as a contractor and includes, but is not limited to, performance of any of the acts as set forth in subsection (3) which define types of contractors. The attempted sale of contracting services and the negotiation or bid for a contract on these services also constitutes contracting. If the services offered require licensure or agent qualification, the offering, negotiation for a bid, or attempted sale of these services requires the corresponding licensure

42. As it relates specifically to unlicensed contracting, section 489.13, provides in pertinent part:

(1) Any person performing an activity requiring licensure under this part as a construction contractor is guilty of unlicensed contracting if he or she does not hold a valid active certificate or registration authorizing him or her to perform such activity, regardless of whether he or she holds a local construction contractor license or local certificate of competency. Persons working outside the geographical scope of their registration are guilty of unlicensed activity for purposes of this part.

* * *

(3) Notwithstanding s. 455.228, the department may impose an administrative fine of up to \$10,000 on any unlicensed person guilty of unlicensed contracting. In addition, the department may assess reasonable investigative and legal costs for prosecution of the violation against the unlicensed contractor. The department may waive up to one-half of any fine imposed if

the unlicensed contractor complies with certification or registration within 1 year after imposition of the fine under this subsection.

43. Petitioner has proven both counts in the Amended Administrative Complaint by clear and convincing evidence. The work Respondent proposed and performed at the two properties at issue meet the definition of (plumbing) contracting. Respondent was compensated for his work at the properties. Despite Respondent's belief, his actions do not fit within any exemption.

44. Therefore, Petitioner met its burden to prove by clear and convincing evidence that Respondent is guilty of unlicensed contracting in violation of sections 489.127(1)(f) and 489.13, as alleged in Counts I and II.

45. With respect to unlicensed contracting under section 489.13, Petitioner is authorized to impose an administrative fine up to \$10,000. See § 489.13(3), Fla. Stat.

46. However, Petitioner has adopted Disciplinary Guidelines to provide the range of appropriate penalties to be imposed for unlicensed activity. Fla. Admin. Code R. 61-5.007(1). The guidelines also provide that Petitioner shall impose a penalty consistent with the guidelines absent any aggravating or mitigating circumstances. Id. The penalty guidelines should be applied to each count or separate

violation, accordingly. See Fla. Admin. Code R. 61-5.007(3) (All penalties established herein are for each count or separate violation found).

47. Pursuant to rule 61-5.007(3), the range of penalties for a violation of section 489.127, is \$3,000 for each count. In this case, the penalty of \$3,000 per count is warranted.

48. Petitioner is also authorized to "waive up to one-half of any fine imposed if the unlicensed contractor complies with certification or registration within 1 year after imposition of the fine under this subsection." § 489.13(3), Fla. Stat. It would be appropriate to do so if Respondent meets the requirements.

Investigative Costs

49. Section 489.13(3), authorizes Petitioner to assess reasonable investigative costs for prosecution of the alleged violation against an unlicensed contractor, in addition to any appropriate fines. The evidence clearly and convincingly establishes that the Department incurred investigative costs in the amount of \$415.95 related to this matter.

RECOMMENDATION

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

RECOMMENDED that the Department of Business and Professional Regulation issue a final order that:

1. Finds Respondent guilty of unlicensed contracting in violation of section 489.13(1), as alleged in Counts I and II of the Amended Administrative Complaint;

2. Imposes an administrative fine of \$6,000 (\$3,000 for each count); and

3. Requires Mr. Tuttle to pay the Department's investigative costs of \$415.95.

DONE AND ENTERED this 26th day of October, 2016, in Tallahassee, Leon County, Florida.



YOLONDA Y. GREEN
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 26th day of October, 2016.

ENDNOTES

^{1/} Shortly after the final hearing convened, Petitioner renewed its motion to relinquish jurisdiction and again argued there were no disputed issues of material fact and that the matter should be relinquished to Petitioner for a hearing pursuant to section 120.57(2), Florida Statutes. Ruling on the renewed motion was ultimately reserved until conclusion of the evidence. At the conclusion of the hearing, Petitioner again renewed its argument that there was no dispute of material fact regarding whether Respondent performed an activity requiring licensure as

a construction contractor. This is the ultimate fact that is in dispute.

There is a well-established rule, "that the issue of whether an individual violated a statute or deviated from a standard of conduct is generally an issue of fact to be determined by the administrative law judge based on the evidence and testimony." Gross v. Dep't of Health, 819 So. 2d 997, 1003 (Fla. 5th DCA 2002). See also Goin v. Comm'n on Ethics, 658 So. 2d 1131 (Fla. 1st DCA 1995) (whether facts constitute violation of statute or rule is a question of ultimate fact); Langston v. Jamerson, 653 So. 2d 489, 491 (Fla. 1st DCA 1995) (whether a particular action constituted a violation of one of these two rules is a factual question to be decided in the context of the alleged violation).

Ultimate facts are "those found in that vaguely defined field lying between evidential facts on the one side and the primary issue or conclusion of law on the other, being but the logical results of the proofs, or, in other words, mere conclusions of fact." Tedder v. Fla. Unemp. App. Comm'n, 697 So. 2d 900, 902 (Fla. 2d DCA 1997) (Danahy, A.C.J., specially concurring) (citing Black's Law Dictionary 1365 (5th ed. 1979)). Ultimate facts are those facts which are necessary to determine the issues in a case, as distinguished from the evidentiary facts supporting them.

The undersigned has not been persuaded to alter the ruling denying Petitioner's motions to relinquish jurisdiction. The issue of whether Respondent performed an activity requiring licensure as a construction contractor is a question of ultimate fact.

^{2/} Pursuant to section 381.0062, Florida Statutes, "'potable water' means water that is satisfactory for human consumption, dermal contact, culinary purposes, or dishwashing as approved by the department [of health]."

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.