

THE SUPREME COURT  
FOR THE STATE OF FLORIDA

KISSIMMEE UTILITY AUTHORITY,

Petitioner,

vs.

BETTER PLASTICS, INC.,

Respondent.

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FILED

SD J. WHITE

NOV 23 1987

CASE NO: 71-078  
CLERK SUPREME COURT

FIFTH DISTRICT COURT OF  
APPEALS CASE NO: 86-2044  
Deputy Clerk

PETITIONER'S REPLY TO BRIEF OF INTERVENOR

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## INTRODUCTION

Throughout this Reply Brief, Petitioner, KISSIMMEE UTILITY AUTHORITY, is referred to as "KUA"; Respondent, BETTER PLASTICS, INC., is referred to as "BETTER PLASTICS"; the Fifth District Court of Appeals is referred to as "5th DCA"; and the Public Service Commission is referred to as "PSC". The following symbols will be used: "R-" for the Record, and "A-" for the Appendix.

## SUMMARY OF ARGUMENT

A regulated Public Utility in Florida is obligated to follow the rules prescribed by the PSC. The State Legislature directed the Public Service Commission to promulgate such rules by virtue of 366.05 Florida Statutes, Section 1. The PSC wrote Rule 25-6.106 dealing with underbillings and overbillings of energy. Section 2 of said Rule directs the Utility in the method of dealing with an overcharge and is silent on the question of interest on the overcharge. The PSC in its Answer Brief contends that this Court should read into said Rule the word "interest". No cases cited by the PSC shed light on the interest requirement. Since said Rule is silent as to interest on the overcharge, the PSC should rewrite said Rule as a legislative function and not ask the judiciary to supply the interest requirement.

## ARGUMENT I

A regulated public utility in Florida is not liable to its customers for interest on overcharges until the PSC says so in its Rules. This lack of liability stems from the failure of the Rule to speak to interest payments. The position of Better Plastics in this appeal is easily understood, but it's difficult to understand the PSC's position. If the PSC desires that the regulated public utilities pay interest on overcharges it should say so and not ask this Court to write the Rule for the PSC.

Gulf Power Company v. Florida Public Service Commission, 487 So.2d 1036 (Fla. 1986), fails to provide guidance to this Court in deciding the question. Neither KUA, nor Better Plastics, nor the Fifth District Court of Appeals has found any case in Florida on point. In an effort to have the Gulf Power Company case apply, the PSC cites State ex rel. Jatex Realty Company v. Green, 105 So.2d 817, 819 (Fla. 1st DCA 1958) by quoting Judge J. Wigginton. In that same opinion Judge Wigginton says "the only justification for inflicting upon the bar the duty of reading the great mass of opinions prepared by appellate courts is that an opinion is necessary for the guidance of the trial court and the litigants.....that its discussion and decision will be of assistance to the bar and other courts in ascertaining the rights of persons and the proper decision of other cases".

Gulf Power Company, supra, does not help in this case.

The PSC Rules are the polestar for guidance of the regulated utility as well as for protection of consumers. KUA cannot be guided by the PSC Rules unless the Rules say what the PSC intends them to say.

The case of Citizens v. Public Service Commission, 435 So.2d 784 (Fla. 1983), deals with an interim award that was being collected in advance. The PSC in this case says that the Commission may authorize the payment of interest on interim revenues ordered refunded. It is noted that this case was decided by the Court in 1983 and that the Rule under discussion has not been changed but continues to contain the same language with no reference to the word "interest".

Florida Power Corporation v. Zenith Industries Company, 377 So.2d 203 (Fla. 2nd DCA 1979) indicates that if interest is to be paid then it is up to the Public Service Commission to so order. This argument should equally apply to the instant case.

CONCLUSION

A requirement that interest be paid on refunds of overcharges to customers should not be required if and until the Public Service Commission so specifies in its Rules. The purpose of the PSC rules is protection of customers as well as guidance to the regulated utilities. The question certified in this case should be answered in the negative.

Respectfully Submitted,

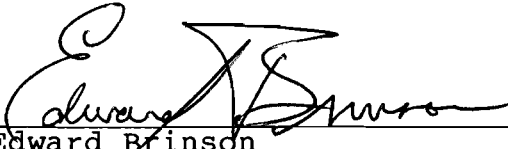
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Jeffrey R. Jontz, HOLLAND & KNIGHT, P. O. Box 1288, Tampa, Florida 33601, and Mary Jane Lord, Associate General Counsel and William S. Bilenky, General Counsel, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399, by U. S. Mail this 20<sup>th</sup> day of November, 1987.

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