

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Consumer John Falk regarding resale of electricity and gas by the H. Geller Management Company. ) DOCKET NO. 910056-PU ) ) ) ) )

STAFF'S PREHEARING STATEMENT

Pursuant to Order No. 24195, the Staff of the Florida Public Service Commission files its Prehearing Statement.

a. All Known Witnesses

None.

b. All Known Exhibits

	<u>(STAFF-1)</u>	Herm Geller Susan Tucker	Estimated budgets of Terrace Park-Five Towns buildings filed with the Florida Department of Building Regulation.
ACK _____			
AFA _____			
APP _____	<u>(STAFF-2)</u>	Herm Geller Susan Tucker	Worksheets prepared by Geller and provided to PSC auditor including, H. Geller Management Electric expenses; electric history; breakdown of maintenance contract terms for each building; electric 1988; electric 1989; electric 1990.
CAF _____			
CMU _____			
CTR _____			
EAG _____			
LEG _____			
LIN <u>6</u>			
OPC _____			
RCH _____	<u>(STAFF-3)</u>	Herm Geller Susan Tucker	Staff audit of books and records produced by the H. Geller Management Corporation at its St. Petersburg headquarters.
SEC <u>1</u>			
WAS _____			
OTH _____			

c. Staff's Statement of Basic Position

**STAFF:** The H. Geller Management Corporation (Geller) has acted as a public utility and has violated Commission rules in charging unit owners more for electricity and gas than it has paid the utilities providing service, Florida Power Corporation, and Peoples Gas System. Geller should be ordered to cease overcharging for electric and gas, and should be required to reimburse unit owners for the amount it has profited from resale of electricity and gas.

d. Staff's Position on the Issues

Factual Issues

**ISSUE 1:** Whether H. Geller Management Company has collected more from the residents of the Jefferson Building of Terrace Park of Five Towns condominium community for electricity than it has paid Florida Power.

**STAFF:** Yes. H. Geller Management Company has collected more for electricity than it has been charged by the utility.

**ISSUE 2:** Whether H. Geller Management Company has collected more from the residents of the Jefferson Building of Terrace Park of Five Towns condominium community for gas than it has paid Peoples Gas.

**STAFF:** No position at this time.

**ISSUE 3:** In what ways, if any, do the practices of H. Geller Management Corporation (HGMC) pursuant to its September 1, 1979 management contract with the condominium association Terrace Park of Five Towns, No. 15, Inc. involve the use of or receipt of benefit from, and payment to HGMC for electricity by owners of condominium units in the Jefferson Building, for which electricity HGMC is the customer or record with Florida Power Corporation?

**STAFF:** The contract itself provides that specified increases (including the increase for electricity at issue) in the maintenance fee shall represent increases for public utilities. In this respect unit owners pay Geller for electricity, which Geller has purchased from Florida Power Corporation.

**ISSUE 4:** If Commission Rule 25-6.049(6) is applicable in any way to the practices of HGMC pursuant to its September 1, 1979 management contract with the condominium association Terrace Park of Five Towns, No. 15, Inc., can it be reasonably determined whether Jefferson Building residents have reimbursed HGMC more than its actual cost of electricity for the electricity actually utilized by the Jefferson Building residents? If so, has HGMC been reimbursed by Jefferson Building residents more than its actual cost of electricity for the electricity actually utilized by Jefferson Building residents; if so, by how much?

- a. If so, has HGMC been reimbursed by Jefferson Building residents more than its actual cost of electricity for the electricity actually utilized by Jefferson Building residents; if so, by how much? All witnesses.

**STAFF:** Rule 25-6.049(6) is applicable and Geller has been reimbursed by unit owners more than the actual cost it paid for electricity.

**ISSUE 5:** Does H. Geller Management Corporation collect fees or charges for electricity billed to its account by Florida Power Corporation? If so, what specific fees and charges and in what amount have been collected? All witnesses.

**STAFF:** Pursuant to the contract, certain increases in the maintenance fee are specifically to cover electricity cost increases. In this respect Geller collects fees for electricity. The amount Geller has overcharged can be calculated by comparing the total increase in FPC's billings to the total amount of increase Geller has billed unit owners pursuant to Article VI(d) of the contract.

ISSUE 6: In what ways, if any, do the practices of H. Geller Management Corporation (HGMC) pursuant to its September 1, 1979 management contract with the condominium association Terrace Park of Five Towns, No. 15, Inc. involve the use of or receipt of benefit from, and payment to HGMC for gas by owners of condominium units in the Jefferson Building, for which gas HGMC is the customer of record with Peoples Gas Company?

STAFF: The contract itself provides that specified increases (including the increases for gas at issue) in the maintenance fee represent increases for public utilities. In this respect unit owners pay Geller for gas.

Legal Issues

ISSUE 7: Whether H. Geller Management Company is generally subject to the jurisdiction of the State of Florida Public Service Commission.

STAFF: In reselling electricity and gas Geller is acting as a public utility and is subject to Commission jurisdiction.

ISSUE 8: Whether the issues in dispute between John Falk and H. Geller Management Company are a matter of contract over which the State of Florida Public Service Commission should or can constitutionally assert jurisdiction.

STAFF: In reselling electricity and gas Geller is acting as a public utility and is subject to Commission jurisdiction.

ISSUE 9: Whether, under applicable Florida law, H. Geller Management Company has collected more from the residents of the Jefferson Building of Terrace Park of Five Towns condominium community for electricity than it has paid Florida Power.

STAFF: Yes.

ISSUE 10: Whether, under applicable Florida law, H. Geller Management Company has collected more from the residents of the Jefferson Building of Terrace Park of Five Towns condominium community for gas than it has paid Peoples Gas.

STAFF: No position at this time.

ISSUE 11: Do the provisions of Commission Rule 25-6.049(5) and (6) apply to the practices of HGMC pursuant to its September 1, 1979 management contract with the condominium association Terrace Park of Five Towns, No. 15, Inc.?

STAFF: The provisions of Rule 25-6.049(6), Florida Administrative Code, do apply to the practices of H. Geller Management Company pursuant to its maintenance contract with the Jefferson Building.

ISSUE 12: Is the application of Commission Rule 25-6.049(6) to the practices of HGMC pursuant to its September 1, 1979 management contract with the condominium association, Terrace Park of Five Towns, an unconstitutional impairment of the contract rights of HGMC or the association in violation of Article I, Section 10 of the Florida Constitution and Article I, Section 10 of the United States Constitution?

STAFF: No. Constitutional claims of contractual interference have been universally rejected by the courts in the face of the Public Service Commission's exercise of its statutory authority to regulate utility rates. Specifically, the Commission's regulation of utility rates is considered a valid exercise of its police power. When an existing contract is voided by the Commission's actions, there is no unconstitutional impairment of contract under the Florida or United States Constitution. H. Miller & Sons, Inc. v. Hawkins, 373 So.2d 913 (Fla. 1979); City of Plant City v. Mayo, 337 So.2d 966 (Fla. 1976); City of Plantation v. Utilities Operating Co., 156 So.2d 842 (Fla. 1963); Union Dry Good Co. v. Georgia Public Service Commission, 248 U.S. 372, 39 S.Ct. 117, 63 L.Ed. 309; Home Building & Loan Assn. v. Blaisdell, 290 U.S. 398, 54 S.Ct. 231, 78 L.Ed. 413 (1934).

See also State v. Burr, 84 So. 61 (Fla. 1920) and Cohee v. Crestridge Utilities Corp., 324 So.2d 155 (Fla. 2 DCA, 1975), which hold that the Public Service Commission has authority to raise as well as lower rates established by a pre-existing contract. In fact, Cohee holds that the Commission is not even permitted to take into consideration a pre-existing contract in its determination of reasonable rates.



STAFF'S PREHEARING STATEMENT  
DOCKET NO. 910056-PU  
PAGE 6

ISSUE 13: If Commission Rule 25-6.049(6) is applicable in any way to the practices of HGMC pursuant to its September 1, 1979 management contract with the condominium association, Terrace Park of Five Towns, No. 15, Inc., from what date should the rule be applied?

STAFF: No position at this time.

ISSUE 14: If Commission Rule 25-6.049(6) is applicable in any way to the practices of HGMC pursuant to its September 1, 1979 management contract with condominium association Terrace Park of Five Towns, No. 15, Inc., can it be reasonably determined whether Jefferson Building residents have reimbursed HGMC more than its actual cost of electricity for the electricity actually utilized by the Jefferson Building residents?

STAFF: Yes. Rule 25-6.049(6) is applicable and it can be reasonably determined that Geller has been reimbursed by unit owners for more than it actually paid for electricity.

ISSUE 15: Do the provisions of Commission Rule 25-7.071(2) and (3) apply to the practices of HGMC pursuant to its September 1, 1979 management contract with the condominium association, Terrace Park of Five Towns, No. 15, Inc.?

STAFF: No position at this time.

ISSUE 16: Is the application of Commission Rule 25-7.071(3) to the practices of HGMC pursuant to its September 1, 1979 management contract with the condominium association, Terrace Park of Five Towns to prohibit or alter the practices of the parties under that contract, an unconstitutional impairment of the contract rights of HGMC or the association in violation of Article I, Section 10 of the Florida Constitution and Article I, Section 10 of the United States Constitution?

STAFF: No. See discussion for Issue 12 above.

ISSUE 17: If Commission Rule 25-7.071(3) is applicable in any way to the practices of HGMC pursuant to its September 1, 1979 management contract with the condominium

association, Terrace Park of Five Towns, No. 15, Inc., from what date should the rule be applied?

STAFF: No position at this time.

ISSUE 18: If Commission Rule 25-7.071(3) is applicable in any way to the practices of HGMC pursuant to its September 1, 1979 management contract with condominium association Terrace Park of Five Towns, No. 15, Inc., can it be reasonably determined whether the Jefferson Building residents have reimbursed HGMC more than its actual cost of gas for the gas utilized by Jefferson Building residents?

STAFF: John Falk asserts and maintains that it is factually and reasonably possible to determine and conclude that the residents of the Jefferson Building have reimbursed Geller for more than its actual cost of gas.

ISSUE 19: Commission Rule 25-7.071(3) does not contain a provision similar to Rule 25-6.049(6)(b). Does Rule 25-7.071(3) require that fees and charges collected by a customer of record for gas billed to the customer's account by the utility be determined in a manner which reimburses the customer of record for no more than the customer's actual cost of gas?

STAFF: No position at this time.

ISSUE 20: Does Commission Rule 25-6.049(6) apply to use of electricity in areas other than occupancy units in commercial establishments, residential buildings, shopping centers, malls, apartment condominiums and other similar locations?

STAFF: Yes.

ISSUE 21: Does the Commission have jurisdiction to adjudicate the claim by Mr. Falk that H. Geller Management Corporation breached its management contract with the Jefferson Building condominium association in 1982 and 1983 by incorrectly calculating increases in the maintenance fee?

**STAFF:** Generally no; only insofar as the alleged breach of contract may have been a violation of Commission rules, or Florida Statutes.

Policy Issues

**ISSUE 22:** Do the provisions of Commission Rule 25-6.049(6) apply to the practices of HGMC pursuant to its September 1, 1979 management contract with the condominium association Terrace Park of Five Towns, No. 15, Inc.? All witnesses.

**STAFF:** Yes.

**ISSUE 23:** If Commission Rule 25-6.049(6) is applicable in any way to the practices of HGMC pursuant to its September 1, 1979 management contract with the condominium association, Terrace Park of Five Towns, No. 15, Inc., from what date should the rule be applied?

**STAFF:** No position at this time.

**ISSUE 24:** If Commission Rule 25-6.049(6) is applicable in any way to the practices of HGMC pursuant to its September 1, 1979 management contract with condominium association Terrace Park of Five Towns, No. 15, Inc., can it be reasonably determined whether Jefferson Building residents have reimbursed HGMC more than its actual cost of electricity for the electricity actually utilized by the Jefferson Building residents?

**STAFF:** See discussion in Issue 4.

**ISSUE 25:** Do the provisions of Commission Rule 25-7.071(3) apply to the practices of HGMC pursuant to its September 1, 1979 management contract with the condominium association, Terrace Park of Five Towns, No. 15, Inc.?

**STAFF:** See discussion in Issue 15.



ISSUE 26: If Commission Rule 25-7.071(3) is applicable in any way to the practices of HGMC pursuant to its September 1, 1979 management contract with the condominium association, Terrace Park of Five Towns, No. 15, Inc., from what date should the rule be applied?

STAFF: No position at this time.

ISSUE 27: If Commission Rule 25-7.071(3) is applicable in any way to the practices of HGMC pursuant to its September 1, 1979 management contract with condominium association Terrace Park of Five Towns, No. 15, Inc., can it be reasonably determined whether the Jefferson Building residents have reimbursed HGMC more than its actual cost of gas for the gas utilized by Jefferson Building residents?

STAFF: See discussion in Issue 18.

ISSUE 28: Commission Rule 25-7.071(3) does not contain a provision similar to Rule 25-6.049(6)(b). Does Rule 25-7.071(3) require that fees and charges collected by a customer of record for gas billed to the customer's account by the utility be determined in a manner which reimburses the customer of record for no more than the customer's actual cost of gas?

STAFF: No position at this time.

ISSUE 29: Does Commission Rule 25-6.049(6) apply to use of electricity in areas other than occupancy units in commercial establishments, residential buildings, shopping centers, malls, apartment condominiums and other similar locations?

STAFF: See discussion in Issue 20.

STIPULATED ISSUES

None.

MOTIONS

None.

OTHER MATTERS

None.

Respectfully submitted this 9TH day of April,  
1991.

*Michael A. Palecki*

MICHAEL A. PALECKI  
Staff Counsel

FLORIDA PUBLIC SERVICE COMMISSION  
101 East Gaines Street  
Fletcher Building - Room 226  
Tallahassee, Florida 32399-0863  
(904) 487-2740

MAP:bmi  
910056C.BMI

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Consumer John Falk ) DOCKET NO. 910056-PU  
Regarding Resale of Electricity and )  
Gas by the H. Geller Management Company.)  

---

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Staff's Prehearing Statement,  
has been served by First Class U.S. Mail, Postage Prepaid, on the  
following parties of record, on this 9<sup>TH</sup> day of April,  
1991 :

John Falk  
7975 58th Avenue, North  
St. Petersburg, FL 33709

Charles Everett Boyd  
P.O. Box 1170  
Tallahassee, FL 32302

Michael A. Palecki  
MICHAEL A. PALECKI  
Staff Counsel

FLORIDA PUBLIC SERVICE COMMISSION  
101 East Gaines Street  
Fletcher Building - Room 226  
Tallahassee, Florida 32399-0863  
(904) 487-2740

MAP:bmi  
910056C.BMI