

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

File
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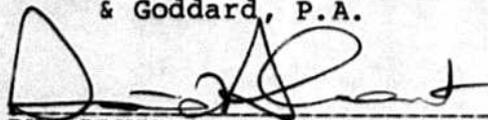
In re: Complaint of Consumer John Falk regarding resale of electricity and gas by the H. Geller Management Company

DOCKET NO. 910056-PU

JOHN FALK'S NOTICE OF FILING REBUTTAL TESTIMONY

COMES NOW the Consumer, JOHN FALK, by and through his undersigned legal counsel, and hereby gives notice of his filing of Rebuttal Testimony in the above-styled matter.

Bacon, Bacon, Harrington, Johnson & Goddard, P.A.



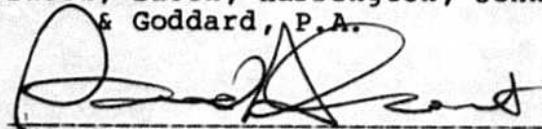
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CERTIFICATE OF SERVICE

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I HEREBY CERTIFY that the original and fifteen (15) true and correct copies thereof were dispatched by U.S. Mail, overnight, to the Director of Records and Reporting, Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0870, and that one (1) true and correct copy was dispatched by U.S. Mail, overnight, to C. Everett Boyd, Jr., Esquire, counsel for H. Geller Management Company, 305 South Gadsden Street, Tallahassee, Florida 32301, this 4th day of April, 1991.

Bacon, Bacon, Harrington, Johnson & Goddard, P.A.



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03344 APR -5 1991

-PSC-RECORDS/REPORTING

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

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REBUTTAL TESTIMONY OF JOHN FALK

DOCUMENT NUMBER-DATE
03344 APR -5 1991
FPSC-RECORDS/REPORTING

1 Q: Please state your name and residence address
2 for the record.

3 A: John Falk. Unit 310, 7975- 58th Street
4 North, St. Petersburg, Florida.

5 Q: You have previously given testimony in
6 support of your complaint before the Public
7 Service Commission against H. Geller
8 Management Company, is that correct?

9 A: That is correct.

10 Q: Have you had the opportunity to carefully
11 review and consider the testimony offered by
12 H. Geller Management Company in its defense?

13 A: Yes.

14 Q: And it is your desire to take advantage of
15 your right to respond to H. Geller Management
16 Company's testimony, correct?

17 A: Yes.

18 Q: Beginning with the testimony of Herm
19 Geller, what testimony has he given with
20 which you disagree?

21 A: Generally speaking, I disagree with his
22 assertion that my analysis of what his
23 management company has done over the years
24 with regard to electricity and gas is flawed.
25

1 Q: Please explain what you mean.

2 A: Certainly. In my previous testimony, I
3 outlined the two reasons why I believed that
4 our management contract with Mr. Geller's
5 company has resulted in the collection of
6 more money each month for electricity and gas
7 than has been charged to the management
8 company. The first reason was based solely
9 upon the language of the management contract.
10 A \$15.00 per month increase in our monthly
11 maintenance fee for each 5% increase in the
12 per kilowatt hour rate charged by Florida
13 Power inevitably results in the collection by
14 H. Geller Management Company of more money
15 for electricity than he is being charged.
16 For example, let's assume that we have a
17 monthly electric bill of \$100.00. If Florida
18 Power raises the per kilowatt hour rate by
19 5%, our bill would rise by \$5.00 to \$105.00.
20 Yet, under the management contract, H. Geller
21 Management Contract would collect \$15.00 more
22 per month. I cannot understand how Mr.
23 Geller does not see this as selling
24 electricity.

25

1 Q: Yes, Mr. Falk, but you do understand that Mr.
2 Geller has argued that the increase in your
3 monthly maintenance fee in response to
4 increases in the per kilowatt hour rate
5 charged by Florida Power was never meant to
6 reimburse him for his costs of electricity?

7 A: I understand that that is what he said in his
8 testimony, but I do not at all agree with
9 him. First of all, the introductory language
10 of Paragraph VI of the maintenance agreement
11 contract I have with H. Geller Management
12 Company -- the one he prepared and the one
13 behind which he continues to stand in
14 response to my complaint -- states the
15 following: "The monthly maintenance fee for
16 each condominium parcel owner shall be
17 increased as provided for hereinafter to
18 represent increases for public utilities and
19 other specific costs effective immediately in
20 the month following the announcement by any
21 public utility, private utility, corporate
22 sovereign or other company furnishing such
23 services." I frankly do not see how Mr.
24 Geller can say that this provision is not
25 intended to recover electricity costs when

1 the language of his own management contract
2 states otherwise.

3 Q: Is there anything else about the management
4 contract which causes you to disagree with
5 Mr. Geller in this regard?

6 A: Yes. Paragraph VI (d) of the management
7 contract states: "In the event that Florida
8 Power Corporation, which is presently
9 furnishing electricity to the said
10 condominium units, increases its rates per
11 KWH by an amount equal to five percent (5%)
12 of the rate per KWH being charged as of the
13 first day of January, 1980, such increase
14 will be apportioned among the condominium
15 units by the addition to the monthly
16 maintenance fee, beginning with the month
17 following such increase, the sum of \$15.00 to
18 be paid by the Association, which sum shall
19 be proportioned to each unit owner predicated
20 upon each unit owner's percentage of
21 ownership of the common elements as set forth
22 herein. There shall be no increase in the
23 amount of the management fee for this
24 increase. For each increase of the rate per
25 KWH equaling five percent (5%) made by the

1 said Corporation, the maintenance fee shall
2 be increased as hereinabove set forth." This
3 also suggests to me that Mr. Geller is in
4 fact trying to recoup the costs of
5 electricity, and not just inflation
6 generally.

7 Q: So you believe the contract is designed to
8 recover the electricity costs?

9 A: Yes. I am at somewhat of a disadvantage
10 because that management contract was not of
11 my making. Now, after it has been in place
12 and in operation for years, Mr. Geller is
13 trying to say that it means something
14 different from what the plain language of the
15 contract says. Mr. Geller testifies
16 throughout his testimony that this
17 electricity provision was merely intended to
18 allow for an increase in the monthly
19 maintenance fee to keep up with inflation.
20 For example, at page 17, lines 16 through 24
21 of his testimony, he states that he intended
22 the provision I quoted to be "an index of
23 general costs levels that would permit small,
24 occasional increases in the maintenance fee
25 over the life of the contract." Yet his own

1 management contract expressly states that
2 there will be increases in the monthly
3 maintenance fees "to represent increases in
4 public utilities", and that increases in
5 electricity cost "will be apportioned" among
6 the condominium units, and that this increase
7 will not be regarded as an increase in the
8 management fee. If any normal person on the
9 street were to pick up Mr. Geller's
10 management contract and read Paragraph VI
11 (d), I very seriously doubt that they would
12 recognize that it was not designed to recover
13 electricity costs, but rather just to allow
14 Mr. Geller to keep up with inflation
15 generally? The same holds true for the gas
16 issue, since Paragraph VI (c), dealing with
17 gas, is virtually identical to Paragraph VI
18 (d), dealing with electricity. I simply
19 cannot accept his position.

20 Q: What else do you disagree with?

21 A: I am confused about his testimony at page 10,
22 lines 8 through 13, where Mr. Geller refers
23 to "the fixed maintenance fees without any
24 automatic cost of living increases".
25 Paragraph VI of the management contract in

1 fact does provide for automatic cost of
2 living increases, which in practice amount to
3 an annual increase of the monthly maintenance
4 fee by \$144.00. Perhaps this increase is not
5 consistent with the true cost of living, but
6 should I have to pay more for electricity
7 than he is being charged just because his
8 management contract did not adequately
9 account for a more realistic cost of living
10 adjustment?

11 Q: Mr. Geller suggests that you are wrong to
12 rely upon the budget in your analysis of what
13 has happened. How do you respond to this
14 allegation?

15 A: Again, I disagree with him. The budget I
16 referred to in my initial testimony, and
17 which is very much a part of my analysis, is
18 the only budget we have ever been given. H.
19 Geller Management Company never told anyone
20 to my knowledge, and certainly never told me,
21 that the budget was inaccurate or was not to
22 be relied upon. I find it simply too easy
23 for him to now disavow the budget when that
24 budget is part of what demonstrates he has
25 been overcharging for electricity. But even

1 without the budget analysis, the evidence is
2 very clear that he has been charging more for
3 electricity than he has been paying Florida
4 Power. Even Florida Power recognized that H.
5 Geller Management Company was overstating the
6 increase in per kilowatt hour rates, and Mr.
7 Geller did not refute that finding whatsoever
8 in his testimony. When he overstates the
9 increase in per kilowatt hour rates, and then
10 increases our monthly maintenance fee in
11 accordance therewith, then he is overcharging
12 for electricity.

13 Q: Is there anything else in Mr. Geller's
14 testimony you would like to address?

15 A: Yes, one final thing. Mr. Geller has made a
16 point in his testimony to say how my analysis
17 is flawed because it does not take into
18 account other electricity costs, such as the
19 costs of running the pool pumps. When I was
20 forced several years ago to file a lawsuit
21 against H. Geller Management Company to make
22 them let me look at the electric bills, I
23 specifically asked him about the costs of
24 that electricity. He told me that those
25 costs were none of my business. If my

1 analysis was flawed by his account, I feel it
2 was his fault for not being open about those
3 costs years ago.

4 Q: Anything else?

5 A: Not really.

6 Q: Would you like to respond in any fashion to
7 the testimony of Carl Parker?

8 A: Not particularly. There is nothing I could
9 possibly say since I was not a party to any
10 of the efforts or conversations Mr. Parker
11 speaks of. Of course, I doubt that any
12 employee of the State of Florida would have
13 envisioned Mr. Geller's electricity
14 provisions in operation when they suggested
16 that errors in the budget amount would be no
17 problem.

18 Q: What about Charles Parmalee, would you like
19 to respond to his testimony?

20 A: I really don't know how to respond to his
21 testimony. Mr. Parmalee doesn't think that
22 H. Geller Management Company is subject to
23 the jurisdiction of the Florida Public
24 Service Commission, and he, like Mr. Geller,
25 seems to want to keep directing everyone's

1 attention back to the management contract. I
2 suppose he thinks that if the management
3 contract is sufficiently confused, then H.
4 Geller Management Company can escape
5 responsibility for the clear and irrefuted
6 facts. It amazes me that no one on behalf of
7 Geller Management Company has directly stated
8 or demonstrated how my analysis is wrong.
9 All Mr. Geller has stated is that I was wrong
10 to use the budget, and that he never intended
11 Paragraph VI (c) or (d) to recover the costs
12 of gas and electricity. So, there is nothing
13 I can say in response to Mr. Parmalee's
14 testimony.

15 Q: Finally, do you want to respond to Susan
16 Tucker's testimony?

17 A: Again, there is very little I could say about
18 her testimony. Her calculations are very
19 interesting. On page 10, lines 9 through 13,
20 she identifies the various monthly
21 maintenance fees for the different units in
22 the Jefferson Building. There are eight
23 Category A units paying \$111.29 per month;
24 eight Category B units paying \$123.73 per
25 month; sixteen Category C units paying

1 \$123.73 per month; eight Category D units
2 paying \$126.73 per month; and eight Category
3 E units paying \$130.00 per month. The
4 arithmetic is simple; the residents of the
5 Jefferson Building pay a combined monthly
6 maintenance fee of \$5,913.68. Yet, if you
7 review Exhibit S.T. - 1, you find that the
8 Jefferson Building's equal, pro rata share of
9 the total electrical cost for 1989, for
10 example, was \$3,646.34 (total cost divided by
11 total number of buildings), which works out
12 to a monthly pro rata share of \$303.86. If
13 the Jefferson Building accounts for \$303.86
14 per month in electricity cost by Susan
15 Tucker's calculations, and if H. Geller
16 Management Company is collecting \$5,913.68
17 per month in maintenance fees from the
18 Jefferson Building, then it sure seems to me
19 that a great deal of money is unaccounted for
20 under Mr. Geller's throw-out-the-budget
21 approach.

22 Q: Is there anything else you wish to say?

23: A: No.

24

25