

BEFORE THE

FLORIDA PUBLIC SERVICE COMMISSION

| | | |
|----------------------------|---|----------------------|
| In The Matter of | : | DOCKET NO. 910056-PU |
| Complaint of Consumer | : | |
| John Falk Regarding Resale | : | <u>HEARING</u> |
| of Electricity and Gas | : | |
| by the H. Geller | : | <u>VOLUME II</u> |
| Management Company. | : | |

Pages 96 Through 274

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Florida Public Service Commission

Courtroom C, Third Floor
Criminal Court Complex
5100 144th Avenue, North
Clearwater, Florida

Friday, April 19, 1991

Met pursuant to adjournment at 12:25 p.m.

BEFORE: COMMISSIONER GERALD L. GUNTER
COMMISSIONER J. TERRY DEASON

APPEARANCES:

(As heretofore noted.)

REPORTED BY: SYDNEY C. SILVA, CSR, RPR
Official Commission Reporter

DOCUMENT NO.
04305-91

FLORIDA PUBLIC SERVICE COMMISSION

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AFTERNOON SESSION

(Hearing reconvened at 12:25 p.m.)

COMMISSIONER GUNTER: Back on the record.

Counsel, call your witness.

MR. BOYD: We would call Mr. Herm Geller,
Commissioner.

COMMISSIONER GUNTER: All right. (Pause)

MR. PALECKI: Before we start, Commissioner,
we'd like to go ahead and move in Exhibits 2 and 3,
which were the tariffs and then Sam Nixon had the table
he produced for Florida Power Corp.

(Exhibit Nos. 2 and 3 admitted into
evidence)

- - - - -

HERM GELLER

appeared as a witness on behalf of H. Geller Management
Company and, after being first duly sworn, testified as
follows:

DIRECT EXAMINATION

BY MR. BOYD:

Q Mr. Geller, would you give us your name and
business address, please, sir.

A Herm Geller. 8141 54th Avenue North,
St. Petersburg, Florida.

1 Q And, Mr. Geller, could you tell us what your
2 affiliation with H. Geller Management Corporation is,
3 please?

4 A I'm President and owner.

5 Q And, Mr. Geller, did you cause to be filed in
6 this matter before the Commission direct prefiled
7 testimony?

8 A I did.

9 Q Of some 29 pages?

10 A Yes, sir.

11 Q And I believe there were two exhibits to your
12 prefiled testimony?

13 A That's correct.

14 Q Is that correct?

15 A Yes, sir.

16 Q And, Mr. Geller, if I were to ask you today
17 the questions as set forth in that prefiled testimony,
18 would your answers be substantially the same today?

19 A Yes, sir.

20 Q And do you have any changes to make in your
21 testimony?

22 A None, sir.

23 MR. BOYD: I would ask that the prefiled
24 testimony be inserted into the record as though read,
25 Commissioner.

1 COMMISSIONER GUNTER: It will be inserted
2 into the record as though read. We'll use Composite
3 Exhibit Number 4 for the attachments to his testimony.

4 (Composite Exhibit No. 4 marked for
5 identification)

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1 Q: Please give your name and business address.

2 A: My name is Herm Geller. My business address
3 is 8141 54th Avenue North, St. Petersburg,
4 Florida, 33209.

5

6 Q: What is your present occupation or business
7 pursuit?

8 A: I am president of H. Geller Management
9 Corporation, a Florida corporation. Our
10 principal areas of operation are condominium
11 association and management services.

12

13 Q: Please give us a brief description of your
14 personal and business background.

15 A: I attended public schools in Massachusetts
16 and, as a young man, was employed in several
17 different jobs in the sales and management
18 field. In the 1950's, I moved my family to
19 Florida and entered into a construction and
20 real estate development business.

21

22 Q: How long have you been in the Pinellas County
23 area?

24 A: I worked in Dade County until 1964, where I
25 was involved in single family residential,

1 cooperative rental and light commercial
2 construction projects. I then saw a need in
3 the Pinellas County area directed to housing,
4 for the retirement aged community and decided
5 to get involved in that field.

6

7 Q: What are some of the projects you have been
8 involved with in Pinellas County?

9 A: Herm Geller Enterprises, Inc. is the
10 development company through which I have
11 successfully completed several types of
12 housing projects in the Pinellas County area.
13 Herm Geller Enterprises, Inc. has built six
14 mid rise condominium projects which together
15 represent approximately 4,000 condominium
16 units. The company also built a few single
17 family projects in the Pinellas County area.

18

19 Q: Have you been involved in any trade or
20 community organizations?

21 A: Yes, I am a member of the Better Business
22 Bureau, the Chamber of Commerce, the Buildings
23 & Contractors Association, and the Nitram
24 Masonic Lodge.

25

1 Q: Tell us about the Terrace Park - Five Towns
2 project.

3 A: In the early 1970's I joined, as a major
4 stockholder, Metrocare, Inc., (AMEX), and
5 began the development of Terrace Park of Five
6 Towns on a 135 acre site on 54th Avenue North
7 in St. Petersburg that I saw as a great site
8 for a housing project directed to the middle
9 income retirement market. I envisioned a
10 project that would offer retired people
11 housing with essentially a fixed level of
12 maintenance expenses. The prospects at that
13 time of double digit inflation of maintenance
14 or operating expenses that could grow out of
15 control represented a great source of fear to
16 senior citizens planning their retirement. In
17 1976, I bought Metrocare's share of Terrace
18 Park of Five Towns and formed Herm Geller
19 Enterprises, Inc.

20

21 Q: How was Terrace Park - Five Towns structured
22 to address this problem?

23 A: The first part of the philosophy at Terrace
24 Park - Five Towns was to build and offer for
25 sale moderately priced condominium units. Most

1 of the units sold at prices in the range of
2 \$18,000 to \$45,000. A few of the later
3 buildings built in the 1984 to 1985 time frame
4 with approximately 150 units sold in the
5 \$60,000 to \$75,000 range.

6

7 Q: How many buildings are there in the project?

8 A: There are 34 buildings in Terrace Park - Five
9 Towns. They are represented by 31
10 associations. I found over the years that
11 people form a sense of association and
12 community with their neighbors in the same
13 building. There are 1700 units in the
14 development, which averages about to just over
15 50 units per building.

16

17 Q: What are the arrangements for recreational
18 facilities?

19 A: I always have viewed Terrace Park - Five towns
20 as a community of neighborhood groups
21 comprised of the 34 buildings. All residents
22 of the community enjoy the use of recreational
23 and community facilities throughout the
24 project. There are six swimming pools, two of
25 which are heated. There are shuffle board

1 courts located throughout the development.
2 There are also two recreational - community
3 centers in the community which together have
4 over 31,000 square feet of space, including
5 full commercial kitchens, dining facilities,
6 televisions, game rooms and many other
7 facilities. The main recreational building
8 also has full saunas, hot-tub, whirlpool and
9 spa-type facilities.

10

11 Q: Are separate memberships or user fees charged
12 for the use of those facilities?

13 A: No. All residents pay a single monthly
14 maintenance fee that includes all services and
15 facilities, with unlimited use - subject only
16 to very reasonable rules as to hours of
17 operation. A key part of the Terrace Park -
18 Five Town place was to ensure a single monthly
19 maintenance fee to cover all services and
20 facilities, with very specific limitations on
21 the amount and method of which that fee can be
22 increased.

23

24 Q: Is the development company, Herm Geller
25 Enterprises, Inc., involved in operating the

1 Terrace Park - Five Towns project?

2 A: No. Herm Geller Enterprises, Inc. is a
3 construction - development company. It is a
4 licensed construction company. Herm Geller
5 Enterprises, Inc. built and sold the
6 condominium units, but has had no real
7 involvement in the project since the last few
8 units were sold in 1988.

9

10 Q: What is the role of H. Geller Management
11 Corp.?

12 A: H. Geller Management Corp. was organized
13 specifically to provide the maintenance and
14 operating functions for the Terrace Park -
15 Five Towns project. It is H. Geller
16 Management Corporation that, by contracts with
17 each of the 31 condominiums associations,
18 operates all of the on-going services and
19 facilities that would ordinarily be performed
20 by the condominium associations themselves.

21

22 Q: Did you make any special effort to distinguish
23 between the two companies at the inception of
24 the project?

1 A: Yes. I wanted to make sure all of the
2 residents understood that the developer Herm
3 Geller Enterprises, Inc. is a separate and
4 distinct company from the management company
5 that would be involved with the project and
6 actually be operating the project in a
7 management capacity. The Service and
8 Management Agreement - the "Management
9 Contract" - entered into with each condominium
10 homeowner's association, contained a very
11 specific statement in bold print explaining
12 that the developer (Herm Geller Enterprises,
13 Inc.) is a separate company. Article XIV(e)
14 of the Management Contract states as follows:

15 Developer and Maintenance are
16 separate entities. The failure
17 of the developer to perform his
18 duties or contractual
19 obligations or warranties shall
20 not affect the obligations of
21 the unit owner as to his
22 payment of this monthly
23 maintenance fees, so long as
24 the maintenance company is
25 fulfilling its obligations

1 under the terms of this
2 maintenance agreement.

3

4 Q: Do you have as an exhibit the Jefferson
5 Building management contract?

6 A: Yes. Exhibit H.G. - 1 is the Service and
7 Maintenance Agreement with the Jefferson
8 Building association, Terrace Park of Five
9 Towns, No. 15, Inc. It is commonly referred
10 to as the Management Contract. It runs for 14
11 years from January 1, 1979, through January 1,
12 1993.

13

14 Q: The Management Contract is an agreement
15 between H. Geller Management Corporation and
16 the Jefferson Building homeowner's association
17 Terrace Park - Five Towns, No. 15, Inc. How
18 were the individual purchasers of units made
19 aware of its provisions?

20 A: The Management Contract was made a part of the
21 condominium public offering statement or
22 prospectus that is required by the Florida
23 Condominium Law is to be given to each person
24 who purchased at unit in the Jefferson
25 Building. In addition, as part of the sales

1 transaction each purchaser was given a copy of
2 the contract and signed the signature space of
3 the last page reflecting their approval and
4 consent of the contract and agreement to abide
5 by its terms. We wanted to make sure that
6 each new resident was made aware of the
7 arrangements for operating and maintaining the
8 community. And, of course, the fixed
9 maintenance fees without any automatic cost of
10 living increases was a key part of the Terrace
11 Park - Five Towns philosophy, so the contract
12 arrangements were a major factor in all of the
13 sales efforts.

14

15 Q: Let's turn back, Mr. Geller, to the economics
16 of the Terrace Park - Five Towns project.
17 Explain the concept of the single fixed
18 monthly maintenance fee.

19 A: The idea was, very simply, to allow the
20 residents' monthly maintenance fee to be an
21 essentially identifiable, fixed cost item.
22 Many of the residents are on a fixed income,
23 so I knew it was important that their monthly
24 expenses not be subject to radical increases.
25 The plan was for the single maintenance fee to

1 cover just about all of their non-personal
2 expenses. The residents pay the electricity
3 bill for their own unit, their personal
4 expenses like food and insurance on their
5 personal belongings, while basically all other
6 operational costs associated with their
7 building and the project are included within
8 the maintenance fee.

9

10 Q: You've discussed the recreational facilities.
11 What other facilities and services are
12 encompassed by the residents' maintenance fee?

13 A: H. Geller Management Corp. maintains full
14 \$1,000,000.00 liability insurance for the
15 entire project along with fire and other
16 hazard insurance on all of the buildings,
17 which includes the condominium units
18 themselves. The hot water boilers in each
19 building are maintained by our company. All
20 lawns and shrubbery service of the extensive
21 common grounds in the 135 acre development is
22 provided under the Management Contract. Also
23 included are maintenance and repair of the
24 master television antenna and amplifier system
25 for all 34 buildings, all garbage and trash

1 collection service, repair and up keep of the
2 exterior of the 34 buildings including
3 painting of exterior doors and trim, general
4 cleaning and housekeeping of the 34 buildings
5 and all common areas, minor roof repairs,
6 service and maintenance of the 29 elevators
7 throughout the development, and a staff person
8 to schedule all functions using the recreation
9 and meeting facilities. As you can see, there
10 is very little left in the way of costs for
11 individual residents other than their truly
12 personal expenses.

13

14 Q: What is the maintenance fee for the Jefferson
15 Building?

16 A: The initial fee in 1979 ranged from \$64.00 to
17 \$75.00 depending upon the size of the unit.
18 That averaged out to \$71.50 per unit per
19 month. The monthly fee for all 48 units
20 increased by \$3.00 on January 1, 1980, and
21 then have had annual increases ranging from
22 \$2.70 to \$3.14 per unit, which is an average
23 of \$3.00, again depending upon the size of the
24 unit. The first increase in 1980 amounted to
25 about a 4.20 percent increase, with the second

1 increase, which averaged \$3.00 per unit,
2 constituting just over a 4% increase. Of
3 course, as the base fee has increased each
4 year, the increase as a percentage declined.
5 Ignoring any other changes in the fee, the
6 annual increase on January 1, 1991, amounted
7 to right at 2.75%, much below the consumer
8 price index. But the important point, is that
9 the annual increase is a fixed amount not
10 withstanding any higher increase in the costs
11 of living or consumer price index. The
12 residents know exactly what that increase will
13 be and can plan their personal budget
14 accordingly.

15

16 Q: Explain how the Management Contract provides
17 for certain other increases in the event of
18 specific changes in the cost of operating the
19 project.

20 A: In developing the Terrace Park - Five Towns
21 concept, I knew that some costs would
22 increase, costs over which H. Geller
23 Management Corporation would have little or
24 no control. The first category of expenses is
25 the cost of sewer service. That service

1 provided by Pinellas County is a fixed monthly
2 charge based on the specific facilities in an
3 apartment or condominium unit. The contract
4 was designed - Article VI(a) to pass any
5 increase in that charge directly through to
6 the residents. If the sewer charge increases
7 from \$10.00 to \$12.00 per unit, then the
8 maintenance fee is increased by \$2.00. The
9 format of the sewer charge allows an increase
10 in that charge to be directly passed on to
11 each unit. That is the only charge that can
12 be or is handled in that manner.

13

14 Q: What about the other categories of expense
15 mentioned in Article VI of the Maintenance
16 Contract -- water, gas, electric, trash and
17 insurance?

18 A: These costs of the management company were not
19 so conveniently packaged by the entity
20 furnishing the service. Water, gas and
21 electric costs are tied to consumption, but
22 may have some fixed components, too. Trash
23 costs are essentially based on a per container
24 basis, but the volume of trash determines the
25 number of containers needed. Of course,

1 insurance costs jump around so much, I'm not
2 sure who can explain it. The concept that I
3 developed was to tie specific levels of
4 increases in these 5 costs to fixed amounts of
5 increase in the maintenance fees. For
6 instance, Article VI(e) of the Jefferson
7 Building Management Contract provides for a
8 \$10.00 increase in the maintenance fee for the
9 building in the event the charge paid by the
10 Management Company for trash removal increases
11 by ten percent. A key part of the Terrace
12 Park - Five Towns plan was that any increase
13 in the trash expense for the Management
14 Company of less than 10% would result in no
15 increase in the monthly fee; the Management
16 Company would have to absorb that increase
17 with no increase in the management fee. Now
18 I believe that over the past eleven years
19 there have been two increases in the trash
20 expense -- one of 15% and another of 30%.
21 Under the Management Contract that constitutes
22 four increases of 10% and allows for a total
23 increase in the maintenance fee for the
24 building of \$40.00. Broken down to each unit,
25 that represents an average increase in the

1 maintenance fee of 84 cents per unit per month
2 as a result of the contract provision relating
3 to trash.

4 Q: Is the contract provision designed to directly
5 pass through to the residents the actual
6 increase in cost of trash removal for the
7 Management Contract?

8 A: Clearly not. The whole purpose of this plan,
9 with exception of sewer costs, was not to pass
10 through or directly recoup trash increases in
11 these types of expenses. First of all, the
12 formula or procedure of the contract does not
13 mathematically result in any actual pass
14 through or tracking of the costs. You can see
15 that on the face of the contract. Second, the
16 contract recognized that any increase in these
17 costs must reach a given level, as a
18 percentage, before any increase in the
19 maintenance fee is implemented. So the
20 management company bears all such increases
21 that don't reach the threshold level, or that
22 don't exactly equal the threshold - an 9.8%
23 increase in insurance costs under Article
24 VII(f) permits a single increase in the
25 maintenance fee of \$10.00 for the whole

1 building, or 21 cents per unit. In effect,
2 the 4.8% increase in cost above the 5%
3 threshold is not passed on to any degree to
4 the residents. Third, the concept itself is
5 simply not designed or intended to track or
6 pass through specific costs to the residents,
7 again except for the sewer provision. There
8 are many operating costs throughout the
9 development that increase regularly, and
10 invoke no contractual increase in the
11 maintenance fee. The recent mandated
12 increases in the minimum wage are a good
13 example. In addition, there can be other
14 significant increases in costs generally that
15 far exceed the 2.75% - 4% increase allowed
16 under the contract. Therefore, I specifically
17 intended the five categories of costs
18 identified in Article Vi of the Contract not
19 be a means of "charging" for those specific
20 costs items or tracking those costs, but
21 rather to serve as an index of general cost
22 levels that would permit small, occasional
23 increases in the maintenance fee over the life
24 of the contract.

1 Let me also add that if I had intended to
2 charge for gas, insurance or electricity, I
3 could have done so. The contract could have
4 been written to provide for on-going, annual
5 budgets for those cost items and specific
6 allocation of costs among the buildings, with
7 a true-up mechanism at the end of each year.
8 In that scenario, the residents would directly
9 "pay" for those costs. That, however, is
10 simply not the format which is implemented by
11 the Terrace Park - Five Towns concept.
12 The other very obvious indication that the
13 Management Contract does not charge for these
14 cost items, including electricity, is that
15 increases of less than the threshold
16 percentages result in no increase in
17 maintenance fee. A 4.9% increase in electric
18 rates produces no change at all to the
19 maintenance fee paid by Mr. Falk or other
20 Jefferson Building residents.

21

22

23 Q: Is the contract provision referring to gas an
24 issue in this docket?

1 A: It certainly shouldn't be. The Terrace Park -
2 Five Towns entire development is served by
3 two main looped gas meters. The Management
4 Contract calls for H. Geller Management
5 Corporation as the Management Company to
6 furnish to all units gas for cooking and
7 heating at no extra charge beyond the regular
8 maintenance fee. The Commission's Rule 25-
9 7.071 does not require condominiums built
10 before January 1, 1987, to have separate
11 meters for each unit. Rule 25-7.071(3) does
12 not require sub-metering and has no
13 restriction on the manner in which a customer
14 of record may allocate its cost of gas among
15 the unit owners. More importantly, Jefferson
16 Building residents do not pay for gas used in
17 their units. They receive a bill for their
18 monthly maintenance fee, period. There is no
19 charge for gas. The residents may use their
20 gas as much as they like, it has no bearing on
21 their maintenance fee. It is simply one of the
22 multitude of services included with the
23 management and service obligations, by
24 contract, of H. Geller Management Corporation.
25

1 Q: Commission Rule 25-6.049 requires condominiums
2 and other residential buildings built after
3 January 1, 1981, to have individual electric
4 meters for each occupancy unit. Does the
5 Jefferson Building have individual electric
6 meters for each of the 48 units?

7 A: Yes. Even though the Jefferson Building was
8 constructed before January 1, 1980, we went
9 ahead and put in separate electric meters for
10 all of the units.
11

12 Q: Mr. Falk has raised questions in his complaint
13 relating to electricity used at the Terrace
14 Park - Five Towns project. Please explain
15 what electric costs are incurred by H. Geller
16 Management Corporation in operating the
17 Terrace Park - Five Towns community.

18 A: Aside from electricity used in individual
19 residential units, all electricity used in the
20 development is billed to and paid for by H.
21 Geller Management Corporation. Electricity is
22 used in lighting the hallways, exterior and
23 common areas of the Jefferson Building and all
24 of the other 33 buildings in the project.
25 Also for street lights, hot water and

1 circulating pumps, pumps for sprinkler
2 systems, elevators, lighting and air
3 conditioning in the 2 large recreational
4 centers, swimming pools, hot tubs, gazebo,
5 lighting for recreation facilities, and other
6 similar uses. This case does not involve
7 electricity used by residents in their own
8 condominium units.
9

10 Q: Are the Jefferson Building residents or any
11 other residents at Terrace Park - Five Towns
12 charged for electricity by H. Geller
13 Management Corporation?

14 A: Absolutely not. The costs to H. Geller
15 Management Corporation for the electricity
16 used as described above is simply one of the
17 many expenses incurred by H. Geller Management
18 Corporation in providing the services and
19 facilities which it is contractually obligated
20 to provide to residents of the Jefferson
21 Building and Terrace Park - Five Towns
22 residents. The residents pay their regular
23 maintenance fee, no more and no less, and that
24 fee stays the same no matter how much
25 electricity is use by H. Geller Management

1 Corporation in providing the services. This
2 arrangement is exactly the same as any other
3 condominium, apartment building, shopping
4 center or mall that collects a maintenance
5 fee, or rent, and provides a collection of
6 services.

7

8 Q: What about Article VI(d) of the Management
9 Contract; does that mean the residents are
10 paying for electricity?

11 A: No. As I explained before, that provision is
12 only a means of providing occasional increases
13 in the maintenance fee -- of a fixed \$15.00
14 for the Jefferson Building or 31 cents per
15 unit per month -- in the event of a 5%
16 increase in the KWH rate charged by Florida
17 Power Corporation. Although obviously related
18 to the rate of electric costs, the provision
19 in no way creates a fee or charges for
20 electricity. It does provide a modest
21 increase in the maintenance fee, an increase
22 intended to help cover increases in all
23 operating costs, just as to the other four
24 categories. If there is up to a 4.9% increase
25 in electric rates, H. Geller Management

1 absorbs it. If there is a 5% increase in
2 electric rates, the Jefferson Building
3 residents pay an additional 31 cents per month
4 in maintenance fee on average. If there is an
5 8% increase in electric rates, the Jefferson
6 Building residents' monthly maintenance fee
7 still only goes up by 31 cents per month. If
8 the electricity usage goes up by 5% and thus
9 the costs of H. Geller Management Corporation
10 goes up 5%, there is not an increase in
11 maintenance fee. The maintenance fee paid by
12 the residents bears no relationship to the
13 usage of electricity, or any other service or
14 facility, in the development. The Management
15 Contract provides a certain identifiable way
16 to determine and calculate the maintenance
17 fee, which is central to the whole philosophy
18 behind the project.

19

20 Q: At page 3 of Mr. Falk's testimony he refers to
21 electricity and gas charges being passed on to
22 Jefferson Building residents. What electric
23 costs are passed on the residents?

24 A: None. Mr. Falk is trying to re-cast the
25 Management Contract to his own liking. The

1 only costs that are passed on are sewer costs.
2 If the sewer charges go up \$5.00 per toilet
3 per month, the residents' maintenance fees
4 will go up \$5.00 per toilet per month. In all
5 other cases the contract merely uses the event
6 of a 5% increase in per KWH rates to impose an
7 increase in the maintenance fee of 31 cents
8 per unit per month, or \$15.00 for the whole
9 Jefferson Building. Mr. Falk also ignores the
10 fact that the Management Contract provides no
11 change in the maintenance fee if the per KWH
12 rate increases by 3% or 4%, or if consumption
13 increases at all.

14
15 Q: At page 4 of his testimony Mr. Falk refers to
16 a "hallmark" budget provided by H. Geller
17 Management Corporation. Did H. Geller
18 Management Corporation provide such a budget?

19 A: No. As I referred to at page 7, the developer
20 Herm Geller Enterprises, Inc. prepared and
21 filed with the Florida Division of Land Sales
22 and Condominiums a prospectus or public
23 offering statement for the Jefferson Building
24 Condominium. That prospectus was also made
25 available to prospective purchasers of

1 Jefferson Building units. That prospectus and
2 the Jefferson Building budget contained in the
3 prospectus were prepared by, filed and
4 distributed by Herm Geller Enterprises, Inc.
5 the developer, as part of its sales program.
6 It was not prepared or provided by the
7 Management Company.

8
9 Q: Mr. Falk referred to the budget again at page
10 10 of his testimony when he says the monthly
11 Jefferson Building electric costs was \$180.00.
12 Is that an accurate statement?

13 A: No. Mr. Falk is not aware of why or how that
14 "budget" was prepared, and has taken great
15 liberties with this document. A condominium
16 prospectus is required by Chapter 718, Florida
17 Statutes to be filed with and approved by the
18 Division of Florida Land Sales and
19 Condominium. The budget is required to
20 contain an estimated operating budget for the
21 condominium and homeowners' association. In
22 the typical condominium setting, the expenses
23 are incurred by the homeowner's association
24 who in turn collects maintenance fees from
25 residents. The amount of maintenance fees

1 will directly correlate to the operating
2 expenses incurred by the association, as costs
3 go up the maintenance fees will go up. There
4 is a direct pass through of maintenance costs.
5 Indeed, a homeowners' association has no
6 source other than its residents - members from
7 which to recoup its operating expenses.
8 Secondly, Mr. Falk has conveniently deleted
9 the essential term "estimated" in referring to
10 the budget. The condominium law requires
11 developers to include an estimated budget in
12 the condominium prospectus, a document
13 prepared before or as the building is
14 constructed and occupied. To take any
15 information in the estimated budget and
16 conclude that it represents a reliable level
17 of any expense is simply not fair, not
18 realistic and not supportable.
19 In the instance of Terrace Park - Five Towns,
20 the monthly maintenance fees are fixed by the
21 contract, and have no relationship to the
22 costs actually incurred by the Management
23 Company (except for sewer charges).
24 Nevertheless, the staff at the Division
25 insisted that some form of estimated budget be

1 included in the prospectus. The division
2 staff indicated they did not care about the
3 budget items or amounts, as long as the total
4 of monthly expenses equaled the average \$71.50
5 per unit initial maintenance fee. Again, the
6 important factor was that the residents'
7 maintenance fee, their monthly fee, was the
8 set amount in the contract.

9 As we constructed other buildings, I believe
10 the Division eventually understood the real
11 concept of Terrace Park - Five Towns. For at
12 least five of the later buildings, the
13 estimated budgets included in the prospectus
14 had no expense amount for individual items.
15 Attached to this testimony is composite
16 Exhibit H.G.- 2 entitled "Estimated Budget for
17 Later Buildings." These estimated budgets for
18 the Quincy, Radcliffe, Syracuse, Tiffany and
19 University Buildings built after the Jefferson
20 Building perhaps more accurately shows that
21 the individual expense categories have no
22 bearing on the maintenance fees paid by
23 residents.
24

1 Q: Mr. Falk also provides at pages 11 through 13
2 of his testimony an analysis of sorts of the
3 gas expense for the Jefferson Building. Do
4 you have any comments about that testimony?

5 A: Yes, I do. As I stated before, I don't
6 believe the gas issue is properly before the
7 Commission. First, Mr. Falk again relied upon
8 the "initial budget" in his calculations, and
9 therefore is off-the-mark from the beginning.
10 The balance of Mr. Falk's so called "audit"
11 conclusions are so replete with erroneous
12 assumptions and calculations to be totally
13 unreliable. The fundamental deficiency in
14 those calculations, however, is that it
15 totally ignores the use of gas throughout the
16 development other than in the condominium
17 units themselves. Substantial amounts of gas
18 are used in the recreational facilities for
19 heating, hot water, gas stoves in kitchens,
20 hot tubs and heated swimming pools. Mr.
21 Falk's distorted approach again ignores the
22 total concept of the development; all of the
23 myriad of services and facilities are provided
24 to residents for the single maintenance fee
25 without any limitation on consumption.

1 The maintenance fee cannot be broken down
2 to conclude that Mr. Falk, in his words,
3 paid too much for gas.

4

5 Q: Does that conclude your testimony?

6 A: Yes.

Test-Gel.Pld

1 BY MR. BOYD:

2 Q Mr. Geller, would you give a brief summary of
3 your prefiled testimony, please, sir, for the
4 Commission?

5 A What I would like to do is give a description
6 of what the Company consists of and what the original
7 intent was in creating this particular type of a
8 management company.

9 Over the many years that we had built the
10 apartments, rather large, cooperatives in those days,
11 there was a serious problem of constant inflation and
12 horrible increases in monthly maintenance and charges
13 where it created a hardship on many of the residents.
14 Back in '64, when I first started and I came to St.
15 Petersburg, we went to provide residents in the
16 condominium concept under the concept that if we could
17 create a fixed type of increase of costs per month, and
18 would not fluctuate constantly, and could assure a
19 prospective buyer -- and 90% of our buyers in those
20 days were targeted towards the retired people and those
21 people are either on Social Security or are on pensions
22 -- so that they would never be subject to horrific
23 increases overnight or from one year to another.

24 So I adopted the program of having a fixed
25 rate with a fixed increase every year of a nominal fee;

1 and the majority of them run to \$2, some \$3 and a few
2 of the later ones of \$4 per month. That was a fixed
3 fee which began of every January of each year that they
4 knew they were going to pay so they could budget
5 accordingly.

6 As we went along in creating -- and we have
7 built over 5,000 of these apartments and residents with
8 close to 10,000 people right in the immediate St.
9 Petersburg area -- that we found that the \$2 in no way
10 covered our increases because of the inflationary
11 trends that we have experienced since 1964 to the
12 present.

13 So, in order to be able to accomplish the
14 need for more income, we could not -- in order to stay
15 with my original concept of having a fixed income and
16 not having it fluctuate constantly during the year or
17 from one month to another, we took, in our services
18 that we rendered, certain costs of services that we
19 gave that could be easily recognized and had been
20 advertised.

21 And the primary reason for using these four
22 or five categories for other increases besides the \$2
23 was an increase that usually would stay for two or
24 three or four years and would not fluctuate from one
25 month to another. Such as if we had gone and used

1 labor as one of the bases of increase, or materials, or
2 fertilizers, or whatever we had to supply, and one
3 month you buy for one price and the next month you pay
4 for less, it costs less, and from year-to-year because
5 of the weather and so many conditions that change,
6 labor increases could be changed constantly.

7 So we picked the utilities which we knew from
8 experience that they advertise many months in advance
9 on what their intended increases were going to be and
10 two or three other items that we could contract for one
11 year at least to another, such as waste management,
12 elevator service where they took care of the elevators
13 for a fixed price for on a year basis. So these
14 services -- and insurance, those did not fluctuate from
15 one week or one month to another, it was a one-year
16 long thing.

17 The other was utilities. So we took
18 electric, water, gas, sewer charge. Sewer charge is
19 the charge that every time the Sewer Department would
20 go up on the price, we would pass that directly through
21 to the purchaser, because that price didn't fluctuate.
22 It wasn't a matter of consumption or how many times a
23 shower was used and all. But if it had one bathroom,
24 they paid so much. If it had two bathrooms, they paid
25 so much. And that prevailed right on through the

1 years. So that served our purpose of a fixed rate
2 without any increase, constant change.

3 The other thing was water. We estimated the
4 water at a certain amount and with the one thing that
5 the water, gas and electric was geared that they had
6 unlimited use of all of those facilities.

7 So consumption was not a basis where we could
8 go up on the price. If we used a million gallons or
9 whether we used five million gallons, the rate did not
10 change unless the amount per thousand gallons would
11 change, then there was a certain rate of increase on
12 that.

13 The same thing with the gas and the same
14 thing with the electricity.

15 Q Okay, thank you, Mr. Geller.

16 A Okay.

17 Q Let me just ask one clarification. I believe
18 you referred to a \$2 a year increase, and the Jefferson
19 building contract has the \$3 average increase, doesn't
20 it?

21 A Yes, sir.

22 Q You need to say yes or no, please?

23 A Yes. That's what I said, yes, sir.

24 MR. BOYD: Thank you, Mr. Geller.

25 Commissioner, we would offer Mr. Geller for cross

1 examination.

2 MR. PALECKI: Are you having your exhibits
3 marked?

4 COMMISSIONER GUNTER: They have already been
5 marked.

6 MR. BOYD: They've already been marked.

7 COMMISSIONER GUNTER: The exhibit that is
8 being passed out by Staff counsel, referenced as Staff
9 1, will be identified as Exhibit No. 5.

10 (Exhibit No. 5 marked for identification)

11 CROSS EXAMINATION

12 BY MR. PALECKI:

13 Q Mr. Geller, I have given your counsel what
14 has now been identified as Exhibit No. 5. And do you
15 have a copy of this in front of you?

16 A Will I? Are you asking me, sir? I don't,
17 because I can't see.

18 COMMISSIONER GUNTER: Mr. Geller is going to
19 have to have some assistance.

20 Q (By Mr. Palecki) Mr. Geller, these are the
21 actual budgets that were submitted to the Department of
22 Business Regulation, and I have provided these to your
23 attorney. And I ask if you have you had a chance to go
24 over them, and if they accurately reflect what was
25 submitted by the Herm Geller Enterprises, Incorporated

1 to be the estimated budgets for the various buildings
2 that were in Five Towns that were being built?

3 MR. BOYD: Commissioner, Mr. Geller has not
4 been able to review these documents, some 58 pages. We
5 would not -- so, for identification purposes, Mr. Geller
6 can't really do that.

7 I told Mr. Palecki, we don't have a specific
8 problem with these documents. I just perhaps reserve a
9 few more minutes to review the stack to see if there's
10 anything in there that should be just pulled out.

11 But to the extent they have the other
12 budgets, we don't object on that basis at all.

13 COMMISSIONER GUNTER: All right.

14 MR. PALECKI: The only reason Staff wants to
15 introduce these is that the exhibit that was marked as
16 Exhibit No. 4 contains some of these budgets and I
17 wanted to make sure that the Commission, if they're
18 going to introduce some of them, that the Commission
19 would have all of the budgets in front of them.

20 COMMISSIONER GUNTER: Right. All right,
21 those are identified as Exhibit 5.

22 MR. PALECKI: Apart from introducing this
23 exhibit, Staff has no questions of Mr. Falk -- of
24 Mr. Geller.

25 COMMISSIONER GUNTER: All right. Counsel?

CROSS EXAMINATION

BY MR. LAMONT:

Q Mr. Geller, my name is David Lamont. As you know, I represent John Falk. You and I have met before at the informal hearing.

A Yes, sir.

Q In your prefiled direct testimony -- and I'm referring, for counsel's sake, to Page 17, Lines 16 through 24 -- you indicate that you never intended for any of the categories that are set forth in the contract, like sewage and electricity and gas, your language is that you specifically intended them not to be a means of charging for those specific costs or items but rather to serve as a general index of cost levels.

Did you ever tell anybody or did you ever tell John Falk that that's what you intended that provision to mean?

A It was quite impossible for me to tell Mr. Falk anything, because he did not buy the apartment from us; and it was up to the original owner who was explained that through our sales force and were very knowledgeable with it, and so was their corporation, but he bought it from another person.

Q Now, the language from your contract that you

3 "The monthly maintenance fee for each condominium
4 parcel owner shall be increased as provided for
5 hereinafter to represent increases for public utilities
6 effective immediately in the month following the
7 announcement by the utility that the rate went up,
8 there are to be assessed against the unit owners..."

9 And if you go down and you read your specific
10 gas and electricity provisions, it says, "When we
11 increase it for this, we're not increasing it for the
12 management fee."

13 Now, how would anybody taking this document
14 up, just reading it themselves, know that you didn't
15 intend to recover for electricity or gas?

16 A Mr. Lamont, what do you mean by "management
17 fee"? I don't understand that. Is that the fee of
18 \$10 per month of our fees --

19 Q That's correct.

20 A -- or do you talk about the total maintenance
21 contract?

22 Q Your contract defines the "management fee" as
23 the \$10 per month that you get. The provision that
24 allows for the increase of gas and the provision that
25 allows for the increase in electricity says, "When we

1 up your maintenance fee because of increases in
2 electricity and gas, it's not an increase for the
3 management fee."

4 It's not an increase in what you're being
5 paid -- now, you indicated that you wanted to keep up
6 with inflation, cost of service -- if it's not that,
7 your contract says it's not that, what else is it?

8 A It is to take care of consumption. An
9 increase of any utility rate -- right -- has to take
10 into account that there is a certain amount of
11 consumption which was unlimited. Now, how could I put
12 a price on any per month because I was dependent upon,
13 from month-to-month -- we pay the bills which vary, but
14 we did not increase the price as to the amount of
15 consumption that was used from month-to-month. It was
16 strictly a rate of 5%. And the 5% was put on there
17 purposely, again, to meet our need so that we did not
18 have every time the 1% or 2% occurred that we would
19 have to go to the people and ask them again for it.

20 So we absorbed the 4.9% in order to keep the
21 rates steady and not to make constant changes. But
22 what happened was the consumption varied. And if you
23 wanted to find out whether or not the rate was proper
24 or not to cover that, then give us the figure of how
25 much consumption you used. Are you going to use

1 consumption in comparison with that figure or not?

2 Because we could have had a 2% increase in
3 the rate or a 5%, which would amount to that \$15. But
4 supposing any given month, a hot summer, exceptional
5 usage through the recreation facilities and all,
6 amounted to an increase in the number of kWh we used,
7 right? Isn't that the way you want to find out as to
8 whether or not that electric -- which was not intended
9 to compensate us for the electricity. It was intended
10 as part of the cost of \$71.50 that we used as a monthly
11 fixed rate.

12 You mentioned Mr. Falk. His reason for
13 buying an apartment was he thought it was a good deal
14 at \$71.50, and that's why everybody bought in there is
15 because of the price and that he knew he was going to
16 get a very steady fixed increase to cover costs.

17 Q Mr. Geller, you testified that you never
18 talked to Mr. Falk, so you're right now speculating as
19 to why he bought the condominium. And I understand --

20 A Well, I am speculating, okay.

21 Q I understand the vision that you had for the
22 condominium complex --

23 A That's correct.

24 Q -- where, in the maintenance agreement, does
25 it ever say that that's what you're trying to do, that

1 you're just trying to keep up for inflation?

2 A Well, what would be the purpose of increasing
3 the 3% to 5% if it wasn't for to cover --

4 Q According to your contract, that is to,
5 quote, "represent increases for public utilities
6 effective immediately in the month following the
7 announcement."

8 A That right, that's the way we acquired that
9 extra few dollars that we needed.

10 Q Mr. Geller, do you believe that Mr. Falk
11 should have included within his calculations the costs
12 to you for operating the laundry, washer and dryer
13 facilities that are maintained by you on the premises?

14 A The laundries were put in there as a
15 convenience. Never once in the last 20 years have they
16 ever shown us any profit.

17 Q I understand that. But --

18 A They were put in as a convenience. Now, the
19 liberty built a laundry room there. We pay for the air
20 conditioning, comes through our funds, okay. We pay
21 for the use of the washers and driers, and it pays for
22 the gas driers if we have them in there.

23 Now, those charges come in to me; and it
24 doesn't matter whether \$50 or \$500 a month, it is not
25 calculated as an increase in the amount of the monthly

1 payment fees. It has nothing to do with them.

2 Q Is it your position that Mr. Falk should have
3 taken those costs into account when he was doing his
4 analysis of what was being paid by you to Florida Power
5 and what you were retrieving from them? Setting aside
6 for the moment of whether the budget was legitimate or
7 not.

8 A Well, why do you question the use of the --
9 question me about the use of an air conditioner in the
10 laundry room or in the water and the electricity we
11 used in the laundry rooms, and why am I paying for an
12 elevator motor that is running and why am I paying for
13 lights that are running? It is all one composite
14 amount --

15 Q Mr. Geller, --

16 A -- that costs me money that had absolutely no
17 effect whether there was \$1000 or \$5000 a month. It
18 did not cost any resident in there one penny more. The
19 only time they paid is if it reached 5% increase; and
20 that was cheap enough at 31 cents a month, that's what
21 it represented to each individual owner.

22 Q My question to you is do you believe that
23 Mr. Falk should have included in his analysis the cost
24 of operating the washers and the driers?

25 A Why should he have? If it was part of the

1 \$71.50, right? Did he accept that? And that's all
2 that mattered, because I did not spell out in the
3 contract every little item that that was going to
4 include.

5 Q Mr. Geller --

6 A All he knew was that if the rate went up, he
7 was going to pay 31 cents per month more.

8 Q The problem with that is, Mr. Geller, that
9 your contract says that you are the one who is going to
10 be responsible for the costs of operating the washers
11 and the driers. You didn't tell anybody in your
12 contract that they were going to be --

13 A He is not paying for it. He paid 50 cents
14 for a load of wash where everybody else in the city was
15 paying 75 cents. We did it as a convenience for the
16 residents so they didn't -- wouldn't have to take --
17 they're all senior citizens and many of them we had to
18 bus free to places shopping. And we did not want
19 everybody in that community there having to take their
20 laundry, put it in the bags and then go sit somewhere
21 in the laundromat waiting for their turn for a washing
22 machine. We put it there more as a convenience
23 for the people.

24 Q Neither I nor Mr. Falk nor I doubt any other
25 resident of that condominium complex has any quarrel

1 with the reasons why you put it in there. The only
2 thing I want to know is whether or not Mr. Geller
3 should have included that in his analysis from your
4 perspective?

5 A In what analysis? If the analysis was I
6 didn't include fertilizer or anything else, did I?
7 Okay?

8 Q Well, we're talking about the washers and
9 driers.

10 A Okay? But I fertilize his lawn so what's the
11 difference whether it be washers or driers.

12 Q The contract doesn't say anything about the
13 fertilizer, that's apart. The contract does say that
14 the residents are not going to be paying for the
15 washers and driers. All I want you to tell me is
16 whether or not you expected Mr. Falk to include that in
17 his analysis?

18 A I tell you one thing I did expect from Mr. Falk,
19 and for the last 10 years he's been in the breach of his
20 agreement, that he admitted this morning that he has a
21 washer/dryer. And why didn't he then notify us because it
22 somehow was bootlegged into the apartment. We didn't know
23 about that and he's due us \$4 a month for the last 10
24 years.

25 MR. BOYD: Excuse me, Commissioner, I don't

1 think -- I'm not sure that Mr. Lamont's question is
2 clear or has been clearly understood by Mr. Geller. I
3 think if you will rephrase it, perhaps referring to the
4 specific item, then you can get the answer?

5 WITNESS GELLER: I don't understand the
6 question, that's right.

7 MR. LAMONT: I think I'll leave it at that.
8 I have no further questions.

9 COMMISSIONER GUNTER: I've just got one,
10 Mr. Geller.

11 WITNESS GELLER: Yes, sir.

12 COMMISSIONER GUNTER: Do you have a different
13 contract for each one of the units, the condo units,
14 that you have? You know, we've heard, like these folks
15 pay \$3.06 annually, you know, through 1992, as I read
16 this. I've never been to the development, so you'll have
17 to bear with me a little bit.

18 WITNESS GELLER: Certainly.

19 COMMISSIONER GUNTER: Like, were there 48
20 units in this one that we're talking about?

21 WITNESS GELLER: Yes, sir, Jefferson had --

22 COMMISSIONER GUNTER: And then, how many are
23 there total? I'm just to get a feel.

24 WITNESS GELLER: For the total complex?

25 COMMISSIONER GUNTER: Yes.

1 WITNESS GELLER: 1700.

2 COMMISSIONER GUNTER: So that's pretty large.
3 How many individual buildings are there?

4 WITNESS GELLER: There are 34 represented by
5 31 different associations.

6 COMMISSIONER GUNTER: Okay. And there are
7 differences --

8 WITNESS GELLER: Yes, sir.

9 COMMISSIONER GUNTER: -- I picked up there
10 are differences in the monthly -- the annual
11 escalations between the various individual complexes?

12 WITNESS GELLER: Oh, yes, sir. Starting back
13 in the past 20 years that we have started these, way
14 back on 62nd Avenue North here and then through these
15 5,000 units that we built in the last 18 years, let's
16 say, that we geared the cost -- the original amount --
17 we started as low as \$30 a month back in those years
18 and supplied these very same services that we supply
19 now. But as prices kept going up, inflation was
20 running rampant anywhere from 8 to 21% in the '70s,
21 that we realized we had to go up on the monthly base.

22 So it went from \$30 for \$40 to \$45 as the
23 time went; and now some of the people there getting the
24 very same services that Jefferson is getting; whereas
25 they're paying 124 and \$125 some of them are very happy

1 and paying \$152 a month and that's with the \$4 increase
2 per month. And I have about out of the 1700, it's
3 close to 1000 that we only increased by \$2 a month.
4 And those are the older buildings.

5 COMMISSIONER GUNTER: Okay. Good. Thank
6 you, I'm just trying to get the feel of how --

7 WITNESS GELLER: We kept it with the market,
8 and what the people, what Social Security was paying
9 and so forth just to supply this comfort to them.

10 COMMISSIONER GUNTER: Okay. Good. Thank
11 you, sir.

12 COMMISSIONER DEASON: Mr. Geller, I'm right
13 here. I have a few questions, and I believe they're
14 simple questions. If you can answer them yes or no,
15 I'd appreciate it. And then if you needed to expound
16 on that, please do so.

17 WITNESS GELLER: Would you acknowledge
18 yourself to me, sir?

19 COMMISSIONER DEASON: Okay. I'm Commissioner
20 Deason.

21 WITNESS GELLER: Oh, okay. Fine.

22 COMMISSIONER DEASON: My first question, is
23 Geller Management Company reselling electricity to the
24 condominium owners in your development?

25 WITNESS GELLER: No, sir.

1 COMMISSIONER DEASON: Does your contract, as
2 you interpret it, envision the reselling of electricity
3 to those persons?

4 WITNESS GELLER: No, sir, and I can explain
5 why.

6 COMMISSIONER DEASON: Go ahead.

7 WITNESS GELLER: You don't sell an item
8 unless you have a consumption amount, right?
9 Irregardless of a rate, a rate could go up by 2% and
10 the consumption could increase by 40%. So we've given
11 them unlimited amount -- I'll give you a vivid example.
12 You talk about electr'city. We run for 11 months
13 during the year at a certain give-or-take, depending on
14 the season or so, a differential in the amount of
15 electricity that's consumed.

16 Comes December, why does my bill every
17 December goes up \$2500, \$3000, \$3500. Do you know why?
18 Because you would think it was Santa Claus Land the way
19 we've allowed them to take and take the buildings and
20 put thousands of lights over those 34 buildings all
21 over the place. Some have even added circuit breakers
22 into their main switch panels so that they could have
23 enough electric power to have Christmas lights.

24 So for 30 days the place is lit up, and
25 people drive through the project, and, "Oh, it's

1 beautiful, and all." And it cost me 2500 up to \$3000
2 one year. And we never -- I absorb that because I have
3 no way of recapturing that because it is a consumption
4 and not a rate increase.

5 COMMISSIONER DEASON: Mr. Geller, I believe
6 -- I certainly understand that.

7 WITNESS GELLER: Do you follow my point?

8 COMMISSIONER DEASON: I understand that
9 concept. Let me ask another question.

10 WITNESS GELLER: Yes, sir.

11 COMMISSIONER DEASON: Geller Management does
12 provide certain services to the condominium owners, is
13 that correct?

14 WITNESS GELLER: Yes, sir.

15 COMMISSIONER DEASON: Part of the cost of
16 providing those services is the electricity consumption
17 of providing those services, is that correct?

18 WITNESS GELLER: That's correct, sir.

19 COMMISSIONER DEASON: In your contract, as
20 you interpret it, the escalation in electric costs from
21 Florida Power Corporation is used as a escalation
22 factor to be applied to the cost of these other
23 services, is that correct?

24 WITNESS GELLER: That is correct, sir.

25 COMMISSIONER DEASON: And the electricity is

1 just a component of providing those services, is that
2 correct?

3 WITNESS GELLER: That's right.

4 COMMISSIONER DEASON: All right, thank you.
5 I have no other questions.

6 MR. BOYD: Thank you, Commissioner.

7 REDIRECT EXAMINATION

8 BY MR. BOYD:

9 Q Mr. Geller?

10 A Yes, sir.

11 Q In connection with those questions, as part
12 of the operations under your management contract, does
13 your Company ever send a separate bill for electric
14 charges to the residents?

15 A No, sir.

16 Q Or a separate bill for gas?

17 A No, sir.

18 Q Or any of the other components of the costs
19 that it takes to run the project and all the common
20 areas?

21 A No, sir. One lump sum fee, that's it.

22 Q Now, the escalation factor that you have been
23 asked about in Article VI of the contract relating to
24 electricity, could you explain for me why, in terms of
25 ease of administration, electricity was one of these

1 categories that was selected for the contract?

2 A Yes. Because it is easily -- the reason we
3 picked that as one of the items to use? Is that what
4 you're asking me? I want to be sure.

5 Q Yes, sir.

6 A Why we use that as a means of acquiring more
7 funds for the help for the payment of everything else
8 in the services was because it was easily recognized in
9 the paper, just like water or gas or any of the
10 utilities. They're advertised for months ahead of
11 time.

12 We've just gone through water an increase
13 where for the last six months they have been telling
14 everybody they're going up by 40%, and as it turned out
15 they went out by 20% increase. But everybody in the
16 project knew it, and they were expecting the rate
17 increase in accordance where their contract. The same
18 thing with electricity.

19 I couldn't go and advertise that every time
20 -- I knew that \$2 or \$3 wasn't enough to cover us when
21 we were running a rampant 8 to 10 or 21% in the '70s of
22 inflation. The prices were going out of the sky. So
23 what did I have to do? In order to compensate for
24 those other increases, I couldn't go and advertise that
25 every time I bought fertilizer, and if I bought two ton

1 of fertilizer and I paid, say, \$10 a bag for it, and
2 then six months later I had to go again and do it, and
3 then I paid \$4 a month, what was I going to do? Or \$8
4 a month? And there was a constant change.

5 Q Mr. Geller --

6 A Insecticides, all these particular items had
7 to be covered by other means. So I thought people know
8 when there's an electric increase that they were going
9 to pay the 31 cents. They knew when gas went up, and
10 they saw it advertised in the paper that the PSC had
11 approved such-and-such a rate; that's the reason we
12 used those items strictly to enhance our income to
13 cover the cost of every other thing that had gone up.

14 There's no way I can collect a dime -- and
15 our labor has gone from \$2.70 an hour, our average is
16 5.75 to \$6 an hour that has been our increase -- and
17 I've never been able to collect anything except the \$2
18 to cover that.

19 Q Mr. Geller?

20 A Yes, sir.

21 Q Can you explain why the actual increases were
22 based on the base rate and not on the fuel adjustment
23 charges?

24 A Well, particularly in the electricity, you
25 know, what happened was that at first when we saw

1 suddenly appear on our bills fuel adjustment costs, we
2 couldn't understand what they were. And then we found
3 out, well, oil was this, coal was such and so forth, by
4 questioning the Florida Power Company. And so we
5 determined in our office to ignore them.

6 One month they had a \$19 fuel adjustment
7 charge. So that is an increase to me of \$19. The next
8 month there was a credit of \$12. The next month, a
9 constant change, up and down, up and down.

10 How was I to notify the people of that that
11 every time there was had a \$10 increase in the
12 consumption, which is a fixed cost, that I would
13 collect it? The bookkeeping to manage them at that
14 time, 1200 units, up to 1700 units, would have cost me
15 more than that \$19 would have cost me. So what we did
16 is we ignored all the fuel adjustment costs. We had a
17 base rate of kWh, that's the amount of kWh that was
18 actually used on that project. So we kept with the
19 base to keep the price steady, which is the total
20 concept of this whole program.

21 Q And so over the life of the contract, since
22 1980, really, in terms of the increase provision in the
23 contract, you did not attempt to alter the maintenance
24 fee as a result of any changes in the fuel adjustment,
25 is that correct?

1 A Ignored them completely, sir. Only the base
2 rate, and if that went up, whatever the kWh was, if
3 that went up, that's what we used. And many times
4 there was several years would go by, and we were at a
5 4% -- which we even had to absorb that rate, 4.9%
6 because it had to be an increment of five. And if it
7 went up 19%, I still could collect for three -- 5% but
8 that 4% I've been eating. And it could be on for five
9 years without another increase, and here I am I'm
10 paying 4% more per kilowatt hour and can't collect it,
11 even though in that contract, we're supposed to.

12 But 5% is 5%. It wasn't based on 1% for
13 every 1% I would go up a certain amount, and again so
14 that every 1% I would be every other months going up.
15 If it went up 1% or 2%, I just have to absorb it.

16 And that was the total concept of this
17 program, to make it successful, to make people feel
18 that they knew almost from year-to-year within a few
19 dollars what it was going the cost of living was going
20 to be to them. About 60% of the people who live there
21 are strictly Social Security.

22 Q Mr. Geller --

23 COMMISSIONER GUNTER: Counselor, if I could?

24 MR. BOYD: Yes, sir.

25 COMMISSIONER GUNTER: Mr. Geller?

1 WITNESS GELLER: Yes, sir.

2 COMMISSIONER GUNTER: I'm Commissioner
3 Gunter.

4 WITNESS GELLER: Yes, sir.

5 COMMISSIONER GUNTER: I have this question
6 for you.

7 WITNESS GELLER: Sure.

8 COMMISSIONER GUNTER: I'm sitting and listening,
9 I'm trying to figure a way. And if we looked -- if we
10 were to go look at your electric usage and your billings
11 in 1981, say, the day or whatever the time period was that
12 you signed a maintenance contract.

13 WITNESS GELLER: Yes, sir.

14 COMMISSIONER GUNTER: And we looked at those
15 billings and those kilowatt hour usages from then to
16 now, and we looked at the corresponding increases that
17 have taken place between then and now. If they weren't
18 very approximately -- I mean if they weren't
19 approximately the same, and I'm talking about almost
20 too close to call -- how would you say -- for instance,
21 if you received more revenue than you had to pay out,
22 as a result of increases by the change in the base rate
23 of electricity, if you received more revenue from your
24 ratepayers --

25 WITNESS GELLER: In the rate increase?

1 COMMISSIONER GUNTER: Right. If you received
2 more revenue as a result of that 5% coming in, and it
3 was \$15 for the 5%, and I'm just talking about
4 electricity now --

5 WITNESS GELLER: Yes, sir.

6 COMMISSIONER GUNTER: Wouldn't that indicate
7 that perhaps you had been reselling electricity? I
8 don't know that that's a fact, but I may ask for that
9 as a late-filed exhibit.

10 WITNESS GELLER: Well, except for the one
11 concept, sir, that that came out to \$15.31 per unit was
12 strictly absorbed within our costs, okay? And again
13 that that 15% might indicate that there was a certain
14 amount of more money than we received, but it never
15 took into account consumption.

16 COMMISSIONER GUNTER: Yes, sir. You see,
17 that's the reason I asked the question.

18 WITNESS GELLER: You see what I mean?

19 COMMISSIONER GUNTER: Well, that's the reason
20 I asked the question the way I did.

21 WITNESS GELLER: Yes, sir.

22 COMMISSIONER GUNTER: If we established the
23 base year, and we say, "We're not going to worry about
24 what people were paying prior to the time you signed
25 the contract." And if you looked at only the increases

3 17 or 18%, you only went up the multiples of three on
4 the five.

5 So if we looked at your total billings from
6 the electric company, and that would reflect usage,
7 your total billings --

8 WITNESS GELLER: Yes, sir.

9 COMMISSIONER GUNTER: -- and then on the
10 other side if we looked at total revenues that you had
11 received from that base point forward, that would give
12 us an indication of whether in fact you had been eating
13 part of the price of electricity because of usage or
14 whatever --

15 WITNESS GELLER: That's right.

16 COMMISSIONER GUNTER: -- or, in fact, you had
17 gotten more revenue from those increases?

18 WITNESS GELLER: Exactly, I know what you're
19 saying.

20 COMMISSIONER GUNTER: And then if you were
21 getting more revenues, it would lay out that, in fact,
22 yeah, you might be reselling it?

23 WITNESS GELLER: That is an indication, sir.
24 And bear with me, please. This is going to be brought
25 out here in some of these figures, it is going to be

1 shown. And we can actually give you some very
2 pertinent figures, if I can just beg the question to
3 have Mr. Boyd take that up and answer that to you
4 through another expert who has actually done some
5 auditing on this.

6 COMMISSIONER GUNTER: Okay.

7 WITNESS GELLER: But to answer you yes or no,
8 believe me, sir, you will find that thousands and
9 thousands of dollars more that we paid out than what
10 those increases amounted to because of consumption.

11 These past four years, we've had tremendous
12 increase only because of the heat of the hot summers
13 we've found, an item li'e that. Again, when you take
14 an auditorium, 26,000 square foot of air conditioning
15 in an auditorium, 27 ton of air conditioning, what a
16 horrendous amount of money that that takes.

17 COMMISSIONER GUNTER: I understand. I
18 understand.

19 WITNESS GELLER: See what I mean?

20 MR. BOYD: And, Commissioner, I just point
21 out that your assessment may be right but it's only
22 limited to the increases and not the base part and you
23 said that in your question.

24 COMMISSIONER GUNTER: That's exactly what I
25 did. Counselor, I think I'm trying to be fair.

1 MR. BOYD: I understand.

2 COMMISSIONER GUNTER: Trying to establish the
3 base and then you only address the changes.

4 MR. BOYD: The question only related to the
5 changes, that's correct.

6 COMMISSIONER GUNTER: And the reason I asked
7 that question, and I'm ask Mr. Palecki, what's the
8 status of the Staff's audit?

9 MR. PALECKI: The Staff's audit is completed
10 in so far as the electricity.

11 COMMISSIONER GUNTER: Oh, I know we have it.
12 And I was wondering, is that for our consideration?

13 MR. PALECKI: Yes, sir. I was going to -- I
14 think the next witness is going to take up more of the
15 actual dollar.

16 COMMISSIONER GUNTER: Okay. Fine. I might
17 just be premature in my question.

18 WITNESS GELLER: Is that all right then?

19 COMMISSIONER GUNTER: Yes, sir, thank you
20 very much, Mr. Geller.

21 WITNESS GELLER: Yes, sir.

22 Q (By Mr. Boyd) Mr. Geller?

23 A Yes.

24 Q In terms of the laundry rooms, have any of
25 the residents been given a bill of any kind for any

1 charges relating to these laundry rooms?

2 A No, sir.

3 Q And have they paid anything for those laundry
4 rooms?

5 A No, sir.

6 Q And do any of the maintenance fees that they
7 pay, are they affected in any way by the number of
8 washes or the number of drying loads that run through
9 there?

10 A Not at all, sir. In fact, the line of
11 buildings that we provided washer and driers right
12 within the apartment, and it automatically raised our
13 price by that \$4 because when they use the meter in
14 their apartment or they use them out in the laundry
15 room, we have to take into account the hot water that
16 it would take in the heating of the water, the water
17 itself, the electricity, and the -- it's their units
18 now. Whereas here in the laundry rooms, I have to
19 replace the units. We have 132 washers and 90 driers
20 and the maintenance on them is horrendous. Horrendous.
21 Almost a full-time mechanic just keeping them
22 operating.

23 Q Okay. Mr. Geller, I believe you mentioned
24 the sewer, the provision relating to increases in
25 sewer?

1 A Yes.

2 Q That provision is a direct pass-through of
3 actual dollar-for-dollar, is it not?

4 A Yes, sir.

5 Q In increase?

6 A That's right, sir.

7 Q And are any of the -- let me just back up.
8 If the sewer charge goes up \$1 per toilet, is that what
9 is passed on to the residents?

10 A Exactly right, yes, sir.

11 Q And as far as the other five categories, are
12 they a direct pass-through matching up the dollar
13 amount of increases?

14 A Only by the rate of the percentage. And that
15 is part of the contract. It does not pass through
16 directly because it's an increase of that 31 cents --

17 Q Mr. Geller, to follow up on a question that
18 Commissioner Deason asked you, and I refer you to all
19 the services that you provide. Are you buying and
20 selling insurance through your maintenance contract?

21 A We supply it. We don't buy and sell. We
22 have been asked to supply them as part of our
23 maintenance agreement insurance. So I take two or
24 three months of ringing up different insurance
25 companies and get the best rate I possibly can for

1 them; and then a committee from the project meets with
2 me and see whether they are satisfied with the
3 provisions, and in one instance they wanted more
4 umbrella, so they paid the difference.

5 Directors and officers insurance is another
6 item which we never supplied that they wanted it. We
7 got them a price, they were satisfied, they paid an
8 additional one-time fee for those services that they
9 requested specially.

10 Q Those were outside the contract?

11 A Outside the contract.

12 Q As far as all the other services which are
13 provided as part of the whole maintenance and
14 management contract, are any of those services sold to
15 the residents?

16 A No way, sir.

17 MR. BOYD: Thank you, Commissioner, that's
18 all I have.

19 COMMISSIONER GUNTER: All right. Thank you,
20 Mr. Geller.

21 WITNESS GELLER: Thank you, sir.

22 (Witness Geller excused.)

23 - - - - -

24 MR. BOYD: Commissioner, we'd call Ms. Susan
25 Tucker.

1 SUSAN GELLER TUCKER

2 appeared as a witness on behalf of H. Geller Management
3 Company and, after being first duly sworn, testified as
4 follows:

5 DIRECT EXAMINATION

6 BY MR. BOYD:

7 Q Ms. Tucker, can you give us your name and
8 address, please, ma'am?

9 A Susan Geller Tucker, 8141 54th Avenue North,
10 St. Petersburg, Florida.

11 Q What is your position with H. Geller
12 Management Corporation?

13 A I'm the Secretary/Treasurer of the
14 corporation.

15 Q And did you cause to be filed in this docket
16 prefiled testimony comprised of some 14 pages?

17 A Yes.

18 Q And then, I believe, five exhibits attached
19 to the testimony?

20 A Yes.

21 Q And if I asked you the questions -- let me
22 back up. Do you have any corrections or changes you
23 wish to make in your testimony?

24 A Yes, I do.

25 Q The corrections -- are they corrections?

1 A Yes, corrections.

2 Q Okay. Would you tell us what those are? I
3 believe it begins on Page 11, Line 21?

4 A Yes, correct. On Page 11, Line 21, the
5 number should be \$21.30. On Page 12, Line 2, the
6 number should be \$128.80. Open Page 3, Line 8, the
7 number should be \$4.65. On Page 12, Line 10, the line
8 should read: "\$223.20 per month or \$2,678.40 per year."

9 Q Okay. Do you have one other addition or
10 correction to your testimony?

11 A Yes. Another addition on Page 10, Line 13,
12 add a new sentence, quote, "These maintenance fees may
13 include a few units that pay an additional \$4 per month
14 for laundry facilities in their unit. Therefore, the
15 average maintenance fee is slightly less than \$124.15."

16 Q And do you have one more change relating to
17 that?

18 A Yes. On Page 12, Line 3, it should read
19 "Just under \$124.15 per unit."

20 Q Okay. Does that complete the changes?

21 A Yes, sir. (Pause)

22 Q Ms. Tucker, with those corrections and
23 additions, if I were to ask you the questions today
24 that are set forth in your testimony, would your
25 answers be substantially the same?

1 A Yes, sir.

2 MR. BOYD: Commissioner, I would ask that the
3 testimony be inserted into the record as though read
4 today.

5 COMMISSIONER DEASON: It will be inserted
6 into the record as though read.

7 MR. BOYD: And I ask that the exhibits be
8 labeled as Composite Exhibits 5-1, -2, -3, -4 and -5.

9 COMMISSIONER DEASON: Well, I understand
10 that's the whole purpose of the Composite Exhibit, you
11 just identify them as Composite Exhibit 5?

12 MR. BOYD: Yes, Composite Exhibit 5. That's
13 fine. They're labeled 1 through 5 --

14 COMMISSIONER DEASON: Is that correct,
15 Mr. Pruitt?

16 MR. PRUITT: I think we'd better give it
17 Exhibit No. 6.

18 MR. BOYD: I'm sorry, No. 6.

19 COMMISSIONER DEASON: Composite Exhibit No.
20 6, it will be so identified.

21 (Exhibit No. 6 marked for identification)

22

23

24

25

1 Q: Please state your name and business address.

2 A: My name is Susan Geller Tucker, and my
3 business address is 8141 54th Avenue North,
4 St. Petersburg, Florida 33709.

5

6 Q: What is your business position?

7 A: I am secretary-treasurer of H. Geller
8 Management Corp., which I will refer to as
9 Geller Management. In that capacity, I
10 directly supervise all financial matters
11 involving the company in its management
12 contract for the Terrace Park - Five Towns
13 condominium development.

14

15 Q: What is your educational and business
16 background?

17 A: I attended the University of Miami, graduating
18 in 1965 with a degree in Education. After
19 college I worked in California. In 1986 I
20 began work at Geller Management with my
21 father, Herm Geller, where I continue at the
22 present time. As secretary-treasurer, I am
23 responsible for all office, bookkeeping and
24 accounting operations as well as supervisory
25 responsibility for day to day operations in

1 the project. You might say I am my fathers'
2 right hand woman.

3

4 Q: What has been your role in responding to the
5 complaint filed by Mr. Falk in this matter?

6 A: Mr. Falk has made numerous allegations and
7 conclusions based on his so-called "audit" of
8 Geller Management's contract with the
9 Jefferson Building homeowner's association and
10 certain information and records of Geller
11 Management. I have tried to review our
12 records to evaluate the claims made by Mr.
13 Falk in order to present information from the
14 records which is pertinent to these matters.

15

16 Q: Explain the initial areas that you have
17 reviewed.

18 A: The principal Commission Rule in question,
19 Rule 25-6.049 was apparently adopted in
20 October 1988. Therefore, I initially tried to
21 focus on the past three years to see some of
22 the implications of application of the rule to
23 the Terrace Park - Five Towns development and
24 to the Jefferson Building particularly.

25

1 Q: Do you have an exhibit to your testimony
2 marked as Exhibit S.T. - 1?

3 A: Yes. Exhibit S.T. - 1 entitled "Effects of
4 Electric Rate Increases if effective for 1989
5 and 1990" is designed to analyze what effect
6 an increase in the Florida Power Corporation
7 electric rates would have on Jefferson
8 Building residents. The exhibit first takes
9 the 1989 total electric cost of Geller
10 Management for the Terrace Park - Five Towns
11 project, \$123,975.42 and then assumes
12 hypothetical Florida Power Corporation rate
13 increases ranging from 5% to 9 3/4%. The
14 projections assume a flat level of electric
15 consumption. An even 5% increase in electric
16 cost, or \$516.58 increase per month for the
17 whole project, will result in a total increase
18 in maintenance fees for all residents of
19 \$567.00. Such a result leads to a surplus to
20 Geller Management of \$50.42 per month. An
21 increase of 5 1/2% in electric cost however,
22 would result in a shortfall to Geller
23 Management each month of \$1.24. Indeed, any
24 Florida Power Corp. increase from 5 1/2% to
25 9.9% would result in a net shortfall to Geller

1 Management as a result of Article VI(d) of the
2 contract.

3

4 Q: What would be the result of a 4% increase in
5 Florida Power Corporation rates?

6 A: A 4% increase in 1989 electric costs would
7 have resulted in an increased cost of
8 \$4,4959.18 to Geller Management. Under the
9 Management Contract there would be no increase
10 in the maintenance fee. That is obviously one
11 of the risks assumed by Geller Management
12 under the Terrace Park - Five Towns plan.

13

14 Q: With reference to the information on Exhibit
15 S.T. - 1, what is the effect of a 5% plus
16 increase in electric rates under Article VI(d)
17 of the Jefferson Building Management Contract?

18 A: A 5% increase in electric rates results in a
19 \$15.00 increase in the total Jefferson
20 Building maintenance fee. Spread across the
21 48 units that comes to an average of 31 cents
22 per unit per month. A few units would pay
23 slightly less, and few would pay slightly
24 more.

1 An even 5% increase in electric rates would
2 thus increase the average Jefferson Building
3 maintenance fee by 31 cents, compared to the
4 average increase in electric cost of 30 cents
5 per unit. Virtually any increase in rates
6 greater than 5% will result in an increase in
7 cost per unit greater than 31 cent, while the
8 increase in Jefferson Building maintenance fee
9 remains 31 cents for any increase between 5%
10 and 9.9%. This too is a risk that Geller
11 Management assumes under its contract with the
12 Jefferson Building.

13 In 1990 the actual electric costs were
14 slightly higher, \$125,178.64. The exhibit
15 also shows the effects of hypothetical
16 electric rate increase based on the 1990 level
17 of consumption and cost. The results for 1990
18 are similar, with the shortfall of Geller
19 Management being greater.

20

21 Q: Have you prepared a similar exhibit showing
22 the effects of hypothetical increases in the
23 cost of gas?

24 A: Yes. Exhibit S.T. - 2 entitled "Effects of
25 Gas Rate Increases if implemented in 1989 or

1 1990" shows the actual gas costs of Geller
2 Management for the project for 1987 though
3 1990, with the effects of a hypothetical 5%
4 increase in gas rates during any of those
5 years. Based upon the 1989 gas costs, a 5%
6 increase in gas rates would result in an
7 annual shortfall to Geller Management of
8 \$2,3690.64 per year. So as a result of the
9 contract provision, an increase in a gas rates
10 of any level will result in an immediate
11 shortfall to Geller Management; the additional
12 maintenance fees collected by the company will
13 be less than the increase in costs.

14

15 Q: Was there a recent increase in rates of
16 Peoples Gas?

17 A: Yes. In November 1990, Peoples Gas
18 implemented a 16.23% increase in its gas
19 charged to Geller Management. I met with a
20 representative of Peoples Gas and obtained
21 information on the increase directly from him.

22

23 Q: What will be the effect of that increase?

24 A: That increase represents three 5% increases in
25 the gas rates, so the contract calls for an

1 increase in the total Jefferson Building
2 maintenance fee of \$51.00 per month. Spread
3 equally among the 48 units it results in an
4 average monthly increase of \$1.06 per unit.
5 Based upon the actual 1990 consumption and
6 cost information, the Peoples Gas rate
7 increase will increase Geller Management's gas
8 cost for 1991 by \$35,094.13. Spread among all
9 of the units in the development that amount
10 represents an increase in gas cost of \$1.72
11 per unit each month. Based upon the Jefferson
12 Building contract, the increase in gas rates
13 will result in a monthly loss to Geller
14 Management for that one building of 66 cents
15 per month per unit.

16

17 Q: Your conclusions are based upon 1990
18 consumption and costs data. What will be the
19 result if gas consumption increases in 1991?

20 A: Again, none of the Management Contract
21 provisions are tied to consumption. In no
22 real sense are the residents being charged for
23 gas, or electricity, because neither the
24 maintenance fees or the indexed increase
25 factors are based upon consumption. That is

1 the other major risk assumed by Geller
2 Management; the residents are assured their
3 fixed maintenance fee regardless of
4 consumption. I believe the lower gas costs in
5 1989 and 1990 are a result of the mild winters
6 experienced in Pinellas County. But if
7 consumption increases in 1991 due to the
8 weather, the figures I gave will change to
9 result in higher gas costs to Geller
10 Management. The maintenance fees paid by the
11 residents, however, will not change.

12
13 Q: Have you prepared an exhibit to show the
14 number of units sold during the history of the
15 development, together with the project
16 electric cost?

17 A: Yes. Exhibit S.T. - 3 entitled H. Geller
18 Management Electric Expenses shows the total
19 project electric costs beginning with 1982,
20 together with the number of sold units. I
21 gathered this information directly from the
22 company's records.

23
24 Q: Do these figures include electricity used in
25 individual condominiums units?

1 A: No. The data shown on the exhibit reflects
2 usage of electricity in all of the common
3 areas of the project, hallways, exterior
4 lights, street lights, recreation buildings
5 and facilities and the like.

6

7 Q: What are the current maintenance fees paid by
8 Jefferson Building residents?

9 A: The present maintenance fees for categories A
10 through E identified in the Management
11 Contract are \$111.29, \$123.73, \$126.73 and
12 \$130.00, respectively. That is an average of
13 \$124.15. These maintenance fees may include a few units
14 that pay an additional \$4 per month for laundry facilities
15 in their unit. Therefore, the average maintenance fee
16 is slightly less than \$124.15.

17 Q: How much of that average maintenance fee
18 represents the \$3.00 annual increase called
19 for in the Management Contract?

20 A: The initial maintenance fee was an average of
21 \$71.50 per month. There have been 12 increases
22 of \$3.00, for a total of \$36.00. That brings
23 the total fee to \$107.50. Therefore, the
24 remaining \$16.65 of that fee has been added to
25 the average Jefferson Building maintenance fee
 for all contract changes under Article VI
 including the increases related to electric

1 rate increases.

2

3 Q: Have you determined how much the Jefferson
4 Building maintenance fees have been increased
5 as a result of the application of Article
6 VI(d) of the Management Contract relating to
7 electric rate increases?

8 A: Yes. Only two increases were implemented,
9 based upon the Florida Power Corporation rate
10 increases of March 1982 and April 1983. Those
11 increases resulted in a total of \$3.13 being
12 added to the maintenance fees of Jefferson
13 Building residents, spreading the increase
14 evenly among the 48 units.

15

16 Q: Have all of the increases in the maintenance
17 fee permitted by the Management Contract
18 actually been added to Jefferson Building
19 maintenance fees?

20 A: No. In reviewing the company's records for my
21 testimony I ascertained a total of ~~\$21.65~~^{\$21.30} in
22 increases, on a per unit average, that were
23 noticed to the residents as required by the
24 contract. When that figure is added to the
25 \$71.50 original base fee, plus the \$36.00 in

1 annual increases, the current maintenance fee
2 should be ^{\$128.80}~~\$129.15~~. Yet, the amount being
3 charged is ^{just under}~~only~~ \$124.15 per unit. Several of
4 the increases authorized by the contract were
5 not actually added to the maintenance fees.
6 Therefore, pursuant to the contract the
7 Jefferson Building residents are being under
8 charged by \$5.00 per unit per month. For the
9 48 units in the building that amounts to
10 ^{\$223.20}~~\$240.00~~ per month or ^{\$2,678.40}~~\$2,880.00~~ per year. That
11 amount substantially exceeds the alleged
12 overcharges claim by Mr. Falk.
13

14 Q: Do you have an exhibit concerning the 1990
15 electric costs of Geller Management for the
16 Terrace Park - Five Towns project?

17 A: Yes. Composite Exhibit S.T. - 4 entitled
18 "Jefferson Building Meter Electric Costs
19 October 1988 - December 1990" shows a monthly
20 breakdown of the costs for the electric meter
21 located in the Jefferson Building. These
22 figures do not show, however, the costs for
23 electricity used throughout the development.
24 I have prepared another Exhibit, S.T. - 5,
25 entitled "October 1988 - December 1990 Project

1 Electric Costs" which shows the actual
2 electric costs for all of the common areas and
3 facilities throughout the project on a monthly
4 basis. Of course, those facilities are
5 available to and used by all residents of the
6 project.

7 There are also a few other electric costs
8 which are omitted from the data on Exhibit
9 S.T. - 5. The electric meters servicing
10 several individual buildings also record
11 electricity used in common facilities. The
12 Emory and Radcliffe Building meters also
13 include nearby community swimming pools. The
14 Belmont, Syracuse and University Buildings
15 have sprinkler systems pumps connected to
16 their meters. For some reason these
17 facilities were connected to the building
18 meters; of course, since the Management
19 Company is responsible for all electric
20 expenses, and the unit owners are not
21 responsible for charges for their own
22 building's "house" meter, this metering system
23 is of no importance.

24 Q: For the years shown on Exhibit S.T. - 5, if
25 you allocate in the same way the common

1 facility electric costs to the Jefferson
2 Building, what are the total electric costs
3 associated with the Jefferson Building?

4 A: Of course, there is no way to actually
5 allocate the electric costs to any one
6 building. The common facilities are available
7 for and used by all 1700 residents. If,
8 however, you divide the total common area
9 costs by 1700 units, you get figures of
10 monthly per unit costs of \$2.37, \$2.57 and
11 \$2.44 for 1988 (last quarter), 1989 and 1990.
12 If you add to those figures the average per
13 unit costs for the Jefferson Building electric
14 meter, you get the following \$4.65 - 1988,
15 \$4.40 - 1989 and \$4.37 - 1990. I would point
16 out again the several building meters that
17 have sprinkler system pumps or pools tied into
18 them, so there are additional electric costs
19 that also should be allocated to the Jefferson
20 Building.

21

22 Q: Does that conclude your testimony?

23 A: Yes.

1 BY MR. BOYD:

2 Q Ms. Tucker, do you wish to give a brief
3 summary of your testimony?

4 A Yes. I have a brief prepared statement.

5 In my testimony, I have tried to present
6 information from our Company's records that relate to
7 the questions raised in this case. My first two
8 exhibits show generally how increases in electric or
9 gas increases would impact our company today. They
10 especially show that an increase in gas rates will
11 produce a net loss to our company.

12 Of course, if gas or electric consumption
13 increases, so do our costs with no increases in
14 maintenance fees.

15 I have also put together information showing
16 the maintenance fees, the number of units occupied over
17 the periods in question, and the electric cost for the
18 Terrace Park at Five Towns project and the Jefferson
19 Building. The data shows that the Company's average
20 electric cost per unit for the past two years has been
21 \$6.12 per month, which is a fairly substantial increase
22 over the 1982 and 1983 levels. It is an increase of
23 over 13%, yet there have been no Florida Power Corp
24 rate increases.

25 Excuse me, I left my last page. (Pause) I'm

1 sorry, here it is, I'm sorry.

2 There have been no increases or increases in
3 the maintenance fee since March 1983. The 13% increase
4 is a result of the increase in consumption. That's a
5 risk that our Company bears under the contract.

6 Thank you.

7 MR. BOYD: We'd offer Mrs. Tucker for cross
8 examination, Commissioner. (Pause)

9 MR. PALECKI: I'm distributing what has been
10 marked as Staff 2 and ask what is the next number for
11 identification?

12 MR. PRUITT: 7.

13 MR. PALECKI: Ask that it be marked as
14 Exhibit 7.

15 COMMISSIONER DEASON: Will be so marked.

16 (Exhibit No. 7 marked for identification)

17 CROSS EXAMINATION

18 BY MR. PALECKI:

19 Q Ms. Tucker, do you recall when an auditor from
20 the Florida Public Service Commission came to the
21 Geller Corporation Headquarters and you met with him?

22 A Yes.

23 Q Several weeks back? And do you recall
24 providing him with various work sheets and figures
25 which he checked against your actual billings in order

1 to assist in conducting this audit?

2 A Yes, sir.

3 Q I would like you to look over what has been
4 marked for identification as Exhibit 7 and tell me if
5 those are accurate copies of the work sheets that you
6 provided to the auditor, Mr. Stallcup, when he came to
7 conduct the audit.

8 A Yes, I can verify these.

9 Q Could you briefly, starting with the first
10 page, explain to the Commissioners what these figures
11 consist of?

12 A Yes. The first one, titled "Herm Geller
13 Management Electric Expense Expenses;" in that, the
14 first column shows the consumption for 1982 by month.
15 The next column indicates the number of units that were
16 actually occupied or at least sold at that time. And
17 then, of course, a third column is the cost per unit.

18 The totals indicate the consumption is the
19 actual total cost to management and the units is an
20 average over the 12 months, as is the cost per unit.

21 In using 1982 as an example, it's the same
22 for the subsequent years.

23 Q All right. And moving on to the next sheet,
24 which is --

25 COMMISSIONER GUNTER: Let me ask you one

1 question here, if I may.

2 WITNESS TUCKER: Yes, sir.

3 COMMISSIONER GUNTER: This is the first
4 column titled "Consumption," that's in dollars and
5 cents?

6 WITNESS TUCKER: Yes, sir.

7 COMMISSIONER GUNTER: Okay. So we don't
8 really know the number of kilowatt hours you were
9 billed?

10 WITNESS TUCKER: No, sir.

11 COMMISSIONER GUNTER: Okay. Thank you.

12 Q (By Mr. Palecki) Moving on to the next sheet,
13 the second page of this composite exhibit, which is
14 entitled "Electric History."

15 A Yes, sir. That's month-by-month and each
16 year, 1982 through 1990. Those were the actual bills
17 paid by Geller Management.

18 Q Now moving to the third sheet of the
19 composite exhibit, is this kind of a summary of the
20 different treatment accorded to the various buildings
21 in the project pursuant to their contracts?

22 A Yes, sir.

23 Q Do you recall when there was a question
24 earlier made to Mr. Falk as to whether the buildings
25 were all treated the same, how would you answer that

1 question?

2 A They're all treated the same in accordance
3 with their contracts.

4 Q And this would pretty much, if you could go
5 over this briefly and explain to the Commissioners,
6 especially with regards to the gas and electric rates
7 and how the contract affects them, perhaps starting
8 with the Amhurst Building.

9 A All right. The Amhurst Building, the second
10 column "Contract Years" indicates that the Amhurst
11 contract is a 25-year contract beginning in year 1972
12 and will expire in 1997.

13 The next column indicates there are 96 units
14 in the Amhurst Building.

15 The next column, titled "Gas," indicates that
16 for every 5% increase, there shall be a 50-cent per
17 unit charge passed along to the Amhurst residents.

18 And with -- skipping the next column, with
19 "Electric," for every 5% increase, there shall be a
20 35-cent increase per unit.

21 Q So when we look under the column that says
22 "Gas," there are different percentages for the various
23 buildings pursuant to their contract, correct?

24 A Correct.

25 Q And then there are different amounts of

1 increase in their maintenance fees that result from the
2 5% or whatever the percentage increase in the utilities
3 charge?

4 A Correct.

5 Q And the same is true for the electric?

6 A Yes, sir.

7 Q And reviewing these, these are the actual
8 figures that you have obtained from the contracts prior
9 to our auditor arriving there to conduct his audit,
10 correct?

11 A Correct.

12 Q All right. Could you move on to the next
13 sheet and explain, please, what actually the next three
14 sheets are? Because they're the same but for three
15 different years.

16 A All right. If you want to look at the first
17 sheet that shows the electric in 1988, beginning with
18 October, that is the amount that we were charged per
19 building. In other words, using the Amhurst again, in
20 October, their electric bill was \$349.95.

21 I would also like to indicate that at the
22 bottom of the page it shows the electric cost for the
23 amenities, those being the rec centers, pools,
24 streetlights, et cetera.

25 Q And why are those showed separately?

1 A Because it's listed here according to the
2 bills that we get from Florida Power, they're all
3 different accounts.

4 MR. PALECKI: At this time, Staff would like
5 to ask for a late-filed exhibit which would consist of
6 an updating of Exhibit 7 or what has been marked for
7 identification as Exhibit 7 to the most current figures
8 that you have for 1991.

9 Mr. Boyd, would you have any objection to
10 that?

11 COMMISSIONER GUNTER: Are you talking about
12 the last three pages or the whole thing?

13 MR. PALECKI: To the whole thing, to all --
14 actually, it's six separate.

15 COMMISSIONER GUNTER: Is that would be for
16 the months of January, February, March and April?

17 MR. PALECKI: Yes. If they have the April
18 figures available, we would like them.

19 COMMISSIONER GUNTER: But you would have --
20 well, you'd have the March billing but that would be
21 just for a three-months period.

22 MR. PALECKI: We would like to have the most
23 recent figures they have up until today's date.

24 COMMISSIONER GUNTER: That will be Late-Filed
25 Exhibit 8?

3 "Update, 1991 Expenses."

4 MR. BOYD: Commissioner, we don't have any
5 objection other than it's a pretty burdensome task to
6 do this because it requires going through all the
7 electric bills for each of those months. We'll get
8 them as quickly as we can.

9 COMMISSIONER GUNTER: Okay, fine.

10 (Late-Filed Exhibit No. 8 marked for
11 identification.)

12 WITNESS TUCKER: If I could direct your
13 attention to the electric on 1990, the last page there,
14 it indicates some of these units are tied in. For
15 example, the first one is the Emory Building, going
16 down in alphabetical order, the fifth building. If you
17 can see the Dartmouth before it, the Fordham and
18 Georgetown after it, those are all 75-unit buildings.

19 And now if you -- I'm looking in January. If
20 you look at the consumption, the cost to management for
21 that month, you'll see quite a difference between the
22 Dartmouth and the Emory. The reason is the Emory has,
23 in addition to its building, the meter is read with a
24 pool connected to it. And the same as the Belmont. So
25 some of the costs belong in the bottom for the

1 amenities.

2 I had no way of allocating it because I had
3 no way of knowing, other than to take an average, which
4 I didn't want to do.

5 Q I understand. If you would like to provide a
6 notation on the figures that you provide for Late-Filed
7 No. 8, we would have no objection to that.

8 A All right.

9 Q After our auditor received the figures, he
10 conducted -- he completed an audit report which I
11 provided to your attorney. Have you had a chance to
12 review the audit report that was provided by Mr. Paul
13 Stallcup, the audit manager?

14 A Not in detail, sir, just very briefly.

15 Q And did your brief review of that audit
16 report show that it accurately reflected the figures
17 that were derived from your work sheets?

18 A I can only relate to the figures that were
19 taken directly from my work sheet. I can't really get
20 into his compilations from my figures, because I didn't
21 get into it that precisely.

22 MR. PALECKI: At this time we would ask that
23 what is identified as Staff 3 be marked for
24 identification as --

25 COMMISSIONER GUNTER: Exhibit 9.

1 MR. PALECKI: -- Exhibit 9. (Pause)

2 (Exhibit No. 9 marked for identification)

3 MR. PALECKI: Also at this time, Staff would
4 like to request two other late-filed exhibits. One is
5 the kilowatt hour usage by month by building for the
6 buildings in the development; and that's --

7 COMMISSIONER GUNTER: For what time period?

8 MR. PALECKI: For the time period 1981 to the
9 present.

10 MR. BOYD: Commissioner, that's a mighty big
11 undertaking. That's going through about 34 -- no,
12 let's see, 34, let's look at this chart. Probably in
13 excess of 40 bills every month for 10 or 11 years
14 pulling off kWh usage.

15 MR. PALECKI: Commissioner, the reason we
16 need this is to get an exact electric expenditures
17 figure. We can come really close to this figure and we
18 have on our audit by taking the actual dollar amount
19 and dividing that by the tariff charges. But in order
20 for us to get an exact figure, the only way we can do
21 that is by having the actual kilowatt hour usage for
22 each building. Otherwise, we have to say that our
23 audit report is an extremely close estimate, but we
24 can't say any more than that.

25 COMMISSIONER GUNTER: Unless you want to

1 stipulate to that?

2 MR. BOYD: I certainly can't stipulate to how
3 close his figures are. We can let somebody explain
4 them. I mean, the problem is just the size of the
5 undertaking.

6 COMMISSIONER GUNTER: I understand.

7 MR. BOYD: To the extent the bills are there,
8 somebody can do it. But it's a mighty big undertaking
9 when we have all of the actual dollars paid for those
10 time periods.

11 COMMISSIONER GUNTER: Well, it's got to be
12 one way or the other. Either you agree to dollars
13 divided by the rate, or -- either you agree that that's
14 a -- you stipulate that process and then review the
15 results, or provide it. One of the two. You're
16 standing on a knife edge, which side you want to fall
17 on.

18 MR. BOYD: Well, I can't agree as to the
19 accuracy of his numbers. We can compile the figures as
20 best we can. And I know going back to '81, let's see,
21 (Pause) let's see --

22 MR. PALECKI: While I'm at it, we will need
23 one additional figure or additional late-filed in order
24 to get the absolutely exact figure, and that is the
25 occupancy rate by month of the buildings.

1 Now, we've made an adjustment for occupancy
2 rate in this audit, but that is not based on the exact
3 figures, it's based on an estimated percentage
4 occupancy rate.

5 COMMISSIONER GUNTER: Let me ask you a
6 question. If these are customer -- if these are owned
7 units, you know, people own the units themselves, they
8 don't rent them -- are they rental units or are they
9 owned units?

10 WITNESS TUCKER: They're owned; some people
11 rent them out, but they are all owned units.

12 COMMISSIONER GUNTER: How would you ever
13 know? If they were going to count my subdivision, how
14 would they know whether I was there or not? Have
15 somebody every day knock on your door? Or is there --

16 MR. PALECKI: I guess maybe "occupancy rate"
17 is the wrong term because --

18 COMMISSIONER DEASON: You need to know the
19 number of units that are paying the maintenance fee.

20 MR. PALECKI: Yes, I think that's much more
21 accurate and that's what we meant. The actual number
22 of units that were paying towards the maintenance fee,
23 not actually those who had occupants.

24 MR. BOYD: I think the figure would be the
25 number of units sold. And that then would be the

1 number of units responsible for paying a maintenance
2 fee.

3 COMMISSIONER GUNTER: Yeah. As long as
4 they're responsible for paying that maintenance fee and
5 paying that maintenance fee --

6 MR. BOYD: Sure.

7 MR. PALECKI: We would like that as part of
8 the late-filed exhibit.

9 MR. BOYD: Isn't that contained in the first
10 page of your exhibit? That's got the number of units
11 on-line from January '82 forward.

12 MR. PALECKI: With that representation, we
13 can use those figures. We weren't aware that that's
14 what those figures represented.

15 WITNESS TUCKER: Yes, sir, they do.

16 Q (By Mr. Palecki) So all of those units that
17 are indicated as having been sold would be paying
18 towards the maintenance fee?

19 A Yes, sir. (Pause)

20 MR. PALECKI: Since each of the buildings has
21 a different contract, though, a total occupancy rate
22 doesn't really help us. It would have to be a
23 occupancy rate by building so we know how many people
24 are paying the 5% additional, how many people are
25 paying the 3%. Because each one of the buildings has a

1 different contract, so the only way we can actually
2 nail the exact figure is by getting the occupancy rate
3 per building rather than total lines.

4 COMMISSIONER GUNTER: Sales per building.

5 MR. PALECKI: Yes, sales per building.

6 MR. BOYD: Is that possible?

7 WITNESS TUCKER: Yes.

8 MR. BOYD: Commissioner, I go back to the --
9 that may be easier to get than the other. I would just
10 go back to the earlier request for a -- the information
11 we did went back to 1987 -- I mean 1988, October of
12 '88. So --

13 COMMISSIONER GUNTER: You started off on the
14 first page of Exhibit 7 back in January 1982.

15 MR. BOYD: Yes, sir. As to the number of
16 units sold, I think that is probably the easiest what
17 he's asking for.

18 COMMISSIONER GUNTER: And the sum of the
19 parts equals the whole in your monthly electric
20 billing. So you had to look at all of them where you
21 had different bills. So you have already done some
22 analysis there compiling all the bills, and the payment
23 in January 1982 is \$6,224.87. So it's logical to me
24 that where your witness testified you had numerous
25 bills, you had to add all them up. So you have been

1 through that process. The only -- that's the reason I
2 asked the question I did was whether this was dollars
3 or kilowatt hours.

4 MR. BOYD: Yes, sir.

5 COMMISSIONER GUNTER: It escapes me how you
6 would have arrived at this figure without reviewing all
7 the bills.

8 MR. BOYD: No. I think the bills were
9 reviewed. I say that because I didn't do it. It may
10 have been that they looked to the expense records for
11 that period of time to see the check that was written
12 to Florida Power Corp and maybe --

13 COMMISSIONER GUNTER: I don't know. State
14 your objection because you're testifying now,
15 counselor. Your objection to Staff counsel's requests
16 for two late-filed exhibits.

17 MR. BOYD: My objection is that it is
18 massive, oppressive and burdensome, but then we'll
19 attempt to do it to the extent that we can. And I do
20 note -- or may I ask the witness? I believe the
21 figures for 1981, the records are not available, so I
22 want to make that clear now. I think the auditor was
23 told that when he was present. Can we -- may I inquire
24 of the witness?

25 COMMISSIONER GUNTER: The auditor agrees by

1 the nodding of the head. Let the record reflect that
2 the auditor agrees that the records for 1981 were not
3 available. So Late-Filed Exhibit No. 10 would include
4 the monthly billing per kilowatt hour. Late-Filed
5 Exhibit 12 --

6 MR. PALECKI: 11.

7 COMMISSIONER GUNTER: 11? Well, 11 would be
8 the next one, would it not? There were two late-filed
9 exhibits. I numbered the first one.

10 MR. PALECKI: It was 10.

11 COMMISSIONER GUNTER: 10, okay. The second
12 one, 11, would be, not occupancy rate but the number of
13 units sold --

14 MR. PALECKI: Per building.

15 COMMISSIONER GUNTER: -- for which the
16 maintenance contracts were in effect.

17 MR. PALECKI: Per building?

18 WITNESS TUCKER: Yes, sir.

19 (Late-filed Exhibit Nos. 10 and 11
20 identified.)

21 MR. BOYD: Commissioner, may I inquire of the
22 witness just so I make an accurate representation to
23 you. Ms. Tucker, are the bills available for '82?

24 WITNESS TUCKER: Yes.

25 MR. BOYD: All the bills? Expect for a few

1 here and there?

2 WITNESS TUCKER: Yes, sir.

3 MR. BOYD: The only other thing I'd ask,
4 Commissioner, is if we get so into this as far as the
5 kWh, could we have the right to accept Mr. Stallcup's
6 figures if we do some checking and they look to be
7 accurate?

8 COMMISSIONER GUNTER: That's fine if we get a
9 stipulation, you know, a written deal that that's
10 accepted, that's fine.

11 MR. BOYD: That's what I mean.

12 COMMISSIONER GUNTER: Yeah. That's the
13 reason I said we have to go one way or the other.

14 MR. BOYD: Yes, sir. I understand.

15 COMMISSIONER DEASON: Mr. Palecki, may I take
16 it then the reason for these two late-filed exhibits is
17 basically to verify the calculations or get more exact
18 data for the calculations as contained in the Staff's
19 audit, is that correct?

20 MR. PALECKI: So the Staff can represent to
21 the Commission that it had the exact figures based upon
22 the record in this proceeding.

23 COMMISSIONER DEASON: Okay, thank you.

24 MR. PALECKI: Because these figures that we
25 have are very, very close estimates but they won't be

1 exact.

2 Q (By Mr. Palecki) I note that every time there
3 has been a 5% or more increase in the Florida Power
4 rates, there has been the according increase in the
5 maintenance fee. But I note that, historically, there
6 was a 5% decrease at one period. Was the maintenance
7 fee decreased?

8 A No, sir.

9 Q And why was it not decreased?

10 A The contracts do not call for that.

11 Q So the contracts only call for an increase in
12 the maintenance fee. What if the maintenance fee or
13 what if the Florida Power rates drastically would
14 decrease, let's say by 50%, is there any provision in
15 the contract for there to be an according decrease in
16 the maintenance fee?

17 A No, sir.

18 MR. PALECKI: Thank you, Staff has no further
19 questions.

20 MR. LAMONT: I have no questions.

21 COMMISSIONER GUNTER: Redirect?

22 MR. BOYD: No questions, Commissioner.

23 COMMISSIONER GUNTER: All right. Thank you,
24 ma'am. You are excused.

25 (Witness Tucker excused.)

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MR. PALECKI: Staff would move the next four exhibits into evidence.

COMMISSIONER GUNTER: Without objection, so ordered.

MR. BOYD: Commissioner, I would object to the Exhibit 9, which is the audit report, which is the work of the Staff auditor. Which, although reciting and listing some of the information from the work sheet for Ms. Tucker, contains numerous assumptions and calculations that unless Mr. Falk could be available for cross examination, then we're left in the dark without an opportunity to really respond to these figures.

COMMISSIONER GUNTER: That's sort of interesting that counsel has comments but counsel's expert witness by her own testimony has not reviewed it enough to even make comment on it. That's real interesting.

MR. BOYD: Well, Commissioner, she's not the expert witness.

COMMISSIONER GUNTER: Okay, who is the expert witness?

MR. BOYD: Mr. Parmelee is the expert witness.

3 MR. BOYD: If he does, then that --

4 COMMISSIONER GUNTER: We just won't put it in
5 -- we just won't move it in until after he's had an
6 opportunity.

7 MR. BOYD: That's fine. We're going to pass
8 on approving it?

9 COMMISSIONER GUNTER: We'll just TP that one.
10 That will be Exhibit 9. We have moved Exhibit 7 and
11 Late-Filed 8, 10 and 11.

12 (Exhibits Nos. 7, 8, 10 and 11 received in
13 evidence.)

14 MR. PALECKI: There was a previous exhibit that
15 I would like to move, it was the exhibit concerning the
16 budgets, which I believe was Exhibit No. 6.

17 MR. PRUITT: We still have 4, 5 and 6
18 according to mine.

19 MR. PALECKI: They weren't moved in --

20 MR. BOYD: Yes, at this time we would move in
21 Mr. Geller's I believe it was 4, Mr. Pruitt, and
22 Ms. Tucker's, which was 6, I believe.

23 COMMISSIONER GUNTER: All right. Without
24 objection, so ordered.

25 (Exhibits Nos. 4 and 6 received in evidence.)

1 COMMISSIONER GUNTER: Exhibit 5 was the --

2 MR. PRUITT: Staff exhibit.

3 MR. PALECKI: Staff Exhibit 5.

4 COMMISSIONER GUNTER: All right. Without
5 objection, so ordered.

6 (Exhibit No. 5 received in evidence.)

7 COMMISSIONER GUNTER: The only thing that we
8 have pending before us is Exhibit No. 9.

9 MR. PALECKI: So for the record, all exhibits
10 have been marked for identification have been
11 introduced into evidence except for Exhibit 9 which was
12 --

13 COMMISSIONER GUNTER: That's right, and we
14 have three late-fileds, 8, 10 and 11.

15 MR. PRUITT: Mr. Chairman, do we actually
16 have an Exhibit No. 12?

17 COMMISSIONER GUNTER: No, sir. Not yet.
18 All right. Call our next witness.

19 MR. BOYD: Yes, sir. Commissioner, at this
20 time we call Mr. Charles Parmelee.

21 COMMISSIONER GUNTER: What happened to
22 Mr. Parker?

23 MR. BOYD: I'm sorry. I'm sorry to shock you
24 there. Mr. Carl Parker.

25 - - - - -

1 CARL J. PARKER
2 appeared as a witness on behalf of H. Geller Management
3 Company and, after being first duly sworn, testified as
4 follows:

5 COMMISSIONER GUNTER: That's the first time I
6 ever swore in a lawyer, in 12 years.
7 (Laughter)

8 DIRECT EXAMINATION

9 BY MR. BOYD:

10 Q Mr. Parker, can you give us your name and
11 address, please, sir?

12 A My name is Carl J. Parker. My law office
13 is at 405 Pasadena Avenue South, St. Petersburg,
14 Florida.

15 Q Your profession is an attorney?

16 A I've been an attorney for about 42 years.

17 Q Mr. Parker, did you cause to be filed in this
18 matter on behalf of Geller Management Company prefiled
19 testimony consisting of seven pages?

20 A I did.

21 Q And, Mr. Parker, if I were to ask you
22 today the questions set forth in that prefiled
23 testimony, would your answers be substantially the
24 same?

25 A Substantially the same, yes, sir.

1 MR. BOYD: And, Commissioner, I would ask
2 that the testimony be inserted into the record as
3 though
4 read.
5 COMMISSIONER GUNTER: Will be inserted into
6 the record as though read.

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1 Q: Please state your name and address.

2 A: My name is Carl G. Parker. My business
3 address is 405 Pasadena Avenue South, St.
4 Petersburg, Florida 33743.

5

6 Q: What is your profession?

7 A: I am an attorney. I have practiced law in
8 Pinellas County for over 40 years.

9

10 Q: Does your practice include the field of
11 condominium law?

12 A: Yes. I have concentrated my practice over the
13 years in the fields of real property,
14 development and condominium law. Over the
15 years, I have formed for my clients over 500
16 condominium projects.

17

18 Q: What particular work is involved in
19 establishing a condominium?

20 A: I often assist my clients in the acquisition
21 of the real property involved through a
22 typical real estate closing. Once the client
23 decides to develop the property as a
24 condominium, the necessary documents must be
25 prepared to legally create the condominium and

1 the condominium association. Since
2 approximately 1975 the Florida Condominium Act
3 has required developers of condominiums to
4 make extensive filings for the project with
5 the Division of Florida Land Sales and
6 Condominiums. Those documents include the
7 declaration of condominium, articles of
8 incorporation, detailed descriptions,
9 summaries and diagrams of the physical
10 improvements included in the project, and
11 contracts and other documents to be furnished
12 to purchasers.

13
14 Q: Are the condominium documents required to
15 include an estimated budget of the
16 association's expenses?

17 A: Yes. In a condominium project the purchasers
18 of units become members of the homeowners'
19 association. The estimated budget is included
20 in the documents to show the purchasers the
21 likely amount of maintenance fees or dues they
22 will pay as members of the association. Of
23 course, in the ordinary condominium project
24 all expenses of the association are passed
25 through to its members, so the estimated

1 budget is important to disclose to purchasers
2 what they can expect as their proportionate
3 share of the association's expenses.
4

5 Q: Are you familiar with Mr. Herm Geller?

6 A: Yes. I performed various legal services for
7 his corporation, Herm Geller Enterprises, Inc.
8 in connection with the Terrace Park - Five
9 Towns condominium project.
10

11 Q: Did you have any involvement with the
12 estimated budgets included in the filings made
13 by Herm Geller Enterprises, Inc. with the
14 Division of Florida Land Sales and
15 Condominiums?

16 A: Yes. I drafted many of the condominium
17 documents for some of the earlier buildings in
18 the project. By 1979 and/or 1980 the basic
19 format had been established and my involvement
20 gradually decreased. Most of the buildings
21 were handled in the same way as the earlier
22 buildings.
23

24 Q: Were you involved with preparation and filing
25 of the estimated budget for the Jefferson

1 Building?

2 A: I did not actually prepare the budgets for any
3 of the buildings. I do recall that we had a
4 great deal of difficulty in fitting the
5 estimated budget required by the Division to
6 the Terrace Park - Five Towns project because
7 of the unique concept of the essentially fixed
8 maintenance fee. This project did not fit the
9 usual mold for a condominium because the long
10 term management contract removed from the
11 residents and their homeowner's association
12 responsibility for the ordinary operating
13 expenses of a condominium. A condominium
14 association typically has certain operating
15 expenses, divides that number by the number of
16 unit owners, and collects the necessary
17 maintenance fee or dues from the members. If
18 expenses go up for salaries, insurance,
19 electricity, or any expenses, the association
20 passes through those expense directly to its
21 members. The estimated budget affords the
22 prospective purchasers an opportunity to see
23 what level of expenses and maintenance fees or
24 dues he or she will have to pay each month.

1 In the Terrace Park - Five Towns setting,
2 however, the management contract removes the
3 association and its members - residents from
4 direct involvement in the operating expenses.
5 The residents pay their stated monthly fee,
6 plus any fixed annual increase - an average of
7 \$3.00 per year - plus any fixed dollar amount
8 increases permitted under Article VI(a) - (d),
9 of the contract relating to increases in rates
10 for insurance, electricity and other items.
11 The management contract explaining the
12 maintenance fee structure was already a part
13 of the prospectus, so any information about
14 maintenance fees in the estimated budget was
15 duplicative.

16
17 Q: Did you have any direct discussions with staff
18 of the Division of Land Sales and Condominiums
19 at the time of the Jefferson Building
20 concerning the estimated budget?

21 A: Yes. At Mr. Geller's request, I telephoned
22 the Division on one or more occasions. I
23 explained to the staff members the unique
24 nature of the Terrace Park - Five Towns
25 project and the difficulty in applying the

1 usual budget format to these circumstances.
2 The Division staff told me that some form of
3 estimated budget must be included in the
4 prospectus in addition to the contract itself,
5 and that a budget would at least show the
6 types of expenses that would be covered by the
7 maintenance fee being paid by the residents.
8 The staff told that any errors or mistakes in
9 the numbers used in the budget were not
10 important, as long as the total of expenses
11 shown was equal to the maintenance fees being
12 paid by the residents.

13

14 Q: What did you then do?

15 A: I informed Mr. Geller of the above information
16 and advised him to prepare some form of budget
17 requested by the Division. From that point
18 forward, I had no further involvement with the
19 project.

20

21

22 Q: Does that conclude your testimony?

23 A: Yes.

1 BY MR. BOYD:

2 Q Mr. Parker, would you like to give us a brief
3 summary of your testimony?

4 A Yes. I have formed condominiums for Mr. Geller
5 and various other clients. And Mr. Geller's condominium
6 concept is unique in nature in that it is essentially a
7 guaranteed or semi-guaranteed -- excuse my voice but I
8 have a bad cold -- semi-guaranteed monthly maintenance.

9 I think it's probably the only one that I
10 have ever formed on that basis. The others we form in
11 accordance with the 718, the condominium statute as of
12 this date, whereby the people pay their maintenance to
13 the management company -- to the maintenance company --
14 and the association -- and the association in turn pays
15 the bills. And the association prepares the budget for
16 the annual meeting of the members of the condominium
17 development.

18 Mr. Geller has taken away -- I say "taken
19 away," but relieved the Association from its
20 responsibilities of making the payment of the bills by
21 virtue of the uniqueness of his maintenance contract.
22 He still has the right, under the maintenance contract,
23 to require the Association to pay the management fees
24 or the maintenance fees monthly but he has bypassed
25 that from the first one that was filed and the people

1 make the payment for the maintenance directly to H.
2 Geller Management.

3 The purpose, as I understand it, of Mr. Geller
4 putting this contract together on this basis was to give
5 retired people, who were primarily the people that
6 purchased from Mr. Geller and his Company, a more definite
7 idea as to what their maintenance would be in their
8 retirement years.

9 As you're aware, the condominium statute
10 allows the Association to submit, or requires the
11 Association to submit, estimated budgets annually. And
12 a lot of developers have gone in and low-balled their
13 first estimate of the monthly maintenance. And the
14 first year they get the sales; and then the second
15 year, the Association that has taken over -- the
16 members that have taken over the Association, they find
17 that the maintenance fees that were being charged for
18 the first year during the sellout by the developer were
19 entirely inadequate to pay the actual cost of
20 maintenance.

21 Then the Board of Directors and members would
22 get upset because if their maintenance was \$80 the
23 first and second year, it could be 160 because of the
24 low-balled position.

25 Mr. Geller didn't want this method included

1 in his sales; and therefore, the purpose of the
2 management contract whereby the people would be more or
3 less assured where it was possible what their
4 maintenance would be monthly from year-to-year; and
5 they knew what increases would be made by virtue of the
6 percentages; and the only unknown factor would be the
7 increases because of the sewer or water and gas and so
8 forth and those expenses, which were variable.

9 MR. BOYD: Thank you, Mr. Parker, we offer
10 him for cross examination.

11 CROSS EXAMINATION

12 BY MR. PALECKI:

13 Q Mr. Parker, do you have a copy of the
14 contract in front of you?

15 A I do not.

16 MR. PALECKI: Could we give Mr. Parker
17 Exhibit 1.

18 COMMISSIONER GUNTER: I'm going to give him
19 mine. That's part of Exhibit 4.

20 MR. PALECKI: We actually have the exhibit
21 introduced twice, once by Mr. Falk and once by Mr.
22 Geller.

23 Q (By Mr. Palecki) Referring to Composite
24 Exhibit 4 and, specifically, the maintenance contract,
25 on Page 5, will you please read the last paragraph on

1 Page 5 which extends on to Page 6? If you can just
2 read that out loud to the Commissioners.

3 A My document doesn't have the page numbers on
4 it, but is this the paragraph that starts: "The
5 monthly maintenance fee --

6 Q Yes.

7 A -- for each condominium parcel owner shall be
8 increased as provided for hereinafter to represent
9 increases for public utilities and other specific costs
10 effective immediately in the month following the
11 announcement by any public utility, private utility,
12 and so forth."

13 Q That's fine. So this is to represent
14 increases for public utilities, correct? And
15 thereafter --

16 A Well, not all public utilities. The trash
17 company is not a public utility.

18 Q Well, thereafter then for public utilities
19 and other specific costs, correct?

20 A Correct.

21 Q And thereafter, you list the sewer increase,
22 and water, and gas, and electricity, and insurance. So
23 basically, it clearly says that these increases are to
24 cover the increases for electricity, gas, water, sewer,
25 insurance. Is that correct?

1 A The increases were to cover the increases in
2 the sewer, water, gas, electricity, trash and
3 insurance, correct.

4 Q Specifically for that purpose.

5 A I don't believe you can interpret the
6 contract any differently.

7 MR. PALECKI: Thank you.

8 MR. IAMONT: I have no questions.

9 COMMISSIONER DEASON: Mr. Parker, I have a
10 question.

11 WITNESS PARKER: Yes, sir.

12 COMMISSIONER DEASON: Is it your opinion that
13 those escalation factors are to cover the cost of those
14 utilities or are those escalation factors just a factor
15 to be applied to the overall maintenance cost to just
16 generally keep up with inflation?

17 WITNESS PARKER: I don't know as I can answer
18 that. Mr. Geller is the developer and, as you know,
19 lawyers take orders from their clients.

20 COMMISSIONER DEASON: So you're just reading
21 the contract as it's stated, and it just states what it
22 states, is that correct?

23 WITNESS PARKER: Yes.

24 COMMISSIONER DEASON: Okay, thank you.

25 COMMISSIONER GUNTER: Fine. Redirect?

1 MR. BOYD: No, Commissioner.

2 COMMISSIONER GUNTER: Thank you, sir.

3 Appreciate it, Mr. Parker.

4 WITNESS PARKER: Thank you.

5 (Witness Parker excused.)

6 - - - - -

7 COMMISSIONER GUNTER: Call your next witness.

8 MR. BOYD: We would call Mr. Charles

9 Parmelee, Commissioner.

10 MR. LAMONT: Mr. Commissioner, I have an
11 objection to Mr. Parmelee testifying and would at this
12 time move to strike the prefiled testimony.

13 If you look at what Mr. Parmelee's testifying
14 about, he's essentially invading your province. He's
15 testifying as to whether or not a specific Commission
16 Rule applies to this situation. I don't think there's
17 been any showing in his prefiled testimony that he's
18 competent to invade your province and tell you whether
19 or not this Rule applies. That's your area.

20 COMMISSIONER GUNTER: Response?

21 MR. BOYD: Commissioner, it's -- Mr. Parmelee
22 is a 22- or 20-year experienced man in the field of
23 rate design and rate management and administration
24 directly applicable to the issues in this case. It's
25 consistently the policy of this Commission to allow

1 expert testimony on issues such as these, and we think
2 it's entirely proper.

3 COMMISSIONER GUNTER: Counselor, I understand
4 your objection, but this is certainly not something
5 new. Every proceeding we have, we have people take
6 exception with our interpretations of law, rule,
7 policy, whatever. That's sort of the nature of the
8 beast that we have. And we'll see if our
9 interpretation is different than his. And that's the
10 nature of the beast that we have here.

11 MR. LAMONT: I understand.

12 COMMISSIONER GUNTER: I will deny your
13 objection.

14 - - - - -

15 CHARLES PARMELEE
16 appeared as a witness on behalf of H. Geller Management
17 Corporation and, after being first duly sworn,
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. BOYD:

21 Q Mr. Parmelee, would you give us your name and
22 address, please, sir?

23 A My name is Charles Parmelee. My business
24 address is 1025 Princeton Walk, Marietta, Georgia.

25 Q And what is your business or occupation,

1 please, sir?

2 A I'm an independent consultant and principal
3 of Parmelee and Associates.

4 Q And what is the area of practice of your
5 business?

6 A I'm an independent electric utility rate
7 consultant. I have spent several years in the Rate
8 Department of Florida Power and Light Company; I worked
9 in the Rate Department at Georgia Power Company; I
10 worked 11 years for Ebasco Services, Inc., as a
11 consultant doing rate design, cost of service and
12 related work for a number of utility companies in the
13 United States and overseas.

14 Q Mr. Parmelee, did you cause to be filed in
15 this case, this docket, prefiled testimony consisting
16 of 14 pages together with one exhibit on behalf of
17 Geller Management Company?

18 A Yes, I did. .

19 MR. BOYD: Commissioner, I would ask that
20 that testimony be inserted into the record as though
21 read.

22 COMMISSIONER GUNTER: It will be inserted
23 into the record as though read.

24 MR. BOYD: And his exhibit, which is his
25 vitae, be marked as, Mr. Pruitt, do you have the next

1 number?

2 MR. PRUITT: 12, I believe.

3 COMMISSIONER GUNTER: All right.

4 (Exhibit No. 12 marked for identification)

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1 Q: Please state your name and occupation.

2 A: My name is Charles R. Parmelee and I am an
3 independent utility consultant, Principal of
4 Parmelee & Associates, 1025 Princeton Walk,
5 Marietta, Georgia, 30068.
6

7 Q: What is your educational and business
8 background related to utility rate matters?

9 A: I graduated from Georgia State University in
10 1970 with a Bachelor of Arts degree in
11 Mathematics. I have worked in the Rate
12 Departments of both Florida Power & Light
13 Company and Georgia Power Company. I was
14 employed as a utility rate consultant by
15 Ebasco Services Incorporated for 11 years,
16 doing rate design, rate analysis, cost of
17 service, and load research for a number of
18 clients in the United States and abroad. I
19 began my own utility consulting business in
20 February, 1991. My full resume is attached as
21 Exhibit C.P. - 1.
22

23 Q: Have you testified as an expert witness before
24 any regulatory bodies?

1 A: I have testified as an expert witness in the
2 areas of rate analysis, rate design and cost
3 of service on several occasions. I have
4 testified five times before the Public Service
5 Commission of South Carolina, once before the
6 Commission in Arkansas, and once before the
7 Public Utility Commission in Bermuda.

8

9 Q: What is the purpose of your testimony?

10 A: I was asked to review the Complaint of
11 Consumer John Falk, the Service and
12 Maintenance Agreement of H. Geller Management
13 Company, utility cost summaries of H. Geller
14 Management Company, and Florida Public Service
15 Commission rules pertaining to measuring
16 customer service. The purpose of my testimony
17 is to give an opinion of the applicability of
18 the Florida Public Service Commission's
19 electric and natural gas metering rules to
20 the Service and Maintenance Agreement of H.
21 Geller Management Company.

22

23 Q: Do you think that the Florida Public Service
24 Commission Electric Service Rule 25-6.049,
25 Measuring Customer Service, is applicable in

1 this case, specifically those parts relating
2 to individual metering versus master metering
3 and allocation of electric costs to other
4 parties?

5 A: No, I don't think it is applicable.

6
7 Q: Why?

8 A: It is my opinion that the parts of the rule
9 pertaining to individual metering versus
10 master metering, and allocation of electricity
11 costs to third parties, only apply to electric
12 service to occupancy units, as defined in the
13 rule. This would exclude electric service to
14 common use areas and shared facilities such as
15 recreation centers, swimming pools, and
16 outdoor lighting. In the commercial setting
17 of the shopping center or office complex, it
18 would not apply to common areas, or outdoor
19 lighting. The service and maintenance fees
20 collected by H. Geller Management Company, do
21 not include any costs associated with electric
22 service to occupancy units, since each
23 condominium unit is separately metered, and
24 each occupant is directly billed by Florida
25 Power Corporation. Therefore, I don't think

1 the rule applies.

2

3 Q: Why do you think the rule is limited to
4 occupancy units?

5 A: I believe this rule is designed to encourage
6 electric utilities and property owners to
7 separately meter occupancy units, such as
8 apartments, condominiums, mobile homes, or
9 shops. It is generally accepted that
10 individual metering of occupancy units
11 promotes conservation of energy and this may
12 have been a consideration in the design of the
13 rule. Rule 25-6.049(6) limits electricity
14 fees or charges collected from third parties
15 to the actual cost of electricity. This rule
16 effectively eliminates financial incentive as
17 a motive for master metering occupancy units
18 and therefore encourages individual metering,
19 and conservation.

20

21 Q: If we ignore the occupancy unit limitation, do
22 you think that Rule 25-6.049(6) would apply to
23 the Service and Maintenance Agreement?

24 A: No, I still don't think the rule applies in
25 this case.

1

2 Q: Why?

3 A: The rule is set in the context of individual
4 metering versus master metering and allocation
5 of electric costs to third parties based on
6 sub-metering or other reasonable apportionment
7 methods. The Service and Maintenance
8 Agreement does not include any mechanism for
9 allocating the actual cost of the electricity
10 billed to H. Geller Management Company, since
11 the agreement does not base any charges on the
12 amount of electricity actually used each month
13 in the facilities. The management company has
14 assumed the responsibility, and therefore the
15 risk, for fluctuations in energy consumption
16 due to factors such as weather and facility
17 usage levels. Although the agreement contains
18 an adjustment mechanism tied to increases in
19 the electric rates applied by Florida Power
20 Corporation, this mechanism does not allow any
21 maintenance fee adjustment for levels of
22 energy consumption, and has not been applied
23 since 1983.

24 This adjustment is also very simple, and
25 obviously was not intended to allocate

1 increases in electricity costs with any degree
2 of accuracy. For example, the adjustment
3 allows an increase in the monthly service and
4 maintenance fees for each 5% increase in
5 Florida Power Corporation's applicable rates.
6 Therefore, a 4.9% rate increase would result
7 in no adjustment.

8 Another major consideration is that the
9 Service and Maintenance Agreement does not
10 directly address electricity as a service to
11 be provided, but only as an element which may
12 be necessary to provide other services covered
13 by the agreement. The management company has
14 agreed to provide services such as
15 recreational centers, swimming pools, and
16 maintenance of common areas, and providing
17 these services requires the company to
18 purchase electricity. The electricity cost is
19 incidental to the provision of the services,
20 just as the cost of electricity is incidental
21 to the provision of many services and
22 products.

23 For example, a Florida manufacturing company
24 could enter into a long term agreement to
25 supply electronic components to another party.

1 That contract could include an escalation
2 clause to make some adjustment to the product
3 price for increases in the manufacturer's
4 energy costs. If Rule 25-6.049(6) were
5 applied to such a contract, the manufacturer
6 could be required to allocate total
7 electricity costs to various products and show
8 that the costs were not over-recovered. I
9 don't think this is the intention of the rule.
10 Another example is the apartment complex owner
11 who provides recreational facilities and
12 maintains common areas of the complex. The
13 owner is billed for electricity required for
14 swimming pool pumps, for heating and air
15 conditions of recreational facilities, and for
16 house lighting in hall ways and other common
17 areas. The cost of this electricity is
18 included, but usually not specified, in the
19 rental fee for each rental unit. The owner
20 will increase those fees to reflect increases
21 in electricity costs, and other costs, at the
22 expiration of each lease, possibly each year.
23 This example is virtually the same, with
24 respect to electricity cost, as the case
25 before this Commission. In both cases, the

1 electricity cost is part of a flat monthly fee
2 which does not vary with the actual amount of
3 electricity used in the facilities. The only
4 difference is that the 14 year term of the
5 Service and Maintenance Agreement makes
6 explicit cost adjustment factors necessary.
7 I don't think Commission Rule 25.6-049(6)
8 applies to my example of an apartment rental
9 fee, and therefore, I don't think it applies
10 to the H. Geller Management Company's service
11 and maintenance fees either. In neither case
12 do the fees charged constitute fees or charges
13 collected for electricity.

14

15 Q: Could you describe circumstances where you
16 think Rule 25-6.049(6) is clearly applicable,
17 disregarding issues regarding the point in
18 time the rule became effective?

19 A: Yes. The rule is clearly applicable to
20 circumstances where a number of occupancy
21 units are metered collectively with a master
22 meter, and the cost associated with the
23 electricity billed from that meter is
24 recovered from the individuals or businesses
25 using the occupancy units, using an allocation

1 method which recognizes changes in energy
2 consumption levels. The rule would be
3 applicable regardless of the use of sub-
4 metering for the individual occupancy units.

5

6 Q: Is the rule clearly applicable in any other
7 circumstances?

8 A: No, I can't say that it is.

9

10 Q: If we assume that Commission Rule 25-6.049(6)
11 did apply to the Service and Maintenance
12 Agreement, how would you define pertinent fees
13 and costs as used in Rule 25-6.049(6) in order
14 to determine whether H. Geller Management
15 Company complies with this rule?

16 A: I have reviewed the Service and Maintenance
17 Agreement. The only service and maintenance
18 fees to any degree identifiable as electricity
19 charges are the adjustments which the
20 agreement allows for increases by the Florida
21 Power Corporation in the electricity rate.
22 These adjustments presently average \$3.13 per
23 month per unit for the Jefferson Building.
24 There are no other fees or charges billed by
25 Geller Management or paid by the residents

1 which are identifiable as electricity charges.
2 In fact, I also understand that the
3 adjustments are not separately stated on any
4 billing. They are added to the maintenance
5 fee, and the residents pay the single monthly
6 fee.

7 The total electric cost paid by Geller
8 Management, per month, per unit, for the
9 calendar year 1990 was \$6.14. This figure is
10 based on the total consumption for all
11 buildings and facilities divided by the total
12 of 1700 units in the community.

13 It is impossible to calculate an accurate cost
14 figure for the Jefferson Building including
15 its fair share of the common facilities, since
16 the electric metering for some of the other
17 buildings in the community include electricity
18 usage related to common facilities which are
19 not separable from the building usage.
20 However, a minimum cost can be calculated by
21 taking the Jefferson Building electric cost
22 and adding a per unit proportional share of
23 those common facilities which are separately
24 metered. This minimum cost, for 1990, is
25 \$4.37 per unit per month and does not include

1 any share of the common facilities included in
2 building meters. Since both the average cost
3 figure of \$6.14 and the Jefferson building
4 minimum cost of \$4.37 per unit per month are
5 greater than the identifiable electricity
6 charges of \$3.13 per unit per month, the H.
7 Geller Management Company would be in
8 compliance with the rule, if it were
9 applicable.

10

11 Q: Did you also review the estimated budget
12 document from the Jefferson Building
13 prospectus?

14 A: Yes, I did. It is obvious that most of the
15 individual items in the budget document are
16 rough estimates, since most of the figures are
17 rounded to the nearest quarter of a dollar.
18 The only figures from this budget contained in
19 or referenced by the Service and Maintenance
20 Agreement are the total monthly maintenance
21 fees for the various categories of condominium
22 units, and the ten dollar management fee. The
23 individual expense items are not addressed by
24 the agreement and there is no implication that
25 the total maintenance fee represents a dollar

1 for dollar pass through of utility costs, or
2 any other expense.

3 Therefore, I don't think that any item in this
4 estimated budget represents a fee or charge
5 for that specific service, with the exception
6 of the \$10.00 per month management fee, which
7 is specifically addressed, and broken down, in
8 the Service and Maintenance Agreement.

9 Undoubtably, many organizations and
10 businesses, including condominium
11 associations, apartment owners, and shopping
12 center managers frequently prepare estimated
13 budgets and those budgets may include a line
14 item entitled "electricity expense." In many
15 instances those budgets will be used to
16 develop fees, charges, or prices for
17 facilities provided, services or products sold
18 by the business. If the existence of such a
19 budget establishes a fee or charge for
20 electricity, then any over estimation of the
21 electricity expense would violate Commission
22 Rule 25-6.049(6), and any customer of the
23 business could seek compensation for the
24 alleged overcharge.

1 This could put the business at a great
2 disadvantage, since other expense items in its
3 budget may have been under estimated, by
4 amounts which more than offset the electricity
5 over estimate, and the business may already be
6 operating at a loss. Yet providing the
7 facilities, product or services at a loss
8 would still constitute an overcharge for
9 electricity, if one accepts the premise that
10 the existence of a budget establishes a fee or
11 charge for electricity.

12 I believe this example shows that using a
13 budget to establish a fee or charge for
14 electricity is neither fair or practical. It
15 would force budgeting businesses to either
16 under estimate electricity costs consistently
17 and absorb the losses, or to develop a system
18 to constantly adjust fees or prices, and
19 refund over estimates.

20

21 Q: Does that conclude your testimony?

22 A: Yes.

Test-Par.Pld

1 BY MR. BOYD:

2 Q Mr. Parmelee, do you wish to give a brief
3 summary of your testimony?

4 A Yes. The purpose of my testimony is to give
5 an opinion of the applicability of this Commission's
6 electric metering rules to the service and maintenance
7 agreement of H. Geller Management Company. Specifically,
8 subsection (6)(b) of Rule 25-6.049, which states that
9 "Fees or charges collected for electricity shall not
10 exceed the actual cost of the electricity." I don't think
11 this Rule applies in the case before this Commission for
12 several reasons.

13 First, the rule specifically addresses
14 "occupancy units," which would not include electric
15 service to common use areas or shared facilities such
16 as recreation centers and swimming pools. The service
17 and maintenance fees collected by H. Geller Management
18 Company don't include any cost associated with electric
19 service to occupancy units since each condominium is
20 separately metered and occupants are directly billed by
21 Florida Power Corp.

22 It is also important to note that the service
23 agreement does not directly address electricity as a
24 service to be provided, but only as an element which
25 may be necessary to provide the services and facilities

1 covered by the agreement.

2 The Company agreed to provide services such
3 as recreational centers, swimming pools and maintenance
4 of the common areas. To provide these services, the
5 Company must purchase electricity. The electricity
6 cost is incidental to the provision of the services,
7 just as the cost of electric is incidental in many
8 other businesses.

9 For example, the owner of an apartment
10 complex may provide recreational facilities and
11 maintain common areas for the tenants; the owner is
12 billed for the electricity required for swimming pool
13 pumps, club house air conditioning and other usage in
14 common facilities. The owner includes this electricity
15 cost along with other expenses in the monthly rent for
16 each apartment. The owner will increase the rental fee
17 to reflect increases in electricity costs and other
18 costs as each lease expires possibly each year.

19 Is this apartment owner reselling
20 electricity? I don't think he is.

21 This example is virtually the same with
22 respect to electricity cost as the case before this
23 Commission. In both cases, the electricity cost is
24 part of a flat monthly fee which does not vary with the
25 amount of electricity actually used in the facilities

1 and does not include any electric service cost for
2 occupancy units. The only difference is that the
3 Geller service agreement, unlike an apartment lease,
4 has a 14-year term, which makes explicit cost
5 adjustment factors necessary.

6 The electricity cost adjustment clause in the
7 service agreement was obviously designed to be easily
8 understood and administered, and was never intended to
9 allocate increases in electricity cost with any degree
10 of accuracy. For example, the adjustment allows a
11 fixed increase for each 5% increase in Florida Power
12 Corporation's applicable rates. Therefore, a 4.9% rate
13 increase would result in no adjustment, and the
14 agreement would undercollect in a sense for the rate
15 increase.

16 In other scenarios, the adjustment could
17 collect more than the amount of the increase. The
18 accuracy of the adjustment can only be determined in
19 retrospect. Applying the rule in subsection (6)(b) to
20 a case where a single flat fee like a maintenance fee
21 is used to recover electricity costs basically forces
22 the business using such a fee to underestimate the fee,
23 since any overestimate would violate the Rule and be
24 subject to challenge. However, should the flat fee
25 underrecover electricity costs, the business would have

1 no recourse. Basically, this puts the business
2 applying such a fee into a no-win situation.

3 For these reasons, I am even more convinced
4 that the rule is not intended to apply to electricity
5 usage in common areas. That concludes my summary.

6 MR. BOYD: Commissioners, before I tender him
7 for cross examination, I would like to inquire of Mr.
8 Parmelee about Exhibit No. 8.

9 COMMISSIONER GUNTER: Is that the audit?

10 MR. BOYD: Yes, sir.

11 COMMISSIONER GUNTER: That's number 9,
12 Exhibit No. 9.

13 MR. LAMONT: I have an objection to that. He
14 certainly didn't testify to that in the prefiled
15 direct. He's going beyond that now. I don't think
16 it's appropriate for him to start giving an expert
17 opinion about the Staff report.

18 COMMISSIONER GUNTER: To again eliminate some
19 time, Staff's audit report wasn't available when the
20 testimony was filed. Staff is attempting to introduce
21 the Staff's audit into the proceedings. If we were
22 going to follow the exact proper procedure, getting the
23 Staff's audit in and not violating anybody's due
24 process rights -- anybody, yourself, anybody -- should
25 have been given time to file rebuttal testimony on

1 anything that's coming in like that. That's sort of
2 standard the way we do business.

3 And I don't see anything wrong with whatever.
4 Because the audit is merely a calculation of what the
5 books and records say. Have you got any objection to
6 that?

7 COMMISSIONER DEASON: No.

8 MR. PALECKI: Staff has no objection and we
9 would also assert that certainly all of the figures
10 upon which the audit is based are already in evidence
11 or they're late-filed exhibits that will be in
12 evidence.

13 COMMISSIONER GUNTER: Sure.

14 MR. BOYD: Thank you, Commissioner.

15 Q (By Mr. Boyd) Mr. Parmelee, you've had an
16 opportunity to review what's been marked as Exhibit No. 9?

17 A Yes, I have.

18 Q I would ask you to turn to the last two pages
19 of that exhibit, please. They're identified as Table 1
20 and then Table 2.

21 A I have that.

22 Q Can you explain to me, on looking at Table 1
23 and in particular the Column B, which is the number of
24 units by building, did you reach any conclusion in
25 terms of any assumptions made based on that column that

1 would affect the calculations on Table 1?

2 A Well, that is the total number of units for
3 each building. That doesn't mean those units are
4 occupied or that Geller Management is collecting a fee
5 for each one of those units. As a result of that, the
6 total figure in Column F of \$311,247.75 is basically
7 assuming that a fee is being collected for each unit,
8 which is not true. I doubt very seriously that's true.

9 Q And so, if the figures are updated to give
10 the actual number of units sold in those buildings,
11 then you could get correct projections or calculations
12 in Column F, is that correct?

13 A That would give you a valid representation of
14 the maintenance fees actually collected, yes.

15 Q Turning to Table 2, --

16 COMMISSIONER GUNTER: In other words, let me
17 see if I understand this now. If all of the units --
18 well, let me ask you a question. Do you know if all
19 this whole complex was completed by 1983?

20 WITNESS PARMELEE: I can't answer that. I
21 don't believe it was.

22 COMMISSIONER GUNTER: Okay. One of the
23 things that we could do is go back and look at -- well,
24 let's see how we could do that. I'm just trying to
25 come out to test the assumption, we were talking about

1 the assumption of the '91 occupancy rate.

2 WITNESS PARMELEE: Well, I believe, Mr.
3 Palecki, some of the information he's asked for
4 addresses this. Am I correct?

5 MR. PALECKI: Well, I think that's correct.
6 One thing I would point out is that, and if you'll look
7 at the first asterisk on the bottom of Table 1, you
8 will see that none of the buildings that were completed
9 after 1983 are included in these calculations because
10 the rate increase would already have been implemented
11 by that time and we would assume that's the base
12 amount that they're paying. Only those buildings that
13 were completed before 1983 are included in the
14 calculation.

15 WITNESS PARMELEE: I don't think that changes
16 the occupancy issue, though.

17 MR. PALECKI: With regard to occupancy after
18 the 93-month total, you'll see there was an adjustment
19 made for 95% occupancy.

20 COMMISSIONER GUNTER: Mr. Palecki, you can't
21 testify.

22 MR. PALECKI: I'll ask him on cross
23 examination.

24 COMMISSIONER GUNTER: I'm sorry, as much as
25 you would like to.

1 MR. PALECKI: I tried.

2 Q (By Mr. Boyd) Okay. Mr. Parmelee, turning
3 to Table 2 of this exhibit --

4 COMMISSIONER GUNTER: Mr. Parmelee? Excuse
5 me just a second, counselor. So you would say that if
6 there was any calculation or any review to compile and
7 see whether any of the differences were material or
8 not, would you not agree that the figures should be
9 based on factual data versus assumptions?

10 WITNESS PARMELEE: Yes, sir, I agree with
11 that.

12 COMMISSIONER GUNTER: Okay, all right.

13 Q (By Mr. Boyd) Mr. Parmelee, with regard to
14 Table 2 and let's look at Column E, what is your
15 understanding of the source and what the figures in
16 Column E represent?

17 A From my review, it represents what would be a
18 typical bill for a 1000 kilowatt hour usage customer on
19 the RS-1 rate of Florida Power Corporation, including
20 the fuel charge and other adjustments. It is not a
21 base rate, it's a total rate.

22 Q And that column appears to project that rate
23 in terms of a per-thousand kWh assumption, is that
24 right?

25 A That is correct. It would be in the amount

1 for a 1000 kilowatt hour bill, in a sense. But again,
2 the top of the page, Table 2, is called "Electricity
3 Expenses Attributable to Rate Changes April 1983."
4 This rate isn't just the rate change of 1983; it
5 represents changes to the rates, both the base rates
6 and the fuel adjustments, all the way through this
7 period.

8 Q And all changes in the element?

9 A I believe it does. Obviously, the numbers
10 vary up and down. The rate change in 1983 was a one-
11 time happening.

12 Q And it also includes the customer charge
13 which is not a per-kWh, is that correct?

14 A I believe it does, yes.

15 Q Now, Column F, figures for kWh used, can you
16 determine how that number, what calculation was done to
17 produce that number?

18 A From what is stated in the report, that
19 figure was computed by taking the amount billed in
20 Column B and dividing by this rate that we just
21 discussed in Column E, to determine an estimated
22 kilowatt hour usage. That figure would only be valid
23 to the extent that the rate in Column E is exactly
24 correct; and obviously, it can't be exactly correct
25 because the amount billed is not a number of 1000

1 kilowatt hour bills. I know for a fact that there are
2 bills for different amounts.

3 Q And at this point, what is your conclusion as
4 far as the figures up to Column F in comparison to the
5 provisions of the contract calling for a maintenance
6 fee to be paid?

7 A Well, I think these figures, that there's an
8 assumption inherent in these figures, and that is that
9 Geller Management is able to recover its costs on a
10 kilowatt hour basis. And, as Mr. Geller has stated,
11 Geller Management does not recover their costs on a
12 kilowatt hour basis, it's through a flat fee which does
13 not recognize consumption.

14 And the problem that I have with the -- well,
15 the largest problem I would have with this figure at
16 the bottom of Column H, the \$26,561, is that it doesn't
17 recognize any changes in consumption during this period
18 which Geller Management had to pay. Their adjustment
19 doesn't recognize consumption.

20 Now, if you look at the first figure that was
21 used as a base figure in this calculation of Column F
22 of 595,816 kilowatt hours, if we accept that as a
23 correct figure and then look at the figure -- the very
24 bottom figure in Column F is for a short period, so
25 I'll direct you to the one on the line above that,

1 887,919 kilowatt hours. You can see there's been a
2 substantial increase in consumption during that period,
3 in fact, about 49%.

4 Now, also during that period, there's been an
5 increase in the average number of units, which is shown
6 in Column C.

7 Q Okay. Mr. Parmelee, what is the increase in
8 -- again, this is for a six-month period -- in kWh's
9 used from the first test period, '82 to '83, up to
10 April of '90 through September '90. What's the actual
11 increase in kWh used?

12 A Kilowatt hours, I'll have to compute that.
13 That's 292,103 kilowatt hours.

14 Q And is that, what's the percentage of that
15 increase?

16 A As applied to the initial figure of 595,816,
17 that's a 49.0% increase in kilowatt hours used.

18 Q And if we look back to the Column C, the
19 average number of units, what's the corresponding
20 increase in average number of units for those two time
21 periods?

22 A The final period is 1700 units, the initial
23 period is 1351 units. That's an increase of 25.8%. So
24 the increase in kilowatt hours used is almost twice the
25 increase in the number of units.

1 Q So those percentages are 49% increase in kWh
2 used versus what, 28%?

3 A 25.8% increase in an average number of units.

4 Q Now, let's go back to the base period,
5 October of '82 to March of '93. Can you convert that
6 kWh usage into a per-unit figure?

7 A Certainly. By dividing the kilowatt hours in
8 Column F by the average number of units in Column C,
9 for that first line, I derive 441 kilowatt hours per
10 unit for the six-month period. Likewise, for the next-
11 to-the-last line, using the 887,919 kilowatt hours
12 divided by 1700 units, I derive 522 kilowatt hours per
13 unit. That represents an 18.4% increase in electricity
14 usage per unit per six months.

15 Q Okay. And, Mr. Parmelee, with that level,
16 with an increase in consumption over that period of
17 time, did you assume Column E, the rates, what is the
18 result, not in specific dollar, but the result to the
19 Geller Management Company?

20 A Well, basically, like I said, the Geller
21 Management Company contract has no adjustment for
22 increased consumption. So therefore, this increase in
23 consumption between this base period and the later
24 periods represents an increased cost to Geller
25 Management which is not reflected in the cost figure

1 that's shown on this table. It's a relatively
2 substantial increase, particularly comparing the first
3 period to, say, this next-to-the-last line.

4 Q Well, take a look at just the last time
5 period, April '90 to September '90. Have you got at
6 least a quick calculation as to the magnitude of the
7 impact there?

8 A Yes. If you subtract the 441 kilowatt hour
9 average in the first period from the 522 kilowatt hour
10 average in this next-to-the-last line, that's an
11 increase of 81 kilowatt hours per unit per six months.
12 If I multiply that times two, I can put it into an
13 annual figure, which would be 162 kilowatt hours per
14 unit per month. Using the 1700 units in the
15 next-to-the-last line, that represents 275,400 kilowatt
16 hours increased usage for the year.

17 Now, if I assume a rate of 7 cents a kilowatt
18 hour, that would yield an additional cost to Geller
19 Management of \$19,278 in one year as a result of
20 increased consumption over this base period.

21 Q And what would it take to then more or less
22 back down through this, what, eight-year time period to
23 come up with -- and carry that over the life of this
24 exhibit?

25 A The calculation could be performed for each

1 time period. I mean, obviously, the most accurate way
2 to do it is to do it on a monthly basis. But this
3 simple calculation I've just done can be done for each
4 time period. And you get a total effect of the
5 increased usage. Again, this \$26,561 cost increase in
6 a sense, assumes that Mr. Geller is recovering his
7 electricity cost on a kilowatt hour basis. And again,
8 he's not. There's a flat fee and he absorbs the cost
9 of the increased usage, which has not been reflected in
10 the exhibit.

11 MR. BOYD: Commissioner, at this time I would
12 like to request permission to file a late-filed exhibit
13 doing those calculations that would, as Mr. Parmelee
14 has just described over this time period, to submit, to
15 be in conjunction with his exhibit.

16 MR. PALECKI: Staff would have no objection,
17 but only under one condition, and that is that the
18 exact kilowatt hour figures are used and also that the
19 exact figures concerning the number of occupants or the
20 number of units sold are used, rather than an estimate.
21 As long as we get those exact figures, which are going
22 to be included in your other late-fileds, anyway, Staff
23 would have no objection.

24 COMMISSIONER GUNTER: Okay. You can't file a
25 different exhibit bolstering -- you know, attacking --

3
4 be Late-Filed 13?

5 MR. FRUITT: 13.

6 COMMISSIONER GUNTER: All right.

7 MR. PALBERT: Can you give us a short title
8 for the late-filed exhibit?

9 Q (By MR. Boyd) Mr. Parmelee, can you help me
10 with the title for that one?

11 A "Additional Cost to Geller Management as a
12 Result of Increased Kilewatt Hour Usage."

13 (Late-Filed Exhibit No. 13 identified.)

14 Q (By MR. Boyd) Mr. Parmelee, looking still at
15 Table 2, and referring to your Column B, what is your
16 calculation of the total electric expense paid by the
17 management company for the period from April '83
18 through December 1988?

19 A The figure shown in the exhibit is \$890,000
20 -- \$890,180.69 for the entire period. That's the total
21 amount billed by Florida Power Corporation.

22 MR. BOYD: I haven't -- may I ask Mr. Palecki
23 one thing, Commissioner? (Pause)

24 COMMISSIONER GUNTER: This is getting highly
25 irregular. Getting highly irregular. You have an

1 exhibit to work from. Here you are going to counsel
2 who is going to the guy that sponsored it to get you an
3 answer to a question you've got.

4 MR. BOYD: I'm just trying to make it a
5 little bit easier.

6 COMMISSIONER GUNTER: All right. Make it
7 easy and let's hurry on with it. Let's get it out
8 there so everybody can hear what you're saying.

9 MR. BOYD: Sure.

10 Mr. Stallcup, does the column, the total
11 column for Exhibit B, Table B, include the 42,040 which
12 was the comparison period?

13 COMMISSIONER GUNTER: Your witness just
14 answered your question. Your own witness said that's
15 what the figure was. He answered. You just didn't
16 like what he said?

17 MR. BOYD: Yes. I wanted to make sure --

18 COMMISSIONER GUNTER: Well, why didn't you
19 ask him?

20 MR. BOYD: I was trying to shortcut it. I'll
21 be happy to. That's what I was trying to do because I
22 don't think he's added up all --

23 A I haven't added those figures, I'm assuming
24 that the column adds to 890,000.

25 Q And if the column includes the test period,

1 then you would subtract the \$42,000 figure, \$42,040.75,
2 which would lower it down to about \$848,000?

3 A \$848,139.94.

4 Q And if you flip back to Table 1, even if you
5 take the \$311,247 figure of maintenance fee increase
6 attributable to the rate increase, what kind of
7 difference does that leave in electric cost over that
8 time period?

9 A Using the \$311,000 figure?

10 Q Yes, sir.

11 A \$536,892.19.

12 Q And what is your understanding of how that
13 expense is recovered by the management company?

14 (Pause)

15 A Could you restate that question in some way?

16 Q Sure. You came up with a difference of
17 \$540,000, 50,000? I'm sorry.

18 A The \$311,000 figure is the increase in
19 maintenance. Roughly, it's an estimate of the increase
20 in maintenance fees attributable to the April '83
21 increase. The \$848,000 figure are the total
22 electricity expenses during that period. What that
23 shows is that the increase in maintenance fees, which
24 are the only fees that are identifiable as fees
25 collected in any way or manner are fees collected for

1 electricity, are less than the total cost by \$536,000.

2 Q And from your review of the maintenance
3 contract and how it operates, how is that difference in
4 electric expense recovered by the management company?

5 A I don't believe it is recovered.

6 Q Other than through the maintenance fee?

7 A Exactly.

8 Q The regular maintenance fee?

9 A Right.

10 Q Now, were you also, did you also review the
11 draft audit report that was compiled by Mr. Stallcup?

12 A Excuse me? Yes, I have.

13 Q And that, Table 2 of that report had an
14 additional, I think, two columns. If I may look over
15 your shoulder? Column --

16 COMMISSIONER GUNTER: Have you got a copy for
17 everybody?

18 MR. BOYD: No, sir, I don't.

19 COMMISSIONER GUNTER: If you're going to
20 dwell on it, you've got to go somewhere and get one for
21 us. We need to follow along. If you want to be brief,
22 we won't make that requirement.

23 MR. BOYD: Well, I think I can refer to the
24 concept and not the figures, Commissioner, at least for
25 the moment.

1 COMMISSIONER GUNTER: All right.

2 Q (By Mr. Boyd) Columns H and I reflected on
3 the draft report, what is the substance of the numbers
4 in those columns?

5 A The two additional columns show that not just
6 -- as opposed to the change in the total rate, it shows
7 a change in base rate and calculates an impact on
8 amount billed based on the base rate change similar to
9 the last column in the Table 2 exhibit.

10 The total figure in this case, based on the
11 change in base rate, is shown to be \$119,503, compared
12 to the total rate figure of \$26,561. So there's a
13 considerable difference in this analysis if it's based
14 on base rates instead of on total rates, which include
15 changes in fuel adjustments and other adjustments.

16 Q And in light of the fact that the evidence of
17 the actual increases in the maintenance fee being based
18 on changes in base rate and excluding fuel charges, do
19 you think that that's a relevant calculation?

20 A Yes. Based on the way the adjustments are
21 made and the way the contract has been administered,
22 that is the more valid figure. I mean, basically, the
23 management company, for the reasons stated by Mr.
24 Geller, for simplicity reasons, chose to exclude those
25 adjustments from their calculation of the maintenance

1 fees.

2 In doing that, they assumed some risk that
3 those adjustments might increase by some amount, which,
4 back in particularly in the '70s in this state, those
5 adjustments did increase by a lot. So having assumed
6 that risk and basing the adjustment on the base rates,
7 I think it would be more appropriate to use the base
8 rate column in this calculation.

9 MR. BOYD: Commissioner, at this point I
10 would like to ask for permission to submit an
11 additional late-filed exhibit that would either provide
12 that information or add it to the previous exhibit.

13 COMMISSIONER GUNTER: What information?

14 MR. BOYD: The information that Mr. Parmelee
15 has just referred to showing the --

16 COMMISSIONER GUNTER: That's a draft audit
17 report you referred to?

18 MR. BOYD: Yes, sir, it's the figures
19 compiled by Mr. Stallcup and then left out of the final
20 report.

21 COMMISSIONER GUNTER: Okay.

22 MR. BOYD: And the change -- it's the same
23 figures as Table 2, but just including the column for
24 change in base rate on --

25 COMMISSIONER GUNTER: Rather than that, why

1 don't you put in the whole draft so you can see it all.

2 MR. BOYD: That would be fine.

3 COMMISSIONER GUNTER: Include that with the
4 late-filed that you're going to furnish.

5 MR. BOYD: I would be happy to, thank you.

6 With that I would offer Mr. Parmelee for
7 cross examination.

8 COMMISSIONER GUNTER: That was included in
9 the previous one that they had, whatever that number
10 was. What was that number, Mr. Pruitt?

11 MR. PRUITT: The Late-Filed is 13. I guess
12 it would be 12.

13 COMMISSIONER GUNTER: No, that was the one
14 that -- wasn't yours 13?

15 MR. PALECKI: 13, Late-Filed 13.

16 COMMISSIONER GUNTER: It was their Late-Filed
17 13. He was just going to add that last piece to it, he
18 wasn't going to put another number to it.

19 MR. PRUITT: Add to 13?

20 COMMISSIONER GUNTER: Yes, sir. Just adding
21 it to 13.

22 Let me ask Mr. Parmelee a couple of
23 questions.

24 Mr. Parmelee, we've heard testimony and I
25 want you to tell me what you have seen now. As a

1 consultant for this company, have you seen a policy
2 statement or have you seen a procedure which says that
3 it is only on the rate base -- I mean, only on the base
4 element of electricity, that that's the trigger
5 mechanism. Because that's not what the contract says.

6 WITNESS PARMELEE: Well, I think you have to
7 read the contract very carefully. And that is that the
8 contract states that the adjustment will be made
9 following the announcement of a rate increase by a
10 public utility. And as has already come up in this
11 proceeding --

12 COMMISSIONER GUNTER: You read a different
13 one than I have. I hate to interrupt you. Do you have
14 a copy of it before you?

15 WITNESS PARMELEE: The contract?

16 COMMISSIONER GUNTER: Yes.

17 WITNESS PARMELEE: If I can find one, sir, yes.

18 COMMISSIONER GUNTER: If you would, I want
19 you to show me where you see it. I'm trying to
20 understand this process; and the less you all bull me,
21 the more I understand it. And I won't say bulling, you
22 know, we use, up where I come from, it's heifer dust.

23 WITNESS PARMELEE: I understand, sir.

24 COMMISSIONER GUNTER: Okay.

25 WITNESS PARMELEE: I'm looking at HG Exhibit

1 1, Page 5 of 14.

2 COMMISSIONER GUNTER: Look down at
3 "Electricity."

4 WITNESS PARMELEE: Well, you have to go to
5 the previous page, it starts down at the very bottom of
6 the page.

7 COMMISSIONER GUNTER: Yes.

8 WITNESS PARMELEE: "The monthly maintenance
9 fee for each condominium parcel owner shall be
10 increased as provided for hereinafter to represent
11 increases in public utilities and those specific costs
12 effective immediately in the month following the
13 announcement by any public utility, private utility,
14 corporate sovereign, et cetera."

15 COMMISSIONER GUNTER: Uh-huh. You still
16 didn't answer my question. You answered a question,
17 but not the one I asked you.

18 WITNESS PARMELEE: That wasn't intentional.

19 COMMISSIONER GUNTER: Well, don't give me
20 that. I've seen you expert witnesses for 13 years now.

21 Go down to D on that page under electricity
22 and you show me in that contract where it says the base
23 rate, excluding fuel elements, excluding customer
24 charge or anything else, where does it say that?

25 WITNESS PARMELEE: It does not say that.

1 COMMISSIONER GUNTER: I asked you in the
2 beginning, in the very beginning. You're an expert
3 witness hired by this company: have you seen a policy
4 directive, have you seen written directives within the
5 company as to how this is calculated?

6 WITNESS PARMELEE: No, I have not.

7 COMMISSIONER GUNTER: Okay. Mr. Palecki?

8 THE REPORTER: I need just a moment.

9 COMMISSIONER GUNTER: Let's take about five.

10 (Brief recess.)

11 - - - - -

12 COMMISSIONER GUNTER: All right.

13 MR. BOYD: Commissioner, during the break I
14 confirmed with Mr. Palecki and Mr. Stallcup that the
15 total figure at the bottom of Column B on Staff's
16 exhibit -- that's Table II, Staff's Exhibit 9,
17 Mr. Pruitt?

18 MR. PRUITT: That right.

19 MR. BOYD: Does not include the test period.

20 COMMISSIONER GUNTER: Right.

21 MR. PALECKI: Staff would so stipulate.

22 COMMISSIONER GUNTER: I was going to ask him
23 if he would accept, subject to check, but he didn't.
24 That's a different question.

25 All right (Laughter)

1 MR. BOYD: Thank you.

2 CROSS EXAMINATION

3 BY MR. PALECKI:

4 Q Mr. Parmelee, you testified that you were
5 employed by Florida Power and Light for years, is that
6 correct?

7 A Yes, sir.

8 Q Are you aware that Florida Power and Light
9 has had a tariff on their books for, I think, in excess
10 of 15 years which prohibits the resale of electricity
11 at a profit?

12 A I'm not aware of the specific tariff. There
13 was -- I remember there was wording in individual rate
14 schedules that, I believe, it was in the applicability
15 or availability clause that would say resale of
16 services is prohibited, or something to that effect.
17 I'm not --

18 Q Would it be fair to say that most utilities
19 that you've worked for have a tariff which prohibits
20 resale at a profit?

21 A It's not always stated in the rate schedule,
22 but it's a common statement in a rate schedule that
23 resale is prohibited. It's not universal, though.

24 Q Let's go back to when you were an employee of
25 Florida Power and Light and let's say you had the

1 authority to determine whether or not there was a
2 tariff violation. We have a tariff that does prohibit
3 resale at a profit. Now, you've testified that you
4 don't think we have resale of electricity here because
5 we have a flat fee which doesn't recognize consumption,
6 is that correct?

7 A That's one of the reasons I've given, yes.

8 Q And let's say we had exactly the same
9 contract that we have here and we have a very, very
10 small building that uses 1000 kilowatt hours every
11 month -- and you know their history, they have been
12 doing that for the last 10 years. But instead of
13 having a 5% increase result in a \$15 maintenance fee
14 increase, we have a 5% electrical increase resulting in
15 a million dollar electrical or a million dollar
16 maintenance fee increase.

17 Would you determine that the management
18 company was in violation of their tariff in selling
19 electricity or reselling under those circumstances?

20 A I think I would question the sanity of the
21 individual that would sign such a contract, first.

22 Q Well, apart from that, and I realize it's an
23 extreme example.

24 A Again, the matter of resale of electricity,
25 you have to realize that resale of electricity is

1 common in some tariffs. I mean, there are utilities
2 that resell electricity. Florida Power and Light right
3 now resells electricity that is generated in the state
4 of Georgia.

5 It's just typically for certain applications
6 utility companies will try to prohibit resale of
7 electricity for certain applications. But to try to
8 make a general rule and say resale under any way, form
9 or fashion is against the tariff, you get into so many
10 situations where you have to make administrative
11 judgments.

12 Take the example I gave in my testimony.
13 Every apartment owner that has common facilities in
14 that apartment and buys electricity for those common
15 facilities has to include the cost of that electricity
16 in the rent. You can take the point of view he is
17 reselling electricity, can't you? You certainly can.
18 But I know of no utility company that is going to try
19 to regulate how much the apartment owner has included
20 in his rental fees for that electricity.

21 And I don't think this case is substantially
22 different from the case before this Commission right
23 now. Again, in both cases there's a flat fee involved.
24 I think as soon as that apartment owner started trying,
25 for example, to sell electricity to individual

1 apartments which were metered on some sort of rate
2 arrangement, the utilities definitely have a problem
3 with that. I think that the wording of the Commission
4 Rule in this state very clearly prohibits that; and, in
5 fact, due to the statement that such apartments have to
6 be master metered after a certain point in time, that's
7 not likely to happen.

8 But I think you have to realize that
9 virtually every business in the state of Florida in a
10 sense resells electricity. If they use electricity in
11 the production of a product or service, they're going
12 to recover those expenses. And I don't think that you
13 can get --

14 COMMISSIONER GUNTER: Mr. Parmelee, if I can.

15 WITNESS PARMELEE: Yes, sir.

16 COMMISSIONER GUNTER: If you would -- nobody
17 wants to stop you from editorializing on anything you
18 want to editorialize on. You know, you can get into
19 the Adams Smith model if you want to as long as you can
20 put it together; but if you will respond to questions
21 from counsel and then explain, because you have never
22 responded to his question yet.

23 Q (By Mr. Palecki) Under those circumstances,
24 would there be a resale of electricity?

25 MR. BOYD: Excuse me. Commissioner, can I

1 have him -- I will object to the question. Can we
2 specify, are we talking about a building under the
3 Geller contract or a building --

4 Q (By Mr. Palecki) We'll use the exact same
5 contract we have here but rather than \$15, we have a \$1
6 million increase in the maintenance fee. And you know
7 that that building historically has had only 1000
8 kilowatt hours a month usage for the last 10 years. Do
9 we have a resale at a profit? And we have the same
10 clause that says that when -- that these increases
11 shall provide for and shall represent increases the
12 specific utility.

13 A Could you be a little more specific in your
14 example? Is this flat, is this a flat fee of \$1
15 million?

16 Q Right, it doesn't recognize consumption, it
17 doesn't recognize it at all.

18 A So is this the situation where the individual
19 that is going to pay the million dollars, signed a
20 contract saying that they would pay a million dollars
21 for electricity for this apartment or a million dollars
22 for what?

23 Q Well, it's the same contract we have here
24 that has the clause that says these increases shall be
25 to cover the increased costs of utilities, and then the

1 specific clauses for each utility, including
2 electricity. Just like we have here. I'm just taking
3 this situation to an extreme, I want to find out
4 whether you think we have a resale of electricity at a
5 profit.

6 A Well, to the extent -- no, I don't. Because
7 to the extent that the million dollars is so
8 tremendously different from the actual cost of
9 electricity, how could that be for the electricity?

10 Q Because the contract says that that increase
11 is to cover the cost of electricity, just like this
12 contract.

13 A But that's obviously not what the million
14 dollars is for, is it?

15 Q Well, if the contract --

16 A It can't be.

17 COMMISSIONER GUNTER: If you would try to
18 answer the question. If you say, "I can't answer it,"
19 or, "I don't know," or something, let's get on with
20 answering the question. You're being very
21 argumentative.

22 A I don't believe that it's -- if it's exactly
23 like this contract as stated, I don't think the
24 contract is the resale of electricity. There's no
25 consumption involved, there's no submetering involved.

1 Q So basically you're saying any scenario --

2 A I don't think that because you reach some
3 level of dollars at some point -- if instead of \$1
4 million the amount was one-half the cost, does that
5 mean the individual selling the electricity is selling
6 it at a loss and he can go to the power company or
7 whoever and seek retribution? I don't think so. I
8 think basically what you have there is two individuals
9 that entered into a contract that had some adjustment
10 mechanism; and to take an adjustment mechanism and go
11 from there to selling electricity, no, sir, I can't
12 agree with that.

13 Q We can move on. I believe that you testified
14 that there are basically three things that you don't
15 agree with in the audit report. Correct me if I'm
16 wrong. One, the audit report doesn't reflect the exact
17 number of units sold which are actually paying
18 maintenance fees?

19 A That is correct.

20 Q Two, it doesn't reflect the exact kilowatt
21 hour usage reflected on the bills that are received by
22 Geller?

23 A That is correct.

24 Q And third is that it's not just based on the
25 base rates but it's based upon what would be the entire

1 amount of the billing, including fuel adjustment, et
2 cetera. Is that the extent of your objection or do you
3 have further objection?

4 A There was a further objection, and that is
5 that the exhibit does not recognize the increased cost
6 to Geller Management as a result of increased usage.

7 Q But wouldn't the exact kilowatt hour usage,
8 the second objection that I mentioned, cover that?

9 A No, it wouldn't.

10 Q Basically, if we have the exact kilowatt hour
11 usage, we take the exact costs --

12 A No, sir.

13 Q Why not?

14 A Because it simply doesn't. There was a
15 certain level of kilowatt hour usage back in April of
16 1983 per unit under the contract. After that point in
17 time, if the level of usage goes up, there's nothing in
18 that calculation that recognizes that the Geller
19 Management Company doesn't pay the increment in cost
20 for that increased usage, it pays the entire cost for
21 the electricity associated with the increased usage.

22 In other words, what if your calculation,
23 even if you doubled, triple, quadruple, multiply times
24 a million, to use your number, is not going to
25 recognize that increased usage as a cost to Geller.

1 But it would be a cost to the management company.

2 Q It seems to me that if you take the exact
3 kilowatt hour usage, it certainly recognizes that
4 because it's right there in the calculation.

5 Would you please explain in layman's terms, I
6 just have difficulty getting to where you're going. I
7 mean, if we take the exact bills which are going to be
8 provided, those figures will be provided as a
9 late-filed exhibit, doesn't that solve your problem?

10 A No, it doesn't. Again, the usage per unit in
11 the complex in that base period was 400 and some odd
12 kilowatt hours. When you get to the end of that
13 analysis, it's up to 500 and something kilowatt hours.
14 That represents an increased cost to Geller Management,
15 not just in terms of a rate increase.

16 If there were no rate increase, let's take
17 that one. There's no rate increase at all during that
18 period, all your numbers come to zero, okay? But yet
19 the usage in the condominiums goes up. Can't you see
20 that if the usage goes up, Geller's costs go up, even
21 if there isn't a rate increase?

22 Q You have been here for the extent of the
23 hearing, you've heard all the other testimony.

24 A Yes.

25 Q You were present when Commissioner Gunter

1 made a proposal that we take as a base the actual
2 1981/1982 figure before there were any rate increases,
3 we take that figure as a base?

4 A I heard that.

5 Q And we determine exactly how much kilowatt
6 hour usage there has been, exactly how much increased
7 costs the Geller Corporation has paid, and then we
8 compare that to the exact amount of increase in the
9 maintenance fee. What problems do you have with that
10 calculation? That's basically, I think, what's the --

11 A No, that's not necessarily what Table II
12 does.

13 Q Well, if it was --

14 A Again, the total increased cost to Geller
15 Management would include this cost due to usage. The
16 total increased cost.

17 Q If that was taken --

18 A Geller, if you look at Table II again, the
19 amount billed back in that period, October '82 to March
20 '83, is \$42,000. By the time we're out to the next-to-
21 the-last line, that's up to \$62,000. Yet, this exhibit
22 shows there's very little -- it implies there's very
23 little rate increase here, and Mr. Nixon stated there's
24 very little rate increase. Then why did Geller
25 Management's costs increase by this \$16,000.

1 Q You answer the question.

2 A Because of the increased usage per unit.

3 Q If we go ahead and include that figure in our
4 calculation, then you have no problem with the audit
5 report?

6 A I wouldn't say that I have no problem with
7 the audit report. I'd say you have a more
8 representative figure of the increase in Geller
9 Management's costs compared to this base period back in
10 April of -- or October to March of 1983, you have a
11 more representative figure.

12 MR. PALECKI: No further questions.

13 MR. LAMONT: I have no questions.

14 COMMISSIONER GUNTER: Redirect?

15 REDIRECT EXAMINATION

16 BY MR. BOYD:

17 Q Mr. Palecki asked you the hypothetical about
18 carrying it to an extreme. And based on your time at
19 FPL, wouldn't you, Mr. Parmelee, have to also look at
20 the applicable Rule of the Commission to see how the
21 Rule would be applied to whether there would be a
22 violation of the Rule?

23 A In many cases, yes.

24 Q And the other factor that wasn't specified in
25 the question was the date that either the contract --

1 the date of the contract or the date of the increase.

2 Would the date of the contract in his hypothetical make
3 a difference in whether or not the Rule that we're
4 looking at here would apply?

5 A If it predated the Rule, that could
6 definitely make a difference.

7 Q And what about the date of the increase?

8 A I think all of those factors would have to be
9 considered to determine the application of the Rule.

10 Basically, Florida Power and Light, the power
11 company, does not, at the time I was there, did not go
12 out of its way to interject itself into its customers'
13 contracts unless it felt there was some particular
14 problem.

15 Q Let me ask you this. Looking back at Table
16 II again and maybe we can clarify this. If the
17 increases in the maintenance fee taken place but in
18 fact the total rate column had been constant and there
19 had been no change in rates on this schedule, let's
20 assume that.

21 A Yes.

22 Q Would the cost of electric service to the
23 management company have increased over that time
24 period?

25 A Certainly. The exhibit itself shows that,

1 even though it's a computed figure, that the kilowatt
2 hour usage per six months increases from a level of
3 595,816 kilowatt hours back in the base period to a
4 level approaching 900,000 kilowatt hours in the more
5 recent periods. And obviously, even if there were no
6 rate increase, there's going to be a cost associated
7 with that increased usage.

8 COMMISSIONER GUNTER: Let me ask you a
9 question. There's a corresponding side to that, too,
10 in the math. If you have an increase in the number of
11 customers?

12 WITNESS PARMELEE: Yes, sir.

13 COMMISSIONER GUNTER: Because you have from
14 1350 to 1700 on that is what?

15 WITNESS PARMELEE: That's a 25.8% increase in
16 customers.

17 COMMISSIONER GUNTER: Okay. And you've got
18 about a 30% increase?

19 WITNESS PARMELEE: 49% increase.

20 COMMISSIONER GUNTER: Well, you have 900 at
21 the top, 600 at the bottom?

22 WITNESS PARMELEE: 49% is what the figure
23 was.

24 COMMISSIONER GUNTER: 49%? Your math is
25 different than mine. It's close. Yeah, whichever way

1 you want to figure it. It's 49 versus 25, so it's not
2 all one piece as you're -- in responding to the
3 questions. Yeah, there would be an increase, but not
4 the full 49% increase?

5 WITNESS PARMELEE: You're right, and that's
6 why --

7 COMMISSIONER GUNTER: Because it's offset by
8 customer growth, --

9 WITNESS PARMELEE: Right.

10 COMMISSIONER GUNTER: -- so you're leaving
11 one piece of the equation out of it?

12 WITNESS PARMELEE: What you have to do is,
13 when I went through that calculation before, I divided
14 by 1350 to get that average figure of 4.41, then I
15 divided by 1700 down at the bottom to get that 5.22, I
16 think that takes your concern into account.

17 COMMISSIONER GUNTER: Yes, sir. It does,
18 because that drops that down to about 20 --

19 WITNESS PARMELEE: Yes, sir, I think it's
20 18.4%.

21 COMMISSIONER GUNTER: Yes.

22 WITNESS PARMELEE: But still, there's an
23 increased cost.

24 COMMISSIONER GUNTER: I understand.

25 MR. BOYD: That's all the questions I have.

1 COMMISSIONER GUNTER: Is it fair to assume,
2 though, from where I'm trying to get to, because I want
3 to see the bottom line. I want to see bills from the
4 Company and receipts from the customers. And then you
5 look at a materiality difference --

6 WITNESS PARMELEE: Well, I don't think this
7 exhibit the way it is right now --

8 COMMISSIONER GUNTER: I'm not talking about
9 this exhibit. That's the reason I asked for some data
10 and you were in the room, and I can get there from the
11 data I asked for. When you get total revenue versus
12 total expenses, I can quit dancing around real quick.
13 That's add, subtract, multiply and divide; and then
14 doesn't it get to be a materiality issue?

15 WITNESS PARMELEE: Could you define
16 "materiality issue" for me?

17 COMMISSIONER GUNTER: Well, "materiality" is
18 the amount of dollars. You know, if you're within
19 \$1000 of breaking even, you know, if the customer is
20 only giving you a grand more than your expenses are.
21 But if they're giving you 50 grand more than your
22 expenses are, that gets to be material.

23 WITNESS PARMELEE: Yes, I believe that number
24 you want can be computed accurately, but I do believe
25 that you have to take this consumption thing into

1 account.

2 COMMISSIONER GUNTER: Total billings, for
3 total revenue and total expenses, you've got them.
4 That shows your increase.

5 WITNESS PARMELEE: Yes, sir.

6 COMMISSIONER GUNTER: I'm very sensitive to
7 that.

8 COMMISSIONER DEASON: Mr. Parmelee, I have a
9 question. One of your underlying themes in your
10 testimony and your cross examination is the fact that
11 any such analysis as we have in Exhibit 9 needs to
12 reflect kilowatt hour usage, is that correct? You feel
13 it is important that such an analysis would somehow
14 reflect kilowatt hour usage?

15 WITNESS PARMELEE: Yes, I said that, or
16 increase in kilowatt hour usage.

17 COMMISSIONER DEASON: Okay. Well, look at
18 Column F and explain to me how that does not capture
19 the kilowatt hour usage or increase in kilowatt hour
20 usage, if that is the case?

21 WITNESS PARMELEE: It's showing the -- it
22 does show the increase in kilowatt hour usage. But as
23 we stated, if the change in total rate Column G goes to
24 zero, I think this is the easiest way to put it, then
25 the impact on the amount billed over here would be

1 zero. And yet, obviously, the total cost has gone up.

2 The reason this is confusing is because there
3 are rates per kilowatt hour being used here in Column G
4 which have been calculated using Column F and,
5 therefore, you're dealing with a rate issue that in a
6 sense assumes that Mr. Geller or Geller Management
7 Company is adjusting its fees as these kilowatt hours
8 increase.

9 If they were adjusting the fees as the
10 kilowatt hours increased, then this would be incorrect
11 or it would give a more accurate picture. But the fact
12 is the fees do not increase. This total figure does
13 represent the total amount of electricity billed, I
14 believe, or it's a fairly accurate representation of
15 that figure. It's the Column H in terms of the impact
16 that I have a problem with, because that impact does
17 not recognize that increased kilowatt hour usage, not
18 just as a rate increase -- regardless of a rate
19 increase -- increased kilowatt hour usage is an expense
20 to Geller Management.

21 COMMISSIONER DEASON: Doesn't that fall back
22 into the very basic premise in the contract that it is
23 nonusage sensitive? It is a flat fee that is escalated
24 for some escalation factor?

25 WITNESS PARMELEE: Exactly.

1 COMMISSIONER DEASON: And that goes back to
2 one of your underlying premises that this is not resale
3 of electricity?

4 WITNESS PARMELEE: Exactly. Because I don't
5 think that it's substantially different from many other
6 businesses in the state that pass along their
7 electricity costs buried in some sort of fee or charge.

8 COMMISSIONER DEASON: Okay. A few minutes
9 ago we had an example which was fairly extreme. I'm
10 going to give you another example which is pretty
11 far-fetched, but I'm going to ask your opinion about
12 it.

13 Let's assume that the contract had a
14 provision in it which escalated the maintenance fee by
15 the cost of fertilizer. Would you, if that were the
16 case, if the price of fertilizer increased by 5% and
17 there were a \$15 increase in the maintenance charge,
18 would you consider that a resale of fertilizer?

19 WITNESS PARMELEE: No, sir. A service is
20 being rendered, which is fertilizing the yard which
21 requires fertilizer. But you're not reselling the
22 fertilizer.

23 I also would like to point out that in the
24 same sense much of this electricity that is being used
25 by the management company to provide these services is

1 control of the management company, unlike occupancy
2 units where the appliances that actually use the
3 electricity is owned or controlled, at least, by the
4 individuals in the occupancy unit.

5 In this case, Mr. Geller and his management
6 people control, for example, the recreational area.
7 It's their facilities. And, for example, if -- there's
8 a conservation ethic really built into this as compared
9 to passing the cost through. If the management company
10 were passing the costs through dollar-for-dollar, there
11 would be no incentive on the part of the management
12 company to conserve any electricity in those facilities
13 because they're going to get the money back from the
14 tenants. But under an arrangement where it's buried in
15 a flat fee, such as an apartment building, that the
16 management company just like an apartment owner will
17 want to install efficient light bulbs, efficient
18 facilities because basically it's their money and
19 they're the ones that have control over it.

20 COMMISSIONER DEASON: So would it be fair to
21 say your bottom line position is that the management
22 company is in the business of providing services to the
23 condominium owners and that electricity is a cost of
24 providing those services but the electricity itself is
25 not the service that's being provided?

1 not the service that's being provided?

2 WITNESS PARMELEE: Yes, sir.

3 COMMISSIONER DEASON: Okay. Thank you.

4 COMMISSIONER GUNTER: All right. Thank you,
5 sir.

6 MR. PALECKI: The Staff would move Exhibit 9
7 be entered.

8 COMMISSIONER GUNTER: All right. Without
9 objection so ordered.

10 (Exhibit No. 9 received in evidence.)

11 MR. BOYD: I move Mr. Parmelee's Exhibit 12.

12 COMMISSIONER GUNTER: Isn't that a
13 late-filed?

14 MR. PRUITT: 13 is late-filed.

15 COMMISSIONER GUNTER: 12 is moved without
16 objection.

17 (Exhibit No. 12 received in evidence.)

18 COMMISSIONER GUNTER: Okay. Housekeeping
19 transcripts due on the 3rd of May. That's on the CASR.

20 THE REPORTER: Yes, sir. I don't know, but
21 that's fine.

22 COMMISSIONER GUNTER: Okay. The beliefs will
23 be due on the 24th of May, which is three weeks after
24 that.

25 COMMISSIONER DEASON: I would like to make a

1 request. Probably the parties would be doing this
2 anyway, but I would like to specifically request that
3 in the briefs that the legal question as to whether
4 this particular situation -- whether, let me reverse
5 that as to whether our Rule applies to this particular
6 situation is in this case legally correct? I think
7 that's a very pertinent legal question is the situation
8 of our Rule; and if it does apply in this factual
9 situation? Is that something you plan to include in
10 your briefs?

11 MR. LAMONT: Commissioner Deason, I think
12 that shows up about five or six times in the issues.

13 COMMISSIONER DEASON: Okay. Very well.

14 MR. BOYD: Yes, sir, and several other legal
15 issues that we really haven't talked about.

16 COMMISSIONER GUNTER: Thank you very much,
17 enjoyed being with you.

18 (Hearing concluded at 3:06 p.m.)
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25

1 F L O R I D A)

2 : CERTIFICATE OF REPORTER
3 COUNTY OF LEON)

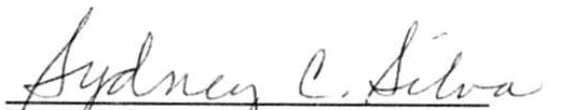
4 I, SYDNEY C. SILVA, CSR, RPR, Official
5 Commission Reporter,

6 DO HEREBY CERTIFY that the hearing in the
7 captioned matter, Docket No. 910056-PU, was heard by the
8 Florida Public Service Commission at the time and place
9 herein stated; it is further

10 CERTIFIED that I reported in shorthand the
11 proceedings held at such time and place; that the same
12 has been transcribed under my direct supervision, and
13 that this transcript, consisting of 273 pages, Volumes I
14 through II, inclusive, constitutes a true and accurate
15 transcription of my notes of said proceedings; it is further

16 CERTIFIED that I am neither of counsel nor
17 related to the parties in said cause and have no interest,
18 financial or otherwise, in the outcome of this docket.

19 IN WITNESS WHEREOF, I have hereunto set my hand
20 at Tallahassee, Leon County, Florida, this 1st day of May,
21 A.D., 1991.

22 
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