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

DOCKET NO. 910056-PU

PREHEARING STATEMENT OF JOHN FALK

CONSUMER JOHN FALK, by and through his undersigned legal counsel, hereby files this his Prehearing Statement pursuant to Rule 25-22.038 (3), Florida Administrative Code, and states:

(a) KNOWN WITNESSES AND SUBJECT MATTER OF TESTIMONY:

The witnesses that may be called on behalf of John Falk and the subject matter of their testimony are as follows:

1. John Falk, who will testify concerning all matters of the pending Complaint, including but not limited to his audit of electric and gas bills for the Jefferson Building of the Terrace Park of Five Towns condominium community.

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2. Roy Brummer, who will testify concerning all matters of the pending Complaint, including but not limited to the audit of the electric and gas bills for the Jefferson Building of the Terrace Park of Five Towns condominium community.

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3. Samuel Nixon, who will testify concerning the proper method of determining the increases in rates per kilowatt hour charged by Florida Power.

(b) KNOWN EXHIBITS:

All exhibits upon which John Falk will rely have been appended to his Complaint.

(c) STATEMENT OF BASIC POSITION:

The basic position of John Falk in this proceeding is that H. Geller Management Company has unlawfully collected more for electricity and gas from the residents of the Jefferson Building of the Terrace Park of Five Towns condominium community than it has paid.

(d) STATEMENT OF QUESTIONS OF FACT AND RELEVANT WITNESSES:

The fundamental questions of fact believed by John Falk to be at issue, and the witnesses who will address such questions, are as follows:

1. Whether H. Geller Management Company has collected more from the residents of the Jefferson Building of Terrace Park of Five Towns condominium community for electricity than it has paid Florida Power; John Falk, Roy Brummer, and/or Samuel Nixon will address this issue.

2. Whether H. Geller Management Company has collected more from the residents of the Jefferson Building of Terrace Park of Five Towns condominium community for gas than it has paid Peoples Gas; John Falk and/or Roy Brummer will address this issue.

(e) STATEMENT OF QUESTION OF LAW

The questions of law expected by John Falk to be at issue in these proceedings are as follows:

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

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

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

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

(f) STATEMENT OF POLICY QUESTIONS

John Falk does not expect there to be any policy questions to at issue in these proceedings.

(g) STATEMENT OF JOHN FALK'S POSITION ON ISSUES IDENTIFIED BY HIM

As to the factual issues identified by John Falk, it is his position that H. Geller Management Company has collected more for electricity and gas than it has been charged by the respective utility.

As to the legal issues identified by John Falk, it is his position that H. Geller Management Company is subject to the jurisdiction of the State of Florida Public Service Commission;

that the disputes between John Falk and H. Geller Management Company can constitutionally be addressed by the State of Florida Public Service Commission; and that, under applicable Florida law, H. Geller Management Company has unlawfully collected more for electricity and gas than it has been charged by the providing utility.

The witnesses for all issues will be John Falk, Roy Brummer, and/or Samuel Nixon.

(g) STATEMENT OF JOHN FALK'S POSITION  
REGARDING ISSUES IDENTIFIED BY H. GELLER MANAGEMENT COMPANY

As to the issues identified by H. Geller Management Company, John Falk's position is as follows:

1. John Falk asserts and maintains that the practices of H. Geller Management Company pursuant to its maintenance contract with the Jefferson Building result in the receipt by H. Geller Management Company of payment for electricity by the owners of units therein.

2. John Falk asserts and maintains that the provisions of Rule 25-6.049 (6), Florida Administrative Code, do apply to the practices of H. Geller Management Company pursuant to its maintenance contract with the Jefferson Building.

3. John Falk asserts and maintains that the application of Rule 25-6.049 (6), Florida Administrative Code, to the maintenance contract between the Jefferson Building and H. Geller Management Company in no way constitutes an unconstitutional impairment of contract rights, nor in any other manner or way infringes upon constitutional rights.



4. John Falk asserts and maintains that the principle set forth in Rule 25-6.049 (6), Florida Administrative Code, is applicable to the practices of H. Geller Management Company retroactively to the point of beginning of violations.

5. John Falk asserts and maintains that it is factually and reasonably possible to determine and conclude that the residents of the Jefferson Building have reimbursed H. Geller Management Company for more than its actual cost of electricity.

6. John Falk asserts and maintains that H. Geller Management Company's practices do result in the payment by the Jefferson Building for gas.

7. John Falk asserts and maintains that Rule 25-7.071 (3) applies to the practices of H. Geller Management Company.

8. John Falk asserts and maintains that the application of Rule 25-7.071 (3), Florida Administrative Code, to the maintenance contract between the Jefferson Building and H. Geller Management Company in no way constitutes an unconstitutional impairment of contract rights, nor in any other manner or way infringes upon constitutional rights.

9. John Falk asserts and maintains that the principle set forth in Rule 25-7.071 (3), Florida Administrative Code, is applicable to the practices of H. Geller Management Company retroactively to the point of beginning of violations.

10. John Falk asserts and maintains that it is factually and reasonably possible to determine and conclude that the residents of the Jefferson Building have reimbursed H. Geller

Management Company for more than its actual cost of electricity.

11. John Falk asserts and maintains that Rule 25-7.071 (3) does require that fees and charges collected by a customer of record for gas billed to the customer's account be determined in a manner which reimburses the customer of record for no more than the actual cost of gas.

12. John Falk asserts and maintains that Rule 25-6.049 (6) does apply to use of electricity in areas other than occupancy units in condominiums.

13. John Falk asserts that H. Geller Management Company does collect fees or charges for electricity billed to H. Geller Management Company by Florida Power, and that the amounts are set forth in John Falk's Complaint before the Public Service Commission.

(i) STATEMENT OF ISSUES AGREED TO BY STIPULATION

No issues of fact, law, or policy have been stipulated to by the parties.

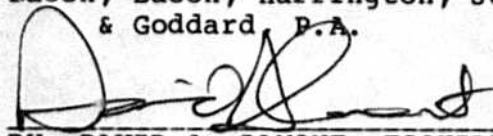
(j) STATEMENT OF ALL PENDING MOTIONS OR OTHER MATTERS

To the best of John Falk's knowledge, there are no pending motions or other matters which require resolution before commencement of these proceedings.

(k) STATEMENT AS TO ORDERS THAT CANNOT BE COMPLIED WITH

To the best of John Falk's knowledge, there are no matters set forth in the Order On Prehearing Procedure with which compliance cannot be achieved.

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



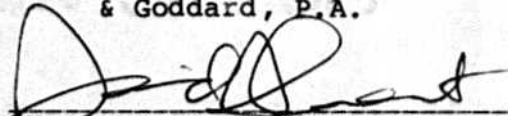
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CERTIFICATE OF SERVICE

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

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



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