

BEFORE THE
STATE OF FLORIDA
PUBLIC SERVICE COMMISSION

ORIGINAL
FILE COPY

Docket No. 91-0056-PU

IN RE:

Complaint of Consumer John Falk)
regarding resale of electricity and)
gas by H. Geller Management Company)
_____)

PREHEARING STATEMENT OF
H. GELLER MANAGEMENT CORPORATION

H. Geller Management Corporation, ("Geller Management"),
by and through its undersigned attorneys and pursuant to the
Commission's Order On Prehearing Procedure (Order No. 24195) issued
on March 5, 1991, files its Prehearing Statement, and states:

A. The witnesses to be called by Geller Management and the
subject matter of their testimony are as follows:

1. Herm Geller. The history and operations of the
Terrace Park - Five Towns project, the purpose,
intent and effects of the Jefferson Building
management contract provisions, the maintenance fee
paid by Jefferson Building residents, the facilities
and service provided by Geller Management under the
management contract, the role of Herm Geller
Enterprises, Inc., the developer of the project, and
the application of Commission Rules 25-6.049 and 25-

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FPSC-BUREAU OF RECORDS

ERVIN, VARN, JACOBS, ODOM & ERVIN TALLAHASSEE, FLORIDA

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FPSC-RECORDS/REPORTING

7.071(3).

2. Susan Tucker. The effects and implementation of the Jefferson Building management contract, the costs incurred by Geller Management for gas and electricity used in the Terrace Park - Five Towns project, the maintenance fees paid by Jefferson Building residents and increases in those fees, the effects of gas and electric rate increases for the Terrace Park - Five Towns project and the units sold in the Terrace Park - Five Towns project.
3. Carl Parker. The requirements and purposes of certain provisions of the Florida Condominium Law, Chapter 718 Florida Statutes, and its application to the Terrace Park - Five Towns project, communications with the Division of Florida Land Sales and Condominiums regarding requirements for the prospectuses for the Terrace Park - Five Towns condominiums, and the purpose, intent and effect of the Jefferson Building management contract provisions relating to maintenance fees paid by residents.
4. Charles Parmelee. The proper application of Commission Rules 25-6.049 and 25-7.071(3), the maintenance fees paid by Jefferson Building residents and the costs of Geller Management for

electricity in providing services under its management contract.

B. The exhibits to be offered into evidence by Geller Management are:

1. H.G. - 1. Jefferson Building Management Contract, October 1, 1973, Service and Maintenance Agreement between H. Geller Management Corp. and Terrace Park - Five Towns, No. 15, Inc. Sponsored by Herm Geller.
2. H.G. - 2. Estimated budgets of five other Terrace Park - Five Towns buildings Composite Exhibit. Estimated budgets from prospectus of Quincy, Radcliff, Syracuse, Tiffany and University buildings. Sponsored by Herm Geller.
3. S.T. - 1. Effects of Electric Rate Increases if implemented in 1989 or 1990. 1989 and 1990 electric cost data for Terrace Park - Five Towns project and projections of electric rate increases of 5% to 9 3/4% and increases in resident maintenance fees. Sponsored by Susan Tucker.
4. S.T. - 2. Effects of Gas Rate Increases if Implemented in 1987, 1988, 1989 or 1990. 1987 through 1990 gas cost data for Terrace Park - Five Towns project and projections of gas rate increases of 5% and increases in resident maintenance fees. Sponsored by Susan Tucker.

5. S.T. - 3. H. Geller Management Electric Expenses. Monthly and annual electric cost data for Terrace Park - Five Towns project for 1982 through 1990, number of units sold in the project on a monthly basis. Sponsored by Susan Tucker.
6. S.T. - 4. Jefferson Building Meter Electric Costs October 1988 through December 1990. Monthly electricity cost data for electric meter located in Jefferson Building for October 1988 through December 1990. Sponsored by Susan Tucker.
7. S.T. - 5. Project Electric Costs. Monthly electricity cost data for all meters in Terrace Park - Five Towns project other than meters located in individual condominium buildings for October 1988 through December 1990. Sponsored by Susan Tucker.
8. C.P. - 1. Charles Parmelee Vita. Vita or resume of Charles Parmelee. Sponsored by Charles Parmelee.

C. The basic position of Geller Management is that the Commission Rules relating to metering of gas and electricity and allocation of electric and gas cost by sub-metering or other methods (Rules 25-6.049(5) and (6) and 25-7.071(2) and (3) do not apply to the Jefferson Building management contract of Geller Management. If applied to any degree to the Geller Management contract for the Jefferson Building, the operation of the Jefferson Building management contract does not violate the provisions of

either of the two Commission Rules. The Jefferson Building residents do not pay a fee or charge for electricity or gas; they pay a single flat maintenance fee -- not tied in any way to consumption of electricity or gas by individual residents or the Jefferson Building -- a fee fixed by contract. The only part of the maintenance fee in any way related to electricity costs incurred by Geller Management, which is not separately stated or billed, are the amounts by which the maintenance fee has been increased under Article VI(d) of the management contract. It is totally unfair and improper to apply to the Jefferson Building management contract, a 14 year contract entered into in 1979, provisions of Commissions rules that were adopted in 1988 and 1986. For all of the reasons stated above the Commission does not have jurisdiction over the operation of the Jefferson Building management contract or over the claims by John Falk that prior calculations of maintenance fees were incorrect or other alleged violations of its contract may have occurred in 1982 and 1983.

D. The questions of fact at issue in the docket are as follows:

1. In what ways, if any, do the practices of H. Geller Management Corporation ("HGMC") pursuant to its September 1, 1979 management contract with the condominium association Terrace Park of Five Tow. No. 15, Inc. involve the use of or receipt of benefit from, and payment to HGMC for electricity by owners of condominium units in the Jefferson Building, for which electricity HGMC is the customer of record with Florida Power Corporation? All witnesses.
2. If Commission Rule 25-6.049(6) is applicable in any way to the practices of HGMC pursuant to its

September 1, 1979 management contract with the condominium association Terrace Park of Five Towns, No. 15, Inc., can it be reasonably determined whether Jefferson Building residents have reimbursed HGMC more than its actual cost of electricity for the electricity actually utilized by the Jefferson Building residents? All witnesses.

- a. If so, has HGMC been reimbursed by Jefferson Building residents more than its actual cost of electricity for the electricity actually utilized by Jefferson Building residents; if so, by how much? All witnesses.
3. Does H. Geller Management Corporation collect fees or charges for electricity billed to its account by Florida Power Corporation? If so, what specific fees and charges and in what amount have been collected? All witnesses.
4. In what ways, if any, do the practices of H. Geller Management Corporation ("HGMC") pursuant to its September 1, 1979 management contract with the condominium association Terrace Park of Five Towns, No. 15, Inc. involve the use of or receipt of benefit from, and payment to HGMC for gas by owners of condominium units in the Jefferson Building, for which gas HGMC is the customer of record with Peoples Gas Company? All witnesses.

E. The questions of law at issue in the docket are as follows:

5. Do the provisions of Commission Rule 25-6.049 (5) and (6) apply to the practices of HGMC pursuant to its September 1, 1979 management contract with the condominium association Terrace Park of Five Towns, No. 15, Inc.?
6. Is the application of Commission Rule 25-6.049(6) to the practices of HGMC pursuant to its September 1, 1979 management contract with the condominium association, Terrace Park of Five Towns, an unconstitutional impairment of the contract rights of HGMC or the association in violation of Article I, Section 10 of the Florida Constitution and Article I, Section 10 of the United States Constitution?

7. If Commission Rule 25-6.049(6) is applicable in any way to the practices of HGMC pursuant to its September 1, 1979 management contract with the condominium association, Terrace Park of Five Towns, No. 15, Inc., from what date should the rule be applied?
8. If Commission Rule 25-6.049(6) is applicable in any way to the practices of HGMC pursuant to its September 1, 1979 management contract with condominium association Terrace Park of Five Towns, No. 15, Inc., can it be reasonably determined whether Jefferson Building residents have reimbursed HGMC more than its actual cost of electricity for the electricity actually utilized by the Jefferson Building residents?
9. Do the provisions of Commission Rule 25-7.071(2) and (3) apply to the practices of HGMC pursuant to its September 1, 1979 management contract with the condominium association, Terrace Park of Five Towns, No. 15, Inc.?
10. Is the application of Commission Rule 25-7.071(3) to the practices of HGMC pursuant to its September 1, 1979 management contract with the condominium association, Terrace Park of Five Towns to prohibit or alter the practices of the parties under that contract, an unconstitutional impairment of the contract rights of HGMC or the association in violation of Article I, Section 10 of the Florida Constitution and Article I, Section 10 of the United States Constitution?
11. If Commission Rule 25-7.071(3) is applicable in any way to the practices of HGMC pursuant to its September 1, 1979 management contract with the condominium association, Terrace Park of Five Towns, No. 15, Inc., from what date should the rule be applied?
12. If Commission Rule 25-7.071(3) is applicable in any way to the practices of HGMC pursuant to its September 1, 1979 management contract with condominium association Terrace Park of Five Towns, No. 15, Inc., can it be reasonably determined whether the Jefferson Building residents have reimbursed HGMC more than its actual cost of gas for the gas utilized by Jefferson Building residents?
13. Commission Rule 25-7.01(3) does not contain a

provision similar to Rule 25-6.049(6)(b). Does Rule 25-7.01(3) require that fees and charges collected by a customer of record for gas billed to the customer's account by the utility be determined in a manner which reimburses the customer of record for no more than the customer's actual cost of gas?

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

F. The questions of policy at issue in the docket are as follows:

15. Do the provisions of Commission Rule 25-6.049(6) apply to the practices of HGMC pursuant to its September 1, 1979 management contract with the condominium association Terrace Park of Five Towns, No. 15, Inc.? All witnesses.
16. If Commission Rule 25-6.049(6) is applicable in any way to the practices of HGMC pursuant to its September 1, 1979 management contract with the condominium association, Terrace Park of Five Towns, No. 15, Inc., from what date should the rule be applied? All witnesses.
17. If Commission Rule 25-6.049(6) is applicable in any way to the practices of HGMC pursuant to its September 1, 1979 management contract with condominium association Terrace Park of Five Towns, No. 15, Inc., can it be reasonably determined whether Jefferson Building residents have reimbursed HGMC more than its actual cost of electricity for the electricity actually utilized by the Jefferson Building residents? All witnesses.
18. Do the provisions of Commission Rule 25-7.071(3) apply to the practices of HGMC pursuant to its September 1, 1979 management contract with the condominium association, Terrace Park of Five Towns, No. 15, Inc.? All witnesses.
19. If Commission Rule 25-7.071(3) is applicable in any way to the practices of HGMC pursuant to its

September 1, 1979 management contract with the condominium association, Terrace Park of Five Towns, No. 15, Inc., from what date should the rule be applied? All witnesses.

20. If Commission Rule 25-7.071(3) is applicable in any way to the practices of HGMC pursuant to its September 1, 1979 management contract with condominium association Terrace Park of Five Towns, No. 15, Inc., can it be reasonably determined whether the Jefferson Building residents have reimbursed HGMC more than its actual cost of gas for the gas utilized by Jefferson Building residents? All witnesses.
21. Commission Rule 25-7.01(3) does not contain a provision similar to Rule 25-6.049(6)(b). Does Rule 25-7.01(3) require that fees and charges collected by a customer of record for gas billed to the customer's account by the utility be determined in a manner which reimburses the customer of record for no more than the customer's actual cost of gas? All witnesses.
22. Does Commission Rule 25-6.049(6) apply to use of electricity in areas other than occupancy units in commercial establishments, residential buildings, shopping centers, malls, apartment condominiums and other similar locations? All witnesses.

G. The position of H. Geller Management Corporation on the issues identified above is as follows:

Questions of Fact

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

The practices of H. Geller Management Corporation under its management contract with the Jefferson Building

September 1, 1979 management contract with the condominium association, Terrace Park of Five Towns, No. 15, Inc., from what date should the rule be applied? All witnesses.

20. If Commission Rule 25-7.071(3) is applicable in any way to the practices of HGMC pursuant to its September 1, 1979 management contract with condominium association Terrace Park of Five Towns, No. 15, Inc., can it be reasonably determined whether the Jefferson Building residents have reimbursed HGMC more than its actual cost of gas for the gas utilized by Jefferson Building residents? All witnesses.
21. Commission Rule 25-7.01(3) does not contain a provision similar to Rule 25-6.049(6)(b). Does Rule 25-7.01(3) require that fees and charges collected by a customer of record for gas billed to the customer's account by the utility be determined in a manner which reimburses the customer of record for no more than the customer's actual cost of gas? All witnesses.
22. Does Commission Rule 25-6.049(6) apply to use of electricity in areas other than occupancy units in commercial establishments, residential buildings, shopping centers, malls, apartment condominiums and other similar locations? All witnesses.

G. The position of H. Geller Management Corporation on the issues identified above is as follows:

Questions of Fact

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

The practices of H. Geller Management Corporation under its management contract with the Jefferson Building

condominium association do not involve the use of or benefit from, or payment to H. Geller Management Corporation for electricity for which H. Geller Management Corporation is customer of record with Florida Power Corp. Simply stated, H. Geller Management Corporation does not charge and residents do not pay for electricity. Each Jefferson Building residents pays his own bill for the electric meter for his own individual condominium unit. The residents pay a single, fixed rate maintenance each month for all of the services and facilities provided by H. Geller Management Corporation under its management contract.

There is no separate charge for electricity, gas, insurance, swimming pools, or any other individual cost or expense incurred by H. Geller Management Corporation in providing all of the facilities and services within the project. Electricity is but one of the costs associated with providing all of the services and facilities to Jefferson Building residents. The maintenance fee is not dependent in any way on the amount of consumption of electricity by a single resident or all of the residents, just as it is not dependent on the amount of use any of the other services and facilities.

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

No. H. Geller Management Corporation incurs a multitude of costs in providing all of the services and facilities called for under the management contract to Jefferson Building residents, and all Terrace Park - Five Towns residents. Those costs are not tied to or can they be allocated to any given building within the project. All of the buildings have "house" meters, meters that record the electricity used for hall lights, elevators and exterior lights in the buildings, but at least five buildings have other facilities tied into those meters.

All of the common areas, facilities and services are available to and used by residents from all buildings throughout the project, so there is no way to determine

what portion of the cost of electricity is used by or should be allocated to Jefferson Building residents. Similarly, as stated above the residents do not pay a separate charge for electricity. They pay a single flat monthly maintenance that covers all services and facilities available under the management contract.

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

No. Again, there is really no way to determine the amount paid by Jefferson Building residents "for electricity" or the amount of electricity cost incurred by H. Geller Management Corporation in providing services and facilities to Jefferson Building residents. The only part of the maintenance fee paid by Jefferson Building residents that is related in any way to electricity is the \$3.13 average per month by which the maintenance fee was increased pursuant to Article VI(d) of the contract. H. Geller Management Corporation's electric costs, under any method of allocation to Jefferson Building residents, greatly exceed the \$3.13 amount.

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

No. As stated above, H. Geller Management Corporation does not collect fees and charges for electricity. The only part of the maintenance fee paid by Jefferson Building residents that is in any way related to H. Geller Management Corporation's electricity cost is the \$3.13 average per month by which this fee has been increased pursuant to Article VI(d) of the contract. That amount is fixed and not related in any way to consumption of electricity or by Jefferson Building residents or by all residents collectively.

4. In what ways, if any, do the practices of H. Geller Management Corporation ("HGMC") pursuant to its

September 1, 1979 management contract with the condominium association Terrace Park of Five Towns, No. 15, Inc. involve the use of or receipt of benefit from, and payment to HGMC for gas by owners of condominium units in the Jefferson Building, for which gas HGMC is the customer of record with Peoples Gas Company? All witnesses

Just as stated above for electricity, H. Geller Management Corporation's collection of maintenance fees under the management contract does not constitute payment by residents for gas used by or benefitting the residents. Residents pay a single maintenance fee for all of their services and facilities, including gas. The individual condominium units do not have separate meters for gas; Commission Rule 25-7.071(2) requires separate meters for buildings constructed after January 1987. The Jefferson Building was built in 1979. See further explanation in issue 1 above.

Questions of Law

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

No. (a) Rule 25-6.049(5) addresses individual metering of separate occupancy units. Because the Jefferson Building was constructed prior to the January 1, 1981, cut-off date, the rule doesn't apply -- even though the condominium units are separately metered. (b) The entire regulatory scheme of Rule 25-6.049(5) and (6) is directed to occupancy units. Because of the separate metering, the circumstances involved in this case involve only the project wide electricity used by H. Geller Management Corporation in providing all of the services and facilities called for in the management agreement. (c) If in any way applicable to the Jefferson Building setting, Rule 25-6.0549(6)(b) adopted in 1988 can not be nine years later applied to the management contract in place since 1979. (d) If at all applicable, which H. Geller Management Corporation denies, the rule can only be applied from October 1988 forward.

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

Yes. The Jefferson Building management contract was entered into in good faith in 1979, in full compliance with Commission Rules. Indeed, although not required individual condominium units were given separate meters. The contract was in effect for nine years when Rule 25-6.049(6)(b) was adopted by the Commission to require that "fees and charges collected by a customer of record for electricity ... shall not reimburse[s] the customer of record for ... more than the customer's actual cost of electricity." Any attempt to now apply that provision to go back to 1980, 1981 or any prior year and conclude (as suggested by Mr. Falk) that collection of the maintenance fee somehow violated the non-existent rule is patently improper, unfair and in violation of the Constitutional protections against impairment of contract. There is similarly no fair, proper or legally permissible way to apply the 1988 provision of the rule to the remaining five years of the contract term. Doing so rips apart the basic "single maintenance fee" concept of the contract.

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

As stated above, the Rule may not be applied to the existing management contract. If at all applicable, the only remotely possible way to apply the rule would be on a prospective basis from October, 1988 forward.

8. If Commission Rule 25-6.049(6) is applicable to the practices of HGMC pursuant to its September 1, 1979

management contract with condominium association Terrace Park of Five Towns, No. 15, Inc., can it be reasonably determined whether Jefferson Building residents have reimbursed HGMC more than its actual cost of electricity for the electricity actually utilized by the Jefferson Building residents?

No. See discussion to issue 2 under questions of fact above. As a matter of law the Rule is intended to address direct, separately stated fees and charges for electricity costs being allocated to residents, or tenants. The plain language of the Rule refers to instances where occupancy units are not separately metered, and the use of "in-project" sub-meters to allocate electric consumption and costs. The circumstances presented by this case -- condominium units and a single maintenance fee that covers all services and facilities used by residents -- is simply not one to which Rule 26-6.049(6) is intended to or should be applied.

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

No. (a) Rule 25-7.01(2)(a) does not require separate metering of occupancy units such as in the Jefferson Building when built prior to 1987. Thus the rule is not applicable at all to the present case. (b) Rule 25-7.01(3)(a) permits the use of sub-metering to allocate gas costs where individual metering of gas is not required. The Rule does not contain any provision that fees and charges collected may not exceed the cost of gas to the customer of record. The Rule has no application and does not prohibit the practices alleged by the complaint filed by Mr. Falk.

10. Is the application of Commission Rule 25-7.071(3) to the practices of HGMC pursuant to its September 1, 1979 management contract with the condominium association, Terrace Park of Five Towns to prohibit or alter the practices of the parties under that contract, an unconstitutional impairment of the

contract rights of HGMC or the association in violation of Article I, Section 10 of the Florida Constitution and Article I, Section 10 of the United States Constitution?

Yes. See discussion for issue 6 above.

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

The Rule does not apply at all.

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

No. Just as with electric costs, there is no reasonable, rational calculation by which to determine the amounts "paid by" Jefferson Building residents for gas or the actual costs of gas used by or somehow allocated to Jefferson Building residents. See discussion in issue 2 above.

13. Commission Rule 25-7.01(3) does not contain provision similar to Rule 25-6.049(6)(b). Does Rule 25-7.01(3) require that fees and charges collected by a customer of record for gas billed to the customer's account by the utility be determined in a manner which reimburses the customer of record for no more than the customer's actual cost of gas?

No. On its face Rule 25-7.01(3) does not contain the limitation of fees and costs collected for actual gas costs. There is no way to read the Rule to contain the same requirements as the electric Rule 25-6.049(6)(b).

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

No. The entire focus of Rule 25-6.049(6) is occupancy units. The purpose of the rule is to encourage -- mandate -- the use of individual meters for occupancy units -- condominium units, apartments, stores and shops in shopping centers and malls. The rule is not intended to be thrust into a setting where units are separately metered and a single, composite maintenance fee is paid for all services and facilities used by residents.

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

No. The principal complaint of Mr. Falk is that the calculation of increases to the maintenance fee in 1982 and 1983 under Article VI(d) of the management contract was incorrect. If Mr. Falk is correct, this claim is may state a cause of action for breach of contract that will support a civil action in circuit court. It does not, however, present a claim over which the Commission has jurisdiction. The Supreme Court in Florida Public Service Commission v. Bryson, 569 So.2d 1253 (Fla. 1990) held that the Commission has jurisdiction to determine if its rules and regulations have been violated. The ruling does not create jurisdiction over the breach of contract claim raised by Mr. Falk.

Questions of Policy

16. Do the provisions of Commission Rule 25-6.049(6)

apply to the practices of HGMC pursuant to its September 1, 1979 management contract with the condominium association Terrace Park of Five Towns, No. 15, Inc.? All witnesses.

No. See discussion in issues 5 and 14 above. In addition, as a matter of policy Rule 25-6.049(6) is not intended to apply and should not be applied to circumstances like the present case. The condominium units are separately metered. The question is whether the Commission is going to somehow examine every similar residential or commercial setting to determine whether -- using some method of allocation -- a manager or owner/landlord is collecting more fees or rent "for electricity" than his actual cost. The residents here pay a single flat maintenance fee; there is no separate fee or cost for electricity. This rule does compel nor should it be distorted as a basis to investigate every apartment, shopping center, mall or other lease arrangement in Florida to determine if the electric costs are less than the amounts "charged for electricity."

This policy holds even where the contractual arrangement permits increases in the maintenance fee related to increases in electric rates, an increase in fee of \$3.13 in a twelve year period.

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

See discussion in issue 7 above.

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

See discussion in issue 2 above.

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

See discussion in issue 9 above.

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

See discussion in issue 11 above.

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

See discussion in issue 12 above.

22. Commission Rule 25-7.01(3) does not contain a provision similar to Rule 25-6.049(6)(b). Does Rule 25-7.01(3) require that fees and charges collected by a customer of record for gas billed to the

customer's account by the utility be determined in a manner which reimburses the customer of record for no more than the customer's actual cost of gas? All witnesses.

See discussion in issue 13 above.

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

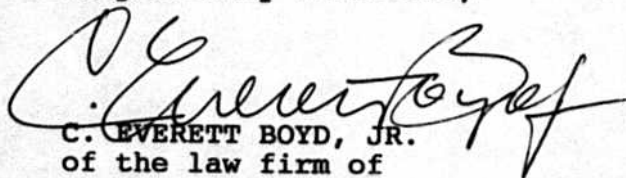
See discussion in issue 14 above.

H. There has been no stipulation as to the issues identified in the docket.

I. There are no pending motions.

J. Geller Management is aware of no requirements of the order on prehearing procedure that cannot be complied with.

Respectfully submitted,

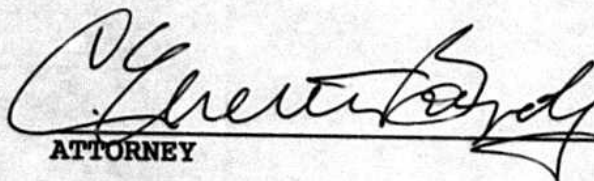


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ATTORNEYS FOR
H. GELLER MANAGEMENT CORPORATION

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Prehearing Statement of H. Geller Corporation was furnished to Mike Palecki, Esquire, Public Service Commission, The Fletcher Building, 101 East Gaines Street, Tallahassee, Florida 32309-0850 by hand delivery and David Lamont, Esquire, Post Office Box 13576, St. Petersburg, Florida 33733-3576, by United States mail this 5th day of April, 1991.


ATTORNEY

Preheari.pld