

BEFORE THE
STATE OF FLORIDA
PUBLIC SERVICE COMMISSION

Docket No. 91-0056-PU

IN RE:

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

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**RESPONSE OF H. GELLER MANAGEMENT CORPORATION
TO JOHN FALK'S MOTION FOR RECONSIDERATION**

H. Geller Management Corporation, ("Geller Management"), by and through its undersigned counsel and pursuant to Rule 25-22.060(1) and (3), F.A.C., submits its response in opposition to the motion for reconsideration filed by John Falk ("Falk"), and in support thereof states:

1. A motion for reconsideration is intended to bring to the attention of the Commission some point which it overlooked or failed to consider when rendering its order; it is not properly a procedure to reargue the case because the losing party disagrees with the order. Diamond Cab Company of Miami v. King, 146 So.2d 889, 891 (Fla. 1962); State ex. rel. Jaytex Realty Company v. Greene, 105 So.2d 817, 818-819 (Fla. 1st DCA 1958), cert. disch., 112 So.2d 571. Falk's motion for reconsideration does nothing more than address the same points, and advances the same arguments, as

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in his brief and arguments throughout this proceeding. The motion is improperly filed and should be denied.

2. In paragraph 3.1 of his motion, Falk reargues the conclusion reached by the Commission that Geller Management, acting under its management contract, is not an electric utility subject to the Commission's regulatory jurisdiction. The Commission correctly observed that the Supreme Court of Florida in Florida Public Service Commission v. Bryson, 569 So.2d 1253 (Fla. 1990) held that the Commission had at "least a colorable claim of exclusive jurisdiction" to consider Falk's complaint. The Commission afforded Mr. Falk every opportunity to pursue his complaint and conducted a day long evidentiary hearing. The Commission has now very clearly found that Geller Management's activities under its management contract with the condominium associations of the Terrace Park - Five Towns project do not constitute the acts of a public utility under Chapter 366, Florida Statutes or the Commission's rules. The Commission did not overlook or disregard any argument or point; it correctly concluded that Geller Management is not a public utility. Falk's motion for reconsideration should be denied.

3. Falk's motion (pararaph 3.2) also challenges the Commission's finding that, by its contract, Geller Management provides services and facilities to the residents in return for payment of a monthly maintenance fee, which has indexed increases. The Commission, based upon the extensive record in the case,

correctly found that many of the services and facilities provided by Geller Management "necessarily require the use of electricity - - this is not a sale of electricity to the ultimate consumer." Falk's argument is simply a rehash of his brief and position in the case. The Commission's conclusions are supported by the record in the docket, and the motion for reconsideration should be denied.

4. Falk's third point (paragraph 3.3) challenges the Commission's conclusion that Geller Management has not violated the Commission's rules. Falk simply renews his arguments made throughout the case that Geller Management resold electricity at a profit. The Commission correctly found that not to be the case, and observed that the Commission's rules do "not apply to a maintenance fee paid for common area services and facilities used by residents of a condominium development." (Page 4 of the Order). Falk is really only carrying his resale of electricity argument over from his second point in an attempt to prove a violation of the Commission's rule. The Commission's conclusion is abundantly correct, and should not be reconsidered.

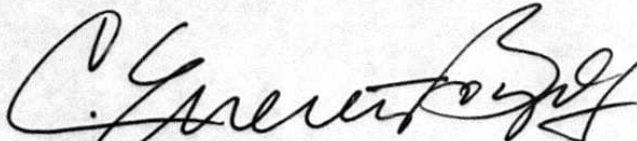
The Commission, perhaps, should clarify that neither Rule 25-6.049(5) or Rule 25-6.049(6) have been violated. Rule 25-6.049(5) requires separate meters in occupancy units, but expressly excepts several categories of occupancy units such as master HVAC systems and hotels, hospitals and nursing homes. Rule 25-6.049(6) then requires that "when individual metering is not required under Subsection (5)(a) ..." the customer of record may not allocate and

collect more than its actual cost. The Commission quite correctly found that "... The rule does not apply to a maintenance fee paid for common area services and facilities used by residents of a condominium development." This is exactly the situation at Terrace Park - Five Towns, and the Commission's rules have not been violated. The Commission should clarify the first paragraph on page 4 of the Order to refer in both instances to Rule 25-6.049(5) and 25-6.049(6). Neither rule has been violated.

CONCLUSION

For all of the above reasons, the motion for reconsideration should be denied. Falk has raised no new issues, points or authorities. The motion simply reargues his position advanced throughout the case. The motion should be denied.

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 response of H. Geller Corporation to John Falk's Motion for Rehearing 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 7TH day of November, 1991.


C. EVERETT BOYD, JR.

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