

VOTE SHEET

DATE: July 30, 1991

RE: DOCKET NO. 910056-PU - Complaint of Consumer John Falk regarding resale of electricity and gas by the H. GELLER MANAGEMENT COMPANY.

Issue 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 Corporation.

Recommendation: Yes. The Geller Company has collected more for electricity than it has paid to Florida Power Corporation.

DEFERRED

COMMISSIONERS ASSIGNED: BR DS

COMMISSIONERS' SIGNATURES

MAJORITY

DISSENTING

REMARKS/DISSENTING COMMENTS:

PSC/RAR33 (5/90)

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PSC-RECORDS/REPORTING

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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 Systems, Inc.

Recommendation: No. Although from year to year there have been differences between the amount collected for gas by Geller and the amount it has paid to Peoples, it has not been shown that these differences have been material over the long term.

Issue 3: 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 or record with Florida Power Corporation?

Recommendation: The H. Geller Management Corporation supplies electricity to all common areas of the Terrace Park of Five Towns condominium complex. Geller is the customer of record with Florida Power Corporation in purchasing this electricity. Geller in turn charges condominium owners more for the electricity than it paid to Florida Power Corp.

Issue 4: If Commission Rule 25-6.049(6), F.A.C. 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? 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?

Recommendation: Rule 25-6.049(6) is applicable and Geller has been reimbursed by unit owners more than the actual cost it paid for electricity. For the period October 1988 to December 1990 Geller has been reimbursed by Terrace Park of Five Towns unit owners \$77,149.25 more than it paid for the electricity.

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Issue 5: 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?

Recommendation: Pursuant to the contract, certain increases in the maintenance fee are specifically to cover electricity cost increases. In this respect Geller collects fees for electricity. The amount Geller has overcharged can be calculated by comparing the total increase in FPC's billings to the total amount of increase Geller has billed unit owners pursuant to Article VI(d) of the contract.

Issue 6: 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?

Recommendation: The contract itself provides that specified increases (including the increases for gas at issue) in the maintenance fee represent increases for public utilities. In this respect unit owners pay Geller for gas.

Legal Issues

Issue 7: Whether H. Geller Management Company is generally subject to the jurisdiction of the State of Florida Public Service Commission.

Recommendation: Yes. In reselling electricity at a profit, Geller is acting as a public utility and is subject to Commission jurisdiction.

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Issue 8: 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.

Recommendation: In reselling electricity Geller is acting as a public utility and is subject to Commission jurisdiction. The Public Service Commission has the authority to reject rates established by pre-existing contracts and the courts have universally rejected claims of contractual interference in the face of the Commission's authority to regulate utility rates.

Issue 9: 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.

Recommendation: Yes. See Issue 4.

Issue 10: 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.

Recommendation: No. Although from year to year there have been differences between the amount collected for gas by Geller and the amount it has paid to Peoples, it has not been shown that these differences have been material over the long term.

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Issue 11: 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.?

Recommendation: Yes. Rule 25-6.049(5) and (6) apply where the customer of record has been reimbursed for more than it actually paid for electricity.

Issue 12: 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?

Recommendation: No. Constitutional claims of contractual interference have been universally rejected by the courts in the face of the Public Service Commission's exercise of its statutory authority to regulate utility rates.

Issue 13: 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?

Recommendation: From October 5, 1988 when the rule became effective.

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Issue 14: 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?

Recommendation: Yes. Rule 25-6.049(6) is applicable and it can be reasonably determined that Geller has been reimbursed by unit owners for more than it actually paid for electricity.

Issue 15: 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.?

Recommendation: Rule 25-7.071(3) does not specifically contain a prohibition against resale of gas at a profit. Since Staff has not found a significant variance between the amount Geller paid and the amount Geller charged unit owners for gas, this issue may be moot.

Issue 16: 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?

Recommendation: No. See discussion for Issue 12 above.

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Issue 17: 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?

Recommendation: Rule 25-7.071(3) does not specifically contain a prohibition against resale of gas at a profit. Since Staff has not found a significant variance between the amount Geller paid and the amount Geller charged unit owners for gas, this issue may be moot.

Issue 18: 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?

Recommendation: Yes. The question of whether unit owners have been overcharged for gas can be reasonably determined.

Issue 19: Commission Rule 25-7.071(3) does not contain a provision similar to Rule 25-6.049(6)(b). Does Rule 25-7.071(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?

Recommendation: Rule 25-7.071(3) does not specifically contain a prohibition against resale of gas at a profit. Since Staff has not found a significant variance between the amount Geller paid and the amount Geller charged unit owners for gas, this issue may be moot.

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Issue 20: 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?

Recommendation: Yes, the rule applies to common areas as well as occupancy units. However, the only issue the Commission need answer in this docket is whether the rule applies to overcharges for electricity used in the common areas of condominiums.

Issue 21: 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?

Recommendation: Generally no; only insofar as the alleged breach of contract may have been a violation of Commission rules, or Florida Statutes regarding utility regulation.