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Energy Tax Solutions, Inc.

1310 Wallwood Drive, Brandon, FL 33510 • Phone (813) 684-5277 Fax (813) 684-5327
ETS@Tampabay.rr.com

RECEIVED-FPSC
09 FEB 13 AM 9:19
COMMISSION CLERK

February 11, 2009

Office of Commission Clerk
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Paradise Lakes, Inc.
TECO Peoples Gas Rate Classification
Complaint #783169G

Dear Sir/Madam:

This formal complaint is being filed on behalf of the Paradise Lakes, Inc. ("Customer") against TECO Peoples Gas ("Company"). Customer's current mailing address is P.O. Box 385, St. Petersburg, Florida 33731. The following is provided in accordance with F.A.C. Rule 25-22.036(b):

1. Rule and Order Violated: Rule 25-7.033 and PSC Order #19365;
2. Actions constituting violation: Customer's gas distribution rate was erroneously misclassified from Commercial GS-2 to Residential by Company in August 2005 resulting in Customer being over billed distribution charges. Company misapplied the Order and their tariffs by failing to properly identify Customer and mistakenly assumed they were a condominium association. Company is refusing to issue Customer a retroactive refund for the difference in rates overcharged in error. Company has no right to keep money that was never rightfully theirs in the first place;
3. Name and address complaint is filed against: TECO Peoples Gas, 702 N. Franklin Street, P.O. Box 2562, Tampa, Florida 33601-2562;
4. Relief requested and penalty sought: Customer is seeking to be made whole by recovering the difference in rates billed in error for the months of August 2005 through October 2007 which equates to over \$18,000. Customer is also seeking interest (as penalty) for the time value of money lost.

COM _____
 ECR _____
 GCL _____
 OPC _____
 RCP _____
 SSC _____
 SGA _____
 ADM _____
 CLK _____

Alfonse

The informal complaint referenced above was originally filed June 15, 2008 in hopes this issue would be resolved amicably. However, Company is not willing to issue a retroactive refund to Customer even though it has been established that Customer's base rate was changed in error. In addition, PSC Staff has stated they don't have authority to require Company to issue retroactive refunds and they have yet to acknowledge that Company did not properly apply Order 19365 and their tariff rate schedules.

Therefore, Customer is requesting the Commission's assistance in requiring Company to issue a retroactive refund for the difference in rates billed in error during the months of August 2005 through October 2007 (i.e., last month account was open). Customer is also requesting interest on their money that was retained by Company during

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Florida Public Service Commission
February 11, 2009

this time (*same rate as interest on deposits*) since Company had no right to this money and has refused to refund it.

The facts in this complaint are essentially identical to those in complaint #781838G filed for a different customer (i.e., Lake Como Resort) and PSC Staff has combined the two cases in their review process. As such, many of the supporting facts and correspondences between PSC Staff and Customer reference both cases.

It is understood the informal complaint "case file" includes all correspondences between Customer, Company, and PSC Staff to date and that this will be forwarded to your department immediately after this formal complaint is received. As such, there is no need to restate the facts here.

Although these documents should also be in the case file, enclosed are copies of specific correspondences submitted to PSC Staff supporting Customer's position. These include:

- 1) Original complaint dated June 15, 2008;
- 2) Rebuttal to Company' response emailed to Shonna McCray on July 31, 2008;
- 3) Emails to Rhonda Hicks August 26 and September 2, 2008;
- 4) Letter to Neal Forsman dated January 16, 2009 summarizing both cases;
- 5) Email January 26, 2009 responding to Kate Smith's letter dated January 20, 2009.

Please take the time to carefully review all the facts and arguments supporting Customer's position in this case and advise if any additional information or documentation is required to process this complaint expeditiously.

All questions and correspondence concerning this matter should be referred to me as the authorized representative of Customer (*see LOA attached*). I can be reached at (813) 684-5277 or cell (813) 625-4264. Copies of written correspondence should be sent to 1310 Wallwood Drive, Brandon, FL 33510, or e-mailed to ets@tampabay.rr.com.

Your prompt attention to this matter will be appreciated.

Respectfully yours,



Brian G. Davidson
Authorized Representative -
Paradise Lakes, Inc.

Cc: J. T. Lettelleir, Paradise Lakes

Letter of Authorization

To: Florida Public Service Commission


Customer Name: Paradise Lakes, Inc.

Address: 2001 Brinson Road, Lutz, FL 33558

To Whom It May Concern:

Please be advised that we have authorized **Brian G. Davidson** of **Energy Tax Solutions, Inc.** to represent us with respect to the issue involving a rate change by **TECO Peoples Gas** to our former natural gas account #09677048. He is to be made aware of and receive copies of all correspondence between the Commission, **TECO Peoples Gas**, and our company with respect to this matter.

Joseph T. D'Arreale
(Print Name)


(Signature)

2/23/08
(Date)

President
(Title)

227-920-6119
(Telephone No.)

**PARADISE LAKES INC.
P.O. BOX 385
St. Petersburg, Fl 33731**

June 15, 2008

Florida Public Service Commission
Consumer Affairs
2540 Shumard Oak Blvd.
Tallahassee, FL 32399

Re: Paradise Lakes, Inc.
TECO Peoples Gas Billing Rate Error
Account #09677048

Dear Sir/Madam:

Paradise Lakes, Inc. is the former owner of the Paradise Lakes Resort, a family nudist resort located in Pasco County Florida. Natural gas flows through a single meter serving five different pools, a restaurant, and water heater at this facility. Although our gas account referenced above was recently closed because of an ownership change, we recently learned that our prior bills from TECO Peoples Gas ("Peoples") were being billed at a higher rate classification than they should have been. *This same rate issue was recently discovered with a neighboring nudist resort (i.e., Lake Como Co-op). In addition, this issue came to our attention when the new owner's account (i.e., Paradise Lakes Resort, LLC – Acct. #16832610) was set up as commercial.*

Specifically, it has been determined that Peoples changed our rate classification from commercial GS-2 to their much higher Residential rate in August 2005. Based on discussions with Peoples' representatives and others, the rate change should only have been made to condominium associations, cooperative apartments, and homeowners associations using gas in their common areas for residential purposes only. However, the Paradise Lakes Resort is none of these. More importantly, the gas use was clearly commercial because of the membership/entrance fees and the gas use in the restaurant. *Again, supporting this point is the fact that the new owner's account has been set up as commercial and gas use is the same as it was previously.*

Unfortunately, Peoples is reluctant to issue retroactive refunds even where it has been established rates were billed in error. Peoples has stated they sent out notices prior to making the change advising customers that their rates were being changed as a result of a Public Service Commission Order. We do not recall ever receiving a notice. Even if we had, however, we would have no reason to question Peoples' authority if the notice advised they were required to make the change as a result of a Public Service Commission Order.

Florida Public Service Commission
June 16, 2008

It makes no difference that the error was just recently discovered or that our account is no longer active. The simple fact is we were over charged certain costs and should be reimbursed accordingly. We didn't cause the problem. We shouldn't be penalized for an error we had no part in creating. More importantly, why should Peoples be permitted to keep money that was never rightfully theirs in the first place? If this were so, what would stop them from intentionally overcharging customers without any consequences of doing so?

Our situation is no different than a customer who has been overcharged contracted goods or services from a vendor. Irrespective of the fact there is a legal and contractual obligation to uphold, the vendor would likely be more than willing to reimburse his customer in applying good business practices and ethical standards. *There is no reason Peoples shouldn't be willing to do the same in our case.*

We are requesting the Commission's help in resolving this matter and ask that you advise Peoples to issue a retroactive refund for the difference in rates billed in error to our company from August 2005 through October 2007 (*date account closed*).

If you have any questions or need any additional information to support our claim, please call me at (727) 420-6119.

Respectfully yours,

Joseph T. Lettelleir, President
Paradise Lakes, Inc.

brian davidson

From: brian davidson [ets@tampabay.rr.com]**Sent:** Thursday, July 31, 2008 10:41 AM**To:** 'contact@psc.state.fl.us'**Cc:** 'jjttl@aol.com'**Subject:** ~~7818386~~ 7831696

Bad Ref.

Ms. Shonna McCray,

Thank you for faxing me a copy of the Peoples Gas response letter dated July 8, 2008 pertaining to the Paradise Lakes rate issue (Case # ~~7818386~~). Please note that the Paradise Lakes still has not received a copy of this letter which should have been mailed to P.O. Box 385, St. Petersburg, FL 33731. Nevertheless, attached is a rebuttal to the Peoples response setting forth additional facts supporting Customer's position that they be entitled to a retroactive refund. Please let me know if any additional information is needed that will help resolve this matter timely.

Respectfully yours,

Brian G. Davidson
Energy Tax Solutions, Inc.
Authorized Representative -
Paradise Lakes, Inc.
(813) 684-5277
Fax (813) 684-5327

07/31/2008

Paradise Lakes, Inc. Rebuttal to TECO Peoples Gas Response Letter
Dated July 8, 2008

Case Reference Number 783169G

Peoples' Response

TECO Peoples Gas ("Peoples") claims they are not required to issue a retroactive refund for the difference between the appropriate commercial rate and the residential rate billed Paradise Lakes, Inc. ("Customer") even though they acknowledge the rate was erroneously changed in error. They assert:

- (1) Customer was given proper notice and Customer did not question the change until recently;
- (2) Peoples identified customer as residential after reviewing their account in 2005... Customer's annual report identified the Customer's name as Paradise Lakes Condominium Association, Inc. as filed with the Florida Department of State... Customer changed their name in October 2007; and
- (3) Peoples is abiding by their tariff according to the following language: "*if reclassification to another schedule is appropriate such classification will be prospective*".

Customer's Rebuttal

- (1) Re: Notice

As stated in their original complaint, Customer has no record of ever receiving a notice advising of the rate increase. Even if they had, however, Customer would have no reason to question Peoples' authority if the notification letter advised the change was required as a result of a Public Service Commission Order. Like most, Customer has little understanding of regulatory issues and assumes the bills from their utility providers are correct since the utility is regulated. It shouldn't matter this error was just recently discovered. The simple fact is Customer's rate was changed in error by Peoples and Customer had no part in causing the error. Peoples should not be allowed to keep money that was never rightfully theirs in the first place.

- (2) Re: Name indicating Customer as condominium association

The Paradise Lakes Condominium Association, Inc. is not the same entity as the Paradise Lakes, Inc. (Customer). The Paradise Lakes Condo Association is an entirely different legal entity comprised of unit owners of a condominium located within the Paradise Lakes Resort. There are several other condominium associations also located in the Paradise Lakes Resort. Peoples Gas apparently looked up the wrong annual report because Customer's annual report (filed since 1980) clearly reflects their name as the Paradise Lakes, Inc.

In addition, Customer sold the assets of the Paradise Lakes Resort in 2007 to new owner(s). Customer did not change their name as Peoples claims. The new owner(s) set up a new entity under the name of PLR Management, LLC and acquired all the assets of Customer and a new gas account was set up because of ownership change...not name change.

As such, Peoples failed to properly identify Customer and mistakenly assumed they were a condominium association. Had they thoroughly reviewed Customer's account and gas usage in 2005, they would have found Customer was not a condo association and their gas was used for commercial purposes.

(3) Re: Prospective Rate Change Only

In the Peoples' General Service Rate Schedules is a section titled "Special Conditions". Condition 7 states the following: "*Service under this schedule is subject to annual volume review by the Company or any time at the customer's request. If reclassification to another schedule is appropriate, such classification will be prospective*". [Note: This Condition is not included in the Residential Rate Schedule.]

It seems Condition 7 was established to allow for annual volume reviews so that commercial customers can be reclassified under appropriate rates (based on their annual gas consumption and the volumes set forth in the Rate Schedules). When an annual volume review determines that a commercial customer should be on a different rate, such change is made prospectively.

The purpose of Condition 7 is demonstrated in the following example. Assume an annual volume review is conducted for a customer and their gas consumption has increased to where they should be reclassified from a GS-1 to a GS-2 rate. The change is made prospective as the result of a customer now using more gas than they had previously. In this instance, the change is not the result of an error, but simply the result of a customer now qualifying for a different rate based on their increased gas consumption.

However, the Lake Como's rate change from commercial to residential had nothing to do with an annual volume review or an increase/decrease in their gas consumption. It was clearly due to a misclassification error by Peoples that occurred in August 2005. Likewise, the recent reclassification back to Commercial GS-2 had nothing to do with an annual volume review. It was made to correct the prior error made by Peoples.

No where in the Peoples' tariffs is it stated or implied that changes in rate classifications of customers are to be "prospective only" (*other than changes due to annual volume reviews*). Moreover, it's absurd to think that the Peoples' tariffs would contain language limiting a customer from recovering charges over billed as a result of an error. If they did, nothing would stop Peoples from intentionally misclassifying customer's rates without any consequences of doing so. However, that is precisely what Peoples is claiming.

The "prospective only" limitation simply does not apply to situations as in this case where a customer's rate classification has obviously been changed in error. As such, Customer should be issued a retroactive refund for the entire period they were billed in error. *In addition, an argument can also be made that Customer is entitled to recover interest for the time value of money lost while Peoples overcharged them similar to interest earned on customer deposits...*

Peoples' contention that they are abiding by their tariff is simply without merit. They have taken out of context and misapplied the true purpose of a section of their tariffs in an attempt to avoid having to issue a refund to Customer.

brian davidson

From: brian davidson [ets@tampabay.rr.com]
Sent: Tuesday, August 26, 2008 1:30 PM
To: 'rhicks@psc.state.fl.us'
Cc: 'nforsman@psc.state.fl.us'; 'Connie Kummer'; 'Martha Brown'; 'contact@psc.state.fl.us'; 'rroland@psc.state.fl.us'
Subject: Case #781838G and Case #783169

Dear Rhonda,

It recently came to my attention that the two additional cases concerning the TECO Peoples Gas rate issue are being held up pending the outcome of the Sun City Center Community Association's Case #761557G ("Customer 1"). Specifically, Case #781838G pertaining to the Lake Como Co-op ("Customer 2") and Case #783169G pertaining to the Paradise Lakes Resort ("Customer 3"). However, the key issue being petitioned for Customers 2 and 3 is different and much simpler than the many issues involving Customer 1.

In both cases involving Customer's 2 and 3, it has already been established that their rates should not have been changed from commercial GS-2 to RES. The only issue to be resolved is whether or not these customers are entitled to a retroactive refund for the difference in rates billed in error.

In the case involving Customer 1, many issues have to be resolved before confirming they are entitled to a retroactive refund. It first must be determined if Customer 1 meets the basic application of the Peoples RES Rate Schedule. That is, are they the same as a condo or HOA, or are they legally organized and operated differently? Even if a condo or HOA, another issue to be resolved is whether or not Customer 1 meets the 1st and 2nd criteria set forth in the Peoples' RES Rate Schedules. Specifically, (1) is 100% of the gas used exclusively for the co-owners benefit, and/or (2) is any gas used in any endeavor which provides service for a fee? Furthermore, there is the issue regarding co-ownership of common areas. That is, it also must be determined if the basic application of the Peoples RES Rate Schedule (and the 1st criteria) are met given the fact members of Customer 1 have no co-ownership interest in the common areas whereas condo and HOA members do. Finally, there is the issue regarding the inconsistent rate classification by Peoples Gas given the fact that all eleven electric accounts serving Customer 1 have already been established as commercial and the same criteria apply to both electric and gas utilities...

Customer's 2 and 3 have no such issues to be resolved. The issue in their cases is simply to determine if they are entitled to a retroactive refund (for which both customers have submitted conclusive arguments that support their positions - see attached). Therefore, it does not seem appropriate to hold up the processing of these two cases pending the outcome of the Customer 1 case.

It is apparent Peoples Gas is not willing to concede these two cases regardless of the overwhelming facts presented, so it serves no purpose to go the informal conference route. Instead, these two cases should also be presented to the Commission for consideration (if possible, at the same time Customer 1's case is presented). To do so, please advise what due process steps are necessary to proceed.

Thank you,

Brian G. Davidson
Energy Tax Solutions, Inc.
(813) 684-5277
Fax (813) 684-5327

02/10/2009

brian davidson

From: brian davidson [ets@tampabay.rr.com]
Sent: Tuesday, September 02, 2008 1:44 PM
To: 'Rhonda Hicks'
Cc: 'Neal Forsman'; 'Connie Kummer'; 'Martha Brown'; 'Consumer Contact'; 'Randy Roland'
Subject: RE: Case #781838G and Case #783169G

Dear Rhonda,

As previously indicated, these two cases should not be held up pending the outcome of Case #761557G. PSC complaint and technical staff should proceed with issuing their proposed resolutions so the informal complaint process continues and is not unnecessarily delayed.

Again, it has already been established that these customer's rates should not have been changed from commercial GS-2 to RES. Therefore, the only issue to be resolved is whether or not they are entitled to a retroactive refund (unlike Case #761557G which has many unresolved issues). Based on the simple and underlying facts supporting these two cases, Staff should have no problem issuing proposed resolutions in line with Customer's position and should do so without causing further delay.

Respectfully yours,

Brian G. Davidson
Energy Tax Solutions, Inc.
(813) 684-5277
Fax (813) 684-5327

02/10/2009

Energy Tax Solutions, Inc.

1310 Wallwood Drive, Brandon, FL 33510 • Phone (813) 684-5277 Fax (813) 684-5327
ETS@Tampabay.rr.com

January 16, 2009

Neal Forsman
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399

Re: Lake Como Case #781838G & Paradise Lakes Case #783169G

Dear Mr. Forsman:

The following summarizes the pending cases referenced above and is a request for your office to give them the attention they deserve as they are now over 6 months old...

Lake Como and Paradise Lakes – PSC Case No's 781838G & 783169G

I Chronological Events

- 1) Complaints filed with PSC June 3, 2008 (Lake Como – Case 781838G) and June 15 2008 (Paradise Lakes – Case #783169G), respectively;
- 2) PSC acknowledged complaints in letters dated June 10th and June 19th 2008, respectively;
- 3) Peoples Gas (“PGS”) responded to complaints June 30th and July 8th 2008;
- 4) PSC requested supplemental response from PGS re: Lake Como case July 11th 2008; PGS responded July 21st 2008;
- 5) Customers issued rebuttals to PGS responses July 22nd and July 31st 2008 in emails to the PSC (*Lake Como to Ms. Pura Delgado, Paradise Lakes to Ms. Shonna McCray*);
- 6) During discussions with PSC staff in August 2008, it was discovered these two cases were being held up pending the outcome of an entirely different case (Sun City Center Case # 761557G). An email sent to Ms. Rhonda Hicks and other PSC Staff on August 26th 2008 petitioned that these two cases not be held up because the facts and circumstances were different. A follow-up email to same PSC Staff was issued September 2nd 2008 re-emphasizing Customer’s positions to handle these cases separately;
- 7) A letter dated September 9th 2008 was received from Kate Smith of the PSC advising that complaint #783169G (Paradise Lakes) had been forwarded to her office for additional review. In subsequent telephone conversations with Ms. Smith it was acknowledged that complaint # 781838G (Lake Como) was also being reviewed by her;
- 8) In follow-up phone conversations in September 2008, Ms. Smith advised that PGS was offering to settle these 2 cases by issuing a retroactive refund for the difference in rates for the last 12 months of billing. The offered settlements were significantly less than half of what Customers were claiming. Therefore, Customers declined to accept the offer, but countered by offering to settle if PGS would issue refunds for the last 24 months that

were billed in error. Ms. Smith advised that PGS was not willing to do so. Therefore, she was advised to continue the complaint process;

- 9) Since September 17 2008, there has been no response or reply from the PSC with respect to these 2 cases. A telephone call was made to you (Neal Forsman) in December 2008 to find out the status of the cases. However, there has still been no response...

II **Summary of Issues**

- 1) Customers maintain that their gas rates were changed in error from commercial GS-2 to Residential by PGS in August 2005 and that they are entitled to a retroactive refund for the difference in rates;
- 2) Even after acknowledging that Customer's rates were changed in error and reclassifying the active account of Lake Como back to commercial GS-2 in June 2008 (*Paradise Lakes' account is no longer active*), PGS is refusing to issue retroactive refunds to Customers;
- 3) In both cases, PGS asserts they should not be required to issue refunds because (i) *Customer was given proper notice and did not question the change until recently*, and (ii) *Peoples is abiding by their tariff based on language stating that "if reclassification to another schedule is appropriate such classification will be prospective"*. In addition, PGS asserts that the Paradise Lakes' rate was changed to residential after PGS identified Customer's name as the Paradise Lakes Condominium Association, Inc. as filed with the Florida Department of State...and that Customer changed their name in October 2007;
- 4) In response to PGS' assertion that Customers were given proper notice, Customers maintain:
 - a. They have no record of ever receiving a notice and there is no documentation to support Customers ever received the notice;
 - b. Even if a notice was received, they would have no reason to question PGS' authority if the letter advised the change was required as a result of a Public Service Commission Order. Like most, Customers have little understanding of regulatory issues and rely on their utility providers to properly apply the governing regulatory rules, orders, and tariffs;
 - c. They could not choose to purchase their gas distribution from another company...Customers had no choice but to continue purchasing from PGS;
 - d. It is irrelevant that the error wasn't discovered until recently. The simple fact is Customer's rates were changed in error by PGS back in August 2005. Customers should not be penalized for an error they had no part in creating.
 - e. PGS has no right to keep money that was never rightfully theirs in the first place.
- 5) In response to PGS' assertion that they are abiding by their tariffs (*in reclassifying Customer's rates "prospectively"*), Customers maintain:

- a. Condition 7 set forth in the PGS rate schedules was established to allow annual volume reviews so commercial Customers can be classified under appropriate rates based on their annual gas consumption and volumes set forth in the rate schedules. The limitation to make such changes prospective is not applicable to situations where rate changes are made in error;
 - b. The changes made to Customer's rates in August 2005 were not the result of an annual volume review or an increase/decrease in their gas consumption. They were clearly due to a misclassification error by PGS;
 - c. No where in the PGS tariffs is it stated or implied that changes in rate classifications of Customers are to be "prospective only" (*other than changes due to annual volume reviews*). It is absurd for PGS to claim that their tariffs limit a Customer from recovering charges over billed as a result of an error. If the tariffs did contain such language, nothing would stop PGS from intentionally misclassifying Customer's rates without any consequence of doing so;
 - d. The "prospective only" limitation simply does not apply to situations such as these cases where it has been established that Customer's rates were changed in error.
- 6) In response to PGS' assertion that they the changed the Paradise Lakes' rate after identifying them as the "Paradise Lakes Condominium Association" via Department of State Records...and that Customer's name changed in October 2007, the Paradise Lakes maintains:
- a. PGS failed to properly identify them and mistakenly assumed they were a condominium association because PGS looked up the wrong name with the Department of State. The Paradise Lakes Condominium Association, Inc. is one of many condo associations located within the Paradise Lakes Resort and is not the same entity as the Paradise Lakes, Inc. (Customer);
 - b. Although irrelevant, they did not change their name in October 2007 as PGS claims. Customer sold the assets of Paradise Lakes, Inc. to new owners. The new entity is under the name of PLR Management, LLC. As such, PGS set up a new gas account because of ownership change, not a name change;
 - c. Had PGS thoroughly reviewed the Paradise Lakes account and gas usage in 2005, they would have found Customer was not a condo association and their gas use was for commercial purposes. As such, and the rate change would/should not have been made.

III Summary

These cases were initiated over 6 months ago. The issues are not complicated. The facts clearly establish that Customer's rates were changed in error by PGS and that they should be entitled to a refund. As such, it seems unreasonable that PSC Staff has yet to issue a proposed resolution supporting Customer's position given the ample time they have had to review these cases and the underlying facts...

Both cases are really no different than any situation where it has been determined that a vendor company overcharged its Customer for contracted goods or services. Regardless

Florida Public Service Commission
January 16, 2009

of the fact there is a legal obligation to uphold, such vendor should be more than willing to reimburse such Customer in adhering to good business practice and ethical standards.

Customers understand that Staff cannot force PGS to actually issue the requested refunds. However, Staff does have the authority and obligation to issue a proposed resolution in accordance with Rule 25-22.032(6)(d). Based on the underlying facts, Staff should issue a proposed resolution supporting Customer's position, and should do so promptly given the ample time Staff has had to review these cases.

All questions and correspondence concerning this matter should be referred to me as Customer's authorized representative. I can be reached at (813) 684-5277. Copies of written correspondence should be sent to 1310 Wallwood Drive, Brandon, FL 33510, or e-mailed to ets@tampabay.rr.com.

Your prompt attention to this matter will be appreciated.

Respectfully yours,

Brian G. Davidson
Authorized Representative

Cc: V. Bradley, GM – Lake Como
J. T. Lettelleir, Pres. – Paradise Lakes
R. Hicks – PSC
K. Smith - PSC
P. Delgado – PSC
S. McCray – PSC

brian davidson

From: brian davidson [ets@tampabay.rr.com]
Sent: Monday, January 26, 2009 2:58 PM
To: 'ksmith@psc.state.fl.us'
Cc: 'Van Bradley'; 'jittll@aol.com'; 'Neal Forsman'
Subject: Case #781838G & #783169G

Tracking:	Recipient	Read
	'ksmith@psc.state.fl.us'	Read: 01/26/2009 2:58 PM
	'Van Bradley'	Read: 01/27/2009 8:46 AM
	'jittll@aol.com'	
	'Neal Forsman'	Read: 01/26/2009 3:14 PM

Kate,

To reiterate some my concerns with your January 20th letter discussed with you earlier today...

* There has been no "proposed resolution" issued by PSC Staff as you state in the 2nd paragraph. Customers received no verbal or written proposed resolution from Staff prior to these cases being forwarded to your division for review;

* I have not alleged customer's rates were changed in error because Peoples Gas ("PGS") did not have "proper authority" and did not comply with their tariff. My position was (and is) that PGS changed Customer's rates in error because they did not properly apply the Order and their tariff. They erroneously identified Customers as a residential condominium and/or a cooperative apartment and changed Customer's rates in error. This is clearly evident in the case of the Paradise Lakes where PGS admittedly looked up the wrong name with the Florida Department of State;

* You state that PGS made the reclassification change to become compliant with Order 19365. You also state the complaint was reviewed to ensure PGS complied with the applicable statutes, rules, tariffs, and orders. However, you fail to acknowledge that PGS was wrong in doing so in both cases;

* You also state PGS is denying the retroactive refund because they notified both Customers 2 months prior to when the change was implemented and PGS was not notified of the problem until May 2008. However, there is no proof a notice was ever mailed or received (i.e., no certified mail receipt). Irrespective of this fact, it makes no difference the error was just recently discovered. The fact is that Customer's rates were changed in error. PGS should not be entitled to keep money that was never rightfully theirs in the first place;

* You also state you have thoroughly reviewed the Florida Administrative Code (FAC), Florida Statutes, and company tariff and were unable to identify any rule requiring PGS to issue retroactive refunds for a reclassification error. In effect, what you are claiming is that PGS can erroneously misclassify a customer's rate without any consequences of doing so. However, no where in the FAC, Florida Statutes, or company tariffs is there any language that states or implies that PGS is entitled to keep money overcharged to its customers. To do so and imply this is ridiculous. Common sense alone should tell you this. To the contrary, where it has been established that a party to a written contract in Florida has been wronged, such party is entitled to be indemnified for a period of up to 5 years back from when the infraction occurred.

In reviewing a customer's complaint, is my understanding that Staff has the responsibility to determine if a violation of any applicable statute, rule, order, or tariff has occurred and if so, issue a recommended proposal on how the issue should be resolved. It is clear this has yet to be accomplished.

Therefore, Staff still needs to answer and address the following: Did PGS properly apply the order and it's tariffs

02/10/2009

when it changed these 2 Customer's rates from commercial to residential in August 2005? Based on the facts presented in both cases, it is clear this did not occur and there was a violation of their tariff that resulted in Customer's being billed under the wrong rates. As such, Staff should acknowledge this error and issue a proposed resolution accordingly. It is understood Staff can't force PGS to issue a retroactive refund, but it seems that Staff does have the authority to make such recommendations and it would be up to the Commission to ultimately decide should PGS not agree with Staff's recommendation.

Your prompt attention in addressing this follow-up matter will be appreciated.

Respectfully yours,

Brian G. Davidson
Energy Tax Solutions, Inc.
(813) 684-5277
Fax (813) 684-5327

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02/10/2009