



Public Service Commission

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DATE: APRIL 3, 2003

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: OFFICE OF THE GENERAL COUNSEL (HOLLEY) *JAM*
DIVISION OF ECONOMIC REGULATION (KUMMER) *W. K. K.*

RE: DOCKET NO. 021051-EI - COMPLAINT OF THE LINKS HOMEOWNERS
ASSOCIATION, INC. AGAINST TAMPA ELECTRIC COMPANY, REQUEST
FOR INVESTIGATION, AND REQUEST FOR DETERMINATION THAT THE
LINKS IS NOT RESPONSIBLE FOR MONIES TECO CLAIMS ARE DUE
AND OWING.

AGENDA: 04/15/03 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\021051.RCM

CASE BACKGROUND

This recommendation addresses a complaint filed by The Links Homeowners Association (The Links) against Tampa Electric Company (TECO), for improperly billing it for streetlight service for the period of March 1999 through October 2001. Specifically, The Links requests that the Commission investigate this matter and determine that The Links is not responsible for the monies TECO claims to be due and owing. The amount in question is \$8,874.19, which includes \$6,311.72 for lighting service from March 3, 1999 through February 3, 2001, which was incorrectly billed to another entity, \$1,984.97 for lighting service from February 23, 2001 to October 1, 2001, which was billed directly to The Links, and \$577.50 for late fees. TECO responded to The Links' formal complaint, stating the reasons it believes why The Links is responsible for the money owed.

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Staff has investigated this complaint by requesting additional information from the parties, as well as by conducting a conference call with the parties in order to discuss the facts of the complaint and to explore the possibility of mediation to resolve it. Subsequent to that conference call, written responses were received from both parties. TECO's response indicated that the nature of the dispute did not lend itself to mediation, since the underlying question was one of liability for payment. The Links likewise declined mediation.

Accordingly, staff is now bringing this recommendation to the Commission to address the issue of whether The Links is responsible for the monies TECO claims to be due and owing. The Commission has jurisdiction to consider this matter pursuant to Section 350.05(1), Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission find that The Links is responsible for monies that TECO claims are due and owing?

RECOMMENDATION: Yes. The Commission should find that The Links is responsible for the amount of \$8,874.19 owed to TECO for lighting service provided to the community for the period of March 1999 through October 2001. (KUMMER, HOLLEY)

STAFF ANALYSIS: The positions of the parties are as follows:

The Links

The Links' complaint alleges that it was improperly billed by TECO for streetlight service for the period of March 1999 through October 2001. The Links maintains that it did not request the lights and therefore is not responsible for paying for them. According to the Links, the developer was responsible for establishing a special lighting tax district to assume the responsibility for the lighting for each of the communities, and that special taxing district was not recognized by Hillsborough County for The Links until October 2001.

The Links indicated that the Homeowners Association was incorporated on December 19, 1995. The developer, Brandon Property Partners, LTD. (BPP), turned over the community functions to the Homeowners Association in 1998. The Links maintains that at no time was it involved in the request for the lights or in the establishment of the special lighting tax district with the County because that was the responsibility of the developer. The Links further states that after the 1998 turnover, the developer ceased to pay for any services of the Association, and there is no record that the Association assumed any maintenance contracts from the developer.

TECO

TECO states that in 1996, fifteen streetlights were installed at the request of BPP, for the subdivision then named "Bloomingdale AA/GG Unit 3 Phase 2," later designated as The Links. The lights were originally billed to an account in the name of BPP. On March 2, 1999, at the request of a representative of BPP, the name on the account was changed to Bristol Green Homeowners Association

(Bristol Green), at the same billing address. On March 2001, TECO was notified by a representative of Bristol Green that it was receiving two streetlighting bills - one from the special taxing district set up by the BPP with Hillsborough County, and a second bill from TECO. Upon investigation, it became apparent that the streetlights being billed to Bristol Green by TECO were, in fact, located in and serving The Links community. TECO then refunded the improperly billed amount of \$6,311.72 to Bristol Green and billed The Links both for the amount refunded to Bristol Green and for ongoing service, beginning in March 2001.

TECO states that in early April 2001, after the first bill was received by The Links, a Ms. Dee Anne King contacted TECO and indicated that The Links would pay the bill but didn't have the money currently budgeted. Credit arrangements were made with another representative of The Links to cover current monthly charges and contribute \$525 per month towards the amount in arrears. However, no payments were received, either for current service or for any past due amount through the end of 2001. TECO subsequently turned the account over to Allied Interstate, a collection agency, in January 2002.

After being contacted by the collection agency, The Links attorney, Mr. Mezer, attempted on two separate occasions to contact TECO by mail, but got no response from the utility. TECO contends it never received any correspondence from The Links. In October, 2002, The Links filed a formal complaint with the Commission.

Staff Analysis

At issue is the responsibility for payment of \$8,874.19 for the streetlights for the time period of March 1999, when the lights began being billed to Bristol Green, through October 2001, when the Special Lighting Tax District became operative. Since the inception of the Special Lighting Tax District, the bills have been kept current. Below is staff's understanding of the chronology of events:

DATE	EVENT
1996	TECO installed 15 lights for the subdivision then named "Bloomingdale AA/GG Unit 3 Phase 2," a portion of which was later re-designated as The Links. Billing for lights was under the name of the developer, BPP
1996 through March 1, 1999	Billing for lights paid by BPP.
1998	The developer, BPP, turned over the community functions to The Links Homeowners Association.
March 2, 1999	TECO receives request that the name on the account be changed to Bristol Green, a neighboring subdivision to The Links, but within the Bloomingdale development.
March 3, 1999 through February 2001	Bristol Green residents improperly paying for the 15 lights that were located within The Links subdivision, not Bristol Green subdivision.
April 2001	Upon investigation and determining that Bristol Green had been improperly billed for lights not located within their territory, TECO refunds \$6,311.72 to Bristol Green.
March 2001	TECO bills The Links \$6,599.25, which included the adjustment for the lighting service the subdivision received, but did not pay, and the first month's charge going forward.
April 2001	Questioning the charge, a representative from The Links contacted TECO, and arrangements were made for payment plan of the amount in arrears.
February 2001 through October 2001	Payments for past due amounts were not made, nor were payments for amounts going forward.
October 2001	Hillsborough County established a special taxing district for the lights in question, and took over paying the cost as of October 1, 2001.
January 2002	TECO turned over unpaid account to a collection agency.

As stated previously, staff conducted a conference call with the parties on January 31, 2003 to discuss the facts of the complaint and to explore the possibility of mediation to resolve it. Pursuant to that conference call, TECO affirmed that upon the complaint from Bristol Green, it reviewed the location of the street lights and determined that they appeared to be all within The Links community. Also pursuant to that conference call, The Links did not dispute the assertion that the streetlights in question were serving The Links community. The Links did not disavow the contact between Ms. King or that there was some initial acknowledgment of responsibility by The Links for payment on the account.

The basis for The Links refusal to pay the amount appears to be that The Links did not request the lights, and since the developer was responsible for securing the special taxing district to pay for the lights, The Links believes that it has no obligation to pay for the lights for any time period. TECO asserts that The Links has been receiving the benefits of the lights and the failure of the developer to timely establish the taxing district does not mean TECO should absorb the cost of the streetlights.

Since the problem seems to have arisen because of an erroneous billing to Bristol Green, TECO was asked by staff why it did not attempt to bill BPP, the previous customer of record prior to the transfer to Bristol Green. TECO stated that it attempted to do so at the time Bristol Green informed TECO that it was not responsible for the lights. However, BPP no longer had any accounts with TECO. At one point, the three customers, BPP, Bristol Green and The Links were each represented by the same property management company. When TECO contacted the property management company at the billing address of the former company, BPP, TECO was informed that the lights were the responsibility of The Links Homeowners Association. The property management company also provided TECO with billing information for The Links.

In response to staff's informal inquiries, TECO also provided a description of the process by which a county lighting district is formed. According to TECO, a developer typically creates a homeowners' association for a new development and, as president, executes a lighting agreement with the utility during construction. The developer continues to pay for the lighting until one of two criteria is met: 1) the subdivision is 51% occupied/owned by residents of that homeowners' association or, 2) the county has

approved the establishment of a taxing district for the association or subdivision. Until one of these conditions is met, the developer charges the residents of the homeowners association their pro rata share of all of the association's expenses, including the cost of street lighting. When majority ownership belongs to the residents, the developer relinquishes control of the association. Once control shifts to the residents, the responsibility for all expenses also shifts to the homeowners' association.

To form a county lighting tax district, the developer submits a subdivision plat to the County by December 31st of each year with the request to establish a special lighting district for each subdivision or plat. In February of the following year, the County makes its decision on whether to approve the requests. If approved, the special districts become effective the following October. The county then notifies TECO in writing of its intent to assume the billing of particular lighting accounts. TECO then changes the name from the developer to the appropriate lighting tax district on October 1. According to information provided by TECO, from the time the lights are installed until the special lighting district is effective, the homeowners' association is responsible for payment of the lights. Unless TECO receives official notification from the county that a special district has been approved for a particular subdivision, TECO has no authority to bill the county for those accounts. In this case, TECO was notified in February 2001 that The Links was qualified as a special district. TECO began billing the county, according to procedure, in October 2001.

It appears that both TECO and The Links agree that the builder was responsible for establishing a county special light tax district to pay for the streetlights. However, the parties diverge on who is responsible for the bills for the period up through when the special district was approved. TECO maintains that the homeowners association, through the builder, contracted for the lights and is therefore responsible for paying for them. The fact that the developer may have represented the homeowners' association at the time does not diminish the current association's responsibility for payment. TECO maintains that the failure of the developer to timely request that special district be established does not make the utility liable for lighting expenses incurred to serve The Links.

Staff notes that Rule 25-6.106(1), Florida Administrative Code, states that a utility may backbill a customer for a period of up to twelve months for any undercharge in billing which is the result of the utility's mistake. In this situation, staff does not believe that the undercharge in billing was a result of TECO's mistake. The customer of record (through its management company) requested that the name on the account be changed to Bristol Green in 1999. TECO had no reason to doubt the accuracy of this change until it was brought to the utility's attention in 2001 by Bristol Green. At that time TECO contacted the same management company and was told that The Links was responsible for the account. If a mistake was made, it was by the management company representing the developer who gave incorrect information to TECO when requesting the name change on the account. Similarly, staff believes another mistake likely occurred when the developer failed to seek approval of a special lighting tax district in a timely manner so that the account for the streetlights could be transferred to the county. Neither of these errors was under TECO's control. Thus, staff does not believe that Rule 25-6,106(1), Florida Administrative Code, applies to this situation.

Staff continually returns to one apparently undisputed fact - The Links has been receiving the benefit of the lights during the periods in question through today. Given that TECO has already properly refunded the amount incorrectly billed to Bristol Green, that balance, along with the service billed between March 2001 through October 2001 remains a cost to the utility. If the amount is not recovered, it must be charged to bad debt expense. Bad debt is a cost shared by all of a utility's ratepayers.

The Links' argument that it did not request the installation of the lights and was not responsible for establishing the special lighting district does not negate the fact that they have benefitted from the presence of the street lights all these years. It is also contrary to the information that was provided by TECO in its response to staff's inquiry, that states that under the procedure for forming special lighting tax districts, the homeowners' association is responsible until the special district is approved by the county.

Based on the available information, it appears that it was the developer who failed to seek approval of a special lighting tax district in a timely manner so that the account for the streetlights could be transferred to the county. There also

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appears to be some miscommunication between The Links and its developer on the responsibilities transferred to The Links at the time the developer severed ties with the association. However, staff is unable to support the position that TECO's ratepayers should pay the cost of the lighting when it appears that the proper dispute is between the developer and The Links.

For the reasons stated above, staff recommends that the Commission should find that The Links is responsible for the amount of \$8,874.19 owed to TECO for lighting service provided to the community for the period of March 1999 through October 2001.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If the Commission approves staff's recommendation, this docket should be closed upon the issuance of a consummating order, provided that no substantially affected person files a protest within 21 days of the issuance of the Order.
(HOLLEY)

STAFF ANALYSIS: If the Commission approves staff's recommendation, this docket should be closed upon the issuance of a consummating order, provided that no substantially affected person files a protest within 21 days of the issuance of the Order.