Energy Tax Solutions, Inc.

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

February 12, 2009

Office of Commission Clerk
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850 090083-GU

Re: Sun City Center Community Association, Inc.
TECO Peoples Gas - Rate Change Classification Issue
Informal Complaint #761557G

Dear Sir/Madam:

This formal complaint is being filed on behalf of the *Sun City Center Community Association, Inc.* ("Customer") against *TECO Peoples Gas* ("Company"). Customer's current mailing address is *1009 N. Pebble Beach Blvd., Sun City Center, Florida 33573*. The following is provided in accordance with F.A.C. Rule 25-22.036(b):

1. Rule and Order Violated: *Rule 25-7.033 (Tariffs) and PSC Order #19365*;

2. Actions constituting violation: *Company erroneously misclassified Customer's gas distribution rate from Commercial GS-2 to Residential in August 2005 resulting in Customer being over billed. Company is misapplying the Order and their tariffs by continuing to bill Customer under Residential rates despite the fact that Customer does not meet the basic requirement in the Company's residential rate schedule (i.e., Customer is not legally organized and operated the same as a condominium or homeowners association and does not meet two of the strict criteria set forth in Company's residential rate schedule and the PSC Orders). Furthermore, Company is refusing to issue Customer a retroactive refund for the difference in rates.*

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 requesting that their rate be switched back to the appropriate commercial GS-2 classification based on their annual gas therm usage and that they be made whole by recovering the difference in rates billed in error since August 2005 through most recent billing cycle. Customer is also seeking interest (as penalty) for the time value of money lost.*

The informal complaint referenced above was originally filed December 7, 2007 in hopes this issue would be resolved amicably. Several critical key facts supporting Customer's position were ignored, overlooked, or misconstrued by Company and certain PSC Staff. As such, Customer requested an informal conference held on July

30, 2008 whereby additional information was provided clarifying and distinguishing Company's and PSC Staff's preliminary views.

Furthermore, additional evidence (confirming two key points supporting Customer's position) was provided to Company and PSC Staff immediately following the informal conference. However, Company failed to acknowledge or respond within 20 working days. As such, PSC Staff indicated they would prepare and submit their recommendation at the next available Commission Conference. This was back in August 2008...*it is now 6 months later and PSC Staff has done nothing more to help resolve this matter.* Moreover, this complaint was filed over 14 months ago and Customer continues to be billed at the much higher Residential rate in error. It is apparent PSC Staff involved in this case to date are incapable of reaching a proper conclusion to this matter efficiently.

Therefore, Customer is filing this formal petition in hopes that the Commission will act swiftly and take the appropriate action and require Company to reclassify Customer back to the appropriate commercial GS-2 rate and issue a retroactive refund. Customer is also requesting interest on their money that has been retained by Company during this time *(at same rate as interest on deposits)* since Company had no right to this money.

It is understood that the informal complaint "case file" includes all correspondences and evidence submitted by Customer to Company and PSC Staff and that this file will be forwarded to your department immediately after this complaint is received. Nevertheless, enclosed are copies of specific correspondences supporting Customer's position which are especially relevant to this case. These are provided in case they are not in the official case file and include the following:

1. Letter dated January 22, 2009 to Rhonda Hicks detailing case to date;
2. Copy of Informal Conference Discussion Items presented July 30, 2008;
3. Original Complaint dated December 7, 2007;
4. Response letter dated January 11, 2008 to Company (Lewis Binswinger);
5. Follow-up complaint letter dated January 11, 2008 to Lucille Alford (PSC Staff);
6. Follow-up complaint letter dated February 19, 2008 to Connie Kummer (PSC Staff) rebutting Company's response letter dated January 25, 2008;
7. Email to Connie Kummer dated February 22, 2008 setting forth additional facts;
8. Email to Ansley Watson (Company's Legal Council) dated August 11, 2008 following up on request for documentation supporting Customer's position;
9. Email to Rhonda Hicks dated August 27, 2008 advising of no response from Company and requesting PSC Staff to reconsider all the facts and evidence;

The recent *letter to Rhonda Hicks dated January 22, 2009* provides a summary analysis of the issues, facts, and chronological events pertaining to this case to date. The *Informal Conference Discussion Items presented July 30, 2008* sets forth the issues in detail and provide key distinctions supporting Customer's position their rates were changed in error. As such, special attention should be given to these two items.

Copies of the other correspondences enclosed are based on the chronological date they were originally submitted.

Please take the time to carefully review the enclosed and all the facts and arguments supporting Customer's position in this case and advise if any additional information or documentation is required that will help resolve this complaint expeditiously. Again, it has been over 14 months since the original complaint was filed.

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 -
Sun City Center Community Association, Inc.

Cc: Lynn Reitz, – SCCCA

Letter of Authorization

To: *Florida Public Service Commission*

Customer Name: *Sun City Center Community Association, Inc.*
Address: *1009 N. Pebble Beach Blvd., Sun City Center, FL 33573*

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 natural gas account. He is to be made aware of and receive copies of all correspondence between the Commission, TECO Peoples Gas, and our community association with respect to this matter.

PAUL A. WHEAT
(Print Name)

Paul A. Wheat
(Signature)

12/7/2007
(Date)

President
(Title)

(813) 633-3500
(Telephone No.)

Energy Tax Solutions, Inc.

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

January 22, 2009

Rhonda Hicks
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399

Re: Sun City Center Community Association - Case #761557G

Dear Ms. Hicks:

The following summarizes the pending case referenced above and is a request for your office to take proper action. This case is well over a year old and it has been almost 6 months since the Informal Conference was held. There has been no communication from your office since and it appears there has been a breakdown in the due processing of this case. Meantime, Customer continues to be billed a much higher rate than they should be - 41 months and counting...

I Chronological Events

1) December 7, 2007 – Customer complaint filed with Public Service Commission ("PSC");
2) December 12, 2007 - PSC acknowledged complaint;
3) January 3, 2008 - PGS responded to complaint with follow-up questions;
4) January 11, 2008 – Answers submitted to PGS questions; follow-up complaint sent to PSC;
5) January 25, 2008 - PGS issued response letter;
6) February 19, 2008 - Rebuttal letter to PGS' response issued to PSC (Ms. Connie Kummer);
7) February 22, 2008 - Follow-up email sent to Ms. Kummer setting forth additional facts;
8) May 12, 2008 - PSC opinion letter received from Ms. Kummer;
9) May 2008 – Customer requested Informal Conference;
10) June 3 2008 - Letter from PSC (Mr. Neal Forsman) advising Form PSC/CAF10 required;
11) June 11, 2008 - Form PSC/CAF10 submitted;
12) July 7, 2008 - Letter from PSC confirming Informal Conference July 30, 2008;
13) July 30, 2008 - Conference attendees: *PSC - Rhonda Hicks (moderator), Neal Forsman, Martha Brown (Council), and Connie Kummer; PGS - Ansley Watson (Legal Council), Lewis Binswinger, Kandi Floydd, K. Hobart, and Wayne Macon (formerly PSC); Customer – Brian Davidson;*
14) At conclusion of Conference, PGS and Customer were advised they had 20 working days to settle case...Mr. Forsman emailed a blank Settlement Agreement Form to PGS and Customer;
15) August 11, 2008 - Corroborating evidence supporting Customer's two key points and requested by PGS during the Conference was emailed to PGS' Legal Council - Mr. Ansley Watson (and PGS representatives), in addition to PSC Staff;
16) August 27, 2008 - PGS failed to reply within the 20 working days... Email sent to Rhonda Hicks (and Staff) requesting reconsideration of all facts and evidence submitted to date and a recommendation to the Commission supporting Customer's position;
17) Shortly thereafter, Staff indicated they would prepare their recommendation and submit it to the Commission for consideration at the next available Commission Conference. *Unfortunately, this has yet to be accomplished...*

II Summary of Issues

1) Customer maintains PGS changed their gas rates in error from commercial GS-2 to residential in August 2005 and they are entitled to a retroactive refund based on the following:

    a. They don't meet the basic requirement of the PGS residential rate schedule... *Not legally organized or operated the same as a condo or homeowners association ("HOA")*;

    b. Even if they were a condo or HOA, Customer doesn't meet the second criteria set forth in PGS' rate schedules... *Separate fees are charged in connection with their gas use*;

    c. There should be consistent application between electric and gas utilities... *The four (4) criteria set forth in the rate schedules of both are identical*;

    d. They don't meet the first criteria set forth in PGS' rate schedule... *There is no co-ownership interest in the common areas of Customer as with condos and HOA's*;

2) PGS claims that Customer's rate was properly changed and asserts the following:

    a. A community association is the same as a condo or HOA and to treat them otherwise is a "distinction without a difference";

    b. The fees charged by Customer (in connection with use of the gas heated pool) are no different than assessments paid by a condo or HOA and are not fees for a service;

III Summary of Facts

1) Facts supporting Customer's position that they are not the same as a condo or HOA and do not meet the basic requirement set forth in the PGS residential rate schedule:

    a. Customer is a community association ("CA") legally organized and operated as a separate and distinct legal entity than that of a condo or HOA;

    b. CA's are not specifically included in the language of the PGS residential rate schedule, nor any other regulated electric and gas company's rate schedules;

    c. None of the applicable Commission orders include CA's in their language. If the Commission intended to classify CA's along with condos and HOA's, they would have included them in their orders and advised the utilities to revise their tariffs accordingly. This fact is supported by prior Commission actions. Specifically, original Order 4150 (issued 1967) instructed electric utilities to revise their tariffs to include common areas of condominiums and cooperative apartments as residential. However, HOA's were not included in this Order. It wasn't until eleven years later in 1978 that Order 8539 was issued to expand the ruling to include HOA's. The Orders were issued and apply to specific legal entities - condos, cooperative apartments, and later to HOA's...NOT CA's;

    d. Existing orders and rate schedules do not imply or infer that the language of these can be expanded to include customers with operations "similar" to condo's or HOA's;

    e. State agencies must adhere to the law established by the legislature in the Florida Statutes. Agencies are not permitted to enlarge, modify, or contravene statutory

provisions. Therefore, neither PGS nor PSC Staff are empowered to create additional varieties of condos or HOA's and have no authority to expand the language specifically set forth in the existing Commission orders and rate schedules;

f. In addition, membership in condos and HOA's is required as a condition of property ownership arising from restrictions of record on each owner's deed. Although similar restrictions may apply to members of Customer, not all are property owners. Membership is also offered to non-owners (e.g., certain former residents). There is no obligation for these individuals to pay or continue their membership and Customer cannot enforce payment by placement of a lien or foreclosure;

g. Furthermore, Customer owns their recreational facilities. Members have no ownership interest in the CA's property. However, condos and HOA's have common areas co-owned by unit owners. If Customer was ever liquidated, members are not entitled to receive anything. ***[During the Informal Conference, PGS' Legal Council seemed doubtful of this fact and requested documentation supporting this claim. This was provided shortly after the Conference... PGS never acknowledged this point]***;

2) Facts supporting Customer's position that, even if they were a condo or HOA, they do not meet the 2nd criterion set forth in the PGS residential rate schedule:

a. Customer has different clubs offering exercise and dance classes in the gas heated pool. Club members are required to pay a separate club fee giving them exclusive use of the pool specific days and times. These additional fees provide club members with an extra service they otherwise would not be entitled to. The fees are not management, maintenance, or annual membership dues. They are extra fees for extra services;

b. Certain former residents are also allowed to continue as members if they elect to pay membership dues. As non-residents, this fee is different than condo and HOA fees. It is an optional fee entitling non-residents to use Customer's recreational facilities they otherwise would not be entitled to (including gas heated pool). As such, these are fees for a service regardless of the fact they may only be offered to former residents;

c. Furthermore, certain house guests of members are required to purchase "guest cards" to utilize Customer's recreational facilities (including gas heated pool). The fee paid for these guest cards is the equivalent of an entrance fee (i.e., fee for service). ***[During the Informal Conference, PGS' Legal Council seemed concerned and doubtful of this fact and requested documentation supporting this claim. This was provided shortly after the Conference... PGS never acknowledged this fact];***

d. A critical misconception by PGS and certain PSC Staff is that the fees described above "don't give rise to fees for service" because they are "not available to the general public." However, the language of the 2nd criterion simply states that *"None of the gas can be used in any endeavor which sells or rents a commodity or provides service for a fee."* This restriction does not state, imply, or presume that "service for a fee" means being made available to the general public. Nor is it stated or implied that it is intended to *"prevent obviously commercial enterprises from taking service under the residential rate;"*

e. It is irrelevant that Customer may restrict use of its facilities to members and guests. The 2nd criterion simply states that NONE of the gas can be used in ANY endeavor which...provides service for a fee;

f. Analogy to this point: *A customer is operated as a private non-profit club located within a community development not open to the general public... membership is restricted to community residents... club includes a restaurant with gas used for cooking... separate fees are charged in the restaurant... annual dues are also required from everyone in the community.* Although access to the club restaurant is restricted, the separate fees charged there cause the 2nd criterion not to be met;

g. The fees charged in the example above are no different than the separate fees being charged to the members and guests of Customer. Although services (or food items) are restricted to members and guests, the simple fact is that separate fees are charged for these extra services;

h. This point is further supported by PGS' common policy in the past whereby they treated common areas of condos and HOA's as commercial if <u>any</u> portion of their gas use was associated with fees being charged (e.g., coin laundry, pool entrance fees, etc.), regardless of the fact these services were limited to co-owners;

i. Furthermore, PGS internal guidelines document that they previously treated common areas of condos with coin laundries as commercial for rate making purposes. These guidelines actually state that "coin laundry is service for a fee;"

j. Although the separate fees pertaining to Customer's gas use are not for coin laundries, the same principle applies. Moreover, nothing has changed with respect to the Commission orders or rate schedules that warrant classifying common area accounts differently now than in the past;

3) Facts supporting Customer's position that there should be <u>consistency</u> between gas and electric companies in classifying customers as residential or commercial for rate making purposes:

a. The same four (4) restrictions apply to both electric and gas companies with respect to their residential rate schedules. All 4 criteria must be met in order for common areas of condos, cooperative apartments, and HOA's to be classified at residential rates;

b. All eleven (11) electric accounts of Customer are at commercial rates and have consistently been so since inception by Tampa Electric (brother/sister company to PGS);

c. A misconception by PGS and certain PSC Staff is *"what utilities do in similar situations has no bearing on this case."* To the contrary, this case is the direct result of Order 19365 which was implemented to equalize the gas utility's classification of common area accounts with that previously ordered for the electric companies. *Moreover, in a recent case involving gas use at a timeshare facility, PSC Staff stated that gas service should be commercial based on similar PSC ruling regarding electricity use;*

d. Order 19365 reasoned that *"if electric service to common use facilities is residential in nature, gas use to the same facilities is also residential in nature."* Conversely, this same logic and reasoning should apply here where it has been established that electric service to Customer's facilities is commercial, then gas use to same facilities is also commercial;

e. There is no logical reason for changing the rate classification to residential when it was previously established as commercial by PGS and the electricity serving Customer is (and has consistently been) classified as commercial;

f. Tampa Electric has not misclassified these accounts. It is evident they previously established that Customer should be classified under commercial rates because (1) as a Community Association they do not meet the basic application set forth in the rate schedules, or (2) they do not meet all 4 of the residential rate restrictions;

g. For PGS to classify Customer differently than Tampa Electric is inconsistent and a contradiction to the logic and reasoning that has been applied by their brother/sister company and set forth in the rate schedules.

4) Facts supporting Customer's contention that their gas use does not meet the first criterion:

a. The first criterion set forth in the PGS residential rate schedule states that 100% of the gas must be used exclusively for the co-owners benefit;

b. Members of the CA have no co-ownership rights or interest in the CA's assets. If the corporation is ever liquidated, members would not be entitled to anything. They are simply "members" of the CA... NOT co-owners. Therefore, 100% of the gas is not used exclusively for the co-owners benefit simply because...*there are no co-owners*;

c. Even if Customer was a condo or HOA, it has been established that certain non-owners can also benefit from gas use (i.e., former residents now residing in non-affiliated nursing homes). As such 100% of the gas is not used exclusively for the co-owner's benefit.

5) *The claim for a retroactive refund is basically the same as that pending in Case #781838G & #783169G. As such, the same logic and reasoning in those two cases is applicable here.*

IV Summary

Customer has provided convincing evidence disputing PGS' assertion that they are no different than a condo or HOA. The underlying facts clearly show there is "distinction WITH a difference", both legal and operational, with respect to Customer being a CA versus that of a condo or HOA. Moreover, Commission's prior actions validate this point. Therefore, Customer doesn't meet the basic requirements set forth in the PGS residential rate schedule.

Furthermore, the underlying facts show that, even if Customer was a condo or HOA, separate fees are charged in connection with their gas use (e.g., pool exercise fees, non-owner member fees, and guest card fees). These fees cause the 2nd criterion not to be met irrespective of materiality or limitations placed on who has access to Customer's facility.

Critical key facts supporting Customer's position were ignored, overlooked, or misconstrued by PGS and certain PSC Staff leading up to the Informal Conference. These were discussed at the Conference and additional information was provided clarifying and distinguishing PGS and Staff's preliminary views. Furthermore, additional evidence confirming two key points supporting Customer's position was submitted following the Conference and has yet to be addressed...

V Request for Action

The underlying facts and law pertaining to this case overwhelmingly support Customer's position. Given the ample time your office has had to review this case, it is unclear why it has yet to issue such recommendation to the Commission as set forth in Rule 25-22.032(8)(g). Nevertheless, please see that your Staff addresses and reconsiders all the facts presented to date and give this matter the attention it deserves at your earliest convenience.

All correspondence concerning this matter should be directed to me as Customer's authorized representative. 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
SCCCA - Authorized Representative

Cc: Lynn Reitz - SCCCA
R. Hicks – PSC
C. Kummer - PSC
M. Brown – PSC
N. Forsman - PSC

PSC Informal Conference Discussion Items
Sun City Center Community Association ("Customer") vs. Peoples Gas
Case No. 761557G

(Prepared & presented by Brian G. Davidson July 30, 2008)

I - Customer Not a Condo or HOA - Basic Applicability Not Met
II - Fee for Service – 2nd Criteria Not Met
III – Consistency between Gas and Electric Utilities
IV - No Co-Ownership of Common Areas - 1st Criterion also Not Met

I - Customer Not a Condo or HOA - Basic Applicability Not Met

Issue I: The Peoples Gas ("Peoples") residential rate schedule provides that commonly owned facilities of condominium associations, cooperative apartments, and homeowner's associations ("HOA's") be classified as residential *(subject to meeting certain criteria)*. The Sun City Center Community Association ("Customer") maintains they are not a condo or HOA, and do not meet the basic application of the residential rate schedule. Peoples asserts that Customer is no different than an HOA. And PSC Staff has stated that because Customer performs functions *similar* to that of an HOA, they should be classified the same for ratemaking purposes.

Position: It has been documented that Customer is a Community Association ("CA") legally organized and operated differently than condo or HOA's. *[The Customer is organized under Title XXXVI (Business Organizations) and Chapter 617 of the Florida Statutes. Condos and HOA's are organized under title XL (Real and Personal Property) and Chapter 718 and 720, respectively.]* Although they may have some functions similar to that of an HOA, they are fundamentally different. Moreover, CA's are not included in the specific language of the Peoples' residential rate schedule, *nor any of the other regulated electric and gas utilities rate schedules.* Furthermore, none of the applicable Commission Orders include CA's in their language.

Had the Commission intended to classify CA's along with condos and HOA's, Customer believes the Commission should have specifically included them in their Orders and advised utilities to adjust their rate schedules accordingly. This reasoning is clearly supported when reviewing prior Commission actions.

Specifically, *original* Commission Order 4150 (issued in 1967) instructed electric utilities to file tariffs which provided for the application of residential rates for commonly owned facilities of condominium and cooperative apartments. However, HOA's were not included in this ruling. It wasn't until 1978 that Commission Order 8539 was issued to expand the ruling to legally include HOA's. The point here is that these orders apply to specific legal entities, (i.e., condo associations, cooperative apartments, and later to HOA's). The existing orders and rate schedules don't imply or infer that the ruling can be expanded to customers with operations *"similar"* to condos or HOA's. Again, a CA is a separate and distinct legal entity from condos and HOA's...

Based on written responses from both Peoples and PSC Staff, it appears both are categorizing Customer as a "de facto" HOA. However, State agencies must adhere to the law established by the legislature in the Florida Statutes. Agencies are not permitted to enlarge, modify, or contravene statutory provisions. Therefore, it seems clear that Peoples nor PSC Staff is empowered to create additional varieties of condos or HOA's and has no authority to expand the language set forth in the existing Commission orders and the Peoples' Residential Rate Schedule.

If the "Commission" wants to expand the ruling to include CA's as they did for HOA's in 1978, they will be required to issue a new Order and direct the utilities to revise their tariffs redefining such customers as residential. Until such time, however, CA's do not fall within the scope of regulated utility's residential rate schedules because they are a separate legal entity organized and operated differently than those currently included. Therefore, Customer does not meet the basic application to be classified under the Peoples' residential rate schedule.

Additional distinctions between Customer and HOA's (for possible discussion)

One distinction between Customer and HOA's is their membership structure. Membership in condos and HOA's is required as a condition of property ownership arising from restrictions of record on each property owner's deed. Although similar restrictions may apply to members of this Customer, not all members are property owners. It has been documented that Membership in this CA is also offered to non-owners who are allowed to continue their membership even though they no longer own property in the community *(i.e., former residents now residing in non-affiliated assisted living facilities)*. There is no obligation for these individuals to pay or continue their membership and the Customer cannot enforce payment by placement of lien or foreclosure because these individuals no longer own property in the community.

Another difference is that this Customer owns their recreational facilities. The members of Customer have no co-ownership interest in the CA's recreational facilities. This is different than condo and HOA's that have common areas "co-owned" by unit owners.

In their opinion letter, PSC Staff references Order No. 10104 (issued in 1981 - Docket No. 790847-EU) in which the Commission found that condo/cooperative form of ownership of common facilities on the one hand, and HOA's ownership of facilities, *"are both residential in nature"*. Interestingly, this order also sets forth certain criteria limiting HOA's from automatically being classified as residential *which Staff did not address.*

In particular, criterion #5 states (in part) that *"Membership in the HOA, which controls and operates the common facilities, is required as a condition of property ownership... and such requirement arises from restrictions of record..."* Criterion #6 states (in part) that "*The obligation to pay may be enforced by placement of a lien and foreclosure*." Criterion #7 states (in part) that "*The HOA's are comprised of persons owning contiguous lots in a planned development...*" As previously noted, the Customer is not an HOA. Even if it was, however, it offers membership to certain non-owners. As such, criterion 5, 6, and 7 are simply not met because Customer includes non-owner members. These non-owner members have no property ownership in the CA and have no obligation to pay membership fees that can be enforced by a lien. Therefore, Customer can not be automatically classified as an HOA and should have remained on the commercial GS-2 rate.

II - Fee for Service – 2nd Criteria Not Met

Issue II: Customer maintains that *even* if they were a condo or HOA, they do not meet the 2nd criterion set forth in the residential rate schedule because of separate fees for services being charged. Peoples claims the separate fees being charged are no different than the assessments paid by condo and HOA's for the operation of their commonly owned facilities. PSC Staff states these fees are more like a management or

maintenance fee and are not fees for service because the facilities are not available to the general public.

Position: Customer is not arguing that the "annual dues" are what give rise to them failing this criterion (as PSC Staff has stated). Three (3) other circumstances cause Customer to not meet this restriction.

First, the Customer has separate clubs formed for the purpose of providing exercise and dance classes in the pools. To participate, these club members are required to pay a separate club membership fee. Certain days and times are set aside that allow the clubs to use the pools exclusively during their allotted time slots. As such, these additional fees provide members with an extra "service" (i.e., exclusive use of heated pool during specific times) they otherwise would not be entitled to. These are not "management or maintenance type fees." They are extra fees for extra services not included in annual membership dues.

Second, former residents now residing in two non-affiliated assisted living facilities (i.e., non-residents) can continue as members as long as they elect to pay membership dues. These are not mandatory fees. As non-residents, this fee is clearly different than condo and HOA fees. It is an optional fee entitling non-residents to use Customer's recreational facilities they otherwise would not be entitled to. Again, these are fees for a service regardless of the fact they may only be offered to former residents.

A third instance where separate fees are charged was brought to the attention of Staff in an email (to Connie Kummer) dated February 22, 2008. This noted that house guests of members of the Customer are required to purchase guest cards to use the recreational facilities (including gas heated pools) without the member present. *This point was not addressed by Peoples or in Staff's proposed resolution.*

There seems to be a presumption by Peoples and some PSC Staff that the above situations don't give rise to "fees for service" because they are not *"made available to the general public at large."* However, the language of the 2nd criterion simply states that ***"None** of the gas can be used in **any endeavor** which sells or rents a commodity or **provides service for a fee.**"* It makes no presumption or implies that services must be available to the general public.

No exceptions to this restriction are made anywhere in the People's Tariffs or Commission Orders. No where is it stated or implied that this restriction was intended to *"prevent obviously commercial enterprises from taking service under the residential rate" [a previous Staff comment].* It is irrelevant that the Customer may restrict use of its facilities to only members and their guests. The 2nd criterion simply states that NONE of the gas can be used in ANY endeavor which ...provides service for a fee. As such, ANY separate fees charged cause the 2nd restriction not to be met irrespective of materiality, or limitations placed on who has access to the facility.

A simple analogy to this point was previously provided Peoples and Staff *(Customer letter dated January 11, 2008).* This gave an example of a customer operated as a private non-profit club located within a development not open to the general public where membership is restricted to the residents of that community (e.g. a master association). The club has a restaurant where gas is used for cooking food items. Separate fees are charged for food in addition to the annual membership dues required from everyone residing and owning property in the development. Although access to the club restaurant is restricted, separate fees are charged for food items. In this analogy, the 2nd criterion is clearly not met because a portion of the gas is being used in an endeavor which sells a commodity (i.e., food) for a fee.

The point here is that the fees charged in this example are no different than the separate fees being charged to members and guests of the Customer. Although services (and/or food items) are restricted to members and their guests, the simple fact is that *separate fees are charged for these extra services*. It makes no difference these extra services are primarily restricted to residents of the community. *Unfortunately, this point was not addressed by Peoples or PSC Staff.*

In prior related complaints, information was provided setting forth likely reasons why restrictions were established that limit the residential rate classification of common area accounts. Specifically, it was shown that the residential State sales tax exemption on energy purchases did not apply to condos and HOA's if any portion of energy was used for non-residential purposes. Non-residential use included coin laundries, vending machines, game machines, pool entrance fees, and other services where separate fees were charged...*regardless of the fact that these services were limited to the co-owners of the association*. These same restrictions appear to have been applied when the 2nd criterion was first established to piggyback the sales tax exemption rules.

The restrictions set forth in the utility rate schedules are the same today as they were when first established in 1967 with Order 4150. The common policy of Peoples in prior years has been to classify common area customers as commercial if any portion of their gas was associated with fees being charged (e.g., coin laundry, fees for entrance to pool, etc.). Although the tax rules have been relaxed somewhat in recent years, nothing has changed with respect to Commission Orders or rate schedules that warrant classifying common area accounts differently now for rate making purposes.

Furthermore, copies of internal guidelines used by Peoples in classifying certain types of common area accounts were disclosed in previous related cases. These internal guidelines document that Peoples had previously established that condo associations with coin laundries must be on a commercial rate. The guidelines actually state that "coin laundry is service for a fee."

These internal guidelines provide additional support to two points previously discussed. First, that it has been the common practice of Peoples to classify common area accounts as commercial if any portion of gas was used where separate fees were charged. Secondly, that it makes no difference that the services being offered for a fee are restricted to the co-owners or their guests; if any fees were charged, the gas service was (and should be) considered commercial for rate making purposes.

III - Consistency between Gas and Electric Utilities

Issue III: Customer maintains there should be consistency between the electric and gas rate classification because the same 4 restrictions apply to both utilities in their residential rate schedules. Customer provided Staff with documentation showing that all 11 of their electricity accounts are classified under commercial rates. The point argued that the electric utility *(i.e., Tampa Electric – brother/sister company to Peoples)* had already established that the Customer's facilities are commercial given the facts presented in the case and that People's should do likewise. Peoples has not commented on this point to date. PSC Staff simply offers that *"if the Customer believes the electric utilities are violating their tariffs, they may challenge the application of the electric tariffs in a separate proceeding."* Staff also states that *"what utilities due in similar circumstances has no bearing on this complaint."*

Position: However, this entire case is the direct result of Commission Order 19365 which was implemented to equalize the gas utility's classification of common use facilities with that previously ordered for the electric utilities (in Orders 4150 and 8539). Again, the exact same 4 restrictions apply to both gas and electric utilities.

Moreover, Staff has made several references to Orders pertaining to the electric utilities classification of condo's and HOA's. In fact, in a recent case involving gas use at a timeshare resort, Staff actually stated that gas service should be commercial based on a similar PSC ruling regarding electricity use. As such, Staff's comment to the effect that *"what utilities do in similar situations has no bearing on this case"* seems contradictory.

Furthermore, Commission Order 19365 reasoned that *"if electric service to common use facilities is residential in nature, gas use to the same facilities is also residential in nature."* Therefore, it seems this same logic should follow where it has been established that electric service to common use facilities is commercial, gas use should also be considered commercial.

Again, all eleven electric accounts of the Customer are classified as commercial (including that serving the pool). These accounts were determined to be commercial many years prior to when natural gas service began. There is no logical reason for classifying the gas as residential when electricity serving the same facility has been established as commercial.

IV - No Co-Ownership of Common Areas - 1st Criterion also Not Met

Issue IV: *Although this point was not petitioned in the original complaint, it was submitted to PSC Staff in an email to Connie Kummer dated February 22, 2008 as an additional fact to consider.* Specifically, it was petitioned that Customer also doesn't meet the 1st criterion set forth in the Peoples' Rate Schedule because Customer has no common areas "co-owned" like there are with condo and HOA's. *Neither Peoples Gas or PSC Staff has addressed this point to date.*

Position: The 1st criteria clearly states that *"100% of the gas must be used exclusively for the co-owners benefit."* However, members of this Customer have no such co-ownership interest in the common areas of the facility. They are simply "members" of the CA, not co-owners. As such, 100% of the gas is not used exclusively for the co-owners benefit simply because... *THERE ARE NO CO-OWNERS!*

In addition, even if Customer were a condo or HOA, it has been documented that certain non-owners also benefit from gas use. That is, former owners now residing in the non-affiliated assisted living facilities. Since non-owners also benefit, 100% of the gas is not used exclusively for the co-owners benefit. Therefore, the 1st criterion is not met.

Summary

In summary, Customer maintains their rates should be reclassified back to the commercial GS-2 because (1) they are not a condo, coop, or HOA and do not meet the basic application set forth in the Peoples' Residential Rate Schedule and Commission Order 19365; (2) Even if they were a condo or HOA, they do not meet the 1st and/or 2nd criteria set forth in the Order and Rate Schedule; and (3) There should be consistency between the electric and gas utilities in classifying customer accounts as commercial or residential given the fact the same 4 criteria apply to both utilities.

Furthermore, Customer maintains they are entitled to a retroactive refund for the difference in rates billed in error dating back to when the billing error first occurred.

Discussion Points regarding Retroactive Refund (for possible discussion)

Peoples may argue for no refund claiming that they previously issued a notice advising they were required to make the rate change as the result of a Commission Order, or that Customer should have questioned the rate change sooner.

Customer doesn't recall ever receiving a notice. There is no documentation such as a certified mail return receipt to verify this notice was ever sent/received by Customer. Even if Customer had received a notice, they would have no reason to question the change if the notice advised that Peoples was required to make the change as a result of a Public Service Commission Order. Like most customers who have little understanding of regulatory issues, Customer would have assumed their utility bills are correct because they are regulated. Furthermore, Customer had no choice in purchasing their gas distribution from anyone other than Peoples. Its not like they could shop around for a better deal.

It shouldn't matter that the error was just recently discovered. Customer had no part in creating the error. They should not be penalized for a billing error they had no control over. More importantly, Peoples has no right to keep money that was never rightfully theirs in the first place.

The issue here is no different than any situation where a vendor has (inadvertently) overcharged a customer for contracted goods or services. Regardless 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 practices and ethical standards.

In accordance with the Peoples' Residential Rate Schedules (which in essence is a regulatory contract), Customer's account should have remained on the commercial GS-2 rate. However, it was switched to the higher condominium RESA (CMD) rate by Peoples resulting in their account being overcharged the past 36 months. As such, the fair and proper resolution to this matter is for Customer to be made whole and Peoples issue a retroactive refund.

Peoples may also assert they are abiding by their tariff and not required to issue a retroactive refund. However, 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 clear that Condition 7 was established to allow for annual volume reviews so that commercial customers can be reclassified under appropriate rates *(based on changes in 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, the 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, Customer'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.

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.

The "prospective only" limitation simply does not apply to situations as in this case where a customer's rate classification has 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 without merit. They are taking out of context and misapplying the true purpose of a section of their tariffs.

brian davidson

From: brian davidson [ets@tampabay.rr.com]

Sent: Thursday, July 31, 2008 11:26 AM

To: 'nforsman@psc.state.fl.us'; 'Connie Kummer'; 'Martha Brown'; 'Ansley Watson, JR.'; 'Kandi Floyd'; 'lmbinswanger@tecoenergy.com'

Cc: 'manager@suncitycenter.org'

Subject: Case #761557G - Sun City Center CA - PGS Rate Issue

Dear Conference Participants,

Attached is a copy of the Informal Conference Discussion Items referenced during our meeting yesterday. Although most key points were addressed, additional supporting facts were not discussed because of time constraints. As such, please take the time to carefully review all the facts supporting Customer's position as you reconsider this matter.

Unfortunately I don't have everyone's email address who attended the conference. As such, please forward this message to those you believe should also have a copy of this information.

Respectfully yours,

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

Energy Tax Solutions, Inc.

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

December 7, 2007

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

Re: Sun City Center Community Association, Inc.
TECO Peoples Gas Rate Classification
Account #10909711

Dear Sir/Madam:

The Sun City Center Community Association ("Customer") is a non-profit corporation that manages the various recreational facilities located within the community of Sun City Center Florida. Customer uses natural gas to heat their pool(s) and spa(s) and purchases their gas (distribution) from TECO Peoples Gas ("Peoples Gas"). In August of 2005, Peoples Gas changed Customer's rate classification from Commercial GS-2 to Residential resulting in a significant increase in gas distribution charges. Customer believes their rate was changed in error and that they should be reclassified back to the lower commercial GS-2 rate and retroactively refunded the difference in rates for reasons set forth in the following paragraphs.

The Peoples Gas Residential Rate Schedule RS (copy enclosed) provides the following applicability: *"Gas service for residential purposes in individually metered residences and separately metered apartments. Also, for Gas used in commonly owned facilities of condominium associations, cooperative apartments, and homeowners associations..."* However, the Residential Rate Schedule does not include "community associations." As such, community associations do not meet the basic applicability to be classified as residential and should be commercial for rate making purposes.

As a community association, Customer is organized under Title XXXVI (Business Organizations) and Chapter 617 (Corporations Not for Profit) of the Florida Statutes. Both condominium and homeowners associations are organized under Title XL (Real and Personal Property) of the Florida Statutes with Chapter 718 governing condos and Chapter 720 governing homeowners. As such, community associations are organized as and considered "business organizations" unlike condominium and homeowners associations.

Even if community associations were included in the language of the Peoples Gas Residential Rate Schedule, there are 4 criteria that that must be met to classify commonly owned facilities as residential. The second of the four criteria establishes that *"None of the Gas is used in any endeavor which sells or rents a commodity or provides service for a fee."*

The gas heated pool/spa is open to all of the community residences who pay an annual fee to use the various recreational facilities of the association. In addition, separate clubs have been formed for purposes of providing exercise and dance classes in the pools. Certain days and times are set aside that allow club members to use the pools exclusively during these time slots. To participate in one of these clubs, members pay a nominal fee. Since some gas is used in an endeavor which provides a service for a fee *(use of heated pool for dance and exercise classes)*, Customer's gas use does not meet the second criteria set forth in the Rate Schedule.

Furthermore, Customer has eleven electric accounts (sample bill copies enclosed) serving their recreational facilities (including the pools). Their electric service is provided by Tampa Electric Company, a brother/sister company of Peoples Gas. All eleven electric accounts are classified under commercial rates. Tampa Electric's Residential Rate Schedule (copy enclosed) includes the same basic language as that of Peoples Gas. As such, the rate classification for this Customer should be consistently applied by Tampa Electric and Peoples Gas.

In light of the information presented here, Customer's rate classification should never have been changed by Peoples Gas because they do not meet the basic applicability and all 4 criteria set forth in the Residential Rate Schedule. The Commission is requested to advise Peoples Gas to reclassify customer's gas account back to the Commercial GS-2 rate and refund the difference in rates billed in error since August of 2005.

All questions and correspondence concerning this matter should be referred to me as an authorized representative of Customer (see LOA attached). 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 -
Sun City Center Community Assoc., Inc.

Cc: Lyn Reitz - Community Assoc. Mgr.

Energy Tax Solutions, Inc.

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

January 11, 2008

Lewis Binswanger
TECO Peoples Gas System, Inc.
702 N. Franklin Street
P.O. Box 2562
Tampa, FL 33601-2562

Re: Sun City Center Community Association
Response to Peoples' Follow-up Questions
Complaint No. 761557G

Dear Mr. Binswinger:

In your letter dated January 3, 2008 you advise there is insufficient information regarding the customer and complaint referenced above and request answers to certain questions before you can make a determination with respect to whether or not their account was reclassified in error. You also provide a copy of your response to the PSC (dated same) whereby you state your disagreement with customer's position that they are not a condominium association, cooperative apartment, or homeowners association with respect to meeting the basic application of the Peoples' residential rate schedule. These items are addressed below and in the follow-up complaint letter to the PSC dated January 11, 2008 (copy attached).

The answer to question 1 and 2 is **Yes**; The community residents are required to pay an annual fee to the Sun City Center Community Association ("Community Association") and this fee entitles them to use the recreational facilities.

The answer to question 3 is **Yes**; Non-residents of the Community Association are permitted to use recreational facilities. Specifically there is a reciprocal agreement with two non-affiliated assisted living facilities (i.e., the Sun Towers and Aston Gardens). These two facilities are not members of the Community Association. However, former residents and members of the Community Association who have moved to one of these 2 facilities are allowed to remain a member as long as they continue to pay their membership dues. If they decide not to pay their membership dues, they are not permitted to use the recreational facilities, including the heated pools.

The answer to question 4 is **Yes**; *(Same reason as set forth in response to question 3).*

The answer to question 5 is **No**; *(Same reason as set forth in response to question 3).*

The answer to question 6 is **Both**: The nominal fee charged to club members allows them to participate in the exercise/dance classes AND have exclusive use of the pool during specifically allocated dates and time slots.

Irrespective of the answers provided above, your questions infer that *if* membership and access to the various recreational facilities of the Community Association (including participation in the pool dance/exercise classes) are limited and restricted to residents and their guests, then gas used in such operations should be considered residential. In doing so, however, you ignore the specific language and criteria set forth in the Peoples' residential rate schedule. Specifically, the second criteria which states that "None of the gas is used in any endeavor which...provides service for a fee."

No exceptions to this criteria are made anywhere in the regulatory rules or Peoples' tariffs. No where is it stated or inferred that this second criteria does not apply if gas use is restricted to residents and not for use by the general public. As such, it seems inappropriate to infer this if no justifiable support for doing so has been established. It is irrelevant that the Community Association "could" restrict use of its facilities to members and their guests, though in this case it doesn't.

A simple analogy is a customer operated as a private country club located within a development not open to the general public where membership is limited to and restricted to the residents of that community. The club has a restaurant for which gas is used in cooking the food served to club members and their guests and separate fees are charged for the various food items. Although access to the club restaurant is not permitted for use by the general public who are non-residents of the community, the fact remains that fees are charged for the food items. The gas use in this situation clearly does not meet the 2nd criteria of the Peoples' residential rate schedule. This same reasoning applies to the gas used to heat the Community Association's pools where separate fees are charged to the dance and exercise club members allowing them to use the pools exclusively during certain days and time slots. *Nevertheless, the answers provided above reflect that the Community Association does permit non-residents to utilize their facilities as long as they pay dues.*

The facts presented in this case show that the Community Association does not meet the 2nd criteria in the Peoples' tariff to be classified under residential rates because some of their gas is used in an endeavor *(profit or not-for-profit, public or private – irrelevant)* which provides service *(e.g., use of heated pool)* for a fee.

Another key point in the complaint established that the criteria set forth in the residential rate schedules of both Tampa Electric and Peoples Gas are essentially identical. It was also documented there are eleven electric accounts servicing the Community Association's various recreational facilities (including the pools). All eleven accounts are classified under commercial rates by Tampa Electric. It was argued that the rate classification for this customer should be consistently applied and that there is no justifiable reason for classifying them differently where the energy (gas and electric)

is used for the same purposes. Unfortunately, you do not address this point in your response to the PSC, nor do you provided any valid reasoning for this inconsistency.

Finally, the main point made in the complaint was that the Community Association does not fall under the basic applicability set forth in the Peoples residential tariff. That is, they are not a condo association, cooperative apartment, or homeowners association and, therefore, do not fall within the scope of the residential rate schedule. Your response to the PSC simply states you do not agree with my argument and you believe a community association is no different than a homeowners association or a condominium association. *This issue is addressed further in my follow-up complaint to the PSC (see attached) for which a copy of this letter was also attached.*

I trust that after carefully considering all the facts and additional information discussed herein, Peoples will reclassify the Community Association's rate class back to the applicable commercial rate they were on prior to the change. In addition, Peoples should retroactively refund this customer the difference in rates back to the date the rate change was made in error.

If you have any questions, please contact me at (813) 684-5277

Respectfully yours,

Brian G. Davidson
Authorized Representative –
Sun City Center Community Assoc.

Cc: Lyn Reitz - Community Assoc. Mgr.

Energy Tax Solutions, Inc.

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

January 11, 2008

Florida Public Service Commission
Attn: Lucille Alford
2540 Shumard Oak Blvd.
Tallahassee, FL 32399

Re: Follow-up to Complaint No. 761557G
Sun City Center Community Association, Inc.
TECO Peoples Gas Rate Change

Dear Ms. Alford:

In response to the complaint referenced above, Peoples Gas ("Peoples") issued a reply dated January 3, 2008 advising they needed answers to certain questions before they could make a determination as to whether the reclassification of customer's account is appropriate. These questions were answered in a letter back to them dated January 11, 2008. Several other key points are made in this response letter to Peoples. As such, a copy is attached and should be considered part of this follow-up complaint.

The main point petitioned in the initial complaint was that the customer ("Community Association") does not fall under the basic applicability set forth in the Peoples residential tariff. That is, they are not a condo association, cooperative apartment, or homeowners association and, therefore, do not fall within the scope of the residential rate schedule. In their response to you dated January 3, 2008, Peoples simply states that they do not agree with this point and they believe a community association is no different than a homeowners association or a condominium association. However, they are ignoring and overlooking pertinent facts presented in the complaint and have not provided any supporting data to dispute the fact that a community association is not the same as a condo or homeowners association.

The initial complaint specifically noted that the language of the Peoples residential rate schedule did not include "community associations." It only includes condominium associations, cooperative apartments, and homeowners associations.

The complaint also pointed out that community associations are organized and operated differently from condo and homeowners associations. That is, they are a different type of legal entity organized and governed under separate and distinct Florida Statutes than condo and homeowners associations. Specifically, the Community Association is a not-for-profit 501(c)(3) corporation formed to govern recreational facilities. The recreational facilities are supported by a membership base that is made up of numerous homeowners associations, residents from two assisted living facilities, residents from non-homeowners associations, and property owners associations.

If it was intended that community associations be classified as residential for rate making purposes, then the language of the Peoples' rate schedule should have specifically included them. Furthermore, it is important to note that PSC Order 19365 and related orders pertaining to the electric companies do not include community associations anywhere in their language. Based on these facts, it is clear that community associations are different from condo and homeowners associations and do not meet the basic criteria to be classified under residential rates. Peoples' contention that a community association is no different than a condo or homeowners association is clearly unsubstantiated and without merit.

The point petitioned above is enough to establish that the Community Association's rate should not have been changed from commercial to residential. Nevertheless, two (2) additional points were presented in the initial complaint supporting customer's position that their rate should not have been reclassified. One noted that even if community associations were included in the language of the Peoples' rate schedule, the Community Association's gas use does not meet the 2nd of the 4 criteria. *This point is discussed in detail in the attached response letter to Peoples.*

The other point noted that the Community Association has eleven (11) electric accounts serviced by Tampa Electric (brother/sister company to Peoples) and that the criteria set forth in the residential rate schedules of both regulated companies are essentially identical. It was documented that all 11 Tampa Electric accounts (including that servicing the pools) were classified under commercial rates. As such, it was argued the rate classification should be consistently applied and that there is no justifiable reason for classifying them differently where energy is used for the same purpose. Unfortunately, Peoples has failed to address this key point.

Based on prior dealings with Peoples, they are likely to argue that customer is not entitled to a retroactive refund. They may claim that the Community Association was made aware of this change back in August of 2005 and had the opportunity to dispute it prior to now. Regardless of what they claim, the simple fact is that this customer's rates were changed in error by Peoples in August of 2005. It makes no difference the error was just recently discovered. Customer had no part in creating this billing issue. Although they were originally given a 30 day notice regarding the rate change, this notice essentially stated the rate change had to be made because of the PSC Order and that Peoples had no choice but to implement the change. As such, customer had no reason to question Peoples' authority or expertise in the matter.

In prior correspondence with Peoples, they have claimed that the entire reclassification endeavor undertaken by them in August of 2005 was "soley an effort to comply with the provisions of the 1988 Commission Order 19365." If this is true, then they should be more than willing to retroactively refund customers whose rates are determined to have been changed in error. Moreover, *why should Peoples be allowed to earn and keep more than they were entitled to in the first place? If this is the case, what prohibits Peoples from intentionally misclassifying customer's rates without any consequence of doing so? When Peoples causes a billing rate error, why should customer have to pay for it?* The only fair and proper resolution to this matter is for the

customer to be made whole. There is no justifiable reason for Peoples not to retroactively refund customers whose rates were changed in error.

In light of the information presented herein and the initial complaint, it is requested that the Commission advise Peoples to reclassify the Community Association's rate back to the applicable commercial GS-2 rate and retroactively refund the difference in rates billed in error since the rate change was first implemented.

All questions and correspondence concerning this matter should be referred to me as an authorized representative of the Community Association. 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.

Respectfully yours,

Brian G. Davidson
Authorized Representative -
Sun City Center Community Assoc., Inc.

Cc: Lyn Reitz - Community Assoc. Mgr.

Energy Tax Solutions, Inc.

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ETS@Tampabay.rr.com

February 19, 2008

Connie S. Kummer
Florida Public Service Commission
Division of Economic Regulation
2540 Shumard Oak Blvd.
Tallahassee, FL 32399

Re: Complaint No. 761557G
Sun City Center Community Association, Inc.
TECO Peoples Gas Rate Change

Dear Ms. Kummer:

On behalf of the Sun City Center Community Association ("*Customer*"), a complaint was mailed to the Public Service Commission ("*Commission*") dated December 7, 2007. Peoples Gas ("*Peoples*") issued a reply dated January 3, 2008 requesting answers to certain questions. These questions were answered in a letter to *Peoples* dated January 11, 2008. A copy of this letter was attached and included in a follow-up complaint to the *Commission* also dated January 11, 2007. In their response letter dated January 25, 2008 ("*Response Letter*"), *Peoples* fails to take appropriate action to correct the problem. As such, *Customer* is asking for the *Commission's* further assistance in resolving this issue.

In the initial and follow-up complaint, the main point petitioned that *Customer* is not a condo or homeowners association and, therefore, does not meet the basic requisites set forth in the *Peoples'* Residential Rate Schedule ("*Rate Schedule*"). The second point petitioned that even if *Customer* was a condo or homeowners association, they do not meet the 2nd of the 4 criteria set forth in the *Rate Schedule*. A third point petitioned there should be consistency between electric and gas companies with respect to classifying customers as residential or commercial because the rate schedules of both contain essentially the same language.

Disputing the Peoples' Response Letter

Other than restating some of the basic issues and details, most of the *Peoples' Response Letter* is misleading and departs from the main points and facts set forth in the complaint.

(1) Community Association vs. Homeowners Association

Peoples argues that a community association is no different than a homeowners association and, therefore, should be included within the scope of their *Rate Schedule*. They interject that *"both not-for-profit and for-profit corporations are business organizations, and virtually all condominium and homeowners associations are one or the other."* This comment has no relevance and departs from the main point made in the

complaint. That is, a community association is organized and operated under different Florida Statutes and, therefore, is not the same as a condo or homeowners association.

Peoples states that if a condo or homeowner's association was named "Common Area Operation and Maintenance, Inc." and did not include the words "condominium" or "homeowners", then they would be required to be served under the residential rate. *Customer* agrees with this analogy *if* the entity was *actually organized and operated* as a condo or homeowners association. If not, then the commercial rate would apply.

Customer doesn't argue that their rates should have remained commercial simply because the word "community" does not appear in the *Rate Sch*edule *(as Peoples implies)*. *Customer's* point is that, as a "community" association, they are organized and operated differently than condo or homeowners associations. *Customer* agrees that *"it is what the entity is, not simply what it's called, that is important."* Despite *Peoples'* claims, the facts in this case clearly show there is "distinction ***with*** a difference" with respect to a "community" association vs. a "homeowners" association.

Peoples also references Section 720.301 of the Florida Statutes in a wordy attempt to relate the definition of "community" and "member" with that of a community association. However, Section 720 strictly applies to "homeowners" associations...not "community" associations. *Customer* is a "community" association organized and operated under Section 617 of the Florida Statues...not Section 720. As such, there is no relationship and this allusion by *Peoples* is irrelevant.

In addition to being organized and governed by different Florida Statutes than condo and homeowners associations, *Customer* is also qualified as a Section 501(c)(3) Charitable Organization under the Internal Revenue Code. To qualify under this title, companies must meet certain requirements with respect to the (i) "organization" of the entity and (ii) "operation" of the entity. These are set forth in *Customer's* Articles of Incorporation (copy enclosed) and discussed below. Also enclosed is a copy of an Internal Revenue Service letter dated March 19, 1997 acknowledging *Customer* as a Section 501(c)(3) organization. The key point here is that condo and homeowner associations cannot qualify under this section because they are organized and operated differently than *Customer*.

In *Customer's* Articles of Incorporation, Article II (a) states *(in part)* that *"the general nature, objects and purposes for which this corporation is exclusively organized and operated are charitable, scientific, or educational... This corporation is to serve the residents of the retirement community located in Hillsborough County, Florida known as Sun City Center, by providing relief for the elderly, providing assistance and essential services to tax-exempt entities, and operating in lieu of a municipal government by supplementing, but not duplicating, many costs of government, for the benefit of the residents, by maximum use of volunteer, uncompensated services from the residents... In Furtherance of these purposes, Sun City Center...shall manage recreational facilities owned for the benefit of all residents..."*

In addition, the *Rate Schedule* does not include "community associations" anywhere within the scope of the language contained therein. Furthermore, PSC Order 19365 makes no reference to "community associations", nor do any of the related Orders pertaining to the electric companies. If the *Rate Schedule* and governing Orders intended to include "community associations", then their language should have clearly stated such...*just as they do for cooperative apartments and condominium and homeowners associations.*

The facts clearly show that *Customer* is a community association organized and operated differently than condo or homeowners associations. As such, *Peoples'* presumption and claim that community associations are no different than condo or homeowners associations is wrong. *Customer* does not meet the basic applicability of the *Rate Schedule* to be classified as residential and their rates should have remained commercial.

(2) Rate Schedule Criteria

Customer's second point petitioned that even if they were a condo or homeowners association, they don't meet the 2nd of the 4 criteria in the *Rate Schedule. The details regarding this point are discussed in the initial and follow-up complaint and in the reply letter to Peoples' dated January 11, 2008.*

In their *Response Letter, Peoples* argues that the fee charged by *Customer* is no different than the assessments paid by condo or homeowners to their associations for the operation and maintenance of the commonly owned facilities. However, *Customer* is not petitioning that the "annual" fees collected from "residents" is what gives rise to not meeting the 2nd criteria. Other fees cause this criterion not to be met.

Specifically, *Customer* has separate clubs formed for the purpose of providing exercise and dance classes in the pool(s). Certain days and times are set aside that allow the clubs to use the pools exclusively during their allotted time slots. To participate, club members are required to pay a separate membership fee in addition to their annual community association fees. As such, these additional fees provide members with an extra "service" (i.e., exclusive use of heated pool during specific times for exercise and/or dance classes) they otherwise would not be entitled to.

Furthermore, question #3 of the *Peoples'* letter dated January 3 2008, asks *"Are non-residents of the community entitled to use of the recreational facilities of the association other than as a guest of a resident of the community...?"* In reply, *Customer* answered "yes" and set forth specific instances that allow non-residents to use the facilities as long as they "elect" to pay membership dues *(e.g., former residents who now live in assisted living facilities).* However, *Peoples* ignores this fact in their *Response Letter.*

As non-residents, this fee is different than a condo or homeowners association fee. It is an optional fee that entitles non-residents to use the recreational facilities of *Customer* they otherwise would not be entitled to. Therefore, the membership fees that

non-residents pay to *Customer* for use of the recreational facilities are also fees for service.

Peoples contends that the inclusion of the 2nd criteria in their *Rate Schedule* was to prevent a residential rate from being charged to an enterprise whose operations are "clearly commercial" in nature. However, there is no basis or rational to support their opinion. The 2nd criterion simply provides that "None of the gas is used in any endeavor which sell or rents a commodity or provides service for a fee." No exceptions to this criteria are made anywhere in the *Peoples'* Tariffs, PSC Orders, or any rules governing such. No where is it stated or implied that the criteria was intended to prevent "obviously commercial enterprises" from taking service under a residential rate. Any such notion is misguided, biased and without justification.

To the contrary, where specific words in a rule or regulation are not defined, they must be interpreted and applied to their common meaning. Again, the 2nd criteria simply provides that "NONE" of the gas is used in "ANY" endeavor... which provides service for a "FEE." The facts in this case clearly support *Customer's* contention that they do not meet this criterion.

(3) Consistency Required Between Electric & Gas Companies

Customer has shown that the criteria set forth in the residential rate schedules of both Tampa Electric ("*TEC*") and *Peoples* are essentially identical. *Customer* provided sample copies of their 11 electric bills documenting that all are at commercial rates. It was reasoned that the rate classification should be consistently applied between electric and gas companies because the same rate making criteria apply to both. The energy is utilized by the *Customer* for the same purpose *(e.g., providing power/heat to the recreational facilities including pool pumps and heaters).* There is no justification for classifying *Customer's* electric and gas bills differently for rate making purposes.

Peoples fails to acknowledge or even address this critical point in their *Response Letter.* It is apparent that either *TEC* or *Peoples* is in violation of their respective tariff rate schedules and PSC Orders. It is clear that *TEC* considers *Customer* to be commercial and likely does so based the same underlying facts presented in this case. Customer believes it is *Peoples* who is mistaken...

Actions Requested from the Commission

Based on the information presented herein and previously submitted, it is requested that this case be timely addressed and that the *Commission* rule on each of the following:

1) *Customer* is a "community" association, which is not the same as a condo or homeowners association and has established they do not meet the basic criteria to be served under *Peoples'* residential rates; and

2) That even if *Customer* were a condo or homeowners association, they do not meet the 2nd criteria of the *Rate Schedule* because of the various fees being charged in connection with their operations; and

3) The rate classification of *Customer* should be consistently applied between Tampa Electric and *Peoples* given the fact that the energy being used by *Customer* is for the same purpose and governed by the same criteria; and

4) *Customer's* rate should not have been changed from commercial GS-2; and

5) *Customer* should be issued a retroactive refund for the difference in rates.

With respect to a retroactive refund, *Peoples* may claim *Customer* had the opportunity to dispute the issue previously. However, it shouldn't matter that this error was recently discovered. *Customer* didn't create the billing issue. They had no reason to question *Peoples'* authority when the rate change was implemented. *Customer* shouldn't be penalized for a billing error they had no control over. More importantly, *Peoples* has no right to keep money that was never rightfully theirs in the first place. Although *Peoples* may claim they were just trying to comply with Order 19365, the simple fact is *Customer's* rates were changed in error. As such, the only fair and proper resolution is for *Customer* to be made whole.

Your prompt attention to this matter will be appreciated. All questions and correspondence concerning this matter should be referred to me as an authorized representative of the Community Association. 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.

Respectfully yours,

Brian G. Davidson
Authorized Representative -
Sun City Center Community Assoc., Inc.

Cc: Lyn Reitz - Community Assoc. Mgr.

Brian Davidson

From: Brian Davidson [ets@tampabay.rr.com]
Sent: Friday, February 22, 2008 1:24 PM
To: 'Connie Kummer'
Cc: 'manager@suncitycenter.org'
Subject: Complaint #761557G

Tracking:

Recipient	Read
'Connie Kummer'	
'manager@suncitycenter.org'	Read: 2/25/2008 8:57 AM
Brian Davidson / Energy Tax Solutions	Read: 2/22/2008 1:26 PM

Hi Connie,

Below are some additional points pertaining to the complaint referenced above that were not addressed in my recent follow-up letter to you dated February 19 2008 or the original complaint...

As a corporation organized and operated as a 501(c)(3) Charitable Organization, the Sun City Center Community Association ("SCCCA") owns the recreational facilities. Unlike condo and homeowners associations that have common areas "co-owned" by unit owners, the members of the SCCCA have no ownership interests. *This fact is additional support to Customer's primary position that they are not the same as a condo or homeowners association and that they do not meet the basic applicability for Peoples' residential service.*

In addition, house guests of members of the SCCCA are required to purchase guest cards to use the recreational facilities *(including gas heated pools)* if not accompanied by their host *(per SCCCA Bylaw XII, Section 2)*. This is another example showing that some of the gas is used in an endeavor which provides service *(use of pool)* for a fee. *This fact is further support to Customer's secondary argument that even if they were a condo or homeowners association, they would not meet the 2nd criterion set forth in the Peoples' residential rate schedule.*

Another key point has been overlooked pertaining to this case. That is, 100% of the gas is **NOT** used exclusively for the **CO-OWNER'S** benefit simply because there are no common area "co-owners" like there are with condo and homeowners associations *(as discussed above)*. Nevertheless, even if the SCCCA was a condo or homeowners association, it has been established that non-members/owners also benefit from gas use *(e.g., non-residences residing in the 2 assisted living facilities, paying house guests, and others pursuant to the SCCCA's Bylaw XII, Section 3)*. Therefore, the 1st criterion set for the in the People's rate schedule is also not met.

Please consider these additional points as you review all the facts presented in this case.

In my opinion, the facts clearly show that Customer's rates should not have been reclassified from commercial to residential and I trust that you and your staff will agree. Please let me know if you have any questions or require any additional information or documentation.

Your prompt attention to resolving this issue timely will truly be appreciated...

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

brian davidson

From: brian davidson [ets@tampabay.rr.com]

Sent: Monday, August 11, 2008 2:28 PM

To: 'Ansley Watson, JR.'

Cc: 'manager@suncitycenter.org'; 'nforsman@psc.state.fl.us'; 'Connie Kummer'; 'Martha Brown'; 'Kandi Floyd'; 'lmbinswanger@tecoenergy.com'

Subject: Case #761557G - Sun City Center CA

Dear Ansley,

During our Informal Conference regarding this case, several points were made distinguishing Community Associations ("CA") from condo or homeowners associations ("HOA"). In particular, it was noted that members of the Customer have no co-ownership interest in the CA's assets and if the corporation was ever liquidated, the members are not entitled to receive anything. However, you seemed doubtful of this point and asked for documentation to support this fact. As such, attached is a copy of the Articles of Incorporation verifying this point.

Specifically, Article II, paragraph (b) states in part that *"No part of the net earnings or assets of the corporation shall inure to the benefit of or be distributable to any member...., and no member...shall be entitled to share in the distribution of any of the corporate assets on dissolution of the corporation."* Furthermore, paragraph (d) states in part that *"In the event of dissolution or final liquidation of the corporation, the residual assets of the organization will be turned over to one or more organizations that themselves are exempt as organizations described in Sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code..."*

This is conclusive evidence supporting Customer's primary contention that they are legally organized and operated differently than condos or HOAs and do not meet the basic application of the Peoples Gas residential rate schedule.

Furthermore, it was also petitioned that even if Customer was organized and operated as a condo or HOA, they do not meet the 2nd (and 1st) criteria set forth in the Peoples' residential rate schedule. One point noted that certain house guests of members of the CA are required to purchase guest cards to utilize the various recreational facilities, including the gas heated pools. Again, you asked for documentation to support this fact. Therefore, attached is a copy of the Customer's Guest Card Policy. Section *B, Para 2 (a)* provides that *"During the second, third and fourth month of his/her visit, a weekly fee of $10.00 per guest card will be charged for a Houseguest to use CA facilities." [Prior to being amended 5/9/07, this fee was $5.00 per guest card.]* This is additional evidence establishing that even if Customer was a condo or HOA, they do not meet the 2nd criteria because SOME of the gas is used in an endeavor which provides service (including use of gas heated pool) for a fee (i.e., $10 weekly fee).

I trust this additional information will help convince you and Peoples Gas that this Customer's rate should not have been changed from commercial GS-2 to residential and Peoples will agree to change Customer's rate back to commercial and issue them a retroactive refund *(for the difference in rates billed since August 2005)*. Please advise accordingly.

Respectfully yours,

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

brian davidson

From: brian davidson [ets@tampabay.rr.com]
Sent: Wednesday, August 27, 2008 10:54 AM
To: 'rhicks@psc.state.fl.us'
Cc: 'nforsman@psc.state.fl.us'; 'Connie Kummer'; 'Martha Brown'; 'manager@suncitycenter.org'
Subject: FW: Case #761557G - Sun City Center CA

Dear Rhonda,

As follow-up to the Peoples Gas request made during the Informal Conference held on July 30 2008, additional documentation was provided to them *(i.e., Articles of Incorporation)* clearly demonstrating Customer's primary contention that they are legally organized and operated differently than condos or HOAs and do not meet the basic application of the Peoples Gas RES Rate Schedule. Additional documentation was also provided *(i.e., Guest Card Policy)* confirming that even if they were a condo or HOA, Customer does not meet the 2nd criteria of the RES Rate Schedule because SOME of the gas is used in an endeavor which provides service for a fee *(i.e., $10 weekly fee) - See email below and related attachments.* However, Peoples Gas has failed to acknowledge or respond to this additional information and that presented during the Informal Conference.

It was hoped this additional data would convince Peoples Gas that Customer's rates should not have been changed and Peoples would correct the problem. However, 20 working days have passed since the Informal Conference and it is apparent Peoples has no intention of resolving this case through the informal process. As such, it is requested that Staff submit a recommendation to the Commission for consideration.

Unfortunately, Staff overlooked or did not consider several key points supporting Customer's position in their proposed resolution issued prior to the Informal Conference. These points were addressed during the Conference and information was provided clarifying and distinguishing Staff's preliminary views. A handout of these Discussion Items was emailed to Staff shortly following the Informal Conference *(copy attached).* In addition, Staff was not aware of or had not contemplated the additional supporting documentation provided to Peoples Gas *(discussed above).*

As such, please ensure that Staff addresses and reconsiders ALL the facts and evidence presented to date as they prepare their recommendation *(especially the key points made during the Conference and included in the Conference Discussion Items handout).* In doing so, I trust that Staff will be diligent and recommend to the Commission that the underlying facts and law pertaining to this case overwhelmingly support Customer's position.

Furthermore, during our recent telephone conversation you seemed under the impression that the key issue holding up this case from being settled is Peoples Gas' reluctance to issue a retroactive refund. As such, it is very important that Staff consider the "Discussion Points regarding Retroactive Refund" which provide clear and logical support why Customer is entitled to a refund (included in the Conference Discussion Item handout). In addition, Staff should refer to the two other cases pending (#781838G & 783169G) as they specifically address the retroactive refund issue…

Please advise if anything else is required from Customer that will help expedite this case. Furthermore, please advise if we will have the right to attend and/or participate when the matter is brought before the Commission.

Your prompt attention to this matter will be appreciated.

Respectfully yours,

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