

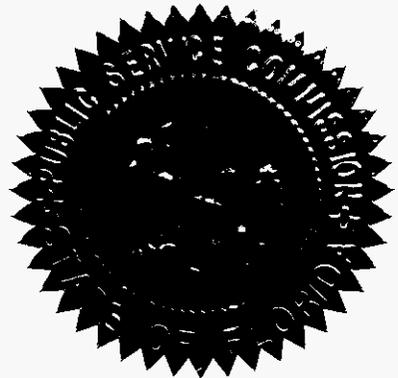
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 090083-GU

COMPLAINT OF SUN CITY CENTER
COMMUNITY ASSOCIATION, INC.
AGAINST PEOPLES GAS SYSTEM FOR
ALLEGED IMPROPER BILLING.



PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 4

COMMISSIONERS
PARTICIPATING: CHAIRMAN MATTHEW M. CARTER, II
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER KATRINA J. McMURRIAN
COMMISSIONER NANCY ARGENZIANO
COMMISSIONER NATHAN A. SKOP

DATE: Tuesday, September 15, 2009

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6732

DOCUMENT NUMBER-DATI

U9803 SEP 23 09

FPSC-COMMISSION CLERK

P R O C E E D I N G S

1
2 **CHAIRMAN CARTER:** Commissioners, as we
3 move to Item 4, we do have with us people wishing to
4 speak, so we will let them get set up here. And as
5 staff is getting ready, we have people that want to
6 speak on Item 4. Mr. Brian Davidson, Mr. Ansley
7 Watson, Candy Floyd, and Louis Binswanger
8 (phonetic). Try to say that ten times.

9 Okay. Let's give staff an opportunity to get
10 here and organized, and we will have staff introduce
11 the issue, and then we will recognize the parties.

12 Staff, you're recognized.

13 **MR. JAEGER:** Yes, Chairman Carter.

14 Ralph Jaeger, Legal Staff. Item 4 is staff's
15 recommendation on the complaint of Sun City Center
16 Community Association against Peoples Gas System. Sun
17 City states that its gas service received from Peoples
18 should be billed under the general service rate and not
19 the residential service rate. Mr. Brian Davidson, as
20 we said, is here. He is a qualified rep for Sun City.
21 And also, as you said, Mr. Ansley Watson, Candy Floyd,
22 and Louis Binswanger is here for Peoples Gas.

23 **CHAIRMAN CARTER:** Okay. Let's hear from
24 Mr. Davidson.

25 Good morning, sir. You're recognized.

1 **MR. DAVIDSON:** Good morning,
2 Commissioners. My name is Brian Davidson of Energy
3 Tax Solutions, and I am representing Sun City Center
4 Community Association regarding their complaint
5 filed against Peoples Gas.

6 I'm here today to discuss the key issues for
7 which this complaint was filed and bring to light
8 several points supporting the customers' position which
9 staff did not consider or address in their recent
10 analysis.

11 **MR. JAEGER:** Chairman Carter, I forgot
12 to -- I left out one thing. Mr. Davidson is asking
13 for 45 minutes of oral argument. He filed that on
14 Friday.

15 **CHAIRMAN CARTER:** No, not 45 minutes.

16 **MR. JAEGER:** And so I think we need to
17 address that quickly.

18 **CHAIRMAN CARTER:** That is not possible.
19 The ruling is no on the 45 minutes. You can have
20 ten minutes.

21 **MR. DAVIDSON:** Okay. I will try to get
22 through this as fast as I can. There's a lot of
23 points here, but --

24 **CHAIRMAN CARTER:** Okay. Hang on a second.
25 Hang on a second. The green light means you can

1 continue. The amber light means you two minutes
2 left. The red light means you've got 30 seconds.
3 You have ten minutes.

4 **MR. DAVIDSON:** Okay. Throughout this
5 discussion I will be referring to the Sun City
6 Center Community Association as the customer or the
7 Sun City Center. Peoples Gas is PGS, or Peoples.
8 And PSC staff is staff.

9 Before moving on, I believe it's important
10 that the Commission have a clear understanding of the
11 specific language set forth in the PGS residential rate
12 schedule which was established based on PSC Order 19365
13 issued in 1988. And I would like to provide a copy of
14 this to the Commissioners at this time, if that's okay.
15 And along with some additional information so that we
16 can go through this. I would like to point out a lot
17 of -- or just go through that real quick so you will
18 have it in front of you so you can reference it.

19 I've got some other information, some
20 exhibits, too, that I'm going to be -- I would like to
21 provide to you, also, so that --

22 **CHAIRMAN CARTER:** Let's take a pause on
23 the time. Staff, would you just get each one of the
24 proposed exhibits and get it to -- just get them all
25 at one time and give them to the Commissioners so we

1 can look those over from the party.

2 Ralph, leave one for Commissioner Argenziano.

3 **MR. JAEGER:** He only has six, and I'll try
4 and make copies.

5 **CHAIRMAN CARTER:** That's okay. Just leave
6 one for Commissioner Argenziano and you can have
7 mine for the record, okay? Does that work? I
8 promise not to write on it. You can have mine for
9 the court reporter.

10 Okay. Mr. Davidson, you may proceed.

11 **MR. DAVIDSON:** Please refer to the
12 applicability section of the residential rate
13 schedule submitted as Exhibit A, which reads as
14 follows: Gas service for residential purposes and
15 individually metered residences and separately
16 metered apartments, also for gas used in commonly
17 owned facilities of condominium associations,
18 cooperative apartments, and homeowners associations
19 subject to the following criteria. So there's two
20 criteria -- I'm only concerned with the first two
21 criteria. The first being 100 percent of the gas is
22 used exclusively for the co-owner's benefit. And
23 the second being that none of the gas is used in any
24 endeavor which sells or rents a commodity or
25 provides service for a fee.

1 So the issue here, the crux of the issue at
2 hand is first to determine whether or not the Sun City
3 Center meets the basic application set forth in the PGS
4 residential rate schedule. In other words, are they
5 the same as a condo or an HOA with commonly owned
6 facilities.

7 Secondly, it must be determined that even if
8 they met this basic application, and were a condo or an
9 HOA, does the Sun City Center meet the second or first
10 criteria set forth in the rate schedule. Okay.

11 The customer maintains that they are not a
12 condo or HOA and do not meet this basic application for
13 the following reasons: The first being that the
14 customer is a community association legally organized
15 and operated as a separate and distinct legal entity
16 and not a condo or an HOA. Although they may have
17 similar functions, they are fundamentally different and
18 these differences -- hopefully we will get the
19 opportunity to describe them here shortly.

20 But, furthermore, community associations are
21 not specifically included in the language of the PGS
22 residential rate schedule nor that of any other
23 electric or gas utility's rate schedules. In addition,
24 none of the Commission orders include community
25 associations in their language. They specifically

1 address condos, cooperatives, and homeowners
2 associations, not community associations. Okay.

3 Staff asserts a lot of different things in
4 their analysis. It says that the omission of community
5 associations is not conclusive. They say that they are
6 similar to that of a condo. The gist of the orders by
7 the Commission is that common areas such as community
8 pools is residential in nature. The customer believes
9 the underlying facts in this case demonstrate
10 otherwise. In particular, staff fails to recognize or
11 note that the applicable orders all pertain to commonly
12 owned facilities or common areas specifically
13 associated with condos, cooperatives, and homeowners
14 associations. Okay.

15 None of these orders reference, imply, or
16 infer that the organizations with similar type of
17 operations should be considered. The orders refer to
18 specific types of residential entities, condos,
19 cooperatives, and homeowners associations. Nothing
20 more, nothing less.

21 In addition, staff overlooks and fails to
22 consider a key principle set forth in the applicable
23 orders and rate schedules, that being that there is
24 common ownership of the facilities. The facts in this
25 case show that the members of the Sun City Center have

1 no co-ownership interest in the property. All of the
2 property is owned by the Sun City Center, a business
3 organization. There simply is no co-ownership of the
4 property and this is a key distinction from that of the
5 commonly owned areas of the condos and the HOAs.

6 Furthermore, the customer believes that had
7 the Commission intended to classify community
8 associations along with condos and HOAs they would have
9 included them in their orders and advised the utilities
10 to revise their tariffs accordingly.

11 The point is supported by prior Commission
12 actions. Specifically Order 4150 issued in 1967
13 instructed electric utilities to revise their
14 residential tariffs to include common areas of condos
15 and cooperative apartments that met certain criteria.
16 However, HOAs were not included in this order. It
17 wasn't until 11 years later in 1978 that Order 8539 was
18 issued to expand the ruling to include HOAs. The point
19 here is that these orders apply to specific legal
20 entities; again, condos, cooperative apartments, and
21 homeowners associations, not community associations nor
22 any other entities with similar operations.

23 The Commission now wants to expand the ruling
24 to include community associations or similar type of
25 legal entities as they did for HOAs in 1978. The

1 customer believes that a new order is required
2 directing the utilities to revise their tariffs and
3 redefine such customers as residential. Until such
4 time, however, community associations simply do not
5 fall within the scope of the orders or PGS residential
6 rate schedule.

7 Again, nowhere in the existing orders or rate
8 schedules is it stated or implied that the language of
9 these can be expanded to include customers with
10 operations similar to condos or HOAs as staff asserts.
11 State agencies must adhere to the law established by
12 the Legislature in Florida Statutes. Agencies are not
13 permitted to enlarge, modify, or contravene statutory
14 provisions. Therefore, neither PGS or staff are
15 empowered to create additional varieties of condos or
16 HOAs and have no authority to expand the ruling or
17 expand the language specifically set forth in the
18 existing Commission orders and rate schedules.

19 In my opinion, these facts should be the end
20 of this argument. They alone clearly reflect that the
21 applicable order and PGS rate schedule do not include
22 community associations in their language. I would like
23 to go on. There's a lot of other points here on this
24 issue, but I think I need to move to my second issue
25 because of time constraints. Okay.

1 The second issue that we are maintaining or
2 that we saying is even if a customer, even if the
3 customer was a condo or a homeowners association, they
4 don't meet the second criterion set forth in the PGS
5 residential rate schedule. What we are saying is if
6 you look at Exhibit A, the second criterion states as
7 follows: None of the gas is used in any endeavor which
8 sells or rents a commodity or provides service for a
9 fee. Now, note that the language here is clear and
10 specific and there are no exceptions to this criterion.

11 As such, if it can be established that any
12 portion of the gas regardless of how small is used in
13 any endeavor, whether it be for profit, not for profit,
14 private clubs, or other restricted establishments in
15 which the services are provided for a fee regardless of
16 how immaterial, then that second criterion is simply
17 not met.

18 Now, customers document that they have
19 organized clubs offering exercise and dance classes in
20 the gas heated pool. Club members are required to pay
21 a separate club fee giving thing exclusive use of the
22 pool during the specific days and times. These
23 additional fees provide club members with an extra
24 service they otherwise would not be entitled to.

25 Although PGS and staff assert that these

1 additional charges are more like annual membership
2 dues, they are simply extra fees for extra services.
3 Customers also documented that they allow certain
4 former residents to continue as members if they elect
5 to pay the membership fees. Okay. As non-residents,
6 this fee is different than a condo or an HOA required
7 dues. It is not mandatory and it cannot be enforced by
8 placement of a lien. It is simply an optional fee
9 allowing the nonresidents to use the customers'
10 recreational facilities they otherwise would be not
11 entitled to. Therefore, these also are fees for a
12 service regardless of the fact they may only be offered
13 to former residents.

14 Now, furthermore, we have documented that the
15 certain houseguests of members are required to purchase
16 weekly guest cards, okay, to utilize customers
17 recreational facilities including the gas heated pools.
18 This policy -- for reference purposes, a copy of Sun
19 City's by-laws pertaining to guest cards has been
20 submitted as Exhibit D. The fee paid for these guest
21 cards is the equivalent of an entrance fee. As such,
22 the guest card fee is a separate fee for services
23 regardless of the fact that it may only be a nominal
24 charge. Now, it should it be noted here that this
25 information was provided to staff and PGS previously,

1 but they just basically haven't acknowledged or
2 addressed that point.

3 Now, even though staff has not addressed the
4 weekly guest card fees, they claim that the other fees
5 described here don't give rise to fees for a service
6 because the facilities are not available to the general
7 public. However, the language of the second criterion
8 simply states that none of the gas can be used in any
9 endeavor which sells or rents a commodity or provides
10 service for a fee. The restriction does not state,
11 imply, or presume that the service for a fee means
12 being made available to the general public. It just
13 doesn't say that. Nor is it required, or does it
14 require that the use be based solely on additional fees
15 paid for certain services as staff has claimed.

16 Okay. It is irrelevant that the customer may
17 restrict the use of its facilities to members and a
18 certain form of property owners. The second criterion
19 simply states that none of the gas can be used in any
20 endeavor which provides service for a fee. To give a
21 simple example -- am I out of time?

22 **CHAIRMAN CARTER:** You've got 30 seconds.

23 **MR. DAVIDSON:** Okay. There's an example I
24 want to give here. The customer -- say there is a
25 customer that operates as a private nonprofit club

1 operated within a community development not open to
2 the general public and membership is restricted to
3 residents of that community. Annual dues are
4 required from everyone and these fees entitle
5 everyone to membership in the club, and the club
6 includes a restaurant with gas used for cooking and
7 separate fees are charged for the food items served
8 here.

9 **CHAIRMAN CARTER:** Mr. Watson, you're
10 recognized. You have ten minutes, sir.

11 **MR. WATSON:** Good morning, Commissioners.

12 Your staff, at least in my opinion, has done
13 an excellent job of correctly addressing the points
14 raised by Mr. Davidson's complaint on behalf of the
15 community association. And I'll use that term
16 community association. So I will attempt to be as
17 brief as possible.

18 The complaint basically asserts two reasons
19 for making the requested reclassification to commercial
20 service. Both points have been addressed by
21 Mr. Davidson. First, that the customer is a community
22 association, i.e., not a condominium association or
23 homeowners association. And that the second criterion
24 in Peoples' residential rate schedule for the
25 applicability of the rate to the customer, i.e., none

1 of the gas is used in any endeavor which provides
2 service for a fee is not met. Peoples, believes as the
3 staff analysis and its recommendation concludes, that
4 the association's use of gas to heat its community
5 swimming pool is residential in character and that the
6 residential rate schedule is, therefore, the
7 appropriate rate schedule under which the association
8 should receive gas service.

9 However, I'd like to add a point on the issue
10 of homeowners association versus community association
11 that is not addressed by the staff recommendation. The
12 point has been raised earlier by Peoples in
13 correspondence preceding the filing of the formal
14 complaint in this docket, but has never been addressed
15 by Mr. Davidson. The point is this. The fact that the
16 term community association is not listed in the
17 residential rate schedule makes absolutely no
18 difference because, as defined by Florida Statute, this
19 particular association, this particular customer is a
20 homeowners association, and homeowners associations are
21 listed in the rate schedule.

22 Chapter 720, Florida Statutes, is titled
23 Homeowners Associations. According to Section 720.302,
24 among the purposes of the chapter are to give statutory
25 recognition, and I'm quoting now, "To corporations not

1 for profit that operate residential communities in this
2 state." This section also provides that the chapter
3 does not apply to condominium associations subject to
4 regulation under Chapter 718 or to a cooperative
5 association subject to regulation under Chapter 719.

6 Section 720.301, Subparagraph 9, reads at
7 least as pertinent here as follows, and I'm quoting,
8 "Homeowners Association or Association means a Florida
9 corporation responsible for the operation of a
10 community in which the voting membership is made up of
11 parcel owners, or their agents, or a combination
12 thereof, and in which membership is a mandatory
13 condition of parcel ownership and which is authorized
14 to impose assessments." That's the definition. If you
15 look at Page 4 of the staff recommendation and look at
16 the articles of incorporation and by-laws of the
17 customer, it falls right within that definition.

18 Now, these homeowners associations are not
19 regulated by the Bureau of Condominiums or the
20 Department of Community Affairs, but the chapter was
21 passed because the Legislature believed that
22 residential communities in Florida are important to the
23 state and its well-being. These declarations or the
24 conveyances that make up the common areas that are
25 managed by the board of directors or by the residents

1 if there is no board, could be term limited, and there
2 are provisions later on in the chapter that provide for
3 this dedication of common facilities to be continued.

4 The definitions in Section 720.301 define
5 community in part as the real property that is or will
6 be subject to a declaration of convenience which is
7 recorded in the county where the property is located,
8 and common area in part as real property committed by a
9 declaration of convenience to be leased or conveyed to
10 the association.

11 Again, compare this to the customer's
12 articles of corporation and you will see that it meets
13 the definition of a homeowners association. The fact
14 is that by statute SCCCA is a homeowners association.
15 If the community association is actually a homeowners
16 association, then the tariff language is applicable
17 notwithstanding the terminology. It's what the entity
18 is not simply what it is called that is important.

19 If a homeowners association or a condominium
20 association was named Common Area Operation and
21 Maintenance, Incorporated; that is, it's name included
22 neither the condominium nor the word homeowners, it
23 would nonetheless be required to receive service from
24 Peoples under a residential rate if the other criteria
25 in the residential rate schedule were satisfied.

1 On the second point of staff's analysis in
2 the recommendation, the customer's argument that the
3 separate club fees paid by certain residents for the
4 exclusive use of the pool amount to the provision of a
5 service for a fee and, therefore, makes the residential
6 rate schedule inapplicable. We agree with staff's
7 analysis. We would also add that there really is no
8 service being provided in return for whatever fee is
9 paid. That is the fees are paid for the privilege of
10 exclusive use of a facility that couldn't be used to
11 begin with if you weren't a community resident or the
12 guest of a community resident.

13 It's no different than allowing a cub scout
14 troop comprised of residents' children to use the pool
15 for a separate fee. There is no service here, but it's
16 a privilege that's extended. It is not a commercial
17 use. Now, this would be difficult in Sun City Center
18 because you have to be 55 or older to live there.

19 The same is the case for the guest cards
20 mentioned by Mr. Davidson. They are for the privilege
21 of being treated as a member of the association, that
22 is as a resident of the community which has the
23 privilege of using the recreational facilities. After
24 four months, a guest who has hung around for four
25 months gets the full assessment of a full-time resident

1 of the community. And it's for the privilege of using
2 these common areas. It's not a commercial use.

3 Peoples believes that the Commission's
4 inclusion of this criterion in the 1988 order was to
5 prevent a residential rate from being charged to an
6 enterprise whose operations are clearly commercial in
7 nature. That cannot be paid for the fees charged by
8 Sun City Center or for the guest cards issued to house
9 guests of residents.

10 We urge you to approve the staff's
11 recommendations on Issues 1 through 3, and thank you
12 for the opportunity to be heard.

13 **CHAIRMAN CARTER:** Thank you.

14 Commissioners, here's my plan on this matter
15 here. What I would like to do is have staff introduce
16 Issue 1, then we will have our discussion on Issue 1,
17 and then we will go Issue 2 and have our discussion on
18 that, and that way if you have questions of either the
19 parties or staff, we can go from there.

20 Commissioner Skop, you're recognized, sir.

21 **COMMISSIONER SKOP:** Thank you, Mr.

22 Chairman.

23 Before we get into the issues, I just have a
24 general question that I would like to try and direct to
25 Mr. Davidson, if I may.

1 **CHAIRMAN CARTER:** You're recognized.

2 **COMMISSIONER SKOP:** Thank you, Mr. Chair.

3 Mr. Davidson, with respect to your
4 representation of your client as a qualified
5 representative, can you please elaborate on the nature
6 of our fee schedule, and if, in fact, you are receiving
7 a contingency fee for your representation?

8 **MR. DAVIDSON:** Actually, I think that is
9 confidential information. But, yes, it is based on
10 a contingency fee basis and, you know, that's about
11 all I can say about that.

12 **COMMISSIONER SKOP:** Okay. I guess just in
13 passing, Mr. Chair, I recognize that we often have
14 qualified representatives appear before the
15 Commission representing clients. Usually those are
16 either out-of-state attorneys or people doing
17 something on behalf of an individual citizen. I
18 guess when you get in this situation where you're
19 doing so for compensation, it seems an awful lot to
20 me like acting in the capacity as an attorney, but I
21 don't believe that Mr. Davidson is a member of the
22 bar. So I guess my concern would be whether this
23 representation is tantamount to the unlicensed
24 practice of law. But, again, that's a personal
25 concern.

1 **CHAIRMAN CARTER:** Okay. All right.

2 Staff, let's go with Issue 1. Introduce the
3 issue and then, Commissioners, we can get into a
4 discussion whether you have questions for staff or for
5 the parties. Let's do it that way.

6 Staff, you're recognized to introduce Issue
7 1.

8 **MR. JAEGER:** Yes, Chairman Carter.

9 Issue 1 is whether from August 2005 through
10 the present was Sun City correctly pursuant to the
11 residential service tariff of Peoples Gas System, or
12 should it have billed using the commercial GS-2 service
13 tariff.

14 And, basically, Mr. Davidson has divided his
15 argument up into three separate categories. One, they
16 are not a condo association, they don't meet the
17 criterion, and let me see what the -- and being
18 consistent between gas and electric applications saying
19 that the electricians are charging -- or the same
20 community association is being charged under GS-2
21 rates.

22 **CHAIRMAN CARTER:** I remember reading that
23 in your recommendation, so let's kind of bring it
24 down in the context of staff's recommendation.

25 **MR. JAEGER:** Okay. The first one is

1 whether or not they are a homeowners association as
2 put forth by Mr. Ansley in his argument, and whether
3 if they are not a homeowners association, is that
4 fatal to this cause for Peoples Gas.

5 **CHAIRMAN CARTER:** And your recommendation?

6 **MR. JAEGER:** We're saying that whether
7 they are a homeowners association or not, the gist
8 of the orders are that it's not the entity that is
9 receiving the service, it is the type of service
10 being provided. And basically it started out with
11 condos and co-ops being residential service, and
12 then the homeowners came in, or a homeowners
13 organization came in, and in Order Number 10104 they
14 argued we're a homeowners association, we don't fit.

15 The Commission basically rejected that
16 argument, and said, no, it's not whether you are a
17 homeowners organization, this is residential service,
18 so they rejected the argument that homeowners -- and
19 then the tariffs did change and they added homeowners.
20 But, basically, that argument was made already, I
21 think, when we added homeowners. Now they are saying
22 here is the fourth animal of a community association.
23 We don't fit. And so that's -- and staff believes that
24 no, this is still -- I think on Page 5 we talk about --
25 I have circled it, Bylaw V, Section 7, "The Board may

1 exercise the right of lien to effect collection of dues
2 which remain unpaid 30 days after the due date." And
3 then Section 2 at the very top, use of association
4 facilities and other privileges normal to association
5 membership requires that all members have all dues,
6 fees, assessments, and obligations satisfied.

7 So, this is basically, as Mr. Ansley said,
8 the same as a homeowners association, and it is
9 commonly owned areas, that to use them they have to pay
10 these fees and they are subject to lien.

11 **CHAIRMAN CARTER:** Okay. Commissioners,
12 any questions?

13 Any questions of staff?

14 Commissioner McMurrin, you're recognized.

15 **COMMISSIONER McMURRIAN:** I think this is
16 for Ms. Kummer. I just have one quick question
17 about going forward. There was discussion in the
18 staff rec --

19 **COMMISSIONER ARGENZIANO:** I'm sorry,
20 Commissioner McMurrin, I can't hear you very well.

21 **COMMISSIONER McMURRIAN:** I'm sorry. I
22 will get closer to the mike.

23 **COMMISSIONER ARGENZIANO:** Thank you.

24 **COMMISSIONER McMURRIAN:** With respect to
25 the conclusion paragraphs in the rec, and it talks

1 about going forward we shouldn't have this problem
2 again, or this same issue should not reoccur because
3 of what was done in the recent rate case. Can you
4 explain that a little bit more? And also explain
5 does that have any bearing on this particular
6 entity.

7 **MS. KUMMER:** Commissioner, this is Connie
8 Kummer with staff.

9 **CHAIRMAN CARTER:** Get a little closer,
10 Connie. Chris, can you give us a little volume on
11 Ms. Kummer's mike? Okay.

12 **MS. KUMMER:** In Peoples' last rate case
13 this issue was addressed. They went to a volumetric
14 type of rate structure as opposed to a residential
15 commercial rate structure so that any customer no
16 matter what their makeup, whether it was residential
17 or economical, if they use the same therm level will
18 pay the same rate. So there won't be this problem
19 of being residential versus commercial. And that
20 really has no bearing on this complaint because this
21 is a past action, but that was simply included to
22 let the Commission know that we have addressed and
23 the company has addressed this issue going forward.

24 **CHAIRMAN CARTER:** Commissioner McMurrian.

25 **COMMISSIONER McMURRIAN:** I guess one quick

1 follow-up. So going forward, though, the changes
2 would also apply to any entity that that rate
3 structure would apply to. In other words, it
4 could -- I'm not able to get it together today. The
5 proposed changes -- well, the changes that were made
6 in that rate case would apply to an entity like
7 this.

8 **MS. KUMMER:** Yes, ma'am, they would. And
9 I believe it was May of '09 when the new rates went
10 into effect, and as of that date they went on the
11 new rate schedule.

12 **COMMISSIONER McMURRIAN:** Okay. Thank you.

13 **CHAIRMAN CARTER:** Commissioner Edgar.

14 **COMMISSIONER EDGAR:** Just a follow-up to
15 that to our staff. I understand the question and
16 the answer about on a go-forward basis that this has
17 been addressed in another forum and another docket.
18 But as to the looking back, are we aware of other
19 residential entities that may be not as clearly
20 delineated as many under the criteria?

21 **MS. KUMMER:** We have -- Mr. Davidson has
22 filed several other complaints that have been
23 resolved on other grounds similar to this, but this
24 is the first time we have addressed -- the
25 Commission has had the opportunity to address this

1 particular issue on the application of the tariff
2 language.

3 **COMMISSIONER EDGAR:** And a follow-up, Mr.
4 Chairman.

5 **CHAIRMAN CARTER:** You're recognized.

6 **COMMISSIONER EDGAR:** On a slightly
7 different issue. I know in the written discussion
8 and some of the presentations that we have had
9 today, and I think our staff mentioned that one way
10 to look at this or analyze it is the type of service
11 versus the type of entity being served I think is
12 what I heard, and so I would just like you or
13 somebody on our staff to elaborate on that point a
14 little bit more for me, if you would.

15 **MR. JAEGER:** I believe when you look at
16 all the past orders, the focus was on service to
17 commonly owned areas, or areas for the benefit of
18 residents. And as I said, it started out with
19 condos, co-ops, and then they added homeowners, and
20 now we are saying is this a homeowners association.
21 If not, should we apply the residential tariff to
22 this kind of service. And staff believes that this
23 type of service is residential in nature, and that's
24 what the Commission has said over and over again
25 that service to commonly owned areas such as pools

1 is residential in nature.

2 **COMMISSIONER EDGAR:** Thank you.

3 **CHAIRMAN CARTER:** Thank you.

4 Staff, on Page 7, under the heading about the
5 consistency between gas and electric application, I
6 think you kind of already fleshed that issue out. Just
7 for the sake of elaboration, would you kind of do it
8 one more time just for the record.

9 **MR. JAEGER:** I think all we're addressing
10 here is the gas. That is what is before us today,
11 the gas case, and we are not looking at what's going
12 on in the electrics in this complaint. So,
13 basically, that's not appropriately before us.

14 **CHAIRMAN CARTER:** Okay. Good.

15 **COMMISSIONER ARGENZIANO:** Mr. Chair.

16 **CHAIRMAN CARTER:** Commissioner Argenziano,
17 you're recognized.

18 **COMMISSIONER ARGENZIANO:** Just a thought
19 had occurred to me. I was just wondering how else
20 the area of the association is represented like with
21 insurance and so on. Are they considered a
22 commercial operation or a residential operation?
23 How is that -- can someone answer that as far as
24 maybe -- with insurance is it viewed upon as part of
25 a residential insurance policy?

1 Again, I'm trying to figure out where else
2 they may be labeled a residential facility with the
3 pool and the common areas, or are they considered
4 commercial?

5 **CHAIRMAN CARTER:** Mr. Jaeger.

6 **MR. JAEGER:** Chairman Carter, I'm not
7 aware of how the insurance is. They are a nonprofit
8 association for the benefit of the residents, that's
9 all.

10 **COMMISSIONER ARGENZIANO:** And maybe
11 someone there representing the association can
12 answer that, because they have to have insurance.

13 **CHAIRMAN CARTER:** Let me ask Mr. Davidson.
14 Mr. Davidson.

15 **MR. DAVIDSON:** They are actually organized
16 as a 501(c)(3) corporation. They are not a
17 homeowners association or anything like that. So as
18 far as the insurance, they are a business
19 organization, so it would not be a residential type
20 of insurance. They are a business entity.

21 **COMMISSIONER ARGENZIANO:** That's what I
22 was afraid you were going to say, because now that
23 complicates it for me. Because I was wondering how
24 they would be insured if it would be insured, and
25 I'm not sure, and then looking at it that way that

1 it --

2 **MR. DAVIDSON:** Keep in mind there is no
3 commonly owned property here. The property is owned
4 by the corporation. If it was ever liquidated, the
5 members of the community association get nothing.
6 Okay. Unlike a condo association, they have common
7 ownership, there is no common ownership here.

8 **MR. WATSON:** Could I respond to that
9 briefly?

10 **CHAIRMAN CARTER:** Mr. Watson.

11 **MR. WATSON:** The homeowners association
12 section of the statute does not contemplate common
13 ownership, either. And as far as 501(c), virtually
14 every not-for-profit corporation of which I'm aware
15 has provisions that say that none of the assets of
16 the corporation ever go to the members, that they go
17 upon liquidation to another entity that meets the
18 requirements of 501(c) of the code.

19 **CHAIRMAN CARTER:** That's required by the
20 IRS.

21 **MR. DAVIDSON:** Can I respond to that
22 quickly?

23 **CHAIRMAN CARTER:** Sure, you may respond.

24 **MR. DAVIDSON:** This is Brian Davidson.
25 My understanding is that a condominium or

1 homeowners association cannot qualify under a 501(c)(3)
2 recognition under the Internal Revenue Code. There are
3 a lot of distinctions here that I have not had the time
4 to be able to present, but there are many other
5 distinctions, you know, between a community association
6 and a condo or homeowners association that have not
7 been presented, but there are a lot of distinctions.

8 **CHAIRMAN CARTER:** Mr. Watson.

9 **MR. WATSON:** I don't really want to
10 respond to that, but we will concede that this is
11 not a condominium association, it is a homeowners
12 association.

13 **CHAIRMAN CARTER:** Okay. Let's kind of get
14 back around here.

15 Staff, where were we? And, Commissioners,
16 obviously any portion of the issues or any issue that
17 you want to ask questions about, you are not bound to
18 that, I just thought if we did 1, 2, and 3 it would
19 kind of flow logically, because in Issue 1 it talks
20 about the -- the first thing, it just kind of breaks
21 out the allegations about the community association,
22 not a condo association. And, Staff, I think they did
23 a good job in dealing with that as it relates to
24 residential services and the applicability of that in
25 terms of commonly owned facilities and condominium

1 associations.

2 Then they looked at it basically -- and I'm
3 reading from this order, is it 19365, staff, is that
4 correct, on Page 3 where you said that this Commission
5 believes that gas utilities should consider service to
6 commonly owned areas of condominium associates,
7 cooperative apartments, and homeowners associations as
8 residential service?

9 **MR. JAEGER:** That's correct, Chairman.

10 **CHAIRMAN CARTER:** And then staff follows
11 up on Page 4 with kind of a delineation as they go
12 through the articles of incorporation for this
13 association here. And from there go to a discourse
14 among the by-laws of this association. And on Page
15 4, about the second subpart of the argument is that
16 the criteria of the residential service tariff
17 prevents the use of residential service tariff, and
18 staff does a good job, in my opinion, of laying out
19 the parameters of that. And then on Part 3, the
20 consistency between gas and electric, we have
21 already asked about that before in the conclusion.

22 And based upon the conclusion, from what
23 staff has said is that -- I mean, I haven't heard
24 anything today that would cause me to disagree with
25 that unless someone else has heard that. Okay.

1 Let's go to Issue 2. Staff, would you
2 introduce Issue 2, please?

3 **MR. JAEGER:** Issue 2 is should Peoples Gas
4 System be required to refund with interest the
5 revenues collected from Sun City from August of 2005
6 to the present. And if you agree with Issue 1 in
7 staff's recommendation then, of course, that would
8 be no. If you disagree, then you could require a
9 refund.

10 **CHAIRMAN CARTER:** Mr. Davidson, why would
11 you go back to 2005 to present? What's the basis
12 for that date? What's magical about that date?

13 **MR. DAVIDSON:** I believe it was in
14 August 2005 Peoples Gas changed the rate
15 classification from commercial GS-2 to residential
16 rate, and in doing so that increased the charge per
17 therm by about up to 20 cents a therm.

18 **CHAIRMAN CARTER:** Excuse me,
19 Commissioners. Did the homeowners association
20 between 2005 and present initiate any legal actions
21 against Peoples Gas?

22 **MR. DAVIDSON:** Okay. I'm going to
23 clarify, it is a community association.

24 **CHAIRMAN CARTER:** Community association,
25 homeowners association --

1 **MR. DAVIDSON:** There is a difference, but

2 --

3 **CHAIRMAN CARTER:** The association we're
4 talking about in this case before us.

5 **MR. DAVIDSON:** I missed the question.
6 What is it? Did the community association do what?

7 **CHAIRMAN CARTER:** I was going back to the
8 date of August 2005. I said did the Sun Center
9 Community Association, Incorporated, engage in any
10 legal action against Peoples Gas between that time
11 and the present?

12 **MR. DAVIDSON:** No, they did not.

13 **CHAIRMAN CARTER:** In this matter?

14 **MR. DAVIDSON:** No. If they did -- I mean,
15 other than when I brought this to their attention,
16 they hired me on to go ahead and pursue this on
17 their behalf.

18 **CHAIRMAN CARTER:** And when was that?

19 **MR. DAVIDSON:** It was about -- this case
20 has been going on for almost two years.

21 **CHAIRMAN CARTER:** So you brought it to
22 their attention two years ago and then they decided
23 to go forward?

24 **MR. DAVIDSON:** Yes.

25 **CHAIRMAN CARTER:** Okay. Commissioners,

1 any further discussion on Issue 2, or any questions
2 of the parties? Issue 3, Commissioners, is
3 basically should the docket be closed.

4 Let's go back. We've heard from staff and we
5 have heard from the parties on Issues 1, 2, and 3.

6 Commissioners, any further questions? Any
7 further debate?

8 **COMMISSIONER ARGENZIANO:** Mr. Chairman.

9 **CHAIRMAN CARTER:** Commissioner Argenziano,
10 you're recognized.

11 **COMMISSIONER ARGENZIANO:** Just one more
12 just to try to find out, again, and I have read it
13 and am trying to maybe put it together at the last
14 minute here. What caused the change from commercial
15 back to residential?

16 **CHAIRMAN CARTER:** Staff, you're
17 recognized.

18 **MR. JAEGER:** Chairman Carter, I believe
19 the utility would be better, but I think they were
20 doing a review of their tariffs and saw these orders
21 and knew that this was the service for heating a
22 pool, and so they decided that it was better --
23 pursuant to Order 19365 that they had to go to
24 residential service.

25 **COMMISSIONER ARGENZIANO:** And for staff,

1 the answer that I got before on the insurance
2 question was that it's treated as a corporation with
3 no common areas that were owned by the homeowners.
4 Was that looked at as part of staff's recommendation
5 as to figuring out whether it was residential or
6 would fall under the commercial side of this
7 argument?

8 **MR. JAEGER:** To my knowledge, staff did
9 not look at any type of insurance, just the type of
10 --

11 **COMMISSIONER ARGENZIANO:** I don't mean the
12 insurance. I mean as far as it was classified
13 somewhere else as not being residential, but being
14 commercial, or other than residential. And if there
15 are no common areas, I thought that we were talking
16 about common areas were also owned by the residents.
17 And if it is treated differently as a commercial
18 property somewhere else such as insurance, was that
19 looked at all in making a determination whether that
20 should be a residential or a commercial --

21 **MR. DAVIDSON:** Chairman, can I make a
22 comment, please? This is Brian Davidson.

23 **CHAIRMAN CARTER:** Mr. Davidson, you're
24 recognized.

25 **MR. DAVIDSON:** One thing that has not been

1 pointed out is the same rules, the same tariff
2 language is included regarding the electricity --
3 the electric company servicing the facility. The
4 exact same criteria are included there. The
5 customer has 11 electric accounts servicing their
6 facility. All 11 electric accounts are classified
7 under commercial rates, okay, including that
8 servicing the pool.

9 If you look at the tariff under Tampa
10 Electric, which I have included as Exhibit F here, and
11 read the criteria you will see that the same language
12 is included there. Even though it's talking about
13 electricity, you know, the same rules apply. So,
14 again, there should be -- that's kind of indicative of
15 the electric company has already determined that this
16 customer is commercial, okay, under the same logic and
17 reasoning that Peoples Gas should be applying, but they
18 are not.

19 **CHAIRMAN CARTER:** You remember when I
20 asked staff about that and we have already discussed
21 that issue. Do you remember when I asked them about
22 that in terms of the -- because I remember you had
23 raised that initially about electric, and it's not
24 necessarily an electric case. Remember on Page 7 we
25 went through that?

1 **MR. DAVIDSON:** Yes, I do, Commissioner,
2 and the only reason I bring it up again here is that
3 staff has also referenced a lot of orders here that
4 were pertaining to the electric companies, okay. So
5 they have applied the rules regarding electricity,
6 you know, back and forth. I mean, the Order 4150,
7 what is the other one, 10104, they all pertain to
8 electricity.

9 **MS. KUMMER:** Mr. Chairman, if I may.

10 **CHAIRMAN CARTER:** Ms. Kummer.

11 **MS. KUMMER:** Connie Kummer, again. To the
12 best of my knowledge, there is no order on electric
13 companies requiring them to put these types of
14 facilities under residential rate. 19365
15 specifically orders the gas utilities to put these
16 customers on a residential rate. We don't have that
17 corresponding requirement for electric.

18 **CHAIRMAN CARTER:** Thank you, Ms. Kummer.

19 Commissioners --

20 **MR. DAVIDSON:** Mr. Chairman, could I
21 respond to that, please? There is an order --

22 **CHAIRMAN CARTER:** Briefly. Ever so
23 briefly.

24 **MR. DAVIDSON:** Okay. Order 4150 issued in
25 1967 did require the electric companies to treat

1 commonly owned areas of condos and cooperatives as
2 residential, okay.

3 **CHAIRMAN CARTER:** Notwithstanding that,
4 assuming arguendo that's true, what Ms. Kummer has
5 just said is that the Order 19365 specifically
6 requires the gas companies to do that. How do you
7 overcome that?

8 **MR. DAVIDSON:** Commonly owned areas of
9 condominiums, cooperative apartments, and homeowners
10 associations. Commonly owned. There is no common
11 ownership here.

12 **CHAIRMAN CARTER:** We are talking
13 specifically about gas companies. How do you get
14 around that?

15 **MR. DAVIDSON:** That's what I'm referring
16 to. Right now -- I'm going to that order now, it's
17 applying to the gas companies, and it's applying to
18 those three types of legal entities.

19 **CHAIRMAN CARTER:** Well, I'm not persuaded
20 personally. I am just speaking for myself, but I'm
21 not persuaded.

22 **COMMISSIONER ARGENZIANO:** Well, Mr. Chair,
23 can staff go to that point again, because I'm stuck
24 on that point. If it is not commonly owned, then
25 how does it classify as residential? And if staff

1 could go over that again maybe that would help me in
2 determining what the outcome is for me.

3 **MR. JAEGER:** Commissioner Argenziano,
4 Ralph Jaeger. I believe the analysis that staff did
5 starting on Page 4, and it's talking about the
6 articles and the by-laws, and it's to serve the
7 residents of the community -- of the retirement
8 community for the benefit of the residents, and they
9 are known as restrictive covenants running with the
10 land on behalf of the residents and for the benefit
11 of the community. And the dues they pay entitle
12 them to use the community pool, and the community
13 pool is considered residential type service under
14 the orders previously mentioned. So the analysis
15 was --

16 **COMMISSIONER ARGENZIANO:** That still
17 doesn't change it for me when it comes to them not
18 owning the common areas. That is a big difference.
19 Thank you.

20 **CHAIRMAN CARTER:** Thank you.
21 Commissioners, any further debate? Any further
22 comment? Any further questions?

23 The Chair is now open for a motion.

24 Commissioner McMurrin, you're recognized.

25 **COMMISSIONER McMURRIAN:** Thank you.

1 I would move staff on Issues 1, 2, and 3.

2 **COMMISSIONER SKOP:** Second.

3 **CHAIRMAN CARTER:** It has been moved and
4 properly seconded that we accept staff's
5 recommendation on Issues 1, 2, and 3. Any further
6 debate?

7 Hearing none, all in favor let it be known by
8 the sign of aye. Aye.

9 **COMMISSIONER McMURRIAN:** Aye.

10 **COMMISSIONER SKOP:** Aye.

11 **COMMISSIONER EDGAR:** Aye.

12 **CHAIRMAN CARTER:** All those opposed, like
13 sign.

14 **COMMISSIONER ARGENZIANO:** Aye.

15 **CHAIRMAN CARTER:** Show it done. Thank
16 you.

17 * * * * *

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF FLORIDA)

: CERTIFICATE OF REPORTER

COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 22nd day of September, 2009.



JANE FAUROT, RPR

Official FPSC Hearings Reporter
(850) 413-6732