

**Ruth Nettles**

090083-GU

**From:** brian davidson [ets@tampabay.rr.com]  
**Sent:** Thursday, October 22, 2009 12:10 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** Docket No. 090083 Petition of Proposed Agency Action  
**Importance:** High  
**Attachments:** Docket No 090083\_GU Petition on PPA.pdf; US Postal Svc Return Receipt.pdf

Dear Sir/Madam,

Please note the attached Petition was sent certified mail/electronic receipt to the Office of Commission Clerk, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850 on October 15, 2009. The US Postal Service confirmed delivery of this on October 21, 2009 via electronic return receipt (copy attached). However, the address this was delivered to and the person who signed as recipient do not appear to be that of the Office of Commission Clerk. As such, this Petition is being resubmitted electronically here so that it is timely received by the due date of October 26, 2009.

Please acknowledge the timely receipt of this Petition.

Respectfully yours,

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

This email is privileged and confidential information. If the reader of this message is not the intended recipient, any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please notify us by email or telephone and delete the original message. Thank you.

10/22/2009

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaint of Sun City Center  
Community Association, Inc. against  
Peoples Gas System.

Docket No. 090083-GU

Filed: October 15, 2009

**PETITION ON PROPOSED AGENCY ACTION**

The Sun City Center Community Association, Inc. ("Customer") by and through their undersigned qualified representative, pursuant to Section 120.57, Florida Statutes, and Rules 25-22.029 and 28-106.201, Florida Administrative Code, file this protest to the Florida Public Service Commission's ("Commission") Order No. PSC-09-0661-PAA-GU, issued October 5, 2009, and state:

1. The name and address of the agency affected and the agency's file number:

Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850  
Docket No. 090083-GU

2. The Petitioner's ("Customer") name, address, and telephone number: Sun City Center Community Association, Inc., 1009 N. Pebble Beach Boulevard, Sun City Center, Florida 33573, telephone number (813)-633-3500. The Public Service Commission's ("PSC") proposed agency action would impact Customer's substantial interest because the Order proposes that Customer was not over billed gas distribution charges by Peoples Gas System for the period of time between August 2005 and June 2009, and that Customer is not entitled to a refund.

3. Pursuant to Rule 28-106.106 and Order No. PSC-09-0551-FOF-GU, the Customer filing this petition is represented by Brian G. Davidson ("Representative") with the following address and telephone number: Energy Tax Solutions, Inc., 1310 Wallwood Drive, Brandon, Florida 33510, telephone number 813-684-5277.

4. Customer's Representative received a copy of the Order attached to an email sent to him by the Office of Commission Clerk dated October 5, 2009.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

5. At this time the disputed issues of material facts, including a concise statement of the ultimate facts alleged and those facts which this Customer contends warrant reversal and/or modification of the agency's proposed action are discussed below. Customer contends that PGS erroneously misclassified their gas distribution rate from Commercial GS-2 to Residential in August 2005 resulting in Customer being over billed through June 2009. Customer contends that their rates should have remained at the Commercial GS-2 rate and that they are entitled to a retroactive refund for the difference in rates billed in error during this time, plus interest.

Customer believes their gas distribution rate was changed in error as a result of PGS misapplying the language of Order 19365 and the PGS Residential Rate Schedule ("Tariff"). Customer contends that the specific language of Order 19365 and the PGS Tariff applies to the commonly owned areas of condominium associations ("condo"), cooperative apartments, and homeowner's associations ("HOA's") – not "community" associations under which the Customer is legally organized and operated as a business entity. In addition, Customer contends that even if they met the basic application and were organized and operated the same as a condo or HOA, they do not meet explicit criteria set forth in Order 19365 and the PGS Residential Rate Schedule to be classified as residential for rate making purposes. Specifically, Customer believes they do not meet the first and/or second criteria set forth in the PGS Tariff.

The following list sets forth the specific issues of material fact which are subject to dispute:

**I - Basic Application of the PGS Tariff and Order 19365 is Not Met**

- a. Customer is a community association ("CA") legally organized and operated as a Business Organization under Title XXXVI, and Ch. 617, Florida Statutes.
- b. Customer is not a condo or HOA as set forth in Order 19365 and the PGS Tariff.
- c. Condos and HOA's are organized under Title XL pertaining to Real and Personal Property with Ch. 718, F.S., governing condos and Ch. 720, F.S., governing HOA's.
- d. CA's are not specifically included in the language of the PGS Tariff or Order 19365.
- e. Customer has no "commonly owned" areas like condos and HOA's. Members of this organization have no "co-ownership" interest.
- f. Order 19365 and related Orders 4150, 8539, and 10104, apply to specific legal entities - condos, cooperative apartments, and HOAs. They do not reference, imply, or infer that organizations with "similar" type operations are to be considered.
- g. State agencies must adhere to the law established by the legislature in the Florida Statutes and agencies are not permitted to enlarge, modify, or contravene statutory provisions.
- h. Neither the Commission nor PGS are empowered to create additional varieties of condos or HOA's from that specifically set forth in the Florida Statutes.

- i. Neither the Commission nor PGS have authority to expand the definition of condos or HOA's from the language specifically set forth in the existing Orders and PGS Tariffs.
- j. If the Commission wants to treat CA's as residential for rate making purposes, then a new Order is required directing utilities to revise their tariffs and redefine such customers as residential.
- k. It is not the nature of the gas service provided that controls its determination as residential service. It first must be determined "who" the gas is sold to (i.e., what type of legal entity), and then look at how the gas is used.
- l. If gas is sold to anyone other than an individual residential customer, condo, cooperative apartment, or HOA, then, by default, that customer must be classified as commercial since it doesn't meet the basic application of Order 19365 and PGS' Residential Rate Schedule.
- m. Customer does not meet the specific definition of an HOA as set forth in Ch. 720.301, Florida Statutes, because membership in the Community Association is also offered to certain non-owners whose membership fees cannot be enforced by placement of a lien or foreclosure.
- n. As a business entity, Customer owns all their recreational facilities. Members have no ownership or co-ownership interest. As such, there is no condo or HOA form of ownership of common facilities.
- o. Specific language set forth in Customer's Articles of Incorporation establish they are organized and operated differently than that of condos and HOA's.

**II - Even if Customer was a Condo or HOA, They Don't Meet the "First" (1<sup>st</sup>) Criterion Set Forth in the PGS Tariff**

- p. There are no exceptions to the language of the 1<sup>st</sup> criterion which states 100% of the gas (not 99.9%) is used exclusively (without exception) for the co-owner's benefit (must be a co-owner).
- q. If any portion of gas use benefits anyone other than a co-owner, then the 1<sup>st</sup> criterion is not met.
- r. Unlike a condo or HOA, Customer has no co-owners or commonly owned property.
- s. Members of Customer's organization have no co-ownership rights or interest.
- t. The Customer owns and manages all property.
- u. If Customer was ever liquidated, members get nothing.
- v. Therefore, 100% of the gas is NOT used exclusively for the co-owners benefit simply because...there are no co-owners.
- w. Even if operated as a condo or HOA with common ownership, certain non-owner members of Customer can also benefit from gas use (i.e., former residents now residing in non-affiliated assisted living facilities).
- x. Because non-owner members can also benefit from gas use, this criterion is also not met because 100% of the gas is not used exclusively by co-owners.

**III - Even if Customer was a Condo or HOA, They Don't Meet the "Second" (2<sup>nd</sup>) Criterion Set Forth in the PGS Tariff**

- y. There are no exceptions to the language of the 2<sup>nd</sup> criterion which states None of the gas is used in any endeavor which sells or rents a commodity or provides service for a fee.
- z. If any portion of the gas (regardless of how small) is used in any endeavor (for profit, not for profit, open to the public, or private or restricted) in which services

are provided for a fee (regardless of how material), then the 2<sup>nd</sup> criterion is not met.

- aa. Customer offers exercise and dance classes in their gas heated pool and members are required to pay a separate club fee giving them exclusive use of the pool during specific days and times. These additional fees provide club members with an extra service they otherwise would not be entitled to.
- bb. These club fees are not mandatory like annual condo or HOA maintenance dues. They are simply extra fees, spent voluntarily, for extra services received.
- cc. Customer also allows certain former residents to continue as members if they elect to pay membership fees. As non-residents, this fee is different than condo and HOA required dues.
- dd. This membership fee is not mandatory and cannot be enforced by placement of a lien. It is an optional fee entitling non-residents to use Customer's facilities they otherwise would not be entitled to. As such, it is a voluntary fee for services received.
- ee. It is irrelevant that these former residents use to own property in the community. The membership fees they elect to pay now are fees for services received.
- ff. Customer also requires certain house guests of members to purchase weekly "guest cards" to utilize Customer's recreational facilities, including the gas heated pool. This is the equivalent of an entrance fee. It is a separate fee paid in return for being allowed to utilize Customer's recreational facilities (i.e., fee for service).
- gg. It is irrelevant that after 4 months, a houseguest will be considered a resident and any guest card fees they paid may be credited towards their pro rata share of membership dues. The fact remains that those guests staying less than 4 months are not considered residents and are charged the guest card fee to use Customer's facilities.
- hh. The 2<sup>nd</sup> criterion does not state, imply, or presume that "service for a fee" means being made available to the general public.
- ii. The 2<sup>nd</sup> criterion does not require that use be based solely on the additional fees paid for certain services.
- jj. Nor does the 2<sup>nd</sup> criterion state or imply that it is intended to prevent obviously commercial enterprises from taking service under the residential rate.
- kk. It is irrelevant that Customer may restrict use of its facilities to members and certain former property owners. The 2<sup>nd</sup> criterion simply states that "NONE" of the gas can be used in ANY endeavor which... provides service for a fee.
- ll. PGS' common policy in the past treated common areas of condos and HOA's as commercial if any portion of the gas was associated with fees being charged (e.g., coin laundry, pool entrance fees, etc.).
- mm. Regardless of the fact that such services were restricted to co-owners, condos and HOA's with coin laundries were classified as commercial by PGS.
- nn. Nothing has changed with respect to the applicable Orders or PGS Residential Rate Schedule that warrant classifying condos and HOA's differently now than in the past.
- oo. Specific PGS internal guidelines advise that common areas of condos and cooperative apartments with coin laundries are to be classified as commercial. These guidelines actually state that a coin laundry is service for a fee.
- pp. Although the separate fees charged pertaining to Customer's gas use are not for coin laundries, the same principle applies here. It makes no difference that the extra services provided may be restricted to residents, club members, or guests. If any extra fees are charged in connection with gas used in providing such services...the 2<sup>nd</sup> criterion is simply not met.

**IV – There should be Consistency between Gas and Electric Utilities in Classifying Customer as Residential or Commercial**

- qq. The same language and 4 restrictions apply to both utilities in their respective rate schedules and applicable Orders.
- rr. Tampa Electric Company, who is the brother/sister company to PGS, has consistently classified all eleven (11) electric accounts serving Customer as commercial, including that serving the pool.
- ss. Tampa Electric previously established that Customer's electric accounts should be classified under commercial rates because they do not meet the basic application (i.e., not a condo or HOA), or they don't meet the 1<sup>st</sup> and or 2<sup>nd</sup> criterion set forth in the rate schedules.
- tt. PGS' actions are inconsistent and contradictory to that applied by their brother/sister company.
- uu. There is no basis or logical reason for classifying the rates differently where the gas and electricity serving the Customer is used for the same purposes and the same criteria apply to both utilities.

6. Each of the foregoing matters involve disputed issues of material fact

7. Order No. PSC-09-0661-PAA-GU established October 26, 2009 as the date by which protests must be filed.

8. Chapter 366.07, Florida Statutes, is a specific statute the Petitioner contends requires reversal of the agency's proposed action. Commission Rule 25-7.033 is a specific rule of the Commission that requires reversal of the agency's proposed action.

9. The Petitioner seeks the Commission to take the following actions with respect to the agency's proposed action:

- a) Set the Proposed Agency Action, Order No. PSC-09-0661-GU, for formal evidentiary hearing.
- b) After consideration of the record evidence presented at the formal hearing, find that the Customer is not the same as a condominium or HOA and that they do not meet the basic application to be classified as a residential customer.
- c) After consideration of the record evidence presented at the hearing, also find that even if the Customer were a condominium or HOA, they do not meet the 1<sup>st</sup> and/or 2<sup>nd</sup> criterion set forth in the PGS Tariff.
- d) To the extent that Customer was overcharged gas distribution charges for the period time between August 2005 and June 2009, find that Customer is entitled to a retroactive refund from PGS for the difference in rates billed in error, with interest.

WHEREFORE, the Petitioner hereby protests and objects to Commission Order No. PSC-09-0661-PAA-GU as provided above, and petitions the Commission to conduct a formal evidentiary hearing, under the provisions of Section 120.27(1), Florida Statutes.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brian G. Davidson", with a long horizontal flourish extending to the right.

Brian G. Davidson  
Authorized Representative for the  
Sun City Center Community Association, Inc.  
c/o Energy Tax Solutions, Inc.  
1310 Wallwood, Brandon, FL 33510  
(813)-684-5277