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February 24, 2009

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

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COMMISSION
CLERK

Re: Paradise Lakes Case #783169G & Lake Como Case #781838G
Response to your letters dated February 17, 2009

Dear Mr. Forsman:

Formal complaints have been filed for the cases referenced above. These were docketed as No. 090080-GU for the Paradise Lakes, and No. 090081-GU for the Lake Como on February 16, 2009. However, your response letters dated February 17, 2009 were prepared, issued, and received after the filing of the formal complaints. It is understood all documents and correspondence in the informal complaint case files will be forwarded to the Office of Commission Clerk for processing, including your February 17 letters. Therefore, it is important to address and clarify several of your comments that depart from the main points petitioned by Customers.

Alleged Improper Rate Classification – Erroneous Billing

In addressing the above subject matter, you state *“The Company does not maintain that residential classification was based on natural gas volume. Peoples Tariff, Sheet No. 7.303-1(7) indicates that service under GS-2 is subject to annual volume review; it does not state that reclassification is exclusively tied to volume.”* In doing so, you infer that Customers are challenging that Peoples misclassified their rates based on natural gas volume and/or that reclassification of a customer's rate is exclusively tied to volume. However, Customers have not challenged this and your statements misconstrue Customer's main point.

Specifically, Customers challenged that Peoples misclassified their rates from commercial to residential as a result of Peoples misapplying Order 19365 and their tariff. This challenge has nothing whatsoever to do with “natural gas volume” as stated in your letter. Customer's challenge is to the Peoples' assertion that they are abiding by their tariffs. That is, Customer believes that Peoples has taken out of context and misapplied the true purpose of a specific section of their tariff by claiming that ALL rate reclassifications are to be prospective only.

Customers maintain that the Peoples Tariff, Sheet No. 7.303-1(7) was established to provide for annual volume reviews and when an annual volume review determines customers should be on a different rate, the rate change will be prospective. The point being that the “prospective” limitation applies only to annual volume reviews - not situations where customer's rates are erroneously changed in error. Unfortunately, the comments in your letter depart from this point.

Under the same subject matter above for the Paradise Lakes, you also state *“The classification change was based on the name change, not a volume review by the company or at the request of Paradise.”* In doing so, you again imply that Customer has challenged their rate reclassification was based on a volume review. However, this is not factual and your statement departs from the main point.

Specifically, the Paradise Lakes petitioned that when Peoples was in the process of identifying customers to be reclassified from commercial to residential, Peoples (admittedly) misidentified the

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Paradise Lakes as a condominium association. That is, Peoples has stated that they identified the Paradise Lakes as residential after reviewing their account in 2005 and that Customer's annual report filed with the Florida Department of Revenue identified them as the Paradise Lakes Condominium Association. However, the fact is that Peoples looked up the wrong annual report. In doing so, they misclassified the Paradise Lakes account from commercial to residential in error. Had Peoples thoroughly reviewed Customer's account and gas use, they never would have made this error. Again, you fail to acknowledge this point in your February 17 letter.

Under the same subject heading, you state *"Peoples further reports that in October 2007, Paradise changed its name to Paradise Lakes Resort Management, LLC. At that time, Peoples established a commercial account for Paradise and reclassified its rates to commercial GS-2."* However, these comments are simply not true as distinguished in the complaint. As such, it is unclear why you chose to restate them in your response letter.

The truth is that the Paradise did not change its name to the Paradise Lakes Resort Management, LLC. Instead, the assets of the Paradise were sold to the newly formed Paradise Lakes Resort Management, LLC. As such, the gas account for Paradise was closed and a new account was set up for the new company in October 2007. Although irrelevant, there was no reclassification of rates to GS-2 as the new account was established under this rate.

Finally, you also state that *"Since October 2007, Paradise has been billed the GS-2 rate."* However, as pointed out above, the Paradise's account was closed in October 2007. Therefore, no such billing under the GS-2 rate has occurred, though this fact is also irrelevant.

Request for Retroactive Reimbursement of Charges

In addressing the above subject matter, you state that the Peoples decision to deny Customer's request for retroactive refund is based on its Tariff Sheet No. 7.303-1(7), which states *"If reclassification to another schedule is appropriate such classification will be prospective."*

As discussed above, the Peoples Tariff, Sheet No. 7.303-1(7) was established to provide for annual volume reviews and when an annual volume review determines a customer should be on a different rate, the rate change will be prospective. This "prospective" rate change limitation is only applicable to annual volume reviews as set forth in that section of the Peoples' tariff. It is not applicable to any other sections of the Peoples tariff, or to situations such this where billing errors occurred as a result of Peoples erroneously misclassifying Customer's billing rates.

Unfortunately, your letter does not address Customer's main point that the prospective rate change limitation applies only to annual volume reviews. You simply state that *"There is no provision in People's tariff or PSC rules that requires retroactive reimbursement."*

Although this statement may be true, it is also true that there is no provision in Peoples' tariff that deny Customers from obtaining retroactive refunds where it has been established that their rates were changed in error. Furthermore, there is no provision in the People's tariff that allow them to keep money that was never rightfully theirs in the first place. Customers should have the right to recover amounts over billed as a result of a specific error where the cause and date of occurrence are identifiable. To claim otherwise is the same as asserting that Peoples can overcharge customers in error without any consequences of doing so.

Although not previously discussed, it is noteworthy that the Peoples Tariff, Sheet No. 5.401-2(H) does provide for adjustment of bills for meter reading errors. This section provides where meter reading errors are found, Peoples will refund Customers the amount billed in error for one half of the period since the last meter test...not to exceed a 12 month period...*"unless it can be shown that the*

error was due to some cause, the date of which can be determined, in which case the overcharge will be computed back to but not beyond such date.” As such, Customer’s believes this same logic and reasoning should also apply to other billing errors. That is, where it can be shown the error is due to some cause (i.e., rate changed in error by Peoples), the date of which can be determined (i.e., August 2005), then Customer should be entitled to a refund for the difference in rates computed back to when the error occurred.

Alleged Statutory, PSC Rules & Orders, and Tariff Violations

Under the subject heading above, your letter provides a lot of general data about the responsibilities of PSC staff (including the PRG & ECR Divisions) and the limitations it has on handling informal customer complaints. The understanding of your staff’s limitations was previously acknowledged in correspondence with Ms. Kate Smith.

However, what Customers were asking from your staff was a simple acknowledgement that a billing rate error occurred as a result of Peoples misapplying the applicable order and their tariff. Unfortunately, you still have not done so even though the facts reflect this has occurred.

The fact that Peoples reclassified Customer’s rate back to the appropriate commercial GS-2 rate after being made aware of the problem simply means they are no longer in violation of the order and their tariff from that point forward. However, this does not cure or resolve the problem previously created by Peoples for the period of time that Customer’s were overcharged in error.

Specifically, starting August 2005 and ending when Customers were switched back to the appropriate commercial rate (or closed their account), Peoples was in violation of the order and their tariff. Peoples earned more than they were entitled to during this time as a result of misclassifying Customer’s accounts and billing them at a higher rate than was approved and set forth in their tariff.

Why your department is unwilling to acknowledge this fact is perplexing...

Alleged PSC Inaction and Lack of Resolution

Under the subject heading above, your letter states that I implied PSC staff has been ineffective in addressing my client’s complaints and I am unappreciative of Katherine Smith’s efforts to negotiate a settlement with Peoples. However, this is not entirely true.

Yes, it is frustrating when one considers it has been over 7 months and the complaints remain unresolved given the facts presented. It is also discouraging to recently learn that your department can’t, or is unwilling, to acknowledge that Customer’s rates were changed in error.

However, I do appreciate Katherine Smith’s efforts in trying to negotiate a settlement with Peoples. It’s just that the proposed settlement for both the Paradise Lakes and Lake Como were not as generous as you claim in your letter. In fact, the proposed offer to the Paradise Lakes was barely half, and that offered Lake Como was less than a third of what they were overcharged. As such, these offers were understandably rejected by Customers.

Conclusion

In your conclusion you state that it is not obvious that Peoples has violated any jurisdictionally applicable provision of the Florida Statutes, the Florida Administrative Code, or its tariff in handling this matter. However, it is very perplexing how you could reach such a conclusion given the facts supporting these cases.

Florida Public Service Commission
February 24, 2009

Answering the questions that follow support a different conclusion...*In August 2005, were Customer's billing rates changed in error from commercial to residential? Beginning in August 2005 until just recently, were Customer's overcharged the difference between commercial GS-2 and residential rates? Has Peoples billed and collected more than they were entitled to earn from Customer's based on rates established in their tariffs? Did Peoples misapply the order and their tariff when it changed Customer's rates? Was Peoples in violation of the order and their tariffs during the period of time they overcharged Customers?*

The answer to each of these questions is a clear and resounding YES! To conclude otherwise is puzzling and without merit.

It is irrelevant that Peoples may not have intentionally misclassified Customer's rates in error, or that they were attempting to abide by the order and their tariff when the misclassification errors occurred. It is also irrelevant that the error was just recently discovered and unrealistic to assume a typical customer can understand and apply all the regulatory rules, orders, and tariffs impacting their bills. Moreover, it is unreasonable to presume that a customer will recognize or question a rate change when (as Peoples claims) Customers were advised the change was due to an order issued by the Public Service Commission. As such, Customers would continue to pay whatever they were billed without question with the understanding that Peoples was properly implementing PSC orders, and that the PSC was "providing appropriate regulatory oversight" and "ensuring that Peoples was complying with all requirements subject to the Commission's jurisdiction" (as set forth in the Commission Mission Statement and Goals).

The simple fact is Customer's rates were changed and billed in error by Peoples, and this rate change error was not the result of an annual volume review. Customers had no part in creating the error that resulted in the overcharges. Peoples billed and collected more from these Customers than they were entitled to earn. Customers could not be expected to recognize or question such a billing change given the complexity of the regulatory rules, orders, and tariffs...especially if Peoples advised them the rate change was due to a PSC order. As such, it seems obvious that a violation of the applicable order and the Peoples' tariff has occurred.

Again, it is unclear how you and your staff can conclude there has been no obvious violation when the facts clearly show otherwise. Nevertheless, I felt it was important to address and clarify some of the comments in your February 17 letters, and that these distinctions be made known to the presiding officer assigned to oversee the formal complaints going forward.

Respectfully yours,

Brian G. Davidson
Authorized Representative

Cc: V. Bradley, GM – Lake Como
J. T. Lettelleir, Pres. – Paradise Lakes
PSC – ~~Office of Commission Clerk~~