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| PUC logo | COMMONWEALTH OF PENNSYLVANIA  PENNSYLVANIA PUBLIC UTILITY COMMISSION  P.O. BOX 3265, HARRISBURG, PA 17105-3265 | **IN REPLY PLEASE REFER TO OUR FILE** |

**May 27, 2011**

To: All Jurisdictional Electric Distribution Companies

All Licensed Electric Generation Suppliers

Re: Unit Pricing Information and Sales Tax on Customer Bills

Docket No.: M-2009-2082042

As a result of recent consumer inquiries and media coverage, the Commission’s Office of Competitive Market Oversight (OCMO) has reached out to electric generation suppliers (EGSs) and electric distribution companies (EDCs) to gather additional information about the failure of some EGSs to include the unit price (kWh) on customer bills and the inappropriate inclusion of sales taxes on residential customers’ bills by some EGSs. The purpose of this letter is to remind EGSs of their responsibilities under the Commission’s regulations.

**FAILURE TO PLACE THE UNIT PRICE (kWh) ON CUSTOMER BILLS:**

The first issue concerns the failure of some EGSs to include the unit price (kWh) on bills for residential and small commercial customers. The Commission’s regulations addressing the format for residential and small commercial bills are set forth at 52 Pa. Code § 54.4.  (<http://www.pacode.com/secure/data/052/chapter54/s54.4.html>). The regulations contain a specific requirement for unit pricing at paragraph (b)(3)(i)(A), as follows:

*(A)   Generation charges shall be presented in a standard pricing unit for electricity in actual dollars or cents per kWh, actual average dollars or cents per kWh, kW or other Commission-approved standard pricing unit.*

Based on information that OCMO has gathered, the Commission is aware that some EGSs may not be in full compliance with this requirement. We view this as a serious deficiency that deprives customers of information necessary for them to fully understand the rate they are being charged. This lack of information also makes it difficult for customers to determine if they are being charged according to the agreed-upon terms in the disclosure statement that was provided to customers when they enrolled with the supplier.  This is especially a concern with customers on variable-rate products.

The Commission urges all suppliers to look into this issue and verify that they are providing “per kWh” pricing information on customers’ bills.  If there are any deficiencies in this respect, we expect EGSs to take corrective action as soon as possible.  For EGSs that rely on the utility to bill for them, the EGS should make sure that it is providing the utility with sufficient information on kWh pricing via EDI so that the utility can include this information on customers’ bills.  If, for some reason, an EGS is not able to immediately implement corrective action to place this information on customer bills, we urge you to communicate, through alternative methods, the price per kWh to your customers.  This is especially critical if the price you are charging is a variable price.

**INCORRECTLY CHARGING RESIDENTIAL CUSTOMERS PENNSYLVANIA STATE SALES TAX:**

The second issue concerns the inappropriate inclusion of state sales tax on residential customers’ bills. Based on information gathered by OCMO, the Commission does not believe that this is a widespread problem.  In some instances, EDCs have noticed the improper inclusion of state sales taxes and EGSs have been able to remove the charges prior to the bills being issued. Regardless, we are asking all EGSs to be aware of this issue to make sure that they understand and correctly apply the Pennsylvania Department of Revenue rules regarding the application of sales tax. Additionally, any EGSs who have improperly charged this tax should immediately correct the problem and issue refunds to customers.

Section 7204 of the Tax Reform Code of 1971 exempts the residential use of electricity from Pennsylvania sales tax.  *See* 72 P.S. § 7204. However, electricity purchased for use in an office or business within a home is subject to sales tax. *See* the Pennsylvania Department of Revenue’s regulation at 61 Pa Code § 32.25 (relating to steam, gas, electricity, fuel oil and kerosene). (<http://www.pacode.com/secure/data/061/chapter32/s32.25.html>). *See* also the [Retailers' Information Guide (REV-717)](http://www.revenue.state.pa.us/portal/server.pt/document/755531/rev-717_pdf) for a list of taxable items.  Note that if the residential customer provides a “Sales and Use Tax Exemption Certificate” (Form REV-1220) to the supplier that indicates the annualized percentage of the total kilowatts used solely for residential purposes, the supplier may charge tax only on the electricity used for commercial purposes. For further information, please contact the Department of Revenue through its on-line customer service center: <https://revenue-pa.custhelp.com>.

**CONCLUSION**

Through OCMO, the Commission will be proactively monitoring these issues and staff will take further action as necessary on an individual basis to ensure compliance. To assist with this monitoring, the Commission requests that EGSs inform OCMO by e-mail addressed to [ra-OCMO@state.pa.us](mailto:ra-OCMO@state.pa.us) by June 10, 2011 of the status of both matters. These communications should indicate whether the companies are including unit pricing on bills and refraining from incorrectly charging state sales taxes to residential customers, identify any problems and planned corrective measures that are necessary, along with projected timeframes, and whether the EGSs have had any consumer complaints or media inquiries about these issues.

Any questions about this Secretarial Letter should be directed to the Office of Competitive Market Oversight by email at [ra-OCMO@state.pa.us](mailto:ra-OCMO@state.pa.us) or by calling the Director of Operations at 717-783-5331.

Sincerely,



Rosemary Chiavetta

Secretary

cc: Office of Competitive Market Oversight

Office of Consumer Advocate

Office of Small Business Advocate