|  |  |  |
| --- | --- | --- |
| PUC logo | COMMONWEALTH OF PENNSYLVANIAPENNSYLVANIA PUBLIC UTILITY COMMISSIONP.O. BOX 3265, HARRISBURG, PA 17105-3265 | IN REPLY PLEASE REFER TO OUR FILE |

July 7, 2011

To: All Electric Distribution Companies and Electric Generation Suppliers

Re: Tax Information Required For Presentment on Residential Electric Bills

Docket No. M-2009-2082042

 At the request of the Office of Competitive Market Oversight (OCMO), the Pennsylvania Public Utility Commission (PUC) is issuing this guidance on the placement of tax information on residential customer bills. OCMO requested this guidance to address questions and concerns that were raised by both electric distribution companies (EDCs) and electric generation suppliers (EGSs) in the working group, Committee Handling Activities for Retail Growth in Electricity (CHARGE). The Electronic Data Exchange Working Group (EDEWG) also sought guidance on these issues for use in developing formats for customer bills – both supplier-only bills and supplier consolidated bills (SCB)[[1]](#footnote-1).

**General Guidance**

 Section 2807(c) of the Public Utility Code states that, subject to the right of the customer to choose to receive a separate bill from its EGS, the EDC may be responsible for billing customers for all electric services, regardless of the identity of the provider of those services. 66 Pa.C.S. § 2807(c). If generation service is provided by an EGS, the EGS shall furnish to the EDC billing data sufficient to enable the EDC to bill customers. 66 Pa.C.S. § 2807(c)(2).

 Section 1509 of the Public Utility Code provides that the following tax information be itemized on the bill:

Federal excise taxes, applicable State sales and gross receipts taxes [GRT], to the extent practicable, fuel adjustment charge, if any, State tax adjustment charge or such other similar components of the total bill as the commission may order.

66 Pa.C.S. § 1509 (parenthetical added).

 EDCs are required to present tax information on customer bills in accordance with the PUC regulations at 52 Pa. Code Chapter 56. Likewise, EGSs are statutorily required to comply with Chapter 56 billing requirements for residential customers. *See* 66 Pa.C.S. § 2809 (b) and (d)(relating to requirements for electric generation suppliers). When an EGS prepares a SCB

that contains both EGS and EDC charges, the SCB shall include taxes that EDCs are required to list on customer bills. The EDC shall provide the billing data for these taxes sufficient to enable the EGS to bill customers.

**Bill Presentment of Class A Utility Total State Tax Information**

 The Commission’s regulations at 52 Pa. Code § 56.15(4) require a Class A electric utility, one with annual operating revenues greater than $2.5 million, to include on a customer’s bill “a statement of the dollar amount of total State taxes included in the current billing period charge.” The regulation does not require that this statement be a line item on the bill.

 Because this requirement is directed only to Class A utilities, it is not applicable to EGSs. In other words, an EGS does not need to present “total state tax” on its bill when a customer receives separate bills from the EGS and EDC. Additionally, an EGS is not required to provide total tax information to an EDC where both EGS and EDC charges appear on an EDC-consolidated bill.

 However, if an EGS renders a SCB that contains both EDC and EGS charges, the EGS must include a statement of total dollar amount of state taxes attributable to the EDC’s charges for the customer’s current billing period. In this case, the EDC shall provide this information along with its other charges to the EGS for presentment on the SCB.

 Since an EGS is required to include on its SCB a statement of the total dollar amount of State taxes for an EDC that is a Class A utility, EDEWG is advised that a field for this information should be included in SCB bill formats that the group may be asked to develop. Again, the statement of total dollar amount of state taxes does not need to be presented as a line item on the bill.

**Guidance on Bill Presentment of State Sales Tax**

 As already stated, Section 1509 of the Public Utility Code requires that a State tax adjustment surcharge (STAS), if other than zero, and state sales tax be listed on a customer’s bill. This information shall be included on a customer’s bill when applicable, regardless of whether the bill is a separate supplier bill, a SCB or an EDC consolidated bill.

 As a general rule, the residential use of electricity is exempted from state sales tax by Section 7204 of the Tax Reform Code of 1971. *See* 72 P.S. § 7204. In a Secretarial Letter to all EDCs and EGSs issued on May 27, 2011, at Docket No. M-2009-2082042, the PUC explained the circumstances where the residential use of electricity is taxable.

[E]lectricity 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, the Secretarial Letter stated that the Department of Revenue should be contacted through its on-line customer service center: <https://revenue-pa.custhelp.com>. The Secretarial Letter may be accessed at this link: <http://www.puc.state.pa.us/pcdocs/1133537.docx>

**Bill Presentment of Gross Receipts Tax**

 The PUC’s regulations at 52 Pa. Code § 56.15(4) require that customer bills “indicate that a State gross receipts tax is being charged and a reasonable estimate of the charge.” This regulation is applicable to both EDCs and EGSs. However, GRT does not need to be a line item on the bill. Thus, in practice, an EGS must include its GRT on a separate supplier bill when the customer has elected to receive dual billing. When the EDC renders a consolidated bill, an EGS must provide its GRT information to the EDC for inclusion on its consolidated bill to the customer. When an EGS issues a SCB, the EGS must include the EDC’s GRT information on the SCB.

 The PUC has been alerted to a problem regarding the inability of several EDCs to include an EGS’s estimated GRT on a customer’s bill. Because of constraints on some EDCs’ billing systems, only the EDC’s GRT appears on customer bills. Since we are aware of this problem, we believe that it is reasonable to grant a temporary waiver of the GRT bill presentment requirement in Section 56.15(4) for affected EGSs. We will direct that each EDC provide OCMO with a list of EGSs for which the EDC cannot display the EGS’s GRT on its bill. EDCs shall provide this list to OCMO no later than 10 days after the date of this letter. OCMO will distribute this information to other PUC staff for use in responding customer inquiries and complaints relating to this issue.

 Additionally, we direct OCMO to raise this issue with CHARGE/EDEWG for the purpose of discussing possible interim solutions that will permit an affected EGS’s GRT to be displayed on EDC consolidated bill, and for establishing a timeline when this problem can be remedied for affected EGSs. OCMO should report back to the Commission on the status of remedying this issue by September 30, 2011.

**Summary**

In summary, the following guidance has been provided:

* + EGSs are not required to place “a statement of the dollar amount of total State taxes” for the current billing period charge on a separate supplier bill or to provide this information to EDCs for inclusion on an EDC consolidated bill. The requirement is applicable only to EDCs. However, an EGS must include this information for the EDC when the EGS is issuing a SCB.
	+ EGS-PA State Sales Tax must be included on a customer’s bill only when applicable. In general, electricity purchased solely for residential use is exempt from PA state sales tax. However, electricity purchased for use in an office or business within a home is subject to sales tax.
	+ An EGS must include GRT on a customer’s bill, regardless of whether the bill is a separate one rendered at the customer’s request, a SCB, or an EDC consolidated bill. However, GRT does not need to be a line item on the bill, and the amount may be estimated.
	+ Because the billing systems of some EDCs cannot accommodate the inclusion of EGS GRT information, the PUC has granted a temporarily waiver of Section 56.15(4) for affected EGSs. The EDCs shall provide a list of the affected EGSs to OCMO within 10 days after the issue date of this letter. OCMO/CHARGE is directed to explore interim and permanent solutions to remedy this situation.

 If you have any questions about the information presented in this Secretarial Letter, please contact the OCMO at ra‐ocmo@state.pa.us.



 Very truly yours,

 Rosemary Chiavetta

 Secretary

cc: Karen Oill Moury, Director of Operations

 Bohdan R. Pankiw, Chief Counsel

 Irwin A. Popowsky, Office of Consumer Advocate

 William R. Lloyd, Office of Small Business Advocate

 Johnnie Simms, Director, Office of Trial Staff

 Alexis M. Bechtel, Director, Bureau of Consumer Services

1. While CHARGE and EDEWG are no longer working on supplier-consolidated billing, the issue of the presentment of tax information on a SCB continues to be of interest since two EGSs have been providing their customers with supplier-consolidated billing using a temporary work-around created by PPL Electric Utilities. [↑](#footnote-ref-1)