

5/19/99

<b>Regulatory Analysis Form</b>		<b>This space for use by IRRC</b> 99 SEP -2 PM 2:22  <b>Mizner</b>  # <b>IRRC Number: 2061</b>
(1) Agency  Revenue		
(2) I.D. Number (Governor's Office Use)  15-410		
(3) Short Title  Utility Gross Receipts Tax		
(4) PA Code Cite  61 Pa. Code §§ 160.21 - 160.33	(5) Agency Contacts & Telephone Numbers  Primary Contact: Anita M. Doucette (717) 787-1832  Secondary Contact: Douglas A. Berguson (717) 787-1382	
(6) Type of Rulemaking (check one)  <input checked="" type="checkbox"/> Proposed Rulemaking <input type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted		(7) Is a 120-Day Emergency Certification Attached?  <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor
(8) Briefly explain the regulation in clear and nontechnical language.  Section 160.21 (relating to scope) provides that §§ 160.23 - 160.33 reflect changes made to the utilities gross receipts tax through the effect of electric industry restructuring occasioned by Act 138-1996. Section 160.23 (relating to definitions) defines numerous terms used throughout the chapter. Section 160.25 (relating to tax on gross receipts) describes the companies subject to tax, what "doing business" shall include and what gross receipts are subject to tax. Section 160.31 (relating to tax on the use of electricity) explains in subsection (a) when tax on the use of electricity under 66 Pa.C.S. §§ 2806(g)(3)(iii) or 2809(c)(2) shall be imposed; subsection (b) explains what actions the Department is authorized to take if an electricity supplier has not properly reported and remitted the tax imposed upon gross receipts; subsection (c) explains the indemnification or reimbursement process; subsection (d) details the presumptions utilized in applying payments or determining refund priorities; and subsection (e) provides that the liability for unpaid gross receipts tax shall not be extinguished by payment of a tax on the use of electricity. Subsection (a) of § 160.33 (relating to electric generation supplier license procedures) describes provisions relating to the license application; subsection (b) provides that by May 1, 1998, and every year thereafter, the Pennsylvania Public Utility Commission (Commission) shall provide the Department with a list of licensed electric generation suppliers with their accompanying state tax numbers, similar identification numbers and any other information the Department shall require. By the immediately succeeding July 30, the Department shall review the tax records of the licensees and determine whether a licensed electric generation supplier has a tax liability of failure to otherwise comply. Subsection (c) provides the procedures that shall be followed if the Department determines that an applicant or licensed electric generation supplier has a tax liability or failure to otherwise comply. Subsection (d) provides that the Commission may request the state tax information necessary to ascertain compliance with the requirements for licensure or to institute licensure revocation proceedings.		
(9) State the statutory authority for the regulation and any relevant state or federal court decisions.  Statutory authority for the regulation is contained in 72 P.S. § 6.		

### Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

The regulation is not mandated by federal or state law, court order, or federal regulation.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The Department is proposing this regulation to clarify the changes to the utility gross receipts tax brought about by utility deregulation (Act 1996-138) codified in Title 15 (Corporations and Unincorporated Associations) and Title 66 (Public Utilities). This regulation will also provide guidance and clarity to out-of-state businesses and the emerging industry.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

There are no public health, safety, environmental or general welfare risks associated with nonregulation.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

This regulation will provide guidance and clarity to out-of-state businesses and the emerging industry.

### Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No parties should be adversely affected by the regulation.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

All electric generation suppliers doing business in this Commonwealth will be required to comply with the regulation. The number of suppliers required to comply with the regulation is under 100.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

A copy of the regulation was forwarded to the Pennsylvania Bar Association; the Pennsylvania Institute of Certified Public Accountants, the Pennsylvania Chamber of Business and Industry, the Pennsylvania Public Utility Commission (PUC) and the PUC's Tax Issues Working Group. The regulation will be listed in the next publication of the Department's Agenda of Regulations and will be forwarded to interested parties upon request.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

Compliance with the regulation could result in a savings to the regulated community by reducing the possibility of assessment of penalty and interest. No legal, accounting or consulting procedures are required by the regulation.

### Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

This regulation does not increase costs or savings to local governments. No legal, accounting or consultant procedures are required by the regulation.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

This regulation does not increase costs or savings to state government. No legal, accounting or consultant procedures are required by the regulation.

### Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Savings</b>	N/A					
<b>COSTS:</b>						
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Costs</b>	N/A					
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Revenue Losses</b>	N/A					

(20a) Explain how the cost estimates listed above were derived.

There is no fiscal impact associated with this regulation. This regulation imposes no additional burden on the regulated community.

### Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
N/A	N/A	N/A	N/A	N/A

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

There are no adverse effects or costs associated with this regulation. The regulation could facilitate compliance and thereby increase savings to the regulated community by reducing the possibility of assessment of penalty and interest.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

The licensing provisions could be addressed in a Memorandum of Agreement with no cost; however, this method would not provide the licensees with notice of the process and due process guarantees. Therefore, there are no nonregulatory alternatives associated with the regulation.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

There are no alternative regulatory schemes associated with the regulation.

## Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

There are no provisions in the regulation that are more stringent than federal standards.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Because of the uniqueness of the subject matter, a surrounding state comparison was not feasible; however, the regulation will not put Pennsylvania at a competitive disadvantage with other states.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This regulation does not affect any other existing or proposed regulations of the Department. The licensing provisions should complement the proposed PUC regulations on the same subject matter.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

The regulation will be presented to the House and Senate Finance Committees and the Independent Regulatory Review Commission. The Committees may hold public hearings or informational meetings to consider the regulation. The date, time and location of such hearings or meetings can be ascertained by contacting the Committee. The Commission may hold informational meetings to consider the regulation. The date, time and location of such meetings can be ascertained by contacting the Commission.

At the same time the regulation is presented to the Committees and the Commission, the regulation will be published in the Pennsylvania Bulletin and the public will be invited to comment.

### Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

Enforcement of the tax on the use of electricity will require additional record keeping and paperwork; however, the law requires the additional record keeping and paperwork.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The regulation specifically includes notice provisions that the electric distribution companies must provide when seeking reimbursement from consumers for the tax on the use of electricity. These notice provisions will assist those parties that are unfamiliar with the appellate process.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

This regulation will be effective upon final publication in the Pennsylvania Bulletin. Compliance with the regulation is required upon publication. There are no permits, licenses or other approvals required by this regulation.

(31) Provide the schedule for continual review of the regulation.

This regulation is scheduled for review within five years of final publication. No sunset date has been assigned.



CDL-1

FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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RECEIVED

#2061

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

By: [Signature]  
(DEPUTY ATTORNEY GENERAL)

AUG 23 1999  
DATE OF APPROVAL

Check if applicable  
Copy not approved. Objections attached.

Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:

PA Department of Revenue

(Agency)

Document/Fiscal Note No. 15-410

Date of Adoption:

By: [Signature]  
Robert A. Judge, Sr.  
Secretary of Revenue

Title: \_\_\_\_\_  
(Executive Officer, Chairman or Secretary)

Copy below is hereby approved as to form and legality. Executive or Independent Agencies

By: [Signature]

6/24/99  
Date of Approval

(Deputy General Counsel)  
(Chief Counsel, Independent Agency)  
(Strike inapplicable title)

Check if applicable. No Attorney General approval or objection within 30 days after submission

NOTICE OF PROPOSED RULEMAKING

DEPARTMENT OF REVENUE

61 Pa. Code §§ 160.11 - 160.33

Utility Gross Receipts Tax

## PREAMBLE

The Department of Revenue (Department), under the authority contained in section 6 of the Fiscal Code (72 P.S. § 6), proposes an amendment to 61 Pa. Code, Chapter 160. Utilities Gross Receipts Tax, by deleting § 160.11 (relating to railroad gross receipts tax credit) and adding sections 160.21 - 160.33 to read as set forth in Annex A.

### Purpose of Regulation

In Section 1 of Act 138-1996 the General Assembly declares in part, "Because of advances in electric generation technology and Federal initiatives to encourage greater competition in the wholesale electric market, it is now in the public interest to permit retail customers to obtain direct access to a competitive generation market as long as safe and affordable service is available at levels of reliability that are currently enjoyed by the citizens and businesses of this Commonwealth."

The Department is proposing this regulation to clarify the changes to the utility gross receipts tax brought about by utility deregulation (Act 138-1996) codified in Title 15 (Corporations and Unincorporated Associations) and Title 66 (Public Utilities). This regulation will also provide guidance and clarity to out-of-state businesses and the emerging industry.

### Explanation of Regulatory Requirements

Section 160.11 (relating to railroad gross receipts tax credit) set forth the Department's interpretation of section 1101.2 of the TRC (72 P.S. § 8101.2). Section 13 of Act 21-1995 repealed section 1101.2 of the TRC; therefore, the Department is proposing to delete § 160.11 in its entirety.

### General Provisions

Section 160.21 (relating to scope) provides that §§ 160.23 - 160.33 reflect changes made to the utilities gross receipts tax through the effect of electric industry restructuring occasioned by Act 138-1996. Section 160.23 (relating to definitions) defines numerous terms used throughout the chapter. Section 160.25 (relating to tax on gross receipts) describes the companies subject to tax, what "doing business" shall include and what gross receipts are subject to tax.

## Tax On The Use Of Electricity

Section 160.31 (relating to tax on the use of electricity) explains in subsection (a) when tax on the use of electricity under 66 Pa.C.S. §§ 2806(g)(3)(iii) or 2809(c)(2) shall be imposed; subsection (b) explains what actions the Department is authorized to take if an electricity supplier has not properly reported and remitted the tax imposed upon gross receipts; subsection (c) explains the indemnification or reimbursement process; subsection (d) details the presumptions utilized in applying payments or determining refund priorities; and subsection (e) provides that the liability for unpaid gross receipts tax shall not be extinguished by payment of a tax on the use of electricity.

## Licensing

Subsection (a) of § 160.33 (relating to electric generation supplier license procedures) describes provisions relating to the license application; subsection (b) provides that by May 1, 1998, and every year thereafter, the Pennsylvania Public Utility Commission (Commission) shall provide the Department with a list of licensed electric generation suppliers with their accompanying state tax numbers, similar identification numbers and any other information the Department shall require. By the immediately succeeding July 30, the Department shall review the tax records of the licensees and determine whether a licensed electric generation supplier has a tax liability of failure to otherwise comply.

Subsection (c) provides the procedures that shall be followed if the Department determines that an applicant or licensed electric generation supplier has a tax liability or failure to otherwise comply. Subsection (d) provides that the Commission may request the state tax information necessary to ascertain compliance with the requirements for licensure or to institute licensure revocation proceedings.

## Affected Parties

All electric generation suppliers doing business in this Commonwealth will be affected by the regulation.

## Fiscal Impact

The Department has determined that the proposed regulation will have no fiscal impact on the Commonwealth.

## Paperwork

The proposed regulation will not generate additional paperwork for the public or the Commonwealth.

### Effectiveness/Sunset Date

The regulation will become effective upon final publication in the Pennsylvania Bulletin. The regulation is scheduled for review within five years of final publication. No sunset date has been assigned.

### Contact Person

Interested persons are invited to submit in writing any comments, suggestions, or objections regarding the proposed to Anita M. Doucette, Office of Chief Counsel, PA Department of Revenue, Dept. 281061, Harrisburg, Pennsylvania 17128-1061, within thirty (30) days after the date of the publication of this notice in the Pennsylvania Bulletin.

### Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Department submitted a copy of this proposed regulation on *September 2, 1999* to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Finance and the Senate Committee on Finance. In addition to submitting the regulation, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed regulation, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review of objections raised, prior to final publication of the regulation, by the Department, the General Assembly and the Governor.

ROBERT A. JUDGE, SR.  
SECRETARY OF REVENUE

04/13/99

CONTINUATION SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU  
(Pursuant to Commonwealth Documents Law)  
ANNEX A

Title 61. Revenue, Part I. Department of Revenue, Subpart B.  
General Fund Revenues, Article VI. Corporation Taxes, Chapter  
160. Utilities Gross Receipts Tax.

§ 160.11. Reserved.

GENERAL PROVISIONS

§ 160.21. Scope.

Sections 160.23 - 160.33 reflect changes made to the  
utilities gross receipts tax through the effect of electric  
industry restructuring occasioned by Act 138-1996.

§ 160.23. Definitions.

The following words and terms when used in this chapter,  
have the following meanings, unless the context clearly indicates  
otherwise:

Commission - The Pennsylvania Public Utility Commission.

Electricity supplier - An "electric generation supplier" or  
"electricity supplier" as defined in 66 Pa.C.S. § 2803 which  
reads: "A person or corporation, including municipal  
corporations which choose to provide service outside their  
municipal limits except to the extent provided prior to the  
effective date of this chapter, brokers and marketers,  
aggregators or any other entities, that sells to end-use  
customers electricity or related services utilizing the  
jurisdictional transmission or distribution facilities of an

electric distribution company or that purchases, brokers, arranges or markets electricity or related services for sale to end-use customers utilizing the jurisdictional transmission and distribution facilities of an electric distribution company. The term excludes building or facility owner/operators that manage the internal distribution system serving such building or facility and that supply electric power and other related power services to occupants of the building or facility. The term excludes electric cooperative corporations except as provided in 15 Pa.C.S. Ch. 74 (relating to generation choice for customers of electric cooperatives)."

Failure to otherwise comply - The term shall include the failure to register with the Department for all applicable taxes imposed by the TRC, the failure to file required tax returns or reports within the time period and in the manner provided by law, the failure to provide complete information to the Department within 45 days of request, the failure to reasonably report and pay tax liabilities, which shall generally be construed as reporting or paying less than 75 per cent of the settled or resettled tax liability without reasonable justification.

Related services - The services that accompany the delivery of electricity in this Commonwealth to a retail electric customer that would have been deemed to be sales of electric energy prior to the effective date of 66 Pa.C.S. §§ 2801-2812 (relating to the

Electricity Generation Customer Choice and Competition Act), whether bundled, unbundled, or separately billed.

Resale - The sale of electricity and related services to a purchaser that does not use or consume the electricity or related services, but resells the electricity or related services in the ordinary course of its business.

Retail electric customer - An end-use customer or consumer of electricity that also meets the definition of a "retail electric customer" contained in 66 Pa.C.S. § 2803, which reads: "A direct purchaser of electric power. The term excludes an occupant of a building or facility where the owners/operators manage the internal distribution system serving such building or facility and supply electric power and other related power services to occupants of the building or facility; where such owners/operators are direct purchasers of electric power; and where the occupants are not direct purchasers."

Sales of electric energy - "Sales of electric energy" as defined by 66 Pa.C.S. § 2810(j) which reads: "Retail sales of electric generation, transmission, distribution or supply of electric energy, dispatching services, customer services, competitive transition charges, intangible transition charges and universal service and energy conservation charges and such other retail sales in this Commonwealth the receipts of which, if bundled, would have been deemed to be sales of electric energy prior to the effective date of this chapter shall be deemed sales

of electric energy for purposes of section 1101 of the Tax Reform Code of 1971." The term also includes: customer charges, capacity charges, demand charges, stand-by charges or usage fees for electric energy and related services to the end-use customer.

State tax information - The information maintained by the Department that is necessary for the administration of 66 Pa.C.S. §§ 2806 and 2809 providing for the grant, renewal, or transfer of an electric generation supplier license.

Tax liability - Any tax, estimated tax, interest, penalty, fee, addition, cost or other charge authorized to be imposed and collected by the Department in the administration of the TRC and 66 Pa.C.S. §§ 2801-2812, which has not been paid within the time period and in the manner provided by law or the failure to indemnify an electric distribution company for the tax on the use of electricity remitted to the Department under 66 Pa.C.S. §§ 2808 and 2809.

Tax imposed upon gross receipts - The tax imposed under section 1101 of the TRC (72 P.S. § 8101) and 66 Pa.C.S. § 2810. § 160.25. Tax on gross receipts.

(a) Companies subject to tax. Electric light companies, waterpower companies, hydroelectric companies, electric distribution companies, electric generation suppliers, electric cooperatives and municipalities to the extent provided in section 1101 of the TRC (72 P.S. § 8101(b)), 15 Pa.C.S., Chapter 74 (relating to electric cooperatives) and 66 Pa.C.S. § 2810 and



doing business in the Commonwealth shall be subject to the tax imposed upon gross receipts.

(b) Doing business. As used in subparagraph (a) doing business includes the phrases "doing business in this Commonwealth" and "engaged in electric light and power business, waterpower business and hydroelectric business in this Commonwealth," as such terms are used in section 1101(b) of the TRC (72 P.S. § 8101(b)) and 66 Pa.C.S. § 2810(j). It also includes the direct or indirect engaging in, transacting or conducting of activity in this Commonwealth for the purpose of establishing or maintaining a market for the sales of electric energy and includes obtaining a license or certification from the commission to supply electric energy.

(c) Taxable gross receipts. The tax is imposed upon the taxpayer's gross receipts derived from sales of electric energy to retail electric customers in the Commonwealth, but does not include gross receipts from sales for resale to persons subject to the tax imposed upon gross receipts, or gross receipts from sales that are otherwise exempt under section 1101 of the TRC (72 P.S. § 8101). Retail sales of generation shall be deemed to occur at the meter of the retail consumer.

#### TAX ON THE USE OF ELECTRICITY

§ 160.31. Tax on the use of electricity.

(a) Tax imposed. A tax on the use of electricity under 66 Pa.C.S. §§ 2806(g)(3)(iii) or 2809(c)(2) shall be imposed upon an

electric distribution company, provided sales of electric energy are made to a retail customer of the electric distribution company by an electricity supplier that has failed to properly report and remit the tax imposed on gross receipts.

(b) Failure of electricity supplier to report and pay tax on gross receipts. Upon ascertaining that an electricity supplier has not properly reported and remitted the tax imposed upon gross receipts, the Department is authorized under section 1102 of TRC (72 P.S. § 8102) to:

(1) Estimate, settle or resettle the tax on gross receipts of the electricity supplier to include the proper tax, interest and penalty; and at the same time,

(2) Settle or resettle and collect within 30 days of notice any unpaid tax, but not any interest or penalty imposed on the electricity supplier on the use of electricity from the electric distribution company with respect retail customers it served. The tax shall be calculated by multiplying the kilowatt hours distributed on behalf of the electricity supplier for which no gross receipts tax has been remitted, by the electric distribution company's shopping credit provided to customers and filed with the Commission for electricity supply during the tax period. In the event that the actual gross receipts of the electricity supplier for which no gross receipts were received are known and available, the tax shall consist of such gross receipts multiplied by the applicable tax rate.

(3) When both the electricity supplier and the electric distribution company have made payment to the Department with respect to estimates, settlements or resettlements issued under paragraph (1) and (2), the Department shall resettle the tax on the use of electricity of the electric distribution company to eliminate any gross receipts upon which tax has been also paid by the electricity supplier.

(c) Indemnification of electric distribution company that has paid use tax. Upon payment to the Department of the tax on the use of electricity, the electric distribution company may collect or seek indemnification or reimbursement from the electricity supplier or from the end-user of the electricity in Pennsylvania.

(1) When collecting or seeking indemnification or reimbursement, the electric distribution company shall provide the following information to the party from whom the collection is made or from whom indemnification or reimbursement is sought:

(i) The tax, interest and penalties due.

(ii) Notice that the party may appeal the collection or request for indemnification or reimbursement by filing a petition with the Board of Appeals not later than 30 days after the date on which the collection was made or the request for indemnification or reimbursement was mailed by the electric distribution company.

(iii) The mailing address of the Board of Appeals where parties may appeal requests for indemnification or reimbursements.

(2) The indemnification or reimbursement shall be due within 30 days of the mailing date of the request for indemnification or reimbursement.

(d) Duplicate payments. In applying payments or determining refund priorities, the following presumptions shall apply:

(1) When both the electricity supplier and the electric distribution company have provided payment to the Department from estimates, settlements or resettlements issued under subsection(b)(1) and (2), the Department shall first apply payment from the electricity supplier to satisfy the unpaid liability.

(2) Within 30 days of receipt of indemnification or reimbursement by an electric distribution company from the electricity supplier and the retail electric customer, the electric distribution company shall issue a refund or credit in the retail electric customer's next monthly bill.

(3) Within 30 days of receipt or notice of a refund or credit of tax on the use of electricity, that was reimbursed by a retail customer, the electric distribution company shall issue a refund or credit in the retail customer's next monthly bill.

(e) Effect on unpaid gross receipts tax. The liability for unpaid gross receipts tax, interest, or penalty of the electricity supplier shall not be extinguished by payment of a tax on the use of electricity.

#### LICENSING

§ 160.33 Electric generation supplier license procedures.

(a) License application. Upon request from the Commission, the Department shall confirm that an applicant has no tax liabilities not subject to appeal under section 202 of the TRC (72 P.S. § 7202), section 1101 of the TRC (72 P.S. § 8101), and 66 Pa.C.S. § 2810 or failure to otherwise comply. If the applicant has a tax liability or failure to otherwise comply, the Department shall follow the procedures set forth in subsection (c).

(b) Licensed electric generation suppliers. By May 1, 1998, and every year thereafter, the Commission shall provide the Department with a list of licensed electric generation suppliers with their accompanying state tax numbers, similar identification numbers, and any other information the Department shall require. By the immediately succeeding July 30, the Department shall review the tax records of the licensees and determine whether a licensed electric generation supplier has a tax liability or failure to otherwise comply.

(c) Procedures.

(1) If the Department determines that an applicant or licensed electric generation supplier has a tax liability or failure to otherwise comply, the Department shall notify the entity of the tax liability or the failure to otherwise comply.

(2) The entity shall have 45 days from the mailing date of the notice to fully remit the unpaid tax liability or correct the failure to otherwise comply.

(3) If the entity fails to fully remit the unpaid tax liability or correct the failure to otherwise comply within 45 days, the Department shall forward a notice to the Commission with a recommendation that the Commission deny the application for electric generation supplier licensure, or institute license revocation proceedings, as applicable.

(d) State tax information. The Commission may request the state tax information necessary to ascertain compliance with the requirements for licensure or to institute licensure revocation proceedings. It shall be available for inspection or disclosure upon written request by the Chairman of the Public Utility Commission or by the authorized representative of the Chairman of the Commission designated in such written request as the individual who is to inspect or receive state tax information on behalf of the Commission.

04/13/99

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT

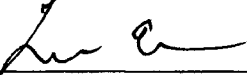
I.D. NUMBER: 15-410  
SUBJECT: Utility Gross Receipts Tax  
AGENCY: DEPARTMENT OF REVENUE

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TYPE OF REGULATION

- X Proposed Regulation  
Final Regulation  
Final Regulation with Notice of Proposed Rulemaking Omitted  
120-day Emergency Certification of the Attorney General  
120-day Emergency Certification of the Governor  
Delivery of Tolled Regulation  
a. With Revisions b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
9/2/99		HOUSE COMMITTEE ON FINANCE
9/2/99	Pat Carnathan	SENATE COMMITTEE ON FINANCE
9/2/99	Ken C. Kerner	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
9/2/99	Maya Garcia	LEGISLATIVE REFERENCE BUREAU

August 27, 1999