



**Lori A. Cole**  
Manager - Regulatory & Tariffs

May 17, 2019

**VIA ELECTRONIC FILING**

Honorable Kathleen H. Burgess  
Secretary  
New York State Public Service Commission  
Three Empire State Plaza  
Albany, NY 12223-1350

Re: Proposed Tariff Revision to New York State Electric & Gas Corporation and  
Rochester Gas and Electric Corporation's Tariff Schedules.

Dear Secretary Burgess:

The enclosed tariff leaves, issued by New York State Electric & Gas Corporation ("NYSEG") and Rochester Gas and Electric Corporation ("RG&E"), (together the "Companies") are transmitted for filing in compliance with the New York Public Service Commission's (the "Commission") Codes, Rules and Regulations (16 NYCRR Appendix 7-H). The leaves are proposed to become effective on October 1, 2019.

P.S.C. No. 120 – Electric, Schedule for Electric Service  
Leaf No. 19, Revision 3

P.S.C. No. 121 – Electric, Schedule for Electric Service  
Leaf No. 5, Revision 2

P.S.C. No. 87 – Gas, Schedule for Gas Service  
Leaf No. 10, Revision 10

P.S.C. No. 88 – Gas, Schedule for Gas Service  
Leaf No. 8, Revision 11

P.S.C. No. 18 - Electric, Schedule for Electric Service  
Leaf No. 11.1, Revision 5

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P.S.C. No. 19 - Electric, Schedule for Electric Service  
Leaf No. 80, Revision 10

P.S.C. No. 16 – Gas, Schedule for Gas Service  
Leaf No. 78, Revision 3

Purpose of Filing

The Companies are filing amendments to its tariffs that would allow for the recovery of municipal gross receipts taxes on transmission and delivery service related to customers who receive commodity service from third party providers, prospectively and upon request by a City or Village to NYSEG or RG&E.

Background

The Companies' current tariffs expressly prohibit the imposition of local gross receipts tax ("Municipal Tax") on customers that only take delivery (or transportation) service from the Companies and are with a third party provider for commodity service<sup>1</sup>.

In 2009, the New York State Department of Taxation and Finance issued an informal Advisory Opinion, TSB-A-09(11)C and TSB-A-09(12)C dated June 29, 2009, that indicated the sale of the commodity and the sale of transportation, transmission and distribution of the commodity are subject to the city and village gross receipts taxes imposed pursuant to the authority of General City Law § 20-b and Village Law § 5-530, regardless of whether the commodity and the delivery of the commodity are sold by different parties. The Companies did not disagree with the conclusion, however, the TSBs did not specifically address the taxability of those transactions that either originate or consummate outside the city limits. Both the General City Law § 20-b and Village Law § 5-530 provide for an exception to the tax related to those transactions originating or consummating outside the territorial limits of such city or village. NYSEG and RG&E had determined that in each of its service territories, for customers receiving their commodity from third party energy services companies, the exception noted above applies.

Proposed Revision

The Companies are proposing revisions to its tariffs that would allow a City or Village to submit a request for the utility to begin collecting and remitting local gross receipts taxes on the delivery/transportation of electricity or natural gas when a customer takes service from a third party provider.

The proposed tariff revisions would permit the Companies to commence prospective recovery of municipal gross receipts taxes upon request by a City or Village. When a request is received by

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<sup>1</sup> The tariff language that specifically exempts the application of Municipal Tax to customers that are taking delivery service only from the Companies has been in place over 20 years at each Company, for both electric and natural gas service.

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NYSEG or RG&E, the Companies will file a Tax Surcharge Percentage (TSP) Statement on 15 days' notice with the Commission to begin collecting the tax on behalf of the municipality. A draft statement is enclosed in Appendix A to demonstrate what the statement will look like when the Companies receive a request and written agreement from a municipality. In the event that it is determined in another forum that the City or Village gross receipts tax is not applicable to delivery service provided by an electric or gas utility to customers obtaining commodity service from a third party energy supplier and a refund is provided to the Companies, the Companies will provide notice of refund to the Commission and submit a petition related to the disposition of such funds.

Additionally, NYSEG and RG&E are reserving their rights to contest the validity of these tax assessments in circumstances where the Companies provide only the transmission and delivery service to customers.

Newspaper Publication

The Company requests that the requirement of § 66(12)(b) of the Public Service Law and 16 NYCRR §720-8.1 as to newspaper publication be waived because the Company will notify customers directly through a bill message if a new TSP Statement is filed on behalf of a municipality.

A State Administrative Procedures Act Notice is enclosed for publication in the State Bulletin.

Company Contacts

If there are any questions concerning this filing, please call me at (585)484-6810.

Respectfully submitted,



Lori A. Cole

Enclosures

PSC No: 19 - Electricity  
 Rochester Gas and Electric Corporation  
 Initial Effective Date:

Statement Type: TSP  
 Statement No. ##

### STATEMENT OF EFFECTIVE TAX SURCHARGE PERCENTAGES

The rates and charges for service under all Service Classifications will be increased by the following surcharge percentages to collect Gross Income Tax in accordance with Rule 4.J.(1) of PSC No. ~~4619~~; plus, where applicable, the municipal tax rate in accordance with Rule 4.J.(2) of PSC No. ~~4619~~. For cities, villages or other areas served, the applicable surcharge percentages are as follows:

Applicable Surcharge Percentages	Non-Retail Access		Retail Access	
	Residential Delivery	Non-Residential Delivery; Residential and Non-Residential Commodity; and Bundled Special Contracts	Residential Delivery	Non-Residential Delivery
Cities:				
Rochester	5.2632%	3.0928%	2.0408%	0.0000%
Canandaigua	3.0928%	1.0101%	2.0408%	0.0000%
Villages:				
East Rochester, Geneseo, Hilton, Manchester, Meridian, Mt. Morris, Nunda, Pittsford, Shortsville, Sodus, Sodus Point, Webster, Wolcott	3.0928%	1.0101%	2.0408%	0.0000%
All Other Villages and Towns	2.0408%	0.0000%	2.0408%	0.0000%
<b><u>City or Village imposing Muni Tax Upon Retail Access Customers:</u></b>				
<u>Cities:</u>				
<u>Name of City</u>				
<u>Villages:</u>				
<u>Name of Village</u>			<u>X.XXXXX%</u>	<u>X.XXXXX%</u>

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#### Notes:

- (1) The effective aggregate percentage rate is computed as follows:  

$$[(\text{taxes imposed}) / (1 - \text{taxes imposed}) * 100]$$
- ~~(2) Retail Access Revenue is not subject to Local, City, or Village Municipal Tax Surcharges.~~