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PUBLIC SERVICE COMMISSION

Maillog Nos.: 236467, 236826

February 22, 2022

Re: Potomac Edison Report on Billing Error

To all parties:

1. On August 5, 2021, The Potomac Edison Company (“Potomac Edison”) filed notice with the Commission, stating that it had inadvertently charged some of its residential customers an incorrect sales tax from April 2012 through part of July 2021. This error resulted from a computer transition issue arising from the integration of Allegheny Energy data into First Energy’s system in 2012.
2. According to Potomac Edison, the amount of sales tax improperly billed to customers totaled \$6.13 million.¹ It noted that all of these taxes were transmitted to the Maryland Comptroller on a monthly basis such that Potomac Edison received no financial benefit from this error. Additionally, Potomac Edison noted that it intended to make all affected customers whole through a full refund as well as interest at the Commission’s rate of interest for security deposits.² These customer refunds began in September 2021 and included an explanatory message describing the reason for the refund.
3. Potomac Edison stated that it will attempt to recoup the excess taxes paid to the State of Maryland. However, any recovery would be limited to the prior four years, resulting in a gap of approximately \$2.5 million³ between what has already been refunded to customers and what it may recover from the State. Potomac Edison stated that it will not seek recovery of this amount in rates. Finally, Potomac Edison described several specific remediation efforts it will implement to ensure a similar issue does not arise in the future.⁴

¹ This amount is contained in a correction filed by Potomac Edison on August 27, 2021. Maillog No. 236826.

² Maryland regulations set the interest rate applicable to security deposits at “the average of the percent yields of 1-year treasury constant maturities.” COMAR 20.30.02.04.C(3)(b).

³ August 27, 2021 Correction. Maillog No. 236826.

⁴ Maillog No. 236467 at 3.

OPC Comments

4. On January 3, 2022, the Maryland Office of People’s Counsel (“OPC”) filed responsive comments. After summarizing Potomac Edison’s filing, OPC disagreed with the interest rate Potomac Edison used to calculate customer refunds. Rather than using the Commission’s interest rate for security deposits, OPC argued that Potomac Edison should have calculated the interest using the prime rate, which OPC claimed is a more appropriate rate to ensure customers are made whole.

5. Unlike in the circumstances in the present case, OPC argued that security deposits are voluntary payments by customers to use a utility’s service. In other words, OPC contended that the Commission-approved (lower) interest rate on security deposits reflects an additional benefit received by customers for the temporary loss of use of their money. OPC argued that in the present circumstances, Potomac Edison’s residential customers received no benefit from the loss of use of their money, thus justifying a higher interest rate on the refunds.

6. OPC determined what it believes to be the appropriate interest rate by analogizing the facts in this case to a debt. OPC referred to several cases before the Commission, as well as before the Federal Energy Regulatory Commission (“FERC”) and the National Labor Relations Board, in which higher interest rates were approved when a company wrongly acquired additional funds from its customers. Citing FERC’s regulations, OPC concluded that the prime rate is the most appropriate rate when refunding monies improperly collected from ratepayers.⁵ Even though Potomac Edison received no unjust enrichment for these monies (and will lose at least \$2.5 million), OPC argued that Potomac Edison’s failure to detect this error for 10 years justifies the higher rate associated with a creditor-debtor scenario.

7. Finally, OPC recognized that the Commission has wide discretion in determining the appropriate rate and offered three suggestions that it believed to be more equitable to customers, including using: (1) the prime rate; (2) a rate equal to Potomac Edison’s late fee on outstanding supplier balances; and (3) Potomac Edison’s investor rate of return. Of these suggestions, OPC recommended the prime rate.

Potomac Edison Response

8. On January 26, 2022, Potomac Edison responded, noting that it has substantially completed the refunds described in its August 2021 filing. After distinguishing the circumstances cited by OPC, Potomac Edison cited Baltimore Gas & Elec. Co., the only case in which it believes the Commission has described its reasoning in adopting an interest rate for similar customer refunds. In that case, the Commission determined the rate applicable to security deposits to be the most appropriate.⁶

⁵ 8 CFR § 154.501(d)(1).

⁶ *In re Baltimore Gas & Elec. Co.*, 78 Md. PSC 36 (1987).

OPC's Reply to Potomac Edison

9. On February 11, 2022, OPC filed an unauthorized reply to Potomac Edison's Response.⁷ OPC again recommended use of the prime interest rate, arguing that Potomac Edison should not have begun refunds until it received authorization from the Commission, and attempted to distinguish the case relied on by Potomac Edison.

Commission Decision

10. Upon consideration of the arguments, the Commission denies OPC's request and will not require a second calculation of refunds using an alternative interest rate. The circumstances in Baltimore Gas & Elec. Co. are largely similar to the facts in this case, as the utility did not retain or benefit from the over collection of taxes, but immediately directed those funds to the Maryland Comptroller. As in that case, the Commission finds that the use of the Commission's prescribed interest rate for security deposits is an appropriate rate to calculate customer refunds in this case. OPC's analogies to the lost time value of money and cases involving federal agencies are unavailing in light of Commission precedent.

11. Moreover, the Commission finds that OPC's comments are well out of time. Notably, OPC offered no reason why it waited five months, long after the refunds were completed, to initially raise concerns with the interest rate. Such an unexplained delay not only frustrates the timely adjudication of matters before this Commission, but contributes to an unacceptable level of regulatory uncertainty for both parties and ratepayers.⁸

By Direction of the Commission,

/s/ Andrew S. Johnston

Andrew S. Johnston
Executive Secretary

⁷ COMAR 20.07 makes no provision for a "Reply".

⁸ Commissioner Richard concurs and writes separately to state that: "I concur with my colleagues that the Comments filed are well out of time. Late filings frustrate the timely adjudication of matters before the Commission and contribute to unacceptable levels of regulatory uncertainty. However, I respectfully disagree that a precedent necessarily applies here. In the future, I would conduct proceedings necessary to develop a record and consider timely petitions that propose just and reasonable solutions - in the ratepayer interest - to utility errors."