

*This information is not the official version of the Official Compilation of the Rules and Regulations of the State of New York (NYCRR). No representation is made as to its accuracy, nor may it be used as an official business record of the New York State Department of Public Service. To ensure accuracy and for evidentiary purposes, reference should be made to the official NYCRR. The Official NYCRR is available from West Publishing: 1-800-344-5009.*

SUBCHAPTER H. MISCELLANEOUS  
PART 89. NOTIFICATION REQUIREMENTS

§ 89.1 Public dissemination of tariff filings

Any consumer organization may apply in writing to any utility company subject to the jurisdiction of the commission and request that it be served with a summary of any tariff filings made by such company. Each company shall keep a roster of such requests and at the time of such tariff filing shall serve such summary upon the organizations that have made such written requests.

§ 89.2 Notice of litigation affecting tariff schedules

Every utility company subject to the jurisdiction of the commission shall promptly notify the commission of the pendency of any litigation, to which such company is a party, which affects the legality, validity or reasonableness of any provision of its tariff schedule.

§ 89.3 Notification concerning tax refunds

(a) Every utility company, and every municipality whose rates for utility service are subject to the jurisdiction of the commission (utility), shall notify the commission, in the manner described in this section, of all tax refunds, including refunds in the form of offsets against the utility's liability to the taxing authority issuing the refund; and including, in the case of municipalities, reductions in the amounts properly chargeable as payments in lieu of taxes. This Part shall be inapplicable to ordinary operating refunds that are not attributable to negotiation or to new legislation, adjudication or rulemaking (such as refunds for overpayment of estimated taxes, and carry-backs of net operating losses and investment tax credits). For purposes of this Part, a refund is deemed to occur when the earlier of the following events occurs, regardless of the possibility of subsequent audit or litigations:

- (1) the refund is authorized by decision of a competent agency or court; or
- (2) the utility receives it or uses it as an offset to liability.

(b) The utility shall notify the commission within 60 days after the refund occurs if the refund:

- (1) exceeds \$ 1,500,000; or
- (2) exceeds \$ 1,000 and exceeds 0.2 percent of the utility's operating revenues for the most recent calendar year that ends more than four months before the refund occurs.

(c) In determining whether a refund exceeds 0.2 percent of operating revenues for purposes of paragraph (b)(2) of this section:

(1) in the case of a gas, electric, steam or combination utility, operating revenues shall be reduced by the amounts properly chargeable to the functional group of production operation and maintenance expense accounts;

(2) in the case of a combination utility, the refund shall be deemed to exceed 0.2 percent of operating revenues if, after the refund is allocated among the gas, electric and steam departments in a manner reflecting insofar as possible the extent

to which the refund is related to each department's activities, one or more of the portions thus allocated exceeds 0.2 percent of the operating revenues of the department to which it is allocated;

(3) in the case of a water utility, operating revenues shall be reduced by the amounts properly chargeable to the functional groups of source of supply, and pumping operation and maintenance, expense accounts; and

(4) in the case of a telephone utility, operating revenues shall not include interstate revenues.

(d) In determining whether a refund meets the criteria stated in subdivision (b) of this section, multiple refunds shall be treated as a single refund if they share a common cause such as a common act of negotiation, legislation, adjudication or rulemaking.

(e) If a refund does not meet the criteria stated in paragraph (b)(1) or (b)(2) of this section, it shall be reported and itemized in the utility's annual report to the commission for the year in which the refund occurs.

(f) When giving the commission any notification or report pursuant to this Part, the utility also shall either propose a method of distributing to its customers the entire amount refunded, or show why it should not make such a distribution.