June 20, 2017

Mark Zych, Director

Technical Assistance and Sent via E-mail and US Mail

Dispute Resolution

Florida Department of Revenue

P.O. Box 7443

Tallahassee, FL 32314

RE: Request for Technical Assistance Advisement/Expedited Response

Dear Mr. Zych:

The Florida Electric Cooperatives Association, Inc. (FECA) is the trade association for electric cooperatives (2 wholesale and 15 distribution) that sell energy and electricity at retail in Florida. Pursuant to Rule 12-11.003, F.A.C., an association may request a Technical Assistance Advisement (TAA) on behalf of its members. FECA files this request for a TAA on behalf of the following members: Central Florida Electric Cooperative, Inc., CHELCO, Clay Electric Cooperative, Inc., Escambia River Electric Cooperative, Inc., Florida Keys Electric Cooperative Association, Inc., Glades Electric Cooperative, Inc., Gulf Coast Electric Cooperative, Inc., Okefenoke Rural Electric Membership Corporation, Peace River Electric Cooperative, Inc., Sumter Electric Cooperative, Inc., Suwannee Valley Electric Cooperative, Inc., Talquin Electric Cooperative, Inc., and Tri-County Electric Cooperative, Inc., (“members”). All of the members are also member-owners of Seminole Electric Cooperative, Inc. (SEC) or PowerSouth Energy Cooperative, generation & transmission electric cooperatives that provide them with their wholesale power supply. FECA will disseminate the TAA to the above-mentioned member-cooperatives and FECA acknowledges that the Department may publish the TAA for official purposes. FECA respectfully requests an expedited response to this TAA request.

Each FECA member is a Florida taxpayer and pursuant to the requirements in Rule 12-11.003(4), F.A.C., and to the best of our knowledge, the issues raised in this request for a TAA: 1) are not identical to any issue involved in our member’s returns; 2) are not being considered by the Department and have not been examined for assessment or refund; 3) do not pertain to any issue that has been examined or assessed for a refund; 4) are not the subject of litigation involving any of FECA’s members; and 5) have not been ruled on by the Department in prior TAAs. In addition, to the best of our knowledge, none of FECA’s members are under DOR audit at this time.

The issues involved in this request for a TAA involve whether payments from an electric co-op’s ratepayers/end-users to participate in a voluntary community solar project are subject to the gross receipts tax and/or sales tax.

**FACTS**

FECA’s members include distribution co-ops that provide electricity at retail, and the consumers of the electricity are member-owners (“ratepayer” or “end-use consumer”) of the distribution cooperative. Several member-owners have requested that their co-op offer a solar power option, even if the electricity costs more than other power options. The co-ops want to accommodate those members as long as they are willing to compensate the co-op for the more expensive solar generated electricity. To this end several co-ops already offer solar power as an option and other co-ops are planning to add a solar option in the very near future.

The billing methods for the community solar power may vary slightly among co-ops, but the essence of the transaction is that the member-owners that want solar power will pay the co-op a fixed fee for the right to have a fixed percentage of the output of a solar facility, and in return the member-owner will receive a credit on their electric bill for the number of kilowatt-hours (KWH) generated by their allotment of the solar facility during the billing period. The fixed fee may be billed periodically (monthly, yearly, or for longer terms) or as a single lump sum payment. The periodic fixed fee will be the same amount regardless of how much solar power is generated in a given billing cycle. The co-ops will offer the solar power in “Blocks”. A “Block” represents a fixed percentage of the electricity generated by the solar generator each month. The number of kilowatt-hours (KWH) in the Block will vary each billing cycle depending upon the amount of electricity the solar generator produces in that time period. The number of KWHs credited to the Block during the billing cycle will be credited to the end-use consumer’s electric bill by deducting the number of KWH in the Block from the total number of KWH the co-op delivers to the member-owner. If the Block produces more KWH than a consumer uses during the billing period, the consumer will receive a credit in accordance with the co-op’s net metering rate/policy. Due to the laws of physics and the fact that electrons follow the path of least resistance, we can’t measure whether some or all of the power in the Block is actually included in the power that the distribution co-op delivers to the member-owner, but it will be accounted for in the same method that is used for net metering (see TAA 09A-029 and TAA 07A-1462).

The solar generator may be leased or owned by the distribution co-op or its wholesale power provider, and the solar generator will be operated and controlled by the co-op. A participating member-owner has a right to their percentage of the power generated by the solar generator, but does not have any other property rights regarding the solar generator. In fact, the participating end-use consumer’s may never even see the solar generator.

On behalf of the above-mentioned member-cooperatives, FECA requests guidance for the hypothetical billing scenarios listed below. The specific questions are whether the fixed Block fees are subject to the gross receipts taxes and either the 6% or 4.35% sales & use taxes, and whether the KWH credits for the solar electricity reduce the tax base for purposes of the sales and gross receipts taxes. For demonstration purposes and recognizing that actual bills may have minor variations, the first hypothetical bill below shows the billing calculations for consumers that do not participate in the voluntary community solar program, and the second hypothetical is for a consumer participating in the community solar program, which includes a solar Block fixed charge that is assessed each billing period and credits the solar KWH credits as an offset of the total KWH delivered by the co-op. The hypothetical bills assume total electric usage of 1,000 KWH and for program participants a solar credit of 180 KWH for a net sale of 820 KWH. We used a hypothetical charge for electric power of $.10 per KWH.

**Sample Bills before taxes:**

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  |  |  |  | Bill without | |  | Bill with solar | |  |  |
|  |  |  |  | solar |  |  | and fixed fee | |  |  |
| Fixed Charges | |  |  |  |  |  |  |  |  |  |
|  | customer charge | |  | $25.00 |  |  | $25.00 |  |  |  |
|  | Solar block charge | |  | $0.00 |  |  | $30.00 |  |  |  |
|  | total fixed charges | |  |  | $25.00 |  |  | $55.00 |  |  |
| Variable charges | | |  |  |  |  |  |  |  |  |
|  | $.10/kwh | |  | $100.00 |  |  | $82.00 |  |  |  |
|  | total variable | |  |  | $100.00 |  |  | $82.00 |  |  |
|  |  |  |  |  |  |  |  |  |  |  |
| Total charges before taxes | | | |  | $125.00 |  |  | $137.00 |  |  |
|  |  |  |  |  |  |  |  |  |  |  |
| \*\* Variable charges are based on 1,000 KWH for non-solar and a net of 820 KWH for those with solar | | | | | | | | | | |

**Question 1: Are the Block charges subject to sales tax, and if so is it the general sales tax at a rate of 6% or the 4.35% sales tax on electricity.**

FECA believes the fixed charge for the Block is the sale of electricity because the product ultimately received by the consumer is electricity. Therefore, we believe the fixed charge for the Block is subject to the 4.35% sales tax on electricity unless the end-use consumer is entitled to a sales tax exemption.

**Question 2: Are the Block charges subject to the gross receipts taxes?**

FECA believes the fixed charge for the Block is the sale of electricity because the product ultimately received by the consumer is electricity. Therefore, we believe the fixed charge for the Block is subject to the gross receipts taxes.

**Question 3: Whether the KWH credits for the solar electricity reduce the tax base for purposes of the sales and gross receipts taxes?**

FECA believes the tax base for calculating the gross receipt taxes should only be based upon the amount of money received from the end-use consumer, and the sales tax should only be based upon the net amount billed to the consumer for sales taxes. Therefore, any credits for the end-use consumer’s solar KWHs should offset or be deducted from the total number of KWH delivered to the end-use consumer during the billing period, and reduce the amount the end-use consumer owes the co-op, and therefore reduce the tax base for the transactions as set forth in the examples above.

FECA respectfully requests an expedited TAA from the Department on the above issues to ensure its members are correctly assessing the gross receipts and sales taxes in a timely fashion. Thank you for your assistance and please call me if you have any questions.

Sincerely,

Michelle Hershel, Esquire

FECA Director of Regulatory Affairs