

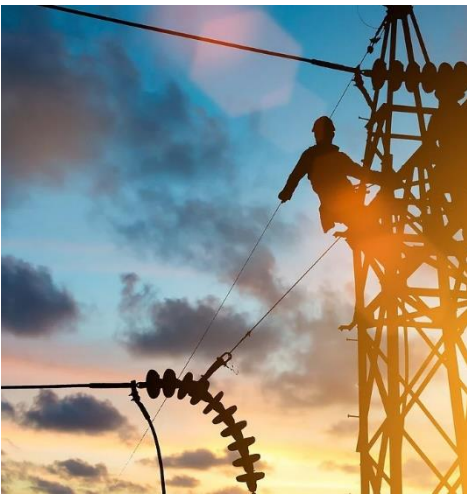


## Help us Name our Newsletter

PMEA's inaugural newsletter needs a name! Help us name the newsletter by submitting your ideas to [bosak@papublicpower.org](mailto:bosak@papublicpower.org). Keep it short and simple – oh, and catchy! We will have a special surprise the person submitting the winning name! Deadline for submitting your suggestions is February 17.

## Solicitor Report 2020- 2021: Rearview Mirror to Windshield Survey

By: G. Bryan Salzmann, Esq. Salzmann Hughes, P.C. Counsel to PMEA



2020 was an extremely busy year serving the interests of the PMEA board and PMEA members on a variety of issues. The majority of the year involved addressing the gross receipts tax ("GRT") issue which successfully resulted in a bipartisan legislative fix. At issue in the GRT debate was a Department of Revenue interpretation based upon certain caselaw that suggested that the sales of electricity to Boroughs was **not exempt** from GRT while the sale of the same electricity from the municipal electric Boroughs to its residents and customers within the boundaries of the municipality was GRT exempt. This interpretation was inconsistent with the Department of Revenue's prior positions on the issue. If unchallenged, the Department of Revenue's interpretation would have created deleterious effects and had the real possibility of "upsetting the applecart" as sellers of electricity from the grid looked to pass on the GRT tax to the Borough

electrics. This left the Boroughs in a precarious situation. Borough electrics would have been forced to decide to either raise rates and pass along past GRT taxes to its customers, or fight the wholesale electric supplier on whether the Borough was required to reimburse the supplier for the GRT under the various power purchase agreements.

*(continued on next page)*



## Feeder Ties – A Reliability Focus 2021

The Borough of Chambersburg (BOC) had set a reliability focus over 50 years ago, to replace its nearing end of life equipment and to upgrade the old 4 kV distribution facilities with new 12 kV facilities. The overall plan was/is to meet and exceed customer expectations of load growth and reliability. Reliability, so important for industry and commerce, is now one of the four trademark cornerstones of the American Public Power Association's Reliable Public Power Provider (RP3) Program. Today, having grown significantly, with eight substations and over 11,300 residential, commercial, industrial, institutional, and governmental customers, the Borough residents enjoy operating reliabilities in the top quartile for sure, and likely on the higher end, nearing, or in the top 10% of all electric utilities who measure reliability indices.

*(continued on page 3)*

## Finance Director Position Available

The Borough of Zelienople is seeking a finance director. Submit cover letter and resume with 3 professional references to: Borough of Zelienople, Attn: Donald Pepe, Borough Manager, 111 W. New Castle St., Zelienople, PA 16063 or email to [dpepe@zelieboro.org](mailto:dpepe@zelieboro.org). Additional information is available at [www.zelieboro.org](http://www.zelieboro.org) . EEO/AA.

### ***Solicitor Report (continued)***

Salzmann Hughes commenced litigation involving several lawsuits and appeals on behalf of PMEA and various affected Boroughs. The litigation challenged the Department of Revenue's position and protected the interests of the borough electrics. It also, allowed us to work closely with other interested stakeholders to advance legislation to resolve the problem. This effort succeeded. Following prolonged negotiations between many involved entities, the General Assembly enacted and the Governor signed Act 2 of 2020, which amended the Borough Code. The litigation in essence held the implementation of the GRT taxes at bay and was a successful strategy in helping to facilitate this legislative clarification. Act 2, which became effective August 4, 2020, states as follows:

The sale of electric power to a borough for resale inside the limits of the borough and the sale of electric power by a borough inside the limits of the borough shall be exempt from the tax imposed under section 1101 of the act of March 4, 1971 (P.L. 6, No. 2),<sup>1</sup> known as the Tax Reform Code of 1971.

This amendment expressly applies to gross receipts received after December 31, 2016, for power sold to or by a borough owned or operated utility established prior to August 2020.

Few wins are achieved without a lot of help and teamwork. This success could not have happened without the leadership and commitment of the PMEA Board, PMEA member municipalities, the PMEA executive director Diane Bosak who was absolutely critical to the process, Joseph M. Uliana who we asked to walk the halls of the Senate and House to champion SB 958, and you as you engaged with your own elected officials directly (whether Democrat or Republican) to ensure that they were aware of the drastic implications of this Department of Revenue interpretation of the Tax Code. Furthermore, this result occurred with assistance from and cooperation of the administration and the Department of Revenue, both of which meaningfully participated in drafting the legislation. This was an example of how government should work and a win-win-win.

Looking forward, our firm continues to monitor the application of the GRT exemption to ensure that Borough municipal electrics receive the full benefit and protection of the new law. To that end, we have drafted proposed language to add to tax exemption certification forms that the Department of Revenue may require. If a PMEA member is interested in reviewing a copy of the draft proposed language you are invited to contact the PMEA Executive Director Diane Bosak. The Department will undoubtedly require confirmation that electricity sold to Boroughs is resold within the boundaries of the Borough to receive GRT tax exemption.

The second matter of significance for 2021 is a continued review of the Ellwood Borough decision by the Commonwealth Court involving municipal liens and collection practices. A recent decision issued by the Pennsylvania Commonwealth Court, *Ellwood City v. Heraeus Electro-Nite Co., LLC*, 167 A.3d 273 (2017), dealt with the efforts of Ellwood City, a borough in Pennsylvania with a municipally-owned electric system, to recover approximately \$1.3 million from an industrial customer for past electric service not previously billed due to a billing error. The Lawrence County Court of Common Pleas ruled in favor of the customer, finding that backbilling was not permitted under the Borough's ordinance. Ellwood City then appealed the trial court's decision to the Commonwealth Court. The Commonwealth Court affirmed the trial court's ruling. Therefore, the best course of action for a Borough municipal electric, in light of the Ellwood City litigation, is to amend the Borough's utility service ordinances by including specific and clear language expressly permitting the Borough to retroactively bill customers, and to ensure regular and thorough monitoring and maintenance of the Borough's electric equipment. In addition, in light of the undisciplined dicta in the Ellwood City ruling that a municipality providing utility service to its residents by using applications for service or service agreements creates a contractual relationship precluding municipal liens, the Borough, and any municipality providing utility service, may consider actively engaging their state representatives and senator to pursue a legislative fix to resolve the Commonwealth Court's interpretation of the Municipal Claims and Tax Liens Act. The extent to which PMEA will be involved on this important matter on behalf of its members is being reviewed. Any member who desires a detailed analysis of the issue which was provided to the PMEA Board is invited to contact PMEA Executive Director Diane Bosak.

The PBA board is presently reviewing the options to address potentially adverse components of the Ellwood City Borough decisions including legislative involvement. However as suggested above, Boroughs would be wise to have their solicitors review existing ordinances and, if necessary and not addressed by now, consider amending ordinances to prevent the Ellwood City Borough decision from creating severe restrictions on collection actions in the future. Also looking forward into 2021, we continue to provide COVID guidance as a courtesy given our municipal client base which is currently reacting to employment-related code issues, public meetings during COVID, and dealing with the public as Commonwealth and federal COVID orders continually change and are modified. We sincerely hope everyone stays healthy and COVID free.

We continue to review other matters as well in 2021 for the PMEA Board and its members including interconnection agreements with independent owned utilities, solar energy facilities planning and implementation, and intergovernmental cooperation agreements regarding shared services. As always, it continues to be my privilege to serve the PMEA board and its members. If you need to discuss any matter with me either under the PMEA membership benefits or beyond, I can be reached at [gbsalzmann@salzmannhughes.com](mailto:gbsalzmann@salzmannhughes.com) or at (717) 263-2121.

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## **Associate Member Spotlight**



NextEra Energy Resources, LLC is a clean energy leader and is one of the largest wholesale generators of electric power in the U.S., with approximately 21,900 megawatts of net generating capacity, primarily in 37 states and Canada as of year-end 2019. NextEra Energy Resources, together with its affiliated entities, is the world's largest generator of renewable energy from the wind and sun and a world leader in battery storage. The business operates clean,

emissions-free nuclear power generation facilities in New Hampshire and Wisconsin as part of the NextEra Energy nuclear fleet, which is one of the largest in the United States. NextEra Energy Resources proudly provides energy to more than 20 PMEA members.



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### Feeder Ties (continued)



The heart of the concepts deployed then and still now in Chambersburg are called “alternate supplies”. I.e., if one source of power goes off, using local utility people, switch to another. The BOC enjoys three 69 kV sources of power from West Penn Power and further, the transmission system can be sectionalized three ways from those sources. Under that high voltage umbrella, in a parallel concept, the eight substations then too, will, in the end of its development, have eight substation field feeder-ties that we call a “ring-bus”.

Using the ring-bus and other available tie arrangements designed into the distribution system, the System Operator can transfer load between substations as needed restoring power to large numbers of customers, while also the line crews sectionalize the faulted area(s), restoring power to as many customers as possible, then finally and safely deploying resources to work on the facilities needing repair from whatever damage had occurred.

There is much work to do yet in 2021 and beyond to fully implement these higher (T&D) reliability designs. Continuing the longstanding development process, the plan is to begin installation of two new 12 kV feeders extending from the Orchard Park Substation which will eventually each, tie in the field, to the Mill Rd. and to the Cree Substation respectively.



*Line Crews Symbolically Demonstrate a New 12 kV Gang Operated Tie Switch between Mill Rd. and the Commerce St. Substations*

The underground and overhead extensions to the last remaining future voltage conversion areas will enable the reasonable upgrades necessary, and replacement of the more-nearing end of life equipment in the south-central downtown areas and southeastern section. Over the next five to ten years, the BOC expects to complete the ring-bus and which will therefore enable the full capability of its emergency response “restore and repair” narrative.

Situational awareness, both in the field and in the System Operators office are key to an accurate, timely, and safe response to events and emergencies. Through many decades using these tried-and-true electric power delivery improvement objectives, customers in Chambersburg have come to enjoy high reliability approaching the order of a premium power park.

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## We Want to Hear From You

Please share with us your exciting projects and photos for future newsletters. Your submissions should be sent to [bosak@papublicpower.org](mailto:bosak@papublicpower.org) at anytime and we will use them in upcoming editions.

**Pennsylvania Municipal Electric Association**

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