

**Attorneys:**

- **Lee D. Hoffman**  
lhoffman@pullcom.com  
860.424.4315
- **John J. Kindl**  
jkindl@pullcom.com  
860.541.3307
- **Frederic Lee Klein**  
fklein@pullcom.com  
860.424.4354
- **Gregory F. Servodidio, CRE**  
gservodidio@pullcom.com  
860.424.4332

## ***My Business is Using Less Power Due to COVID-19; Why is My Electric Bill So High? Things You Can Do to Lower Your Bill***

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by Frederic L. Klein

If your business is closed or partially shut down, but your power bill is still high, your supplier might be charging you for power you didn't use!

Some businesses are billed based on actual usage. But others have entered into power supply contracts that charge for energy based on minimums and maximums derived from historic usage. For example, a company might pay a fixed contract rate of 8¢ per kWh if it uses between 100,000 – 150,000 kilowatt-hours (kWh) per month and pay the difference between the 8¢ per kWh contract rate and current market prices for usage below 100,000 kWh or above 150,000 kWh.

During a normal month, if the company uses 125,000 kWh of electricity, the commodity portion of the bill would be \$10,000.[1] However, if the business is closed due to COVID-19 and it used only 20,000 kWh (for necessities like heat and emergency lighting), and the market price drops to 3¢, the business could be billed \$1,600 for the power it used[2] plus another \$4,000 for the remainder of the minimum amount that the supplier would have to sell into a weak market at a loss.[3] In that situation, the company would wind up paying an extra \$4,000 per month for phantom power it never used!

This is because, when your company entered into its contract, the supplier may have hedged the price of the minimum amount by buying it on the futures market. If your company uses less than the minimum amount, your supplier has to sell the excess between what was actually used and the contract minimum at market prices. Given the current state of the market, prices may be significantly lower than prices were when the contract rate was established. Many contracts

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hold the customer responsible for any losses the supplier experiences if it is forced to sell the excess power into a weak market below the contract price.

However, contracts vary, and some contracts provide relief for the customer. To determine if your contract provides such relief, follow these steps:

- First, you need to fully understand your contract.
- Second, check the supplier's math to make sure the supplier used the correct rates and calculated the bill correctly.
- Third, most supplier contracts contain a variety of provisions, like Force Majeure clauses, that may provide some relief from overcharges. Carefully examine any Force Majeure clauses in the contracts.

Force Majeure clauses generally allow the parties to suspend performance if performance is prevented by events beyond their control. However, Force Majeure clauses are different and each one needs to be examined carefully. While most of these contracts do not consider the buyer's inability to pay as a Force Majeure, some contracts consider the buyer's inability to operate its facilities in a normal manner as a Force Majeure event. Therefore, if the business closure was in response to a governmental directive which is beyond its control, the buyer in the above case may be able to avoid paying an extra \$4,000 per month for phantom power it never used because of a governmental shutdown.

Keep in mind, it is necessary to read the entire contract to understand if it provides relief from phantom charges. In addition, there may be other requirements that must be met in order for a business to avail itself of such relief. For example, a customer claiming Force Majeure may have to provide certain notices to its supplier. Moreover, in some cases, the supplier can terminate the contract if the Force Majeure lasts longer than a certain length of time. This might benefit the buyer, for example, if the buyer is able to enter into a new contract at lower prices. In other cases, the buyer could be exposed to hefty termination charges.

The bottom line is, it is important to read your contract carefully, understand your rights, and understand your alternatives. Also, it may be a good idea to talk with your supplier to see if there might be a mutually acceptable resolution. But before any of that happens, you should fully understand your rights and obligations under the specifics of your contract.

If you are facing phantom electricity overcharges, or any other energy or utility issues, we are available to help. Please contact Fred Klein, [fklein@pullcom.com](mailto:fklein@pullcom.com) or 860.424.4354.

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[1] 125,000 kWh times 8¢/kWh = \$10,000

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[2] 20,000 kWh times 8¢/kWh = \$1,600

[3] (Minimum Contract Amount minus Actual Usage) times (Contract Rate minus Market Price) =

(100,000 kWh – 20,000 kWh) x (8¢/kWh - 3¢/kWh) = \$4,000

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