

**PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1325 G STREET, N.W., SUITE 800
WASHINGTON, D.C. 20005**

ORDER

September 19, 2018

RM46-2015-01-E, IN THE MATTER OF THE INVESTIGATION INTO THE PUBLIC SERVICE COMMISSION'S RULES GOVERNING THE LICENSURE AND BONDING OF ELECTRIC SUPPLIERS IN THE DISTRICT OF COLUMBIA;

AND

FORMAL CASE NO. 1130, IN THE MATTER OF THE INVESTIGATION INTO MODERNIZING THE ENERGY DELIVERY SYSTEM FOR INCREASED SUSTAINABILITY, Order No. 19678

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) adopts final rules governing Retail Electric Suppliers in the District of Columbia in Chapter 46 of Title 15, District of Columbia Municipal Regulations (“DCMR”).¹ The rules shall become effective upon publication of the Notice of Final Rulemaking (“NOFR”) in the *D.C. Register*.²

II. BACKGROUND

2. Currently, the Commission’s rules prescribing the licensing and bonding requirements for Electricity Suppliers are contained in Order Nos. 11796 and 11862.³ Specifically, in Order No. 11796, the Commission adopted on an interim basis rules establishing standards regarding electric consumer protection (“ECPS”), licensing to supply electricity, a form of application for a license to supply electricity, a supplier coordination agreement, an electronic data interchange trading partner

¹ The Commission notes that the terms “Electricity Supplier” and “Electric Supplier” are used interchangeably in this Order.

² The Commission notes that these final rules may be amended in the future depending on actions taken in *Formal Case No. 1130, In the Matter of the Investigation into Modernizing the Energy Delivery System for Increased Sustainability* (“*Formal Case No. 1130*”), Order No. 17912, rel. June 12, 2015 (“MEDSIS proceeding”).

³ See *Formal Case 945, Phase II, in the Matter of the Investigations into Electric Service Market Competition and Regulatory Practices* (“*Formal Case No. 945*”), Order No. 11796, rel. September 18, 2000 (“Order No. 11796”) and *Formal Case No. 945*, Order 11862, rel. December 18, 2000 (“Order No. 11862”).

agreement, and a scheduling coordinator designation form.⁴ The ECPS provisions are now codified in Chapter 3 of Title 15 of the DCMR. In Order No. 11862, the Commission approved and adopted bonding forms for Electricity Suppliers.⁵ The intent of this rulemaking is to codify these requirements into a single chapter (46) in Title 15 of the DCMR.

3. On February 6, 2015, the Commission issued its initial Notice of Proposed Rulemaking (“NOPR”).⁶ On March 9, 2015, the Potomac Electric Power Company (“Pepco”)⁷ and National Energy Marketers Association (“NEM”) filed Comments.⁸ On March 23, 2015, the Retail Energy Supply Association (“RESA”) filed Reply Comments.⁹

4. On August 4, 2015, the Commission convened a Supplier Education Workshop and Technical Conference.¹⁰ During the Supplier Education Workshop, Commission Staff described and answered questions about the Commission’s current consumer complaint process and its current requirements for licensed suppliers. Also, the Commission Staff provided a brief summary of the proposed changes to the codification of the licensing rules and proposed changes to the Consumer Bill of Rights (“CBOR”). During the Technical Conference, stakeholders were able to further discuss the proposed rules and the comments on the CBOR and licensing rules with Commission Staff and attempt to reach consensus on certain areas in the proposed rules.¹¹ At the end of the Technical Conference, the stakeholders were given until the end of August 2015 to continue their discussions in an effort to reach a consensus position, if possible, on many of the proposed rules.¹² On December 31, 2015, the stakeholders filed a letter regarding consensus and non-consensus items for the Commission’s consideration.¹³ While providing consensus and non-

⁴ Order No. 11796, ¶ 1.

⁵ Order No. 11862, ¶ 1.

⁶ 62 D.C. Reg. 001712-001764 (February 6, 2015).

⁷ *RM46-2015-01, In the Matter of the Investigation into the Public Service Commission’s Rules Governing the Licensure and Bonding of Electric Suppliers in the District of Columbia and Formal Case No. 1130 (“RM46-2015 & Formal Case No. 1130”)*, Comments of Potomac Electric Power Company in Response to Notice of Proposed Rulemaking, filed March 9, 2015 (“Pepco’s Comments in Response to First NOPR”).

⁸ *RM46-2015 & Formal Case No. 1130*, Comments of the National Energy Marketers Association, filed March 9, 2015 (“NEM’s Comments in Response to First NOPR”).

⁹ *RM46-2015 & Formal Case No. 1130*, Reply Comments of the Retail Energy Supply Association, filed March 23, 2015 (“RESA’s Reply Comments in Response to First NOPR”).

¹⁰ *RM3-2014-01, Consumers’ Rights and Responsibilities (“RM3-2014-01”)* and *RM46-2015-01*, Notice, filed July 1, 2015.

¹¹ The Technical Conference was attended by the Office of the People’s Counsel, Pepco, RESA, ConEdison Solutions, WGL Energy Services, Verizon, and District of Columbia Government.

¹² *RM3-2014-01* and *RM46-2015-01*, August 4, 2015 Technical Conference (“Tr.”) at 213, filed August 12, 2015.

¹³ *RM3-2014-01* and *RM46-2015-01*, Letter Regarding Consensus and Non-Consensus Items for the Commission’s Consideration, filed December 31, 2015 (“Stakeholders’ Letter”). The Stakeholders were OPC, RESA,

consensus items addressing the CBOR, the stakeholders stated that they “have not discussed in detail the proposed revised rules regarding licensure and bonding of Electricity Suppliers, but intend to address those rules in the future.”¹⁴

5. On February 17, 2017, the Commission published a Second NOPR containing revisions to certain provisions in the First NOPR.¹⁵ The Second NOPR included the same attachments as the First NOPR. In the Second NOPR, the following sections were revised to reflect consistency with the Natural Gas Supplier Rules, where appropriate, comments and reply comments, Commission internal review and concerns raised at the August 4, 2015, Technical Conference: 1) 4602.9; 2) 4602.11; 3) 4602.12; 4) 4602.13; 5) 4602.16; 6) 4603.1; 7) 4606.1; 8) 4607.1(a); and 9) 4699.1 (g) and (h).¹⁶ In March 20, 2017, the Office of the People’s Counsel (“OPC” or “Office”),¹⁷ WGL Energy Services, Inc. (“WGL Energy”),¹⁸ NEM,¹⁹ and RESA filed comments.²⁰ RESA filed Reply Comments on April 3, 2017.²¹

6. On August 11, 2017, the Commission published a Third NOPR superseding the prior NOPRs.²² In the Third NOPR, the following sections were revised to reflect consistency with the Natural Gas Supplier Rules, where appropriate, comments and reply comments, and Commission internal review: 1) 4601.2 (h) (1), (2), (3); 2) 4603.5; 3) 4603.9; 4) 4603.10; 5)

Pepeco, District of Columbia Government, WGL Energy Services and NRG Energy.

¹⁴ *RM3-2014-01* and *RM46-2015-01*, Stakeholders’ Letter at 1, fn. 3, filed December 31, 2015.

¹⁵ 64 *D.C. Reg.* 001818-001871 (February 17, 2017).

¹⁶ The Commission notes that in the Second NOPR, all the section numbers changed because the definition section which was previously numbered 4601 in the first NOPR was moved to the back of the NOPR where it became Section 4699.1. For example, as a result of the change, Section 4601 is now the Licensing Requirements section while in the first NOPR it was the definition section.

¹⁷ *RM46-2015 & Formal Case No. 1130*, Initial Comments of the Office of the People’s Counsel for the District of Columbia, on the Notice of Proposed Rulemaking Containing Proposed Amendments to Title 15 of the District of Columbia Municipal Regulations, filed March 20, 2017 (“OPC’s Comments in Response to the Second NOPR”).

¹⁸ *RM46-2015 & Formal Case No. 1130*, Comments of WGL Energy Services, Inc., filed March 20, 2017 (“WGL Energy’s Comments in Response to Second NOPR”).

¹⁹ *RM46-2015 & Formal Case No. 1130*, Comments of the National Energy Marketers Association, filed March 20, 2017 (“NEM’s Comments in Response to Second NOPR”).

²⁰ *RM46-2015 & Formal Case No. 1130*, Comments of the Retail Energy Supply Association, filed March 20, 2017 (“RESA’s Comments in Response to Second NOPR”).

²¹ *RM46-2015 & Formal Case No. 1130*, Reply Comments of the Retail Energy Supply Association, filed April 3, 2017 (“RESA’s Reply Comments in Response to Second NOPR”).

²² *See* 64 *D.C. Reg.* 007984-008037 (August 11, 2017).

4603.11; 6) 4603.12; 7) 4603.16; 8) 4604.1; 9) 4608.1(a); and 10) 4609.2 (x).²³ RESA²⁴ and NEM²⁵ filed comments in response to Third NOPR and Reply comments were filed by both RESA²⁶ and WGL.²⁷

7. On November 3, 2017, the Commission published a Fourth NOPR.²⁸ In the Fourth NOPR, the following sections were revised in response to parties' comments and Commission internal review: 1) 4603.11; 2) 4603.13; and 3) 4608.1(a). The forms attached to these rules: Attachments A – D, were also revised for accuracy and to ensure applicability to electricity suppliers only. On December 1, 2017, WGL Energy filed comments identifying them as reply comments.²⁹ On December 4, 2017, OPC filed comments, identifying them as reply comments, and RESA filed comments in response to the Fourth NOPR.³⁰

8. On February 2, 2018, the Commission published a Fifth NOPR.³¹ In the Fifth NOPR, the following sections were revised in response to parties' comments and Commission internal review: 1) 4603.11; 2) 4608.1; 3) 4609.2(v); 4) In section 4699.1, definitions for Residential Customers and Small Commercial Customers were revised; and 5) Attachment A (Supplier Application), Question 5 Affiliates or Predecessor(s), engaged in the Sale or Transmission of electricity at Wholesale or Retail to the Public, the names of the individual states were removed. Also, in the fifth NOPR, the following sections had non-substantive changes: (1) 4607.1; (2) Attachment A, Question 1 a. and c; (3) Attachment A, Question 6; (4) Attachment A

²³ The Commission notes that in the Third NOPR, all the section numbers were changed again because the Commission Assessment and Fees Section was moved to the beginning of the Third NOPR and became Section 4602. As a result of the change, the Licensing Requirements section became Section 4603 while it was Section 4602 in the Second NOPR.

²⁴ *RM46-2015 & Formal Case No. 1130*, Comments of the Retail Energy Supply Association, filed September 11, 2017 ("RESA's Comments in Response to Third NOPR").

²⁵ *RM46-2015 & Formal Case No. 1130*, Comments of the National Energy Marketers Association, filed September 11, 2017 ("NEM's Comments in Response to Third NOPR").

²⁶ *RM46-2015 & Formal Case No. 1130*, Reply Comments of the Retail Energy Supply Association, filed September 25, 2017 ("RESA's Comments in Response to Third NOPR").

²⁷ *RM46-2015 & Formal Case No. 1130*, Reply Comments of WGL Energy Services, Inc. and WGL Energy Systems, Inc., filed September 25, 2017 ("WGL Energy's Comments in Response to Third NOPR").

²⁸ 64 *D.C. Reg.* 011527-011581 (November 3, 2017).

²⁹ *RM46-2015-01 and Formal Case No. 1130*, Reply Comments of WGL Energy Services, Inc. and WGL Energy Systems, Inc., filed on December 1, 2017 ("WGL Energy's Comments in Response to Fourth NOPR").

³⁰ *RM46-2015-01 and Formal Case No. 1130*, Reply Comments of the Office of the People's Counsel for the District of Columbia Regarding the Notice of Fourth Proposed Rulemaking Containing Proposed Amendments to Chapter 15 of the District of Columbia Municipal Regulations, filed December 4, 2017 ("OPC's Comments in Response to Fourth NOPR"); Comments of the Retail Energy Supply Association, filed December 4, 2017 ("RESA's Comments in Response to Fourth NOPR").

³¹ 65 *D.C. Reg.* 000976-001028 (February 2, 2018).

Question 15; (5) Attachment A, Question 16 j., k. and l; (6) Attachment A, Affidavit of General Compliance; (7) Attachment B, Form of Customer Payments Bond-Surety Bond; (8) Attachment C Form of Integrity Bond for Electric Suppliers and Marketers Integrity Bond-Surety Bond; and (9) Attachment D Form of Integrity Bond for Aggregators and Brokers Integrity Bond-Surety Bond.

9. In response to the Fifth NOPR, NEM filed comments on March 5, 2018.³² On March 6, 2018, RESA filed comments.³³

10. On May 4, 2018, the Commission published a Sixth NOPR.³⁴ The Sixth NOPR included numerous and extensive revisions, the renumbering of multiple sections, revisions and deletion of certain definitions, and the deletion of attachments and forms that were previously included in the prior five NOPRs. On June 4, 2018, WGL Energy filed comments in response to the Sixth NOPR.³⁵

11. On August 10, 2018, the Commission published a final NOPR proposing to delete the term “Nontraditional Marketers” as an exclusion from the definition of “Electricity Supplier” and the definition of “Nontraditional Marketers” from Chapter 46. No comments were received in response to this NOPR.³⁶

III. DISCUSSION

A. Chapter 46 Overview

12. Chapter 46 establishes the rules governing the licensure and bonding of prospective and current Electricity Suppliers in the District of Columbia, pursuant to the Retail Electric Competition and Consumer Protection Act of 1999.³⁷ Each of the sections in this prospective Chapter 46 is summarized below.

³² *RM46-2015, Formal Case No. 1130, RM47-2017-01, In the Matter of the Investigation into the Public Service Commission’s Rules Governing the Licensing and Bonding of Natural Gas Suppliers and Natural Gas Consumer Protection Standards in the District of Columbia (“RM47-2017-01”) and GT96-3, In the Matter of the Application of Washington Gas Light Company, District of Columbia Division, For the Authority to Establish a New Rate Schedule No.1A (“GT96-3”), Comments of the National Marketers Association, filed March 5, 2018 (“NEM’s Comments in Response to the Fifth NOPR”).*

³³ *RM46-2015, Formal Case 1130, RM47-2017-01 and GT96-3, Retail Energy Supply Association Comments in Response to Fifth NOPR, filed March 6, 2018.*

³⁴ *65 D.C. Reg. 004880-004898 (May 4, 2018).*

³⁵ *RM46-2015 and Formal Case No. 1130, WGL Energy Services, Inc. and WGL Energy Systems, Inc., Comments in Response to the Sixth NOPR, filed June 4, 2018 (“WGL Energy’s Comments in Response to Sixth NOPR”).*

³⁶ *65 D.C. Reg. 008453-008455 (August 10, 2018).*

³⁷ *D.C. Code § 34-1501 – 1520 (2001 Ed.).*

13. **Section 4600 APPLICABILITY.** This Section states that the rules in Chapter 46 apply to a person who engages in the business of an Electricity Supplier in the District and prescribes that no person can act as an electric supplier without a license issued by the Commission.

14. **Section 4601 LICENSING REQUIREMENTS.** This Section provides the list of information that should be included in an Application for an Electricity Supplier License (Attachment A) including proof of technical and managerial competence and bonding requirements; proof of compliance with all applicable requirements of the Federal Energy Regulatory Commission, and any Independent System Operator or Regional Transmission Operator, proof of compliance with District Government business and tax laws; a sample copy of the supplier's contract and applicant's website among other requirements. Also, the procedures for handling proprietary and confidential information are included.

15. **Section 4602 LICENSING PROCEDURES.** This Section outlines the Licensing procedures for a supplier including the term of a license, how customers can be solicited and the suppliers' responsibilities in the event of default.

16. **Section 4603 ELECTRICITY SUPPLIER EDUCATION WORKSHOP.** This Section requires a Current Licensee to complete an Electricity Workshop sponsored by the Commission within ninety (90) days following the effective date of these rules.³⁸ Also, this Section requires a New Licensee to complete an Electricity Workshop sponsored by the Commission within ninety (90) days following the award of its license.³⁹

17. **Section 4604 BOND REQUIREMENTS FOR ELECTRICITY SUPPLIERS COLLECTING DEPOSITS OR PREPAYMENTS ("CUSTOMER PAYMENTS BOND").** This Section outlines the procedures for Customer Payment Bonds or any prepayment deposits required by a supplier.

18. **Section 4605 BOND REQUIREMENTS FOR FINANCIAL INTEGRITY ("INTEGRITY BOND").** This Section prescribes the procedures for determining the amount of a Financial Integrity Bond where a Supplier cannot meet the Commission's criteria for financial integrity in providing services.

19. **Section 4606 PRIVACY PROTECTION POLICY.** This section requires Licensees to institute a Privacy Protection Policy.

20. **Section 4607 COMMISSION REPORTING REQUIREMENTS.** This Section requires the Licensee to report any new information that changes or updates any part of the suppliers' application.

³⁸ A Licensee granted an Electricity Supplier License prior to the effective date of the Chapter 46 rules is considered a Current Licensee for the purposes of this section.

³⁹ An Applicant granted an Electricity Supplier License following the effective date of the Chapter 46 rules is considered a New Licensee for the purposes of this section.

21. **Section 4608 COMMISSION ACTION REGARDING A LICENSEE.** This Section provides the grounds for the Commission to take action against a Licensee for just cause as prescribed by D.C. Code § 34-1508.

22. **Section 4609 SANCTIONS AND ENFORCEMENT.** This Section provides the sanctions that suppliers are subject to for violating the D.C. Code and applicable Commission regulations and orders.

23. **Section 4610 COMMISSION ASSESSMENT AND FEES.** This Section requires the Licensee or the Electricity Supplier to pay an assessment for the costs and expenses of the Commission and OPC and any penalties assessed against the suppliers.

24. **Section 4699 DEFINITIONS.** This Section provides the meaning of specific terms mentioned in the rules.

B. Parties' Comments in Each of the Six NOPRs

25. **Pepco's Comments to the First NOPR.** In its Comments, Pepco recommends that the definition of "Electricity Supplier" exclude Electric Company to make it clear that the Electric Company, as the SOS provider, is not an Electricity Supplier. According to Pepco, such exclusion is consistent with Commission precedent, the Competition Act and the purpose of the NOPR.⁴⁰

26. **NEM's Comments to the First NOPR.** In its Comments, NEM recommends: (1) that the ten (10) day advance notice period in Sections 4603.11 and 4608.2, be shortened because it will unnecessarily interfere with suppliers' ability to rapidly respond to changing market conditions and offer products when optimal market conditions are present; (2) clarification of the intent of Section 4603.11 that requires suppliers to provide marketing material documentation and contact information when suppliers provide notice that they will be soliciting customers; (3) clarification of the requirement in Section 4603.13 that requires a supplier to file an affidavit with the Commission attesting that all sales and marketing regulatory personnel have been trained on the requirements in Chapters 3 and 46 of the DCMR before they begin soliciting customers in the District of Columbia as it pertains to suppliers that utilize third party providers to provide sales and marketing services; (4) further details be provided as to what a "Privacy Protection Policy" should entail; (5) clarification of the extent of the compliance obligation created by Section 4608.1(a) that provides that "if a Licensee changes any of its marketing materials, it shall provide the new materials to the Commission no later than (10) days before it starts using the new material to solicit Customers"; and (6) that the price reporting requirements for small commercial customers in Section 4609.2, be limited only to the "generally available offers" of suppliers.⁴¹ NEM also expresses its support for the Electricity Supplier Education Workshop required in Section 4604.1.⁴²

⁴⁰ Pepco's Comments in Response to First NOPR at 2.

⁴¹ NEM's Comments in Response to First NOPR at 2-7.

⁴² NEM's Comments in Response to First NOPR at 5.

27. **RESA’s Reply Comments to the First NOPR.** In its Comments, RESA recommends that: (1) the Commission reduce the advance notice requirements in Section 4603.11 and 4608.1(a) from 10 days to day-of-notice; (2) in lieu of the requirement for Electric Suppliers to provide photo identification of each marketing agent to the Commission, that Electric Suppliers be required to maintain records of each marketing agent and make such information available upon request; (3) the definition of “Electric Supplier” be revised to ensure unintended third parties do not become subject to Electric Supplier licensing requirements; (4) Section 4603.12 be modified to require Electric Suppliers to provide screen shots of their web enrollment processes to the Commission upon request; (5) Section 4603.13 be modified to mandate reasonable training on the District’s regulatory requirements for Electric Suppliers’ sales, marketing, and regulatory personnel; (6) Section 4609.2(h) be revised to require Electric Suppliers to post accurate information about their products and services on the Internet; (7) Section 4609.2(q) be revised to include a felony conviction as grounds for Commission action when the felony has some relation to the Electricity Supplier’s business; and (8) Section 4609.2(i) be revised to add that failing to provide electricity is grounds for Commission action against an Electricity Supplier when such failure is attributable to the Electric Supplier.⁴³ RESA also indicates that it supports the proposed Electricity Supplier Workshop.⁴⁴

28. **OPC’s Comments to the Second NOPR.** OPC states that it “supports the Commission’s adoption of a new Chapter 46 of Title 15 of the DCMR, and believes consumers would benefit from locating the licensing and bonding requirements for electric suppliers in one chapter.”⁴⁵ Also, OPC recommends reinstating the language of Section 4602.11 from the first NOPR which required both new and existing electricity suppliers who had not started initially serving customers to give 10-day notice prior to solicitation or marketing in the District.⁴⁶

29. **WGL Energy’s Comments to the Second NOPR.** WGL Energy sought clarification as to whether Section 4602.11 applies to existing licensees, the timing of solicitation notifications and whether Section 4602.11 applies to small commercial customers.⁴⁷ WGL Energy sought clarification of the “electronic accessibility” necessary for the Commission to monitor licensees’ compliance.⁴⁸ With respect to Section 4602.13, WGL Energy Services recommends that the attestation language “be confirmed between suppliers and their contractors, or be filed with the Commission on an annual basis, not more frequently, and that existing contracts with third parties and evidence of training should be used as well as these attestations as proof that a supplier has educated employees and agents about regulatory requirements.”⁴⁹

⁴³ RESA’s Reply Comments in Response to First NOPR at 2-10.

⁴⁴ RESA’s Reply Comments in Response to First NOPR at 9.

⁴⁵ OPC’s Comments in Response to the Second NOPR at 2.

⁴⁶ OPC’s Comments in Response to the Second NOPR at 2.

⁴⁷ WGL Energy’s Comments in Response to the Second NOPR at 2.

⁴⁸ WGL Energy’s Comments in Response to the Second NOPR at 2-3.

⁴⁹ WGL Energy’s Comments in Response to the Second NOPR at 4.

30. **NEM's Comments to the Second NOPR.** NEM supports the language in Section 4602.11 (Solicitation of Customers) in the second NOPR which requires the Electricity Suppliers to provide notice "as soon as" the Electricity Supplier begins soliciting customers for the first time.⁵⁰ In addition, NEM sought clarification regarding the following: (1) photo identification requirement in Section 4602.11, so that suppliers can ensure that they understand the compliance obligation associated with this provision; (2) the photo identification record keeping requirement; and (3) what is meant by the term "Privacy Protection Policy" under Section 4606.1.⁵¹ NEM suggests that the Electricity Supplier maintain the photo identification record for a period of six months after a representative or agent has been employed or marketing on the supplier's behalf.⁵² Also, NEM states that the phrase electronic accessibility necessary in Section 4602.12 (Electronic Solicitation) is "vague and open-ended term and that the extent of the associated supplier obligation is therefore rendered unclear."⁵³ Regarding Section 4602.13 (Serving Customers-Notice), NEM states that "it is unclear what additional useful information will be obtained by requiring the one-time notice of marketing as well as the separate notice that a supplier is commencing service to customers."⁵⁴ NEM submits that it supports the Electricity Supplier Education Workshop, but seeks clarification related to the last phrase in this proposed section that would allow the compliance obligation to be satisfied if a supplier's regulatory contact or compliance personnel is otherwise knowledgeable with respect to the Commission's Electricity Supplier rules.⁵⁵

31. **RESA's Comments and Reply Comments to the Second NOPR.** RESA recommends the following changes to the proposed rules: (1) eliminate the requirement for an Electricity Supplier's license to be renewed after five years; (2) eliminate the requirement in Section 4607.1(a) to provide Commission Staff with copies of all new marketing materials; (3) modify Section 4602.12 to require Electric Suppliers to provide screenshots of their web enrollment processes to the Commission upon request; and (4) mandate reasonable training on the District's regulatory requirements for Electric Supplier's sales, marketing, and regulatory personnel.⁵⁶ Also, RESA indicates that it supports the proposed Electricity Workshop and recommends that the Commission reference the ongoing certification requirement under Section 4603.1 in the list of Annual Reporting Requirements provided in Section 4607.2.⁵⁷ In its Reply

⁵⁰ NEM's Comments in Response to the Second NOPR at 3.

⁵¹ NEM's Comments in Response to the Second NOPR at 3.

⁵² NEM's Comments in Response to the Second NOPR at 3-4.

⁵³ NEM's Comments in Response to the Second NOPR at 5.

⁵⁴ NEM's Comments in Response to the Second NOPR at 5.

⁵⁵ NEM's Comments in Response to the Second NOPR at 8.

⁵⁶ RESA's Comments in Response to the Second NOPR at 2-5.

⁵⁷ RESA's Comments in Response to the Second NOPR at 6-7.

Comments, RESA states that it supports many of the recommendations of WGL Energy and NEM and⁵⁸ reiterates many of those same recommendations presented in its Comments.

32. **RESA's Comments to the Third NOPR.** With respect to Section 4603.11 (Solicitation of Customers), RESA recommends that the Commission: (1) retain the timing (day-of-notice) for the notice requirement before a supplier commences solicitation or marketing in the District; (2) clarify that the Solicitation of Customers section only applies to residential customers; and (3) clarify that portions of this section only apply to door-to-door solicitations.⁵⁹ Regarding Section 4603.13 (Serving Customers), RESA recommends that the Commission change the affidavit requirement in Section 4603.13 to require Electric Suppliers to affirm that their sales, marketing and regulatory personnel have reasonable training regarding the District's regulatory requirements.⁶⁰ Finally, with respect to Section 4608.1(a), RESA believes this "provision is unduly burdensome and fails to strike a balance between consumer protection and protecting the many benefits available to consumers through the continued efficacy of the competitive market for retail electricity in the District."⁶¹

33. **NEM's Comments to the Third NOPR.** NEM requests that Section 4603.11 of the proposed rules be modified to eliminate the seven (7) day advance notice requirement for marketing materials because this requirement impedes suppliers' ability to respond to dynamic market conditions and marking responsive product offerings available in the marketplace.⁶² NEM asserts that a seven day advance notice requirement needlessly delays supplier marketing campaigns, and recommends that the Commission require notification as soon as the licensee begins to market and solicit customers.⁶³ NEM also opposes the expansion of the one-time advance notice to OPC, and argues that the "licensing and bonding rules should be limited in their scope to the oversight exercised by this Commission inasmuch as this Commission and its Staff are the entities that will enforce those rules."⁶⁴ Regarding Section 4608.1(a), NEM opposes the requirement for Electric Suppliers to provide a copy of any modified materials to the Commission and OPC at the time the Electric Supplier begin using the materials in the District.

34. **WGL Energy's Reply Comments to the Third NOPR.** With respect to Section 4603.11, WGL Energy states that it "supports NEM's and RESA's concerns that a revision of the ten (10) days to seven (7) days advance notice before marketing and soliciting activities commence would still unnecessarily constrain the flexibility of suppliers to respond to changing market conditions and

⁵⁸ RESA's Reply Comments in Response to the Second NOPR at 2.

⁵⁹ RESA's Comments in Response to Third NOPR at 3.

⁶⁰ RESA's Comments in Response to Third NOPR at 4.

⁶¹ RESA's Comments in Response to Third NOPR at 6.

⁶² NEM's Comments in Response to Third NOPR at 3.

⁶³ NEM's Comments in Response to Third NOPR at 3.

⁶⁴ NEM's Comments in Response to Third NOPR at 3.

would still unnecessarily delay supplier marketing campaigns.”⁶⁵ WGL Energy supports NEM’s proposal to permit suppliers to provide notice “as soon as” marketing and soliciting activities commence.⁶⁶ Also, WGL Energy asserts that it supports NEM’s recommendation that advance notice of marketing and solicitation activity should only be provided to the Commission and not to OPC and that the Commission clarify that Section 4603.11 would apply only to door-to-door solicitations.⁶⁷ Regarding Section 4603.13, WGL Energy submits that it agrees with RESA’s comment that a simple rule requiring a supplier’s agents to read regulations is not a comprehensive training solution and could confuse sales and marketing agents not accustomed to reading and interpreting legal language.⁶⁸ With respect to Section 4608.1 (a), WGL Energy submits that it agrees with NEM’s and RESA’s opposition to the requirement that Electricity Suppliers provide copies of each piece of their marketing materials to both the Commission and OPC every time even the most minor change in the materials is made.⁶⁹

35. **RESA’s Reply Comments to the Third NOPR.** RESA indicates that its reply comments are in response to NEM’s initial comments.⁷⁰ RESA states that it generally agrees with NEM’s comments on Section 4603.11 and reiterates its initial comments.⁷¹ Regarding Section 4608.1(a), RESA reiterates its initial comments to require Electric Suppliers to provide marketing materials to the Commission upon request only.⁷²

36. **WGL Energy’s Comments to the Fourth NOPR.** With respect to Section 4603.11 (Solicitation of Customers), WGL Energy reiterates its concern that seven days would still unnecessarily constrain the flexibility of suppliers to respond to changing market conditions and would still unnecessarily delay supplier marketing campaigns.⁷³ WGL Energy indicates that it supports NEM’s prior recommendation to permit suppliers to provide notice “as soon as” marketing and soliciting” activities commence.⁷⁴ WGL Energy reiterates its prior concern about the obligation to provide advance notice of marketing and solicitation activity to OPC, and that extending regulatory oversight to the OPC is inappropriate.⁷⁵ Regarding Section 4603.13 (b)

⁶⁵ WGL Energy’s Reply Comments in Response to Third NOPR at 3.

⁶⁶ WGL Energy’s Reply Comments in Response to Third NOPR at 3.

⁶⁷ WGL Energy’s Reply Comments in Response to Third NOPR at 3.

⁶⁸ WGL Energy’s Reply Comments in Response to Third NOPR at 3.

⁶⁹ WGL Energy’s Reply Comments in Response to Third NOPR at 4-5.

⁷⁰ RESA’s Reply Comments at 1.

⁷¹ RESA’s Reply Comments at 3-4.

⁷² RESA’s Reply Comments at 5.

⁷³ WGL Energy’s Comments in Response to Fourth NOPR at 2.

⁷⁴ WGL Energy’s Comments in Response to Fourth NOPR at 2.

⁷⁵ WGL Energy’s Comments in Response to Fourth NOPR at 2.

(Serving Customers), WGL Energy supports the revised rule since it reflects the changes WGL Energy and other suppliers suggested.⁷⁶ Concerning Section 4608.1(a), WGL Energy states that “it strongly urges the Commission to correct the burdensome provision in requiring electric suppliers to provide copies of each piece of their marketing materials to both the Commission and OPC every time even the most minor change in the materials is made.”⁷⁷

37. **OPC’s Comments to the Fourth NOPR.** Regarding Section 4603.11 (Solicitation of Customers), OPC states that “the Commission should retain the seven-day timeframe for Licensees to notify the Commission and OPC prior to soliciting or marketing to customers.”⁷⁸ OPC asserts that seven days is the absolute minimum amount of time the OPC needs to adequately review a Licensee’s marketing materials to ensure they are in compliance with District law.⁷⁹ OPC submits that “[t]hree days is simply not sufficient time for OPC to review internally, ask questions of, and receive responses from suppliers regarding marketing materials.”⁸⁰ Also, OPC recommends that the Commission require energy marketers to forward marketing materials to OPC prior to commencing solicitation or sales activities in the District.⁸¹ Finally, OPC recommends that the Commission refrain from limiting the solicitation rules to door-door solicitations.⁸² OPC requests that the Commission clarify that the one-time advance notice requirement also applies to suppliers’ telemarketing and online enrollment activities.”⁸³

38. **RESA’s Comments to the Fourth NOPR.** (Section 4603.11 Solicitation of Customers). RESA states that it generally supports the Commission’s modifications to the Electricity Licensing Rules.⁸⁴ However, with respect to Section 4603.11, RESA reiterates its prior comments, and specifically that the Commission retain the “day-of notice” requirement before a supplier commences solicitation or marketing in the District.⁸⁵ RESA recommends that the Commission clarify that Section 4603.11 only applies to residential customers and door-to-door solicitations.⁸⁶ With respect to Section 4608.1, RESA reiterates its prior suggestion to amend this

⁷⁶ WGL Energy’s Comments in Response to Fourth NOPR at 3.

⁷⁷ WGL Energy’s Comments in Response to Fourth NOPR at 4.

⁷⁸ OPC’s Comments in Response to Fourth NOPR at 2.

⁷⁹ OPC’s Comments in Response to Fourth NOPR at 3.

⁸⁰ OPC’s Comments in Response to Fourth NOPR at 5.

⁸¹ OPC’s Comments in Response to Fourth NOPR at 5.

⁸² OPC’s Comments in Response to Fourth NOPR at 6.

⁸³ OPC’s Comments in Response to Fourth NOPR at 6.

⁸⁴ RESA’s Comments in Response to Fourth NOPR at 4.

⁸⁵ RESA’s Comments in Response to Fourth NOPR at 4.

⁸⁶ RESA’s Comments in Response to Fourth NOPR at 4.

provision to require Licensees to provide copies of marketing materials to the Commission upon request.⁸⁷

39. **NEM Comments to the Fifth NOPR.** NEM submits its comments to address the following two issues of concern it raised in prior comments: (1) the requirement that a licensee have an on-going obligation to provide the Commission and OPC with new marketing materials whenever it changes “any of its marketing materials”; and (2) a requirement that licensees provide advance notice to the Commission and OPC of the commencement of solicitation or marketing to customers.⁸⁸ NEM submits its support of the Commission’s removal of the proposed reporting requirement for a supplier’s changes to “any of its marketing materials” formerly included in proposed Section 4708.1.⁸⁹ NEM also reiterates its preference that supplier notification of the commencement of solicitation or marketing of customers should be provided “as soon as” the solicitation and marketing occurs, rather than the three-business day advance notice requirement set forth in proposed Section 4703.11.⁹⁰

40. **RESA Comments to the Fifth NOPR.** RESA submitted no substantive comments to the Fifth NOPR, stating that it has participated in the NOPRs from the outset and appreciates the Commission’s consideration of the stakeholders’ comments as the NOPRs have progressed.⁹¹

41. **WGL Energy’s Comments to the Sixth NOPR.** WGL Energy submitted no substantive comments to the Sixth NOPR stating that “while we have no further comments, we reiterate the prior comments made and appreciate where the Commission has adopted suggestions we offered.”⁹²

42. The Commission now considers the parties’ comments to the NOPRs by each section.

Section 4602.7 Term of Electricity Supplier License (Formerly Section 4603.9)

43. In the Second NOPR, the Commission proposed to require an Electricity Supplier to renew its license every five years. In its Comments, RESA recommends that the Commission eliminate the requirement for an Electricity Supplier’s license to be renewed after five years.⁹³ RESA indicates that the renewal requirement would discourage new suppliers from entering the competitive electricity market in the District and may encourage currently licensed suppliers to

⁸⁷ RESA’s Comments in Response to Fourth NOPR at 8.

⁸⁸ NEM’s Comments in Response to Fifth NOPR at 2.

⁸⁹ NEM’s Comments in Response to Fifth NOPR at 2.

⁹⁰ NEM’s Comments in Response to Fifth NOPR at 2.

⁹¹ RESA Comments in Response to the Fifth NOPR.

⁹² WGL Energy’s Comments in Response to Sixth NOPR.

⁹³ RESA’s Comments in Response to the Second NOPR at 3.

exit the market, resulting in a less competitive market for retail electricity, to the detriment of District consumers.⁹⁴ RESA recommends that this Section should be eliminated or be modified to require an Electricity Supplier to review its license every five (5) years after the date on which the license was issued or was last reviewed.⁹⁵ RESA only commented on this section.

44. **Decision.** The Commission revised this section in the Third NOPR, deleting the five-year expiration date and substituting instead a five-year review of the supplier license. The Commission agrees with RESA's rationale that an expiration and renewal requirement may chill market entry for new suppliers and may encourage currently licensed suppliers to exist the market, resulting in a less competitive market for retail electricity. Licensed Electricity Suppliers shall file instead an application for Commission review before its five-year anniversary. By the Sixth NOPR, the section was further revised, substituting the term "Licensee" for "Electricity Supplier" in the second sentence and stating that the Commission will take no further action in the event a Licensee's Application for its five-year review is deemed complete. Accordingly, the final version of Section 4602.7 shall state:

4602.7 Term of Electricity Supplier License. An Electricity Supplier License is valid until revoked by the Commission or surrendered by the Licensed Electricity Supplier. A Licensee is subject to review every five (5) years after the date on which the License was issued or was last reviewed. An Electricity Supplier that has been licensed for more than five (5) years from the effective date of this Chapter shall submit an Application for review by the Commission pursuant to the licensing requirements and procedures set forth in §§ 4601 and 4602 within ninety (90) days from the effective date of this Chapter. The Commission shall review the Application within thirty (30) days after its filing. If the Application is incomplete or deficient in any manner, the Commission may request additional information to cure the incompleteness or deficiency. If the Application is deemed complete, the Commission shall take no further action and the Electricity Supplier License shall remain in effect.

Section 4603.11 Solicitation of Customers (Renumbered as Section 4602. 8 in the Fifth NOPR)

45. In the first NOPR, the Commission proposed to require a licensee (both new and existing), if not currently serving customers, to notify the Commission no later than ten (10) days before it starts soliciting customers directly or through an authorized representative. The Licensee was also required to provide photo identifications for each person who conducts in person Solicitations for the Licensee and provide the Commission with a copy of its flyers, consumer pamphlets, scripts and other proposed marketing material at the time of notification.

⁹⁴ RESA's Comments in Response to the Second NOPR at 3.

⁹⁵ RESA's Reply Comments in Response to the Second NOPR at 11.

46. In response to the First NOPR, NEM states that the ten-day advance notice period be shortened because it will unnecessarily interfere with suppliers' ability to rapidly respond to changing market conditions and offer products when optimal market conditions are present.⁹⁶ NEM also requested clarification regarding the language in the section that proposes that the "Licensee provide photo identifications for each person who conducts in person solicitations for the Licensee."⁹⁷ According to NEM, a number of jurisdictions have adopted requirements that sales representatives be required to present photo identification to customers as part of the sales process.⁹⁸ NEM asserts that the proposed language is unclear as to whether this is the intended requirement or rather whether the Commission is proposing that suppliers file photo identifications of representatives with the Commission.⁹⁹ NEM states that such a Commission filing requirement would be difficult and unnecessarily burdensome to comply with.¹⁰⁰

47. In its Reply Comments, RESA agrees with NEM's Comments and recommends that Section 4603.11 be clarified to require only a one-time initial notice prior to beginning marketing to or soliciting District consumers, be modified to apply only to door-to-door solicitations, and changed from a ten-day advance notice to day-of notice requirement.¹⁰¹ RESA indicates that as proposed the notice requirement is unduly burdensome on competitive suppliers and would hinder suppliers' efforts to quickly and efficiently respond to consumers' demands.¹⁰² RESA also submits that "electric suppliers should not be required to provide photo identification of each marketing agent to the Commission, but should be required to maintain records of each marketing agent, available upon request."¹⁰³

48. In the Commission's Second NOPR, the Commission proposed to revise this section per RESA's recommendations and required the licensee to notify the Commission as soon as the licensee begins soliciting or marketing to customers. Also, the proposed revisions to this section clarified that only each sales representative, and marketing agent or representative conducting door-to-door solicitations is required to present a company photo identification to customers as part of the solicitation process. Also, language was added requiring the Licensee to maintain a record of the identity of each sales representative active in the District, including the company photo identification and make it available upon request to the Commission.

⁹⁶ NEM's Comments in Response to First NOPR at 2.

⁹⁷ NEM's Comments in Response to First NOPR at 3.

⁹⁸ NEM's Comments in Response to First NOPR at 3.

⁹⁹ NEM's Comments in Response to First NOPR at 3.

¹⁰⁰ NEM's Comments in Response to First NOPR at 3.

¹⁰¹ RESA's Reply Comments in Response to First NOPR at 2.

¹⁰² RESA's Reply Comments in Response to First NOPR at 3.

¹⁰³ RESA's Reply Comments in Response to First NOPR at 5.

49. In response to the Second NOPR, OPC recommends reinstating the language from the first NOPR which required both new and existing electricity suppliers who had not started initially serving customers to give 10-day notice prior to solicitation or marketing in the District.¹⁰⁴ WGL Energy sought clarification as to whether the Section applies to existing licensees, the timing of solicitation notifications and whether it applies to small commercial customers.¹⁰⁵ NEM suggests that the supplier maintain the photo identification record for a period of six months after a representative or agent has been employed or marketing on the supplier's behalf is a reasonable time frame.¹⁰⁶

50. In the Third NOPR, as a compromise between the stakeholders, the Commission proposed to reduce the ten (10) day notice period to seven (7) days and revised the photo identification requirement to only require all door-to-door sales representatives and agents to present a company photo identification to customers as part of the solicitation process. Also, the rule was further revised to require the electricity supplier to maintain the photo identification record for a period of six months after the representative or agent has been employed or marketing on the supplier's behalf.

51. In response to the Third NOPR, NEM requests that Section 4603.11 be modified to eliminate the seven (7) day advance notice requirement for marketing materials because this requirement impedes suppliers' ability to respond to dynamic market conditions and marking responsive product offerings available in the marketplace.¹⁰⁷ NEM asserts that a seven day advance notice requirement needlessly delays supplier marketing campaigns, and recommends that the Commission require notification as soon as the licensee begins to market and solicit customers.¹⁰⁸ NEM also opposes the expansion of the one-time advance notice to OPC, and argues that the "licensing and bonding rules should be limited in their scope to the oversight exercised by this Commission inasmuch as this Commission and its Staff are the entities that will enforce those rules."¹⁰⁹

52. WGL Energy states that it "supports NEM's and RESA's concern that a revision of the ten (10) days to seven (7) days advance notice before marketing and soliciting activities commence would still unnecessarily constrain the flexibility of suppliers to respond to changing market conditions and would still unnecessarily delay supplier marketing campaigns."¹¹⁰ WGL Energy supports NEM's proposal to permit suppliers to provide notice "as soon as" marketing and

¹⁰⁴ OPC's Comments in Response to the Second NOPR at 2.

¹⁰⁵ WGL Energy's Comments in Response to the Second NOPR at 2.

¹⁰⁶ NEM's Comments in Response to the Second NOPR at 3.

¹⁰⁷ NEM's Comments in Response to Third NOPR at 3.

¹⁰⁸ NEM's Comments in Response to Third NOPR at 3.

¹⁰⁹ NEM's Comments in Response to Third NOPR at 3.

¹¹⁰ WGL Energy's Reply Comments in Response to Third NOPR at 3.

soliciting activities commence.¹¹¹ Also, WGL Energy asserts that it supports NEM's recommendation that advance notice of marketing and solicitation activity should only be provided to the Commission and not to OPC and that the Commission clarify that Section 4603.11 would apply only to door-to-door solicitations.¹¹²

53. In its Comments, RESA recommends that the Commission: (1) retain the timing (day-of-notice) for the notice requirement before a supplier commences solicitation or marketing in the District; (2) clarify that the Solicitation of Customers section only applies to residential customers; and (3) clarify that portions of this section only apply to door-to-door solicitations.¹¹³ Specifically, RESA recommends that the Commission modify the first sentence in Section 4603.11 to read: "A licensee (either new or existing that has not initially started serving residential customers) shall notify the Commission as soon as the Licensee begins soliciting or marketing to residential customers directly or through an authorized representative in the District of Columbia" and the third-to-last sentence of Section 4603.11 to read: "Also, all door-to-door sales representatives and agents shall be required to present a company photo identification to customers as part of the solicitation process."¹¹⁴ In its Reply Comments, RESA states that it generally agrees with NEM's comments on Section 4603.11 and reiterates its initial comments.¹¹⁵

54. In the Fourth NOPR, the Commission proposed to reduce the seven (7) day notice period to three (3) business days. The Commission also proposed to modify Section 4603.11 to read that "all door-to-door sales representatives and agents shall be required to present a company photo identification to customers as part of the solicitation process."

55. In response to the Fourth NOPR, OPC states that "the Commission should retain the seven-day timeframe for Licensees to notify the Commission and OPC prior to soliciting or marketing to customers."¹¹⁶ OPC asserts that seven days is the absolute minimum amount of time the OPC needs to adequately review a Licensee's marketing materials to ensure they are in compliance with District law.¹¹⁷ OPC submits that "[t]hree days is simply not sufficient time for OPC to review internally, ask questions of, and receive responses from suppliers regarding marketing materials."¹¹⁸

¹¹¹ WGL Energy's Reply Comments in Response to Third NOPR at 3.

¹¹² WGL Energy's Reply Comments in Response to Third NOPR at 3.

¹¹³ RESA's Comments in Response to Third NOPR at 3.

¹¹⁴ RESA's Comments in Response to Third NOPR at 3.

¹¹⁵ RESA's Reply Comments at 3-4.

¹¹⁶ OPC's Comments in Response to Fourth NOPR at 2.

¹¹⁷ OPC's Comments in Response to Fourth NOPR at 3.

¹¹⁸ OPC's Comments in Response to Fourth NOPR at 5.

56. Also, OPC recommends that the Commission require energy marketers to forward marketing materials to OPC prior to commencing solicitation or sales activities in the District.¹¹⁹ OPC states that as the District's utility consumer advocate, OPC is often the first point of contact for D.C. consumers and ratepayers with utility concerns, including those related to third-party supplier marketing materials" and that "as a result, the Office is keenly and uniquely aware of the most problematic aspects of these materials."¹²⁰

57. Finally, OPC recommends that the Commission refrain from limiting the solicitation rules to door-door solicitations.¹²¹ OPC requests that the Commission clarify that the one-time advance notice requirement also applies to suppliers' telemarketing and online enrolment activities.¹²² According to OPC, as with door-to-door solicitations, the Commission and OPC should have access to the marketing materials that are used in telemarketing campaigns, in order to ensure that consumers are receiving adequate protections and that the content and delivery of the underlying messaging comports with District law.¹²³

58. WGL Energy reiterates its concern that seven days would still unnecessarily constrain the flexibility of suppliers to respond to changing market conditions and would still unnecessarily delay supplier marketing campaigns.¹²⁴ WGL Energy indicates that it supports NEM's prior recommendation to permit suppliers to provide notice "as soon as" marketing and soliciting" activities commence.¹²⁵ Also, WGL Energy reiterates its prior concerns about the obligation to provide advance notice of marketing and solicitation activity to OPC, and that extending regulatory oversight to the OPC is inappropriate.¹²⁶ WGL Energy suggests that because OPC is an independent agency providing representation on behalf of a certain audience, it should not have the same oversight authority of the Commission to enforce the competitive energy market in the District.¹²⁷ Lastly, WGL Energy supports a prior RESA recommendation that this section apply only to door-to-door solicitations.¹²⁸

¹¹⁹ OPC's Comments in Response to Fourth NOPR at 5.

¹²⁰ OPC's Comments in Response to Fourth NOPR at 5.

¹²¹ OPC's Comments in Response to Fourth NOPR at 6.

¹²² OPC's Comments in Response to Fourth NOPR at 6.

¹²³ OPC's Comments in Response to Fourth NOPR at 6.

¹²⁴ WGL Energy's Comments in Response to Fourth NOPR at 2.

¹²⁵ WGL Energy's Comments in Response to Fourth NOPR at 2.

¹²⁶ WGL Energy's Comments in Response to Fourth NOPR at 2.

¹²⁷ WGL Energy's Comments in Response to Fourth NOPR at 3.

¹²⁸ WGL Energy's Comments in Response to Fourth NOPR at 3.

59. RESA reiterates its prior comments, and specifically states that the Commission retain the “day-of notice” requirement before a supplier commences solicitation or marketing in the District.¹²⁹ RESA recommends that the Commission clarify that Section 4603.11 only applies to residential customers and door-to-door solicitations.¹³⁰

60. In the Fifth NOPR, the Commission revised Section 4603.11 to require a licensee, both new and existing, who has not started serving customers to notify only the Commission within three (3) business days before the licensee begins soliciting or marketing to customers directly or through an authorized representative in the District. The language regarding notification to OPC was removed.

61. In response to the Fifth NOPR, NEM states that it “reiterates its previous recommendation that supplier provision of notice “as soon as” the solicitation or marketing activity commences is preferable and should be adopted.”¹³¹ NEM asserts that the “advance notice requirement unnecessarily interferes with suppliers’ ability to rapidly and flexibly respond to changing market conditions by unnecessarily delaying marketing campaigns.”¹³² NEM also, requests that “the related language regarding grounds for Commission action in proposed Section 4609.2(v) be likewise modified to incorporate an “as soon as” activities commence standard.”¹³³ Finally, NEM indicates that it supports the language revision to this section that removed the proposal to provide the notice to OPC.¹³⁴

62. **Decision.** The Commission adopts the language proposed in renumbered Section 4602.8 in the Sixth NOPR, to now state:

4602.8 Solicitation of Customers. A Licensee, both new and existing, who has not initially started serving Customers shall file a notice with the Commission within three (3) business days before the Licensee begins soliciting or marketing to Customers directly or through an authorized representative in the District of Columbia. This is a one-time initial notice prior to the Licensee beginning its marketing to or soliciting of District of Columbia Customers. The notice shall include the name of the licensee’s designated contact person for pricing information if the Licensee is serving Customers and the URL address of the Licensee’s website. All door-to-door sales representatives and agents of the Licensee shall be required to present photo identification to Customers as part of the solicitation

¹²⁹ RESA’s Comments in Response to Fourth NOPR at 4.

¹³⁰ RESA’s Comments in Response to Fourth NOPR at 4.

¹³¹ NEM’s Comments in Response to Fifth NOPR at 3.

¹³² NEM’s Comments in Response to Fifth NOPR at 4.

¹³³ NEM’s Comments in Response to Fifth NOPR at 4.

¹³⁴ NEM’s Comments in Response to Fifth NOPR at 4.

process. In addition, the Licensee is required to maintain a record of the identity of each sales representative and marketing agent or representative active in the District of Columbia, including the company photo identification, and make it available upon request to the Commission.

63. The Commission finds that requiring a licensee to provide notice to the Commission three business days prior to a licensee's soliciting and marketing to customers provides an appropriate balance between our interests as regulators in receiving pertinent information from electricity suppliers operating in the District and the electricity suppliers' desired flexibility in determining when to conduct business without regulatory interference. In our view, RESA and NEM provide no specific reasons or examples showing why a three-day notice would impede a licensee in its ability to respond to participate in a competitive market. More importantly, we find RESA and NEM's rationale to be unpersuasive because the three-business day requirement is simply a one-time, initial notice requirement that would not restrict a licensee from deciding when to market to and solicit customers at the time when market conditions are most optimal to the licensee. Regarding OPC's previous concern that the notice period should not be less than seven days, we believe that the three-business day notice period is an appropriate compromise between the respective positions of the parties. During the three-business day period, OPC may inform the Commission of any concerns it may have with an electricity supplier's proposed or impending service and any potentially adverse effects on potential customers. In addition, we emphasize that OPC is not foreclosed from raising concerns with the Commission about an electricity supplier at any time after the elapse of three-business day period if the electricity supplier subsequently begins to utilize unlawful or deceptive soliciting and marketing practices to potential customers.

64. With respect to OPC's recommendation that Licensees provide notice to the Office as well as to the Commission prior to initiating service, we believe that requiring licensees to provide notice to the Commission solely is less burdensome to electricity suppliers and does not compromise OPC's ability to receive such notice as well. Specifically, when an electricity supplier files notice with the Commission that it is about to begin soliciting and marketing to customers, OPC, as the statutory representative of ratepayers, is entitled to receive hard copies of the notice from the Commission and may access the same information from the Commission's website. There is no persuasive reason for electricity suppliers to provide, in effect, duplicative notice to OPC at the same time it provides notice to the Commission.

65. The Commission also deletes the proposed requirement that a licensee provide the Commission with a copy of its flyers, consumer pamphlets, scripts and other proposed marketing material at the time of notification of impending service. In deleting this requirement, the Commission is mindful that because approved electricity suppliers are required to use honest, truthful, non-deceptive and ethical materials for soliciting and marketing, there is no reason for the Commission to receive this information in advance for confirmation. In addition, we note that licensees are required to conform to and abide by the consumer protection standards outlined in Chapter 3 (Consumer Rights and Responsibilities) of our rules. If circumstances dictate that the Commission requires receipt of such marketing materials, we will request them from the licensee for filing in the appropriate formal case. If OPC learns that an electricity supplier is engaging in

questionable, unethical or unlawful solicitation and marketing practices as depicted in its comments to this section, the Office may request those materials from the electricity supplier itself, conduct its own investigation, and petition the Commission to initiate an investigation.¹³⁵

66. In addition, the Commission clarifies that Section 4602.8 applies not only to residential customers, but to small commercial customers as well because the definition of “customer” as defined in this chapter does not differentiate between a residential and small commercial customer. The term “customer” is defined in Chapter 46 as “[a] purchaser of electricity for their own end use in the District of Columbia.”¹³⁶ Accordingly, the relevant clause in this section is changed to “Customer” solely, applicable to both residential and small commercial customers. Moreover, this section applies to all types of marketing and soliciting and not just door-to-door marketing and solicitation because marketing and soliciting can be carried out in many ways by an electricity supplier (i.e., telemarketing campaigns and on-line enrollment activities) and just by door to door soliciting. Lastly, this section deletes the proposed requirement that a licensee maintain the photo identification record of its representative or agent for a period of six (6) months after the representative or agent has been employed or marketing on the licensee’s behalf. The licensee instead must make such photo identification available to the Commission upon request.

Section 4603.12 Electronic Solicitation (Deleted in the Sixth NOPR)

67. Section 4602.12 proposed to require licensees who contract electronically with customers to provide the Commission with “electronic accessibility” necessary for the Commission to monitor compliance with applicable subsections in Title 15 of the DCMR.¹³⁷ WGL Energy requests, clarification of the electronic accessibility necessary for the Commission to monitor compliance.¹³⁸ NEM states that the phrase electronic accessibility necessary in Section 4602.12 (Electronic Solicitation) is “vague and open-ended term and that the extent of the associated supplier obligation is therefore rendered unclear.”¹³⁹ RESA indicates that this language is unclear and potentially problematic and would be unduly burdensome.¹⁴⁰

68. **Decision.** Electronic solicitation is discussed in detail in Section 327 of Title 15 of the DCMR and that section’s applicability to electricity suppliers in Chapter 46 is apparent and unquestioned.¹⁴¹ Accordingly, in order to avoid duplication of, or any potential conflict with, those rules, the Commission deletes Section 4603.12 in its entirety.

¹³⁵ D.C. Code § 34-804 (2001).

¹³⁶ *GT96-3; RM47-2017-01-G; and Formal Case No. 1130*, Chapter 47, Section 4799.1.

¹³⁷ WGL Energy’s Comments in Response to the Second NOPR at 2.

¹³⁸ WGL Energy’s Comments in Response to the Second NOPR at 3.

¹³⁹ NEM’s Comments in Response to the Second NOPR at 5.

¹⁴⁰ RESA’s Reply Comments in Response to Second NOPR at 3 and 6. In the Third NOPR, Section 4602.12 was renumbered Section 4603.12.

¹⁴¹ *See* 15 DCMR § 327.26 (2008).

Section 4603.13 Serving Customers (Renumbered as Section 4602.9 in the Sixth NOPR)

69. In the First NOPR, Section 4603. 13 proposed to prescribe that before it begins serving District customers, a licensee must: (1) notify the Commission of the date when it will begin to serve customers in the District; and (2) file an affidavit attesting that all sales and marketing and regulatory personnel have been trained in Chapters 3 and 46 of this title before they begin soliciting customers in the District.

70. In response to the First NOPR, NEM states that it supports the proposed requirement to require supplier sales, marketing and regulatory personnel to have reasonable knowledge of what constitutes acceptable conduct in the marketplace.¹⁴² NEM does request clarification of this requirement as it pertains to suppliers that utilize third party providers to provide sales and marketing services.¹⁴³ RESA recommends that Section 4603.13 be modified to mandate reasonable training on the District's regulatory requirements for Electric Suppliers' sales, marketing, and regulatory personnel.¹⁴⁴ RESA submits that "Retail suppliers often operate in many jurisdictions and, accordingly, tailor their regulatory compliance training to address multiple jurisdictions" and that "generally, a retail supplier's training would include the District's requirements including those in Chapters 3 and 46 of Title 15 of the DCMR, but would not normally be presented as a District-specific training."¹⁴⁵ RESA states that the way Section 4603.13 is proposed may be problematic and recommends that it be amended to require reasonable training on the District's regulatory requirements.¹⁴⁶

71. In the Second NOPR, the section was revised to require the Licensee to file an affidavit attesting that all sales and marketing and regulatory personnel have read the relevant provisions of Chapters 3 and 46 of Title 15 of the DCMR before they begin soliciting customers in the District of Columbia. It also required the licensee to confirm that all of the sales and marketing personnel of any vendor or independent contractor who it contracts with to perform marketing or sales in the District have read the relevant provisions of Chapters 3 and 46 of Title 15 of the DCMR before they begin soliciting customers in the District.

72. In response to the Second NOPR, NEM states that Section 4602.13. should state with greater specificity the provisions of Chapter 3 of Title 15 of the DCMR that a supplier's sales and marketing and regulatory personnel is required to read.¹⁴⁷ Also, regarding the licensee's requirement to notify the Commission of the date when it will begin to serve customers, NEM

¹⁴² NEM's Comments in Response to First NOPR at 4.

¹⁴³ NEM's Comments in Response to First NOPR at 4.

¹⁴⁴ RESA's Reply Comments in Response to First NOPR at 8-9.

¹⁴⁵ RESA's Reply Comments in Response to First NOPR at 9.

¹⁴⁶ RESA's Reply Comments in Response to First NOPR at 9.

¹⁴⁷ NEM's Comments in Response to Second NOPR at 6.

indicates that “from a practical perspective, a supplier will have a generalized idea of the date when it will begin to serve customers, but the utility switching process determines the actual date upon which service will begin.”¹⁴⁸

73. Also, WGL Energy recommends that the attestation language “be confirmed between suppliers and their contractors, or be filed with the Commission on an annual basis, not more frequently, and that existing contracts with third parties and evidence of training should be used as well as these attestations as proof that a supplier has educated employees and agents about regulatory requirements.”¹⁴⁹ In addition, WGL Energy notes that “the utility switching process determines dates for customers” and that “while suppliers will have a general idea of service dates, satisfying this requirement may not provide the Commission with accurate information regarding service dates.”¹⁵⁰

74. RESA reiterates its previous comments in response to the First NOPR and recommends that Section 4602.13 be amended to require reasonable training on the District’s regulatory requirements.¹⁵¹ Also, RESA agrees with NEM’s and WGL Energy’s Comments and asserts that “suppliers do not control the date when a customer’s supply service will be switched, so they will not be able to notify the Commission of the exact service start date in advance.”¹⁵² RESA states that “enrollment timing, including the effective date of enrollment, is controlled by utility switching procedures.”¹⁵³ Thus, RESA recommends that the “Commission modify Section 4602.13 to require an estimated service start date, ensuring suppliers are not unfairly subject to liability for a rule violation because of switching rules and timing that suppliers do not control.”¹⁵⁴

75. In the Third NOPR, the Commission, based upon RESA’s recommendation, proposed to modify Section 4602.13 to require a licensee to notify the Commission before it begins to serve customers in the District of its estimated start date.

76. In response to the Third NOPR, RESA recommends that the Commission change the affidavit requirement in Section 4603.13 to require electric suppliers to affirm that their sales, marketing and regulatory personnel have reasonable training regarding the District’s regulatory requirements.¹⁵⁵ RESA states that “currently the proposed section requires electric suppliers to attest that sales and marketing and regulatory personnel, independent contractors and vendors,

¹⁴⁸ NEM’s Comments in Response to Second NOPR at 5.

¹⁴⁹ WGL Energy’s Comments in Response to the Second NOPR at 4.

¹⁵⁰ WGL Energy’s Comments in Response to the Second NOPR at 3.

¹⁵¹ RESA’s Comments in Response to Second NOPR at 5.

¹⁵² RESA’s Comments in Response to Second NOPR at 6.

¹⁵³ RESA’s Comments in Response to Second NOPR at 6.

¹⁵⁴ RESA’s Comments in Response to Second NOPR at 7.

¹⁵⁵ RESA’s Comments in Response to Third NOPR at 4.

have read the relevant provisions of Chapters 3 and 46 of Title 15 of the DCMR.”¹⁵⁶ RESA submits that “Retail suppliers often operate in many jurisdictions and, accordingly, tailor their regulatory compliance training to address multiple jurisdictions” and that “generally, a retail supplier’s training would include the District’s requirements including those in Chapters 3 and 46 of Title 15 of the DCMR.”¹⁵⁷ RESA asserts that “generally, suppliers employ professional regulatory training and compliance staff to interpret the array of applicable federal state, and local statutes and regulations, interpreting the legal requirements and incorporating them into a comprehensive training program.”¹⁵⁸ According to RESA, “simply requiring agents to read regulations is not a comprehensive training solution and can lead to confusion for sales and marketing agents not accustomed to reading and interpreting legal language.”¹⁵⁹ RESA believes that professional regulatory compliance and training staff should continue to interpret the District’s regulatory requirements and train sales and marketing agents on all applicable rules and requirements providing the context and insight that will enable agents to understand and apply the requirements.”¹⁶⁰ Thus, RESA proposes to revise Section 4603.13 to read as follows: “A Licensee is required to do the following before it begins to serve customers in the District of Columbia: (a) notify the Commission of the estimated start date when it will begin to serve customers in the District of Columbia; and (b) file an affidavit attesting that all sales and marketing and regulatory personnel, including independent contractors and vendors performing marketing or sales activities on the Licensee’s behalf, have received reasonable training on the District’s regulatory requirements.”¹⁶¹

77. WGL Energy submits that it agrees with RESA’s comment that a simple rule requiring a supplier’s agents to read regulations is not a comprehensive training solution and could confuse sales and marketing agents not accustomed to reading and interpreting legal language.¹⁶² Moreover, WGL Energy concurs with RESA’s observation that such confusion can increase and become more burdensome for electricity suppliers who are active in many jurisdictions.¹⁶³ WGL Energy indicates that it supports RESA’s recommendation that the Commission should continue to enable the electricity supplier’s professional regulatory compliance and training staff to interpret the District’s regulatory requirements and train sales and marketing agents on all applicable rules and requirements.¹⁶⁴ In addition, WGL Energy states that it agrees with RESA that a hard and fast

¹⁵⁶ RESA’s Comments in Response to Third NOPR at 4.

¹⁵⁷ RESA’s Comments in Response to Third NOPR at 4-5.

¹⁵⁸ RESA’s Comments in Response to Third NOPR at 5.

¹⁵⁹ RESA’s Comments in Response to Third NOPR at 5.

¹⁶⁰ RESA’s Comments in Response to Third NOPR at 5.

¹⁶¹ RESA’s Comments in Response to Third NOPR at 5.

¹⁶² WGL Energy’s Reply Comments in Response to Third NOPR at 3.

¹⁶³ WGL Energy’s Reply Comments in Response to Third NOPR at 3.

¹⁶⁴ WGL Energy’s Reply Comments in Response to Third NOPR at 4.

requirement that the agents of suppliers read all applicable regulations would reduce supplier flexibility to design training and compliance procedures that are effective.”¹⁶⁵

78. In response to RESA’s and WGL Energy’s Comments, in the Fourth NOPR, the Commission revised Section 4603.13 to require electric suppliers to affirm that their sales, marketing and regulatory personnel have received reasonable training regarding the District’s regulatory requirements.

79. In response to the Fourth NOPR, WGL Energy supports the revised rule since it reflects the changes WGL Energy and other supplier suggested.¹⁶⁶ WGL Energy submits that the revised proposed language provides suppliers’ professional regulatory and training staff greater flexibility to design training and compliance procedures that are effective.¹⁶⁷ Also, WGL Energy states that “This training will enable supplier’s agents to better understand and apply important consumer protections in Chapters 3 and 46 of Title 15 of the DCMR, rather than just reading the texts of the rules.”¹⁶⁸

80. **Decision.** In the Sixth NOPR, the Commission proposed to revise Section 4602.9 by removing language requiring all sales and marketing and regulatory personnel, including independent contractors and vendors, to have received reasonable training on the relevant provisions of Chapters 3 and 46 of Title 15 of the DCMR. We find this language to be too vague since it is not clear as to what is meant by the statement “have received reasonable training”. The Commission revised the sentence to now state “have been trained on the relevant provisions of Chapters 3 and 46 of Title 15 of the DCMR.” Thus, the language of Section 4603.13 is modified and renumbered as Section 4602.9 to now read:

4602.9 Serving Customers. A Licensee shall do the following before it begins to serve Customers in the District of Columbia:

- (a) File a Notice with the Commission of the estimated start date when it will begin to serve Customers in the District of Columbia; and
- (b) File an affidavit attesting that all sales and marketing and regulatory personnel including independent contractors and vendors performing marketing or sales activities on the Licensees’ behalf have been trained on the relevant

¹⁶⁵ WGL Energy’s Reply Comments in Response to Third NOPR at 4.

¹⁶⁶ WGL Energy’s Comments in Response to Fourth NOPR at 3.

¹⁶⁷ WGL Energy’s Comments in Response to Fourth NOPR at 3.

¹⁶⁸ WGL Energy’s Comments in Response to Fourth NOPR at 4.

provisions of Chapters 3 and 46 of Title 15 DCMR before they begin soliciting Customers in the District of Columbia.

Section 4603.16 Required Notices Upon Default (Renumbered as Section 4602.12 in the Sixth NOPR)

81. In the Second NOPR, this section proposed to require a licensee, upon default, to immediately notify its customers of its default by the preferred method that each customer has selected to receive notifications and send written notice by electronic mail to the electric company and Commission notifying them of its default.

82. NEM suggests that this provision be changed such that a supplier would be required to provide notice to its customers using the preferred method that each customer has selected to receive notifications.¹⁶⁹ NEM states that in some cases the “supplier may not have the customer’s email address to provide a notice.”¹⁷⁰ NEM was the only party commenting on this provision.

83. **Decision.** The Commission agrees with NEM that an electricity supplier should be required to provide notice to its customers using the preferred method that each customer has selected to receive notifications. Thus, a revision to this section was proposed in the Third NOPR to read “Upon default, a Licensee shall immediately notify its Customers of its default by the preferred method that each customer has selected to receive notifications and send written notice by electronic mail to the electric company and Commission notifying them of its default.” Thus, renumbered Section 4602.12 shall now state:

4602.12 Required Notices Upon Default. Upon default, a Licensee shall immediately notify its Customers of its default by the preferred method that each Customer has selected to receive notifications and send written notice by electronic mail to the Electric Company and to file notice with the Commission notifying them of its default. Upon receipt of notice of a Licensee’s default from the Defaulted Licensee or from the Regional Transmission Organization, the Electric Company shall immediately provide the Defaulted Licensee’s Customers Standard Offer Service (SOS) in accordance with the SOS Administrator’s Retail Electric Service Tariff, unless or until a Customer notifies the SOS Provider that the Customer has selected a new Electricity Supplier.

Section 4608.1 Updates to an Approved Application (Renumbered as Section 4607.1 in the Fifth NOPR)

¹⁶⁹ NEM’s Comments in Response to Second NOPR at 7.

¹⁷⁰ NEM’s Comments in Response to Second NOPR at 7.

84. In the First NOPR, Section 4608. 1(a) proposed to prescribe that if a licensee changes any of its marketing materials it shall provide the new materials to the Commission no later than ten (10) days before it starts using the new material to solicit customers.

85. In its comments in response to the First NOPR, NEM states the intent of the compliance obligation created by the rule is unclear.¹⁷¹ NEM indicates that the “proposed language could, however, be interpreted to mean that suppliers would have an ongoing obligation to provide any of its marketing materials that change over time.”¹⁷² NEM also states that “if a supplier were required to wait ten days to utilize every marketing material piece before putting it into use, it would unnecessarily interfere with the supplier’s ability to rapidly respond to opportunities to offer products and services of value to consumers.”¹⁷³ RESA agrees with NEM’s comments and recommends that the ten (10) day advance Notice Requirement should be reduced from 10 days to day-of notice.¹⁷⁴

86. In the Second NOPR, in response to comments, the Commission proposed to modify this section to require a licensee provide the new materials to the Commission as soon as the Licensee starts using the new material to solicit customers. In response to this change in the Second NOPR, RESA recommends that the Commission eliminate the requirement in this section to provide Commission Staff with copies of all new marketing materials.¹⁷⁵ RESA states that the provision is “unduly burdensome and fails to strike a reasonable balance between consumer protection and protecting the many benefits available to consumers through the continued efficacy of the competitive market for retail electricity in the District.”¹⁷⁶ RESA recommends that electric suppliers be required to provide marketing materials to the Commission upon request.¹⁷⁷

87. NEM reiterates its position that the language appears to create an ongoing obligation for suppliers to provide any and all of their marking materials over time and that “requiring suppliers to submit all of their marketing materials would be burdensome to comply with and would also generate so many filings that it may be administratively infeasible for Commission Staff to review all of the materials.”¹⁷⁸ NEM recommends that the proposal be modified such that suppliers be required to file a representative sample of their marketing materials, as reflective of general industry practice.¹⁷⁹

¹⁷¹ NEM’s Comments in Response to First NOPR at 6.

¹⁷² NEM’s Comments in Response to First NOPR at 6.

¹⁷³ NEM’s Comments in Response to First NOPR at 6.

¹⁷⁴ RESA’s Reply Comments in Response to First NOPR at 2.

¹⁷⁵ RESA’s Reply Comments in Response to Second NOPR at 4.

¹⁷⁶ RESA’s Reply Comments in Response to Second NOPR at 4.

¹⁷⁷ RESA’s Comments in Response to Second NOPR at 10.

¹⁷⁸ RESA’s Comments in Response to Second NOPR at 10.

¹⁷⁹ RESA’s Comments in Response to Second NOPR at 10.

88. In the Third NOPR, to be consistent with the proposed Chapter 47 Natural Gas Suppliers Licensing rules, we proposed to modify the language in Section 4608.1(a) to require a licensee to provide any changes to its marketing materials, to OPC and the Commission as soon as the licensee starts using the new material to solicit customers.

89. In response to the Third NOPR, NEM opposes the requirement for electric suppliers to provide a copy of any modified materials to the Commission and OPC at the time the electric supplier begin using the materials in the District. NEM contends that requiring suppliers to file a representative sample of their marketing materials is a more reasonable approach that reflects general industry practice.¹⁸⁰ Also, NEM raises concerns about the obligation to make all of such materials available to OPC as an on-going requirement.¹⁸¹ RESA reiterates its initial comments to require electric suppliers to provide marketing materials to the Commission upon request only.¹⁸²

90. WGL Energy submits that it agrees with NEM's and RESA's opposition to the requirement that electricity suppliers provide copies of each piece of their marketing materials to both the Commission and OPC every time even the most minor change in the materials is made.¹⁸³ WGL Energy indicates that "the requirement would be significantly burdensome to both electric retail suppliers and the Commission."¹⁸⁴ WGL Energy submits that it agrees with RESA that a requirement to approve detailed marketing materials would be inconsistent with the concept of a competitive marketplace, and supports NEM's suggestion to file a representative sample of marketing materials.¹⁸⁵ Finally, WGL Energy indicates that it "supports NEM's concern of applying this supplier obligation to OPC for the same reasons noted in opposing the application of supplier obligations to OPC under Section 4603.11."¹⁸⁶

91. In the Fourth NOPR, to be consistent with the three (3) business day notice requirement in proposed Section 4603.11, we proposed to reduce the seven (7) day notice period to three business days.¹⁸⁷ Thus, Section 4608.1 (a) was revised to state that "if a Licensee changes

¹⁸⁰ NEM's Comments in Response to Third NOPR at 4.

¹⁸¹ NEM's Comments in Response to Third NOPR at 4.

¹⁸² RESA's Reply Comments at 5.

¹⁸³ WGL Energy's Reply Comments in Response to Third NOPR at 4-5.

¹⁸⁴ WGL Energy's Reply Comments in Response to Third NOPR at 5.

¹⁸⁵ WGL Energy's Reply Comments in Response to Third NOPR at 5.

¹⁸⁶ WGL Energy's Reply Comments in Response to Third NOPR at 5.

¹⁸⁷ Section 4603.11, required a Licensee (both new and existing who has not initially started serving Customers (residential or small commercial) to notify the Commission and OPC within 3 business days before the Licensee begins soliciting or marketing to Customers directly or through an authorized representative in the District of Columbia.

any of its marketing materials it shall provide the new materials to the Commission and OPC within (3) three business days before it starts using the new material to solicit Customers.”

92. In response to the Fourth NOPR, RESA reiterates its prior suggestion to amend this provision to require licensees to provide copies of marketing materials to the Commission upon request.¹⁸⁸ According to RESA, its suggestion will allow the Commission to obtain any marketing materials at any time from any supplier, without getting inundated with voluminous materials from other suppliers.¹⁸⁹ Moreover, RESA states that if the Commission is concerned about a particular supplier, the Commission could issue a request that the supplier provide ongoing updates for any marketing materials used in the District.¹⁹⁰

93. WGL Energy states that “it strongly urges the Commission to correct the burdensome provision in requiring electric suppliers to provide copies of each piece of their marketing materials to both the Commission and OPC every time even the most minor change in the materials is made.”¹⁹¹ WGL Energy suggests that “a reasonable approach that reflects general industry practice would be to require suppliers to file a representative sample of their marketing materials, because this would provide the Commission with sufficient information to review the materials and address any concerns.”¹⁹² WGL Energy submits that the requirement to provide representative samples of marketing materials could be done on a biannual basis in order to ensure greater consistency of Commission review and assurance that the marketing materials are appropriate for the consumers of the District of Columbia.¹⁹³ Also, WGL Energy notes that suppliers can always submit marketing materials to the Commission for their comments and suggestions upon request on an informal basis and that this informal ability could be made into a formal rule like in other jurisdictions.¹⁹⁴ Finally, WGL Energy indicates that it is again concerned about applying this supplier obligation to OPC for the same reasons noted in opposing the application of supplier obligations to OPC under Section 4603.11.¹⁹⁵

94. In response to RESA’s and WGL Energy’s Comments, in the Fifth NOPR, in Section 4608.1, we proposed the removal of the provision requiring a licensee that changes its marketing materials to provide the new materials to the Commission and OPC within three (3) business days before the licensee starts using the new material to solicit customers.

¹⁸⁸ RESA’s Comments in Response to Fourth NOPR at 8.

¹⁸⁹ RESA’s Comments in Response to Fourth NOPR at 7.

¹⁹⁰ RESA’s Comments in Response to Fourth NOPR at 7.

¹⁹¹ WGL Energy’s Comments in Response to Fourth NOPR at 4.

¹⁹² WGL Energy’s Comments in Response to Fourth NOPR at 4.

¹⁹³ WGL Energy’s Comments in Response to Fourth NOPR at 5.

¹⁹⁴ WGL Energy’s Comments in Response to Fourth NOPR at 5.

¹⁹⁵ WGL Energy’s Comments in Response to Fourth NOPR at 5.

95. In its Comments to the Fifth NOPR, NEM supports proposed Section 4608.1 removing the requirement that Licensees provide to the Commission and OPC new marketing materials whenever the licensee changes “any of its marketing materials.”¹⁹⁶ NEM states that, in prior comments on the proposed Electricity Supplier Rules, it had asserted the burdensome nature of imposing such an on-going reporting requirement on the supplier community, given that suppliers are continuously modifying their marketing materials in the course of their business as they develop and offer innovative and improved products to consumers.¹⁹⁷ NEM had also previously asserted that the requirement would likely result in a deluge of supplier filings that would be administratively infeasible to review.¹⁹⁸ NEM adds that if a specific question were to arise, the supplier can make the materials available to the Commission upon request. NEM concludes that it supports the language revision removing the proposal to provide the notice to OPC, in addition to the Commission, inasmuch as the competitive supplier licensing and bonding rules should be limited in their scope to the oversight exercised solely by the Commission.¹⁹⁹

96. **Decision.** The Commission adopts the language in Section 4608.1 proposed in the Fifth NOPR and is revised in the Sixth NOPR to remove the term “Applicant.” Section 4608.1(a), as proposed in the Fourth NOPR, states: “If a Licensee changes any of its marketing materials, it shall provide the new materials to the Commission and OPC within three (3) business days before the Licensee starts using the new material to solicit Customers[.]” Section 4608.1(a) was deleted in the sixth NOPR. Thus, renumbered Section 4607.1 shall now state:

4607.1 Updates to an Approved Application. After an Application has been approved, a Licensee shall inform the Commission of new information that changes or updates any part of the Application, including but not limited to, the averment regarding any civil, criminal, or regulatory penalties imposed on the Licensee, within thirty (30) days of the change or the new information. A Licensee shall also inform the Commission of changes to the averment regarding bankruptcy proceedings instituted voluntarily or involuntarily within one business day of the institution of such proceedings. Also, if a Licensee changes its trade name or the d/b/a name that it is using in the District of Columbia, the Licensee shall notify the Commission within ten (10) days of the effective date of the change and prior to soliciting Customers under that new name.

97. The Commission deletes the requirement that licensees provide new marketing materials or changes in marketing materials for the same reasons we deleted a similar requirement in Section 4602.8. As the regulator of all licensed energy suppliers in the District, the Commission has the authority to receive and cannot be denied those materials whenever requested. We will not, however, require submission of changes of marketing material at the time such changes are

¹⁹⁶ NEM Comments in Response to the Fifth NOPR at 3.

¹⁹⁷ NEM Comments in Response to the Fifth NOPR at 3.

¹⁹⁸ NEM Comments in Response to the Fifth NOPR at 3.

¹⁹⁹ NEM Comments in Response to the Fifth NOPR at 4.

made because of our strong expectation that the changes or revisions licensees make on their marketing materials will be ethical and lawful, and will not be intended to deceive customers into entering into contracts with those suppliers. Under that circumstance, there is no reason for the Commission to receive the new or revised materials in advance. If, however, circumstances dictate that the Commission requires the changed or new marketing materials, we will request them from the licensee for filing in the appropriate formal case. In the event of that occurrence, those marketing materials will also be made available to OPC concurrently. For the reasons stated above, the Commission declines to adopt RESA's language proposing that suppliers provide new or changed marketing materials upon Commission request because this is a pre-existing requirement upon licensees whether or not it is stated explicitly in this section.

Section 4608.2 Annual Reporting Requirements (Deleted in the Sixth NOPR).

98. **Decision:** Renumbered Section 4607.1 requires licensees to inform the Commission of any changes or updates to an approved application Thus making Section 4608.2 unnecessary. Accordingly, Section 4608.2 is deleted in its entirety.

Section 4609.2(h) (Renumbered as Section 4608.2(g) in the Sixth NOPR

99. In the First NOPR, Section 4609.2 (h) proposed to prescribe that grounds for Commission action may include the failure to post on the Internet information that is readily understandable about its services and rates to Small Commercial Customers and Residential Customers.

100. RESA recommends that the Commission modify Section 4609.2 (h) to require Electric Suppliers to post "adequate and accurate" information regarding their products on the Internet rather than the more subjective "readily understandable" standard.²⁰⁰ RESA also indicates that this is consistent with the Consumer Protection provision in D.C. Code § 34-1507 (e)(2).²⁰¹

101. **Decision.** The Commission agrees with RESA's recommendation since it is consistent with D.C. Code § 34-1507 (e)(2). Thus, the Commission in the Second NOPR proposed to modify Section 4609.2 (h) to require electric suppliers to post "adequate and accurate" information regarding their services and rates for Small Commercial Customers and Residential Customers on the Internet. However, in the Fifth NOPR, we proposed to further revise this section to state, "Failure to post on the Internet adequate and accurate information about its services and rates for Customers." In the Sixth NOPR, we proposed to revise this renumbered Section 4608.2(g) to state, "Failure to post on the Internet or on the Licensee's website adequate and accurate information about its services and rates for Customers." Section 4608.2(g) shall now state:

4608.2 Grounds for Commission Action. The Commission may take action against a Licensee as determined by the Commission including, but not limited to, the following violations:

²⁰⁰ RESA's Reply Comments in Response to First NOPR at 9.

²⁰¹ RESA's Reply Comments in Response to First NOPR at 9.

- (g) Failure to post on the Internet or on the Licensee's website adequate and accurate information about its services and rates for Customers.

Section 4609.2(i) (Renumbered as Section 4608.2(h) in the Sixth NOPR)

102. Proposed Section 4609.2 (i) states that failing to provide electricity should be grounds for Commission action against an electric supplier. RESA recommends that the Commission modify this section to add "when the failure is attributable to the actions of the Supplier."²⁰² According to RESA, "absent such modification, the section is too broad, providing 'just cause' for Commission enforcement action against an Electric Supplier when there is an outage, even if the outage is in no way attributable to the Electric Supplier."²⁰³ RESA was the only party who commented on this Section.

103. **Decision.** We agreed with RESA that, as written, the language in proposed Section 4608.2 (h) can be considered too broad or open. Thus, in the Second NOPR, we proposed to modify Section 4609.2 (i) by adding the phrase "when the failure is attributable to the actions of the Licensee."²⁰⁴ In the Sixth NOPR, we further proposed to replace the word "Licensee" for the word "Electricity Supplier". Thus, renumbered Section 4608.2(h) shall now state:

(h) Failure to provide electricity for its Customers when the failure is attributable to the actions of the Licensee.

Section 4609.2(q) (Renumbered as Section 4608.2(o) in the Sixth NOPR)

104. In the First NOPR, Section 4609.2(q) stated that "conviction by the Licensee or principal of the Licensee (including the general partners, corporate officers or directors, or limited liability managers or officers of the Licensee) of any felony." RESA recommended that the Commission modify this section so that a felony conviction by a licensee or principal of the licensee is grounds for Commission action, but only when the felony has some connection to the licensee's business.²⁰⁵ RESA was the only party who commented on this section as well.

105. **Decision.** We agreed with RESA that a completely unrelated felony conviction should not be grounds for Commission action. Thus, in the Second Proposed NOPR, we accepted

²⁰² RESA's Reply Comments in Response to First NOPR at 10.

²⁰³ RESA's Reply Comments in Response to First NOPR at 10.

²⁰⁴ The word Licensee replaced the word Electricity Supplier.

²⁰⁵ RESA's Reply Comments in Response to First NOPR at 10.

RESA's recommendation and proposed to modify Section 4609.2(q) to state, "conviction by the Licensee or principal of the Licensee (including the general partners, corporate officers or directors, or limited liability managers or officers of the Licensee) of any felony that has some nexus with the Licensee's business." Renumbered Section 4608.2(o) now states:

- (o) Conviction by the Licensee or principal of the Licensee (including the general partners, corporate officers or directors, or limited liability managers or officers of the Licensee) of any felony that has some nexus with the Licensee's business.

Section 4609.2 (v) (Renumbered as Section 4608.2 (t) in the Sixth NOPR)

106. In its Comments to the Fifth NOPR, NEM requests that language regarding grounds for Commission action against licensees in proposed Section 4609.2(v) be modified to incorporate an "as soon as" activities commence standard instead of the three business days' notice requirement for soliciting and marketing.²⁰⁶

107. **Decision.** Section 4609.2 (v) in the Fifth NOPR states:

Failure of a Licensee, who has not initially started serving Customers in the District to notify the Commission within (3) business days before the Licensee begins soliciting or marketing to Customers directly or through an authorized representative per Section 4603.11.

108. Section 4609.2 (v) was previously drafted to reflect the potential consequence of Commission action against licensees who do not comply with the three business days' advance notice requirement in Section 4603.11. Section 4609.2 (v) has been revised and renumbered to Section 4608.2 (t) to remove reference to Section 4603.11. As such, renumbered Section 4608.2 (t) in the Sixth NOPR is adopted and shall now state:

- (t) Failure of a Licensee, who has not initially started serving Customers in the District to notify the Commission within (3) business days before the Licensee begins soliciting or marketing to Customers directly or through an authorized representative in compliance with the solicitation rules in this Chapter.

Section 4699.1

109. In the First NOPR, an electricity supplier was defined as: A person, including an Aggregator, Broker, or Marketer, who generates electricity; sells electricity; or purchases, brokers, arranges or markets electricity or electric generation services for sale to Customers. The term excludes the following:

- (a) Building owners, lessees, or managers who manage the internal distribution system serving such building and who supply electricity solely to the occupants of the building for use by the occupants;

²⁰⁶ NEM's Comments in Response to the Fifth NOPR at 4.

- (b) Any Person who purchases electricity for its own use or for the use of its subsidiaries or affiliates and does not resell it to its subsidiaries or affiliates;
- (c) Any apartment building or office building manager who aggregates electric service requirements for his or her building or buildings, or who does not: (1) Take title to electricity; (2) Market electric services to the individually-metered tenants of his or her building; or (3) Engage in the resale of electric services to others;
- (d) Property owners who supply small amounts of power, at cost, as an accommodation to lessors or licensees of the property;
- (e) A Consolidator;
- (f) A Community Renewable Energy Facilities (“CREFs”) as defined in Subsection 4199.1 and as described in Subsections 4109.1 through 4109.3 pursuant to the Community Renewable Energy Amendment Act of 2013;

110. In response to the First NOPR, RESA states that the definition of “Electric Supplier” is overly broad and should be modified to ensure unintended third parties do not become subject to Electric Supplier licensing requirements.²⁰⁷ RESA indicates that the “overly broad “Electric Supplier” definition may inappropriately require certain charities or nonprofits to obtain an Electricity Supplier’s license.”²⁰⁸ RESA also submits that affinity groups such as fraternal organizations, churches, rotary clubs, and/or retail outlets should not be required to obtain a license in the District.²⁰⁹ As a result, RESA recommended that the Commission include an exemption in the Electric Supplier definition for Nontraditional Marketers and define Nontraditional Marketers as a community-based organization, civic, fraternal or business association that works with a licensed Electricity Supplier as an agent to market electricity to its members or constituents. A Nontraditional Marketer: (i) conducts its transactions through a licensed Electricity Supplier; (ii) does not collect revenue directly from retail Customers; (iii) does not require its members or constituents to obtain its electricity through the Nontraditional Marketer or a specific licensed Electricity Supplier; and (iv) is not responsible for the payment of the costs of the electricity to its suppliers or producers.

²⁰⁷ RESA’s Reply Comments in Response to First NOPR at 6.

²⁰⁸ RESA’s Reply Comments in Response to First NOPR at 6.

²⁰⁹ RESA’s Reply Comments in Response to First NOPR at 7.

111. Pepco states that the definition of the term “Electricity Supplier” as written includes the Electric Company.²¹⁰ Pepco submits that the “Electric Company should be added to the list of exclusions to make it clear that the Electric Company, as SOS provider, is not an Electricity Supplier, consistent with Commission precedent, the Competition Act and the purpose of the NOPR.”²¹¹

112. **Decision.** The Commission agreed with Pepco’s comments and recommendations about excluding the term “Electric Company” from the definition of an “Electricity Supplier” in that such an exclusion is consistent with the Retail Electric Competition and Consumer Protection Act of 1999 (“Retail Competition Act”), D.C Official Code §§ 34-1501 *et seq.*, Commission precedent,²¹² and the purpose of this rulemaking. Therefore, the Commission in the Second NOPR revised the definition of Electricity Supplier to exclude an Electric Company.

113. In the May 4, 2018 NOPR (Sixth NOPR), the Commission proposed to delete the definition for “Nontraditional Marketers” from the proposed rules because it would have established a new category of marketers as an exclusion from the definition of “Electricity Supplier”; however, we inadvertently failed to delete the term “Nontraditional Marketers as an exclusion from the definition of the term “Electricity Supplier”. In the August 10, 2018 NOPR, the Commission proposed to revise Section 4699.1 to delete the term “Nontraditional Marketers” as an exclusion from the definition of “Electricity Supplier” and its definition from Chapter 46. No comments were received in response to this NOPR. Regretfully, the Commission should not have added the term and its definition in the second, third, fourth, and fifth NOPRs because the term and its definition are neither consistent with nor contemplated by the Retail Competition Act. The Retail Competition Act unambiguously defines “Electricity Supplier” to mean “a person, including an aggregator, broker, or marketer, who generates electricity; sells electricity; or purchases, brokers, arranges or, markets electricity for sale to customers . . .” Because there is no exclusion from the definition of “Electricity Supplier” in the Retail Competition Act for nontraditional marketers, all marketers are deemed an “Electricity Supplier”. Therefore, the Commission cannot include a subset category of marketers that would be excluded from the definition of “Electricity Supplier” in Chapter 46. Section 4699.1 has been revised to delete the term “Nontraditional Marketers” as an exclusion from the definition “Electricity Supplier” and its definition from Chapter 46.

114. Other proposed changes in Section 4699.1 as reflected in the Sixth NOPR are the inclusion of the terms and definitions of “Business Day” and “Default;” and deletion of the terms and definitions of “Competitive Billing;” “Consolidator;” “District of Columbia Electricity Supplier Coordination Tariff;” “Electronic Data Interchange Trading Partner Agreement;” “Initiating Service in the District;” “Market Participant;” “Residential Customer;” “Small Commercial Customer;” and “Transfer Application”. Definitions for the following terms are revised: “Prepayments” and “Solicitation.”

²¹⁰ Pepco’s Comments in Response to First NOPR at 2.

²¹¹ Pepco’s Comments in Response to First NOPR at 2.

²¹² *See Formal Case No. 945, Order No. 11796, ¶ 166.*

IV. CONCLUSION

115. With the noted prior amendments, the Commission hereby adopts the final rules governing the licensing of Electricity Suppliers. This Order also includes the following attachments: (A) Supplier Application, including Affidavit of Tax Compliance, Affidavit of General Compliance, Verification, and Applicant's General Authorization for Verification of Financial Information; (B) Form of Customer Payments Bond Surety Bond; (C) Form of Integrity Bond for Electricity Suppliers and Marketers other than Aggregators and Brokers-Surety Bond; and (D) Form of Integrity Bond for Aggregators and Brokers-Surety Bond. The attachments will be made available on the Commission's website upon the issuance of this Order. These rules in new Chapter 46 shall become effective upon publication in the *D.C. Register*.

THEREFORE, IT IS ORDERED THAT:

116. The rules in proposed Chapter 46 of Title 15 of the District of Columbia Municipal Regulations as discussed in this Order are **ADOPTED** and shall become effective upon publication of a Notice of Final Rulemaking in the *D.C. Register*.

A TRUE COPY:**BY DIRECTION OF THE COMMISSION:****CHIEF CLERK:****BRINDA WESTBROOK-SEDGWICK
COMMISSION SECRETARY**

ATTACHMENT A

**APPLICATION FOR LICENSE TO SUPPLY ELECTRICITY
OR ELECTRIC GENERATION SERVICES TO THE PUBLIC IN THE
DISTRICT OF COLUMBIA**

You may use the attached form to submit your application. (Please remove this instruction sheet prior to filing.) If you need more space than is provided on this form, then you can create an attachment to this application. You may also attach exhibits. All attachments/exhibits must be labeled or tabbed to identify the application item to which they respond. You are also required to file an electronic version of this document (excluding “confidential” information) which must be converted to the Portable Document Format (“PDF”) before filing.

To file an application with the District of Columbia Public Service Commission (“Commission”), file a signed and verified original and an electronic version of your application and attachments, and a nonrefundable license fee of four hundred dollars (\$400.00) (payable to “D.C. Public Service Commission”) with the Commission Secretary in Washington, D.C.:

**Commission Secretary
Public Service Commission of the District of Columbia
1325 G Street, N.W., Suite 800
Washington, D.C. 20005**

Questions pertaining to the completion of this application may be directed to the Commission at the above address or you may call the Commission at the following number: (202) 626-5100. You may reach the Commission electronically at psc-commissionsecretary@dc.gov.

If your answer to any of the Application questions changes during the pendency of your Application, or if the information relative to any item herein changes while you are operating within the District of Columbia, you are under a duty to so inform the Commission immediately. After an Application has been approved a Licensee must inform the Commission of changes to all parts of the Application and the averment regarding any civil, criminal or regulatory penalties, etc. imposed on Applicant, *et al.* must be updated. A Licensee must inform the Commission of changes to the averment regarding bankruptcy proceedings instituted voluntarily or involuntarily within one business day of the institution of such proceedings. A Licensee/Electricity Supplier also is required to officially notify the Commission if it plans to cease doing business in the District of Columbia sixty (60) days prior to ceasing operations.

Confidentiality: Sections 4d and 14 of this Application related to ownership of the Applicant (to the extent such information is not already public) and financial information, respectively, will be treated as confidential information by the Commission to the extent permitted by law if the Applicant requests such treatment by stamping or marking the materials in question as

“CONFIDENTIAL.” Any interested person may request, however, release of this information by filing such a request with the Commission. If such a request is made, Applicant shall have the burden of proving the confidential nature of the information. The Commission will notify the Applicant of any request for release of this information, and will permit the Applicant the opportunity to respond to the request through written motion filed with the Commission prior to the Commission’s determination on the request.

If you are applying to provide service as an Aggregator or as a Broker (as defined in Commission regulations), who do take title to electricity as a part of providing that service, you do not need to fill out certain questions in this Application. The exempted questions are marked.

Applicable law: The provisions set forth in this application related to the licensing of Electricity Suppliers and the provision of electricity and electric generation services are addressed in detail in the “Retail Electric Competition and Consumer Protection Act of 1999,” and in Commission orders and regulations.

Statements made in this Application are made under penalty of perjury (D.C. Code Section 22-2402), false swearing (D.C. Code Section 22-2404), and false statements (D.C. Code Section 22-2405). Perjury is punishable by a fine of up to five thousand dollars (\$5,000) or imprisonment for up to ten (10) years, or both. False statements are punishable by a fine not more than one thousand dollars (\$1,000) or imprisonment for not more than one hundred eighty (180) days, or both. Further amendments to these Code sections shall apply. If the Commission has reliable information that an Applicant has violated any or all of these sections of the Code, the Commission will forward the information to the appropriate law enforcement agency. Statements made in this Application are also subject to Commission regulations, which require the Applicant to certify the truthfulness of the contents of this Application. Any Applicant in violation of these regulations is subject to the penalties found in the “Retail Electric Competition and Consumer Protection Act of 1999,” D.C. Code Section 34-1508.

BEFORE THE DISTRICT OF COLUMBIA PUBLIC SERVICE COMMISSION

Application Docket No. _____

Application of _____, d/b/a (“doing business as”)

_____ for approval to offer, render, furnish, or supply electricity or electric generation services as a(n) _____, [specified in item 10 below] to the public in the District of Columbia.

To the District of Columbia Public Service Commission:

BUSINESS INFORMATION

1. IDENTITY OF THE APPLICANT:

a. Legal Name _____

Current Mailing Address: _____

Street Address (if different): _____

Telephone Number: _____

Website URL: _____

Other States, including District of Columbia, in which the Applicant is now or has been engaged in the retail sale of electricity and the names under which the Applicant is engaged or has been engaged in such business(es) Applicant may limit response to the last three (3) years:

Name: _____

Business Address: _____

License # State of Issuance: _____

Other states in which the Applicant has applied to provide retail electric service but has been rejected. Applicant may limit response to the last three (3) years:

State(s): _____

Date of Application: _____

Attach additional sheets to the application if necessary.

b. Trade name (If Applicant will not be using a trade name, skip to question no. 2.a.):

Trade Name: _____

c. The District of Columbia and other states, in which the Applicant has provided retail electric under the current Applicant name or in a different name but has voluntarily or involuntarily surrendered its license. Describe reasons for license surrender. With regard to a voluntary or involuntary license surrender in the District of Columbia only, state whether any previously outstanding assessments and/or penalties imposed by the Commission and the Office of the People's Counsel have been paid. If any previous assessments and/or penalties are unpaid, provide a date certain when those assessments and/or penalties will be paid. Applicant may limit response to the last five (5) years:

State(s): _____

Date of License Surrender and Reasons for License Surrender:

In the District of Columbia, Amount of Paid Assessments and Unpaid Assessments/Penalties Following License Surrender and to Whom Owed (If Applicable)

Attach additional sheets to the application if necessary.

2.

a. CONTACT PERSON-REGULATORY CONTACT:

Name and Title: _____

Address: _____

Telephone: () _____

Fax: () _____

E-mail: _____

b. CONTACT PERSON-CUSTOMER SERVICE and CONSUMER COMPLAINTS (not required for Aggregators who do not take title and/or Brokers):

Name and Title: _____

Address: _____

Telephone: () _____

Fax: () _____

E-mail: _____

3. RESIDENT AGENT:

Name and Title: _____

Address: _____

Telephone: () _____

Fax: () _____

E-mail: _____

4. PRIMARY COMPANY OFFICIALS

President/General Partners: Name(s) _____

Business Address: _____

CEO/Managing Partner: Name _____

Business Address: _____

Secretary Name: _____

Business Address: _____

Treasurer Name: _____

Business Address: _____

a. APPLICANT'S BUSINESS FORM: (select and complete appropriate statement)

- Proprietorship
- Corporation
- Partnership
- Limited Partnership
- Limited Liability Company
- Limited Liability Partnership
- Other _____

b. **STATE OF FORMATION: Applicant's business is formed under the laws of the State of _____**

c. **STATUS: Provide a certificate issued by the state of formation certifying that the Applicant is in good standing and qualified to do business in the state of formation.**

If formed under the laws of other than the District of Columbia, provide a certificate issued by the District of Columbia Department of Consumer and Regulatory Affairs (DCRA) certifying that the applicant is registered or qualified, to do business in the District of Columbia and is currently in good standing with DCRA and with the District Department of Finance and Revenue.

d. **OWNERSHIP:** Provide on a separate sheet the names and addresses of all persons and entities that directly or indirectly own ten percent (10%) or more of the ownership interests in the Applicant, or have the right to vote ten percent (10%) or more in the Applicant's voting securities, or who otherwise have the power to control ten percent (10%) or more of the Applicant.

5. **AFFILIATES, OR PRECEDECESSOR(S), ENGAGED IN THE SALE OR TRANSMISSION OF ELECTRICITY AT WHOLESALE OR RETAIL TO THE PUBLIC:** (select and complete appropriate statement) (Applicant may limit responses to the last five (5) years).

a. The Applicant has no such Affiliate(s) or Predecessors(s).

b. The Applicant is an Affiliate of a regulated utility. Please provide regulated utility's Name and the jurisdictions in which it operates:

c. The Affiliate(s), or Predecessor(s), other than a regulated utility that provides, or provided, sale or transmission of electricity at wholesale or retail to the public:

Name: _____

Business Address: _____

License #, State of Issuance: _____

Location of Operations (Utility Service Territory): _____

Attach additional sheets to the application if necessary.

6. ACTIONS AGAINST LICENSEES: Provide the following information for the Applicant, any Predecessor(s), and any unregulated Affiliate that engages in or engaged in the sale or transmission of electricity at wholesale or retail to the public. (Applicant may limit responses to the last five (5) years).

- Identify all actions against the Licensee, Predecessor or any regulated or unregulated affiliate(s) such as Suspensions/Revocations/Limitations/Reprimands/Fines and describe the action in an attached statement, including docket numbers, offense dates, and case numbers, if applicable. Formal Investigations (defined as those investigations formally instituted in a public forum by way of the filing of a complaint, show cause order, or similar pleading) instituted by any regulatory agency or law enforcement agency relating to the Applicant, Predecessor(s), or unregulated affiliate(s) if, as a result of the investigation, Applicant's/Predecessor's/or affiliate's license to provide service to the public was in jeopardy are also listed. The license number, state of issuance, and name of license are identified below:

State(s): _____

Name(s): _____

License Number(s) (or other applicable identification):

- No such action has been taken.

7. FERC FILING: Applicant has:

- Filed an Application with the Federal Energy Regulatory Commission ("FERC") to be a Power Marketer.

- Received approval from FERC to be a Power Marketer at Docket or Case Number:

- Not Applicable.

OPERATIONAL CAPABILITY

- 8. ISO/RTO AFFILIATION:** Provide evidence that the Applicant has met all applicable requirements of any ISO and/or RTO for its use by the Applicant. Indicate the evidence provided (not required for aggregators who do not take title and/or brokers).

Evidence of having met all applicable requirements of the PJM Interconnection, L.L.C. or another RTO or ISO (Attach evidence of being a signatory to all applicable agreements).

- 9. SOURCE OF SUPPLY:** (Check all that apply) (not required for aggregators who do not take title and/or brokers)

- Not applicable. Applicant will not be supplying retail electricity.
- Applicant owns generation.
- Applicant contracts for generation.
- Applicant obtains generation on the spot market.
- Other – Applicant must attach a statement detailing its source of Generation.

SCOPE OF OPERATIONS

(Check all that apply)

- 10. APPLICANT'S PROPOSED OPERATIONS:** The Applicant proposes to operate as a:

- Generator of electricity in the wholesale or retail market.
- Marketer of electricity purchasing and taking title to electricity as an intermediary for sale to customers.
- Aggregator acting on behalf of customers to purchase electricity.
- Broker acting as an agent or intermediary on behalf of customers in the sale and purchase of electricity and who does not take title to electricity.

Does Applicant intend to offer competitive billing services? _____

Is the Applicant proposing to offer any other services? _____
If so, please provide information regarding the proposed service in an attached statement.

11. AREA OF OPERATION: If the Applicant does not intend to offer services throughout the Potomac Electric Power Company territory in the District of Columbia, Applicant must, in an attached statement, describe in detail the area within the Electric Company's service territory in which Applicant's services will be offered.

- Applicant intends to offer service throughout the Potomac Electric Power Company territory in the District of Columbia.
- Applicant intends to offer services in only a portion of Potomac Electric Power Company's service territory in the District of Columbia. Please see attached statement.

12. CUSTOMERS: Applicant proposes to initially provide services to (check all that apply):

- Residential Customers
- Commercial Customers
- Industrial Customers
- Other (Describe in attachment)

Also, Applicant proposes:

- Restrictions upon the number of end use customers (Describe in attachment).
- No restrictions on the number of end use customers.
- Restrictions upon the size of end use customers (Describe in attachment).
- No restrictions regarding the size of the end use customers (Describe in attachment).
- Other restrictions regarding customers (Describe in attachment).

13. START DATE: The Applicant proposes to begin delivering services:

- Upon approval of the Application and receipt of License.
- Other approximate date of commencement.

FINANCIAL INTEGRITY

14. REQUIRED DOCUMENTATION OF FINANCIAL INTEGRITY:

Check that the documents listed below are attached to the Application.

The Applicant shall provide the most recent versions of the following documents to the extent they are available:

- Credit reports or ratings prepared by established credit bureaus or agencies regarding the Applicant's payment and credit history.
- Balance sheets, income statements and statements of cash flow for the two (2) most recent twelve (12)-month periods for which information is available. Audited financial statements must be provided if they exist. In addition, the Applicant shall provide any financial statements subsequent to the most recent annual financial statements.
- In the event that a parent or other company, person or entity has undertaken to guarantee the financial integrity of the Applicant, the Applicant must submit such entity's balance sheet, income statement and statement of cash flow, together with documentation of such guarantee to insure the financial integrity of the Applicant. Audited financial statements must be provided if they exist. In addition, the Applicant shall provide any available quarterly financial statements subsequent to the most recent annual financial statements.
- If the Applicant, parent, or guarantor entity has not been in existence for at least two (2) twelve (12)-month periods, it must provide balance sheets, income statements and statements of cash flow for the life of the business. Audited financial statements must be provided if they exist.
- Organizational structure of Applicant. Include Applicant's parent, affiliate(s), and subsidiary(ies) if any.
- Evidence of general liability insurance.
- If the Applicant has engaged in the retail supply of electricity supply services in any other jurisdiction, evidence that the Applicant is a licensed supplier in good standing in those jurisdictions.
- A current long-term bond rating, or other senior debt rating.

- Any other evidence of financial integrity such as an unused line of bank credit or parent guarantees.

15. BONDING REQUIREMENTS

Integrity Bond

An Applicant who cannot provide credible evidence that it meets the financial integrity standards listed in Section 4605 of Chapter 46 of Title 15 DCMR must submit a bond on the form attached to this Application (“Integrity Bond”). The Applicant, if licensed by the Commission as an electricity supplier, may be required to update/revise this initial Integrity Bond, by revising the initial Integrity Bond or posting an additional Integrity Bond, as set forth in Section 4605.

However, an Applicant who can provide credible evidence that it meets the financial integrity standards listed in Section 4605 will not be required to submit an Integrity Bond. (The Applicant may still be required to submit a separate Customer Payments Bond, as discussed below.).

Customer Payments Bond

A separate bond on the appropriate form attached to this Application is mandatory if an Applicant requires prepayments and/or deposits from residential or small commercial customers (“Customer Payments Bond”). Please check one of the boxes below to state whether you, the Applicant, intend to charge, collect, or hold prepayments and/or deposits, as such terms are defined in the Bonding Requirements Addendum attached to this Application:

- Applicant will not accept prepayments or deposits from residential and small commercial customers.
- Applicant intends to accept prepayments or deposits and/or deposits from residential and small commercial customers. Applicant must comply with Bonding Requirements Addendum governing the Customer Payment Bond.

Further details regarding the District of Columbia’s bonding requirements are included in Sections 4604 and 4605 of Chapter 46 of Title 15 DCMR.

16. NOTICE OF REQUIRED COMPLIANCE: The Applicant is hereby notified that it is required to comply with the following:

- a. The Applicant may be required to submit bond(s), as applicable as described in Section 15 herein.

- b. The Applicant must update this application with the Commission immediately if any of the information provided in this Application changes or an error or inaccuracy is noted during the pendency of the Application. After an Application has been approved, a Licensee must inform the Commission of changes to all parts of the application and the averment regarding any civil, criminal, or regulatory penalties, etc. imposed on applicant, *et al.* within thirty days of the change or an error or inaccuracy is noted. A Licensee must inform the Commission of changes to the averment regarding bankruptcy proceedings instituted voluntarily or involuntarily within one business day of the institution of such proceedings.
- c. Supplement this application in the event the Commission modifies the licensing requirements, or request further information.
- d. Agree that it will not present itself as a licensed retail supplier of electricity in the District of Columbia, sell or market services, accept deposits, prepayments, or contract with any end-use Customers without a license from the Commission.
- e. Pay all fees imposed by the Commission and any applicable taxes.
- f. Ensure that a copy of each service agreement entered into with Potomac Electric Power Company is provided to the Commission.
- g. Agree to not transfer its license to sell electricity and electricity supply services without the prior approval of the District of Columbia Public Service Commission.
- h. Attend an Electricity Suppliers Education Workshop sponsored by the Commission.
- i. If certified, the Applicant shall institute a Privacy Protection Policy to protect against the unauthorized disclosure or use of information about a Customer or a Customer's use of service. A copy of that Policy shall be made available once a year, including any updates or changes, through electronic means or a hardcopy to the Customer and posted in a prominent place on each company's website.
- j. Abide by 15 DCMR § 308 and refrain from disclosing information about a Customer or the Customer's use of electricity or electric generation services without the Customer's written consent.
- k. Agrees to comply with 15 DCMR § 4602.12 Electric Company and Licensee Responsibilities in the event of a default after certification, and with the District of Columbia Electricity Supplier Coordination Tariff.

17. **AFFIDAVITS REQUIRED.** The Applicant must supply Affidavits of Tax Compliance and General Compliance to the Commission with the completed Application. The affidavits are included with this Application packet and must be executed by the Applicant or representative with authority to bind the Applicant in compliance with District of Columbia laws.

18. **FURTHER DEVELOPMENTS:** Applicant is under a continuing obligation to amend its application if substantial changes occur in the information upon which the Commission relied in approving the original filing.

19. **FEE:** The Applicant has enclosed the required fee of \$400.00.

Applicant: _____

By: _____

Printed Name: _____

Title: _____

The Applicant has obtained all the licenses and permits required to operate the proposed business in the District of Columbia.

The Applicant agrees to comply with power pool, control area, regional transmission operator, and/or ISO standards and requirements, as applicable.

The Applicant agrees that it shall neither disclose nor resell customer data provided to the Applicant by Potomac Electric Power Company.

The Applicant agrees, if the Commission approves its Application, to post an appropriate bond or other form of financial guarantee as required by the Commission and its regulations.

If the Applicant is certified, but later defaults, the Licensee/Supplier agrees to comply with 15 DCMR § 4602.12, Electric Company and Licensee Responsibilities in the event of a default, and with the District of Columbia Electricity Supplier Coordination Tariff.

The Applicant agrees, pursuant to the requirements of § 4603, to complete the Electricity Supplier Education Workshop sponsored by the Commission. Successful completion of the Workshop by the Licensee shall be evidenced by a certificate issued by the Commission.

The Applicant, including any of its Predecessor(s) and/or affiliate that engages in or engaged in the sale or transmission of electricity at wholesale or retail to the public, the general partners, company officials, corporate officers or directors, or limited liability company managers or officers of the Applicant, its predecessor(s) or its affiliates:

1. Has had no civil, criminal or regulatory sanctions or Penalties imposed against it within the previous five (5) years pursuant to any state or federal consumer protection law or regulations, has not been convicted of any fraud-related crime (including, but not limited to, counterfeiting and forgery, embezzlement and theft, fraud and false statements, perjury, and securities fraud) within the last five (5) years; and has not ever been convicted of a felony; or alternatively.
2. Has disclosed by attachment all such sanctions, penalties or convictions.

The Applicant further certifies that it:

1. Is not under involuntary bankruptcy/insolvency proceedings including but not limited to, the appointment of a receiver, liquidator, or trustee of the supplier, or a decree by such court adjudging the supplier bankrupt or insolvent or sequestering any substantial part of its property or a petition to declare bankruptcy as to reorganize the supplier; and

2. Has not filed a voluntary petition in bankruptcy under any provision of any Federal or state bankruptcy law, or its consent to the filing of any bankruptcy or reorganization petition against it under any similar law; or without limiting the generality of the foregoing, a supplier admits in writing its inability to pay its debt generally as they become due to consent to the appointment of a receiver, trustee or liquidator of it or of all or any part of its property.

That Applicant possesses the requisite managerial and financial fitness to provide service at retail in the District of Columbia.

That the facts above set forth are true and correct to the best of his/her present knowledge, information, and belief after due inquiry and that he/she expects said Applicant to be able to prove the same at any hearing hereof.

Signature of Affiant

Sworn and subscribed before me this ____ day of _____, _____.

Signature of official administering oath

My commission expires_____.

VERIFICATION

State of _____ :
 : ss
County of _____ :

_____, Affiant, being duly [sworn/affirmed] according to law, deposes and says that:

He/she is the _____ (Officer/Affiant) of _____
(Name of Applicant);

That he/she is authorized to and does make this affidavit for said corporation;

The Applicant understands that the making of a false statement(s) herein may be grounds for denying the Application or, if later discovered, for revoking any authority granted pursuant to the Application. This Application is subject to all applicable sections of the District of Columbia Code as may be amended from time to time relating to perjury and falsification in official matters.

That the Applicant will supplement this Application in the event the Public Service Commission of the District of Columbia (“Commission”) modifies the licensing requirements, or requests further information.

That the Applicant agrees that it will not present itself as a licensed retail supplier of electricity in the District of Columbia, sell or market electricity, accept deposits, prepayments, or contract with any end-use customers without a license from the Commission.

That the Applicant agrees that a license issued pursuant to this Application may not be transferred without prior approval by the Commission.

That the Applicant agrees to update information contained in this Application in accordance with the schedule set forth in the Application.

That the facts above set forth are true and correct to the best of his/her present knowledge, information, and belief after due inquiry and that he/she expects said Applicant to be able to prove the same at any hearing hereof.

Signature of Affiant

Sworn and subscribed before me this _____ day of _____, 20__.

Signature of official administering oath

My commission expires _____.

**APPLICANT'S GENERAL AUTHORIZATION FOR VERIFICATION OF
FINANCIAL INFORMATION, ETC.**

TO WHOM IT MAY CONCERN:

I/We have applied to the District of Columbia Public Service Commission (the "Commission") for a license to be an Electricity Supplier, or to provide certain Electricity Supply related services, and authorize you to release to the Staff of the Commission and its authorized representatives and agents any information or copies of records requested concerning:

MY COMPANY OR BUSINESS AND ITS HISTORY, PERFORMANCE, OPERATIONS, CUSTOMER RELATIONS, FINANCIAL CONDITION, INCLUDING BANK ACCOUNT TRANSACTIONS AND BALANCES, PAYMENT HISTORY WITH SUPPLIERS AND OTHER CREDITORS, VERIFICATION OF NET WORTH AND OTHER INFORMATION AND RECORDS WHICH THE COMMISSION REQUIRES TO VERIFY OR MAKE INQUIRY CONCERNING MY/OUR FINANCIAL INTEGRITY AND THE INFORMATION CONTAINED IN MY/OUR LICENSE APPLICATION OR OTHER INFORMATION PROVIDED BY ME/US TO THE COMMISSION OR, STAFF OF THE COMMISSION OR ITS REPRESENTATIVES OR AGENTS.

This Authorization is continuing in nature and includes release of information following issuance of a license, for reverification, quality assurance, internal review, etc. The information is for the confidential use of the Commission and the Staff of the Commission in determining my/our financial integrity for being a licensee or to confirm information I/We have supplied and may not be released by order of the Commission or by order of a court of competent jurisdiction.

A photographic or fax copy of this authorization may be deemed to be the equivalent of the original and may be used as a duplicate original. The original signed form is maintained by the Staff of the Commission.

APPLICANT'S AUTHORIZATION TO RELEASE INFORMATION:

APPLICANT (please print)

APPLICANT'S SIGNATURE

DATE

TITLE

ATTACHMENT B

FORM OF CUSTOMER PAYMENTS BOND-SURETY BOND

Bond No.

We,

(Name of supplier)

(Address of supplier)

as principal, and

(Surety Company)

(Address of surety)

as surety authorized to do business in the District of Columbia, are held and firmly bound to the Public Service Commission of the District of Columbia, as obligee for the use and benefit of all persons establishing legal rights hereunder, in the sum of FIFTY THOUSAND AND NO/100 (\$50,000) lawful money of the United States of America, to the payments of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly, severally, and firmly by this document.

WHEREAS, the Principal has applied to the Public Service Commission of the District of Columbia for a license to provide electric service to retail customers in the District of Columbia, and

WHEREAS, pursuant to the Retail Electric Competition and Consumer Protection Act of 1999, the Public Service Commission of the District of Columbia is authorized to require the Principal to maintain a bond in order to provide retail electricity service.

NOW, THEREFORE, if the Principal shall faithfully and truly fulfill all of its service or product contracts and other contractual commitments to deliver retail electric services, and not file for bankruptcy or for similar protection under law, then this obligation shall be void, otherwise to remain in full force and effect as security for the use of the Public Service Commission of the District of Columbia or of any person or entity, who after entering into a service or product contract or third party supplier agreement for service in the District of Columbia with the above named Principal is damaged or suffers any loss of a deposit or prepayment (as such terms are defined in) (Sections 4604 and 4605 of Chapter 46 of Title 15 DCMR) by reason of failure of service or by other breach or bankruptcy by this Principal.

The aggregate liability of the Surety is limited to the foregoing sum which sum shall be reduced by any payment made in good faith hereunder.

The term of this bond is for the period beginning _____ and terminating _____, and may continue for an annual period by a Continuation Certificate signed by the Principal and Surety, a copy of which must be served by registered mail upon the Secretary of the Public Service Commission of the District of Columbia.

In order to draw funds on this Bond, the Public Service Commission of the District of Columbia shall issue an order stating that the Licensee is financially insolvent or unable to meet its obligations as for restitution to any Licensee's Customer who has suffered actual damages or loss of a deposit or prepayment (as such terms defined in Sections 4604 and 4605 of Chapter 46 of Title 15 DCMR) in a specific amount by means of failure, or by reason of breach of contract or violation of the Retail Electric Competition

and Consumer Protection Act of 1999, and/or regulations,
rules or standards promulgated pursuant thereto.

SIGNED, SEALED AND DATED this day of _____

Principal _____

By: _____
(Signatory)

Surety _____

Address of Surety: _____

By: _____
(Signatory)

Notary Seal

ATTACHMENT C

FORM OF INTEGRITY BOND
FOR ELECTRICITY SUPPLIERS AND MARKETERS
INTEGRITY BOND-SURETY BOND

Bond No. _____

We,

(Name of supplier)

(Address of supplier)

as principal, and

(Surety Company)

(Address of surety)

as surety authorized to do business in the District of Columbia, are held and firmly bound to the Public Service Commission of the District of Columbia, as obligee for the use and benefit of all persons establishing legal rights hereunder, in the sum of FIFTY THOUSAND AND 00/100 (\$50,000) lawful money of the United States of America, to the payments of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly, severally, and firmly by this document.

WHEREAS, the Principal has applied to the Public Service Commission of the District of Columbia for a license to provide electric service to retail customers in the District of Columbia, and

WHEREAS, pursuant to the Retail Electric Competition and Consumer Protection Act of 1999, (D.C. Code § 34-1505), the Public Service Commission of the District of Columbia is authorized to require the Principal to maintain a bond in order to provide retail electric service.

NOW, THEREFORE, if the Principal shall faithfully and truly fulfill all of its service or product contracts and other contractual commitments to deliver retail electric services, and not file for bankruptcy or for similar protection under law, then this obligation shall be void, otherwise to remain in full force and effect as security for the use of the Public Service Commission of the District of Columbia or of any person or entity, who after entering a service or product contract or third party supplier agreement for service in the District of Columbia with the above named Principal is actually damaged or suffers any actual loss by reason of failure of service or by other breach or bankruptcy by this Principal.

The aggregate liability of the Surety is limited to the foregoing sum which sum shall be reduced by any payment made in good faith hereunder.

The term of this bond is for the period beginning _____ and terminating _____, and may be continued for an annual period by a Continuation Certificate signed by the Principal and Surety, a copy of which must be served by registered mail upon the Secretary of the Public Service Commission of the District of Columbia.

In order to draw funds on this Bond, the Public Service Commission of the District of Columbia shall issue an order stating that the Licensee is financially insolvent or unable to meet its obligations as for restitution to any Licensee's Customer who has suffered actual damages or loss of a deposit or prepayment (as such terms defined in Sections 4604 and 4605 of Chapter 46 of Title 15 DCMR) in a specific amount by means of failure, or by reason of breach of contract or violation of the Retail Electric Competition and Consumer Protection Act of 1999, and/or regulations, rules or standards promulgated pursuant thereto.

SIGNED, SEALED AND DATED this _____ day of _____

Principal: _____

By: _____
(Signatory)

Surety: _____

Address of Surety: _____

By: _____
(Signatory)

Notary Seal

ATTACHMENT D

**FORM OF INTEGRITY BOND
FOR AGGREGATORS AND BROKERS**

INTEGRITY BOND-SURETY BOND

Bond No. _____

We,

(Name of supplier)

(Address of supplier)

as principal, and

(Surety Company)

(Address of surety)

as surety authorized to do business in the District of Columbia, are held and firmly bound to the Public Service Commission of the District of Columbia, as obligee for the use and benefit of all persons establishing legal rights hereunder, in the sum of TEN THOUSAND 00/100 (\$10,000) lawful money of the United States of America, to the payments of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly, severally, and firmly by this document.

WHEREAS, the Principal has applied to the Public Service Commission of the District of Columbia for a license to provide electric service to retail customers in the District of Columbia, and

WHEREAS, pursuant to the Retail Electric Competition and Consumer Protection Act of 1999, the Public Service Commission of the District of Columbia is authorized to require the Principal to maintain a bond in order to provide retail electric service.

NOW, THEREFORE, if the Principal shall faithfully and truly fulfill all of its service or product contracts and other contractual commitments to deliver retail electric services, and not file for bankruptcy or for similar protection under law, then this obligation shall be void, otherwise to remain in full force and effect as security for the use of the Public Service Commission of the District of Columbia or of any person or entity, who after entering into a service or product contract or third party supplier agreement for service in the District of Columbia with the above named Principal is actually damaged or suffers any actual loss by reason of failure of service or by other breach or bankruptcy by this Principal.

The aggregate liability of the Surety is limited to the foregoing sum which sum shall be reduced by any payment made in good faith hereunder.

The term of this bond is for the period beginning _____ and terminating _____, and may be continued for an annual period by Continuation Certificate signed by the Principal and Surety, a copy of which must be served by registered mail upon the Secretary of the Public Service Commission of the District of Columbia.

In order to draw funds on this Bond, the Public Service Commission of the District of Columbia shall issue an order stating that the Licensee is financially insolvent or unable to meet its obligations as for restitution to any Licensee's Customer who has suffered actual damages or loss of a deposit or prepayment (as such terms defined in Sections 4604 and 4605 of Chapter 46 of Title 15 DCMR) in a specific amount by means of failure, or by reason of breach of contract or violation of the Retail Electric Competition and Consumer Protection Act of 1999, and/or regulations, rules or standards promulgated pursuant thereto.

SIGNED, SEALED AND DATED this _____ day of _____

Principal: _____

By: _____
(Signatory)

Surety: _____

Address of Surety: _____

By: _____
(Signatory)

Notary Seal