

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

ORDER

September 19, 2018

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;

RM47-2017-01-G, IN THE MATTER OF THE INVESTIGATION INTO THE PUBLIC SERVICE COMMISSION'S RULES GOVERNING THE LICENSURE AND BONDING OF NATURAL GAS SUPPLIERS AND NATURAL GAS CONSUMER PROTECTION STANDARDS 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. 19677

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) adopts final rules governing Natural Gas Suppliers in the District of Columbia in Chapter 47 of Title 15, District of Columbia Municipal Regulations (“DCMR”). The rules shall become effective upon publication of the Notice of Final Rulemaking (“NOFR”) in the *D.C. Register*.¹

II. BACKGROUND

2. Currently, the Commission’s rules prescribing the licensing and bonding requirements for Natural Gas Suppliers are contained in Order Nos. 12709 and 12903.² Specifically, in Order No. 12709, the Commission adopted on an interim basis the Natural Gas Consumer Protection Standards (“NGCPS”) for billing, security deposits, disconnections and reconnections of service, resolution of complaints of residential natural gas customers,

¹ 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*, Order No. 17912, rel. June 12, 2015 (“MEDSIS proceeding”).

² *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”), Order No. 12709, rel. April 25, 2003; and *GT96-3*, Order No. 12903, rel. September 5, 2003.

enrollment procedures, advertising by Natural Gas Suppliers, termination of contracts with Natural Gas Suppliers, and switching Natural Gas Suppliers.³ The NGCPS apply to Natural Gas Suppliers who have entered into a Natural Gas Supplier Application Agreement with the Natural Gas Company (“Company”) and/or have received a license to provide natural gas in the District of Columbia (“District”). The NGCPS provisions are now codified in Chapter 3 of Title 15 of the DCMR. Order No. 12709 also established on an interim basis Natural Gas Supplier licensing, licensing regulations, and Natural Gas Supplier application form.⁴ In Order No. 12903, the Commission approved and adopted bonding forms for gas suppliers.⁵ The intent of this rulemaking is to codify these requirements into a single chapter (47) in Title 15 of the DCMR.

3. On May 26, 2017, the Commission issued its initial Notice of Proposed Rulemaking (“NOPR”).⁶ On June 27, 2017, and July 10, 2017, the Office of the People’s Counsel (“OPC” or “Office”)⁷ and the Retail Energy Supply Association (“RESA”) respectively filed comments on the First NOPR.⁸ On August 18, 2017, the Commission published a Second NOPR containing revisions to certain provisions in the first NOPR.⁹ 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 Retail Electric Supplier Rules, where appropriate, and comments and reply comments filed by interested persons in response to the NOPR: (1) 4703.10; (2) 4703.11; (3) 4705.6; (4) 4706.1(b); and (5) 4708.1. RESA was the sole commenter on the Second NOPR.¹⁰

³ See *GT96-3*, Order No. 12709 at ¶¶ 1, 74.

⁴ See *GT96-3*, Order No. 12709 at ¶¶ 1, 74.

⁵ See *GT96-3*, Order No. 12709 at ¶¶ 1, 13-16.

⁶ 64 *D.C. Reg.* 004997-005055 (May 26, 2017).

⁷ *GT96-3*; *RM47-2017-01-G*, *In the Matter of the Investigation into the Public Service Commission’s Rules Governing the Licensure and Bonding of Natural Gas Suppliers and Natural Gas Consumer Protection Standards in the District of Columbia* (“*RM47-2017-01-G*”); and *Formal Case No. 1130*, *In the Matter of the Investigation into Modernizing the Energy Delivery System for Increased Sustainability* (“*Formal Case No. 1130*”), Motion of the Office of the People’s Counsel for the District of Columbia to Late-File Its Initial Comments on the Notice of Proposed Rulemaking Containing Proposed Amendments to Title 15 of the District Of Columbia Municipal Regulations, filed June 27, 2017 (“OPC Initial Comments”).

⁸ *GT96-3*; *RM47-2017-01-G*; and *Formal Case No. 1130*, Reply Comments of the Retail Energy Supply Association, filed July 10, 2017 (“RESA Reply Comments”).

⁹ 64 *D.C. Reg.* 008291- 008349 (August 18, 2017).

¹⁰ *GT96-3*; *RM47-2017-01-G*; and *Formal Case No. 1130*, Motion to File Comments Out-of-Time and Comments of the Retail Energy Supply Association, filed October 2, 2017 (“RESA Comments to Second NOPR”).

4. On November 3, 2017, the Commission published a Third NOPR.¹¹ The Third NOPR superseded the previous NOPR published on August 18, 2017. In the Third NOPR, the following Sections were revised following comments received and, where appropriate, to reflect consistency with the Retail Electricity Supplier Licensing Rules: (1) 4700.1; (2) 4703.8; (3) 4703.9; (4) 4705.2; (5) 4706.5; (6) 4708.1 (b); (7) 4709.2 and (8) 4799. The forms attached to these rules, Attachments A – D, were also revised for accuracy and made to be applicable specifically to Natural Gas Suppliers. OPC¹² and RESA filed comments on the third NOPR.¹³

5. On February 2, 2018, the Commission published a Fourth NOPR.¹⁴ The Fourth NOPR included a number of substantive and non-substantive revisions reflected in a multitude of Sections from 4701.2 through 4710.1 (f). In Section 4799.1, definitions to certain terms such as, “Act,” “Commission,” “Customer,” “Default Service,” “Market Participant,” “Natural Gas Company (or Company),” “Residential Customer,” “Slamming,” and “Solicitation,” were revised. A definition for “Small Commercial Customer” is included. The term and definition of “Firm Delivery Service Gas Supplier Agreement Tariff-Rate Schedule No. 5 Tariff” was modified to “Firm Delivery Service Gas Supplier Agreement Tariff.” Forms in the Attachment Sections were revised, such as to Attachment A to include revisions on the type of information to be included in the Supplier Application, the Affidavit of Tax Compliance, the Affidavit of General Compliance, and Verification. In Attachment B, the Form of Customer Payments Bond was revised to reflect corrected Section numbers.

6. In response to the Fourth NOPR, the National Energy Marketers Association (“NEM”) filed comments on March 5, 2018.¹⁵ On March 6, 2018, the RESA filed comments.¹⁶

¹¹ 64 D.C. Reg. 011582 - 011639 (November 3, 2017).

¹² *GT96-3; RM47-2017-01-G; and Formal Case No. 1130*, Reply Comments of the Office of the People’s Counsel for the District of Columbia Regarding the Notice of Third Proposed Rulemaking Containing Proposed Amendments to Chapter 15 of the District of Columbia Municipal Regulations, filed December 4, 2017 (“OPC Comments to Third NOPR”).

¹³ *GT96-3; RM47-2017-01-G; and Formal Case No. 1130*, Comments of the Retail Energy Supply Association, filed December 4, 2017 (“RESA Comments to Third NOPR”).

¹⁴ 65 D.C. Reg. 001029 - 001084 (February 2, 2018).

¹⁵ *GT96-3; RM47-2017-01-G; and Formal Case No. 1130*, Comments of the National Energy Marketers Association, filed March 5, 2018 (“NEM Comments to Fourth NOPR”).

¹⁶ *GT96-3; RM47-2017-01-G; and Formal Case No. 1130*, Retail Energy Supply Association’s

7. On May 4, 2018, the Commission published a Fifth NOPR.¹⁷ The Fifth 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 four NOPRs. On June 4, 2018, Washington Gas Light Company (“WGL”) filed comments in response to the Fifth NOPR.¹⁸

III. DISCUSSION

A. Chapter 47 Overview

8. Chapter 47 establishes the rules governing the licensure and bonding of prospective and current Natural Gas Suppliers in the District of Columbia, pursuant to the Retail Natural Gas Supplier and Consumer Protection Act of 2004.¹⁹ Each of the sections in this prospective Chapter 47 is summarized below.

9. **Section 4700 APPLICABILITY.** This Section states that the rules in Chapter 47 apply to a Person who engages in the business of a Natural Gas Supplier in the District and prescribes that no person can act as a gas supplier without a license issued by the Commission.

10. **Section 4701 LICENSING REQUIREMENTS.** This Section provides the list of information that should be included in an Application for a Natural Gas 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 Natural Gas Transmission or Pipeline Company, 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.

11. **Section 4702 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.

Comments in Response to Fourth NOPR, filed March 6, 2018 (“RESA Comments to Fourth NOPR”).

¹⁷ 65 D.C. Reg. 004862 - 004879 (May 4, 2018).

¹⁸ *GT96-3; RM47-2017-01-G; and Formal Case No. 1130*, Comments of Washington Gas Light Company, filed June 4, 2018 (“WGL Comments to Fifth NOPR”).

¹⁹ D.C. Code §§ 34-1671.01 – 1671.14 (2005).

12. **Section 4703 NATURAL GAS SUPPLIER EDUCATION WORKSHOP.** This Section requires a Current Licensee to complete a Natural Gas Supplier Workshop sponsored by the Commission within ninety (90) days following the effective date of these rules.²⁰ Also, this Section requires a New Licensee to complete a Natural Gas Supplier Workshop sponsored by the Commission within ninety (90) days following the award of its license.²¹

13. **Section 4704 BOND REQUIREMENTS FOR NATURAL GAS SUPPLIERS COLLECTING DEPOSITS OR PREPAYMENTS (“CUSTOMER PAYMENTS BOND”).** This Section outlines the procedures for Customer Payment Bonds or any prepayment deposits and the required by a supplier.

14. **Section 4705 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.

15. **Section 4706 PRIVACY PROTECTION POLICY.** This Section requires Licensees to institute a Privacy Protection Policy.

16. **Section 4707 COMMISSION REPORTING REQUIREMENTS.** This Section requires the Licensee to report any new information that changes or updates any part of the supplier’s application.

17. **Section 4708 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 § 34-1671.11.

18. **Section 4709 SANCTION AND ENFORCEMENT.** This Section provides the sanctions that suppliers are subject to for violating the D.C. Code and applicable Commission regulations and orders.

19. **Section 4710 COMMISSION ASSESSMENT AND FEES.** This Section requires the Licensee or Natural Gas Supplier to pay an assessment for the costs and expenses of the Commission and OPC and any penalties assessed against the suppliers.

²⁰ A Licensee granted a Natural Gas Supplier License prior to the effective date of the Chapter 47 rules is considered a Current Licensee for the purposes of this Section.

²¹ An Applicant granted a Natural Gas Supplier License following the effective date of the Chapter 47 rules is considered a New Licensee for the purposes of this Section.

20. **Section 4799 DEFINITIONS.** This Section provides the meaning of specific terms mentioned in the rules.

B. Parties' Comments in Each of the Five NOPRs

21. **OPC Initial Comments.** On June 27, 2017, OPC filed a Motion requesting the Commission allow OPC to file its Initial Comments out of time. OPC explains that due to the press of time and administrative delays, OPC was unable to file its response by the due date of June 26, 2017.²² OPC maintains that the grant of OPC's request will not harm or prejudice the interests of any party.²³

22. OPC generally supports of the Commission's adoption of the new natural gas supplier rules.²⁴ OPC believes consumers would benefit from finding the licensing and bonding requirements for natural gas suppliers in one chapter.²⁵ However, OPC offers revisions to proposed Sections 4703.10, 4703.11, 4705.6, 4706.1(b) and 4708.1(a). OPC submits that its proposed amendments will provide for the consistent application of requirements for all energy providers and provide adequate notice to OPC and other stakeholders about the marketing practices of natural gas suppliers in the District of Columbia.²⁶

23. **RESA Reply Comments.** RESA filed Reply Comments in response to OPC's June 27, 2017 Initial Comments.²⁷ RESA's Reply Comments respond to OPC's recommendations and offers its own recommendations regarding other provisions proposed in the NOPR.²⁸

²² OPC Initial Comments at 1-2.

²³ OPC Initial Comments at 1-2.

²⁴ OPC Initial Comments at 2.

²⁵ OPC Initial Comments at 2.

²⁶ OPC Initial Comments at 2.

²⁷ RESA Reply Comments at 1. RESA states in a footnote that the comments expressed in this filing are representative of the organization's position, but may not represent the views of any particular member of the Association. RESA adds that it was founded in 1990, and is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. Additional information on RESA can be found at www.resausa.org.

²⁸ RESA Reply Comments at 2.

24. RESA states that it does not oppose OPC's recommendations that seek consistency with the licensing rules applicable to electricity suppliers.²⁹ RESA points out that OPC offered revisions to proposed Sections 4703.10, 4703.11, 4705.6, 4706.1(b), and 4708.1(a). OPC stated that the changes it proposed to Sections 4703.10 (Transfer of Natural Gas Supplier License) and 4705.6 (Bond Foreclosure) are intended to ensure consistency between these Licensing Rules and the Electricity Supplier Licensing Rules. RESA professes that consistency among the electricity supplier and natural gas supplier rules, wherever appropriate, is helpful to stakeholders, including utilities, licensed suppliers, and customers. RESA, therefore, does not oppose OPC's proposed modifications to Sections 4703.10 and 4705.6.³⁰ RESA does, however, oppose OPC's recommended changes to Sections 4703.11, 4706.1(b), and 4708.1(a).³¹

25. **RESA Comments to the Second NOPR.** Only RESA submitted comments in response to the Second NOPR.³² RESA notes that pursuant to the Commission's schedule in the Second NOPR, initial comments were due within 30 days after the Second NOPR was published.³³ RESA requests permission to file these comments out-of-time, asserting that granting RESA's request will not harm or prejudice the interests of any other stakeholder.³⁴ RESA adds that it would not oppose the Commission affording other interested stakeholders an opportunity to respond to these comments, should any others desire to do so.³⁵

26. **RESA Comments to the Third NOPR.** In general, RESA supports the Commission's adoption of recommendations submitted in RESA's prior comments, stating that it appreciates the Commission's revisions to the draft Natural Gas Licensing rules in the Third Natural Gas Licensing Rules NOPR, which generally match the corresponding

²⁹ RESA Reply Comments at 2.

³⁰ RESA Reply Comments at 2.

³¹ RESA Reply Comments at 2.

³² RESA Comments to Second NOPR at 1. RESA adds in a footnote that its comments are representative of the organization but may not represent the views of any particular member of the Association.

³³ RESA Comments to Second NOPR at 2, *citing* Notice of Second Proposed Rulemaking, *GT96-3, RM 47-2017-01-G*, and *FC 1130*, 64 *D.C. Reg.* 008291-008349 (August 18, 2017).

³⁴ RESA Comments to Second NOPR at 2.

³⁵ RESA Comments to Second NOPR at 2.

rules in the Electricity Licensing Rules.³⁶ Specifically, RESA supports revisions to Section 4703.13 (Serving Customers), which is consistent with Section 4603.13 in the Electricity Licensing Rules, but it also recommends modifications to some Sections in the current version that it states are problematic and require further revision.³⁷

27. **OPC Comments to the Third NOPR.** OPC, in its comments, acknowledges the need to amend the DCMR, asserting that the changes are necessary to ensure consumers receive adequate protections from what it terms infelicitous third-party supplier marketing practices, and to comply with the Retail Natural Gas Supplier Rules.³⁸ OPC recommends that the Commission: 1) retain the seven-day timeframe for Licensees to notify the Commission and OPC prior to soliciting or marketing to Consumers (Section 4703.11); 2) require Licensees to notify OPC before beginning to serve Customers in the District of Columbia (Section 4703.13(a)); and 3) retain the thirty-day timeframe for Licensees to notify the Commission and OPC prior to using changed marketing materials (Section 4708.1(a)).³⁹

28. **NEM Comments to the Fourth NOPR.** NEM has filed several rounds of comments with regard to the proposed Electricity Supplier Rules, but its comments here are its first on the proposed Natural Gas Supplier Rules. NEM submits its comments to address two issues of concern it raised in response to previous Electricity Supplier Rules NOPRs: (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. 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. 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 4703.11.⁴⁰

29. **RESA Comments to the Fourth NOPR.** RESA submitted no substantive comments to the Fourth NOPR, stating that it has participated in the Natural Gas Supplier

³⁶ RESA Comments to Third NOPR at 3-4.

³⁷ RESA Comments to Third NOPR at 4.

³⁸ OPC Comments to Third NOPR at 2.

³⁹ OPC Comments to Third NOPR at 2.

⁴⁰ NEM Comments to Fourth NOPR at 2.

Rules and Electricity Supplier Rules NOPRs from the outset and appreciates the Commission's consideration of the stakeholders' comments as the NOPRs have progressed.⁴¹

30. **WGL Comments to the Fifth NOPR.** WGL's comments to the Fifth NOPR are its first in this proceeding. In its comments, WGL proposes to modify the Fifth NOPR's Section 4702.12 (formerly Section 4703.16) to make clear that when a natural gas supplier defaults, WGL will serve the supplier's customers under either: (1) Rate Schedule No. 5, Firm Delivery Service, if the Company has the requisite infrastructure and is otherwise able to provide firm service to the customer at the time of default; or (2) Rate Schedule No. 6, Interruptible Delivery Service.⁴²

31. At the outset, inasmuch as no comments were received in response to OPC's June 27, 2017, Motion to Late-File Comments and Comments to the First NOPR, and RESA's October 2, 2017, Motion to File Comments Out-of-Time and Comments, the Commission hereby grants the motions and accepts the comments for the record. The Commission shall now consider the parties' comments pursuant to the Sections addressed in each of the five NOPRs.

Section 4702.12 (Formerly Section 4703.16)

32. Only WGL filed comments in response to the Fifth NOPR. WGL proposes to modify Section 4702.12 to make clear that when a natural gas supplier defaults, it will be able to serve the supplier's customers under either (1) Rate Schedule No. 5, Firm Delivery Service, if the Company has the requisite infrastructure and is otherwise able to provide firm service to the customer at the time of default; or (2) Rate Schedule No. 6, Interruptible Delivery Service, under the terms and conditions adopted by the Commission under this rate schedule. Specifically, Rate Schedule No. 6 provides, in pertinent part:

When a Customer no longer has a third-party Supplier, then the Customer will continue to receive Interruptible Delivery Service under this rate schedule while it chooses another Supplier. However, when a Customer no longer has a third-party Supplier, the Customer will also pay the Purchased Gas Charge under the Company's applicable rate schedule for Firm Sales Service for any gas consumed during a month. Customers will have a period of four (4) months to choose another Supplier or, depending on Company infrastructure

⁴¹ OPC Comments to Fourth NOPR at 1.

⁴² WGL Comments to Fifth NOPR at 1-2.

capabilities and/or availability, may be switched to the Company's applicable rate schedule for Firm Sales Service. If the Customer is switched to Firm Sales Service, the Customer will be required to remain on Firm Sales Service for a minimum of one year from the date of transfer. Customers who are non-compliant after the expiration of the 4- month period to choose another Supplier, and who are not switched to Firm Sales Service, may have their service terminated by the Company.

Currently, Section 4702.12 states:

4702.12 **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 Natural Gas 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, the Natural Gas Company shall immediately provide the Defaulted Licensee's Customers Default Service in accordance with the Firm Delivery Service Gas Supplier Agreement Tariff, unless or until a Customer notifies the Natural Gas Company that the Customer has selected a new Natural Gas Supplier.

WGL asserts that in order to reflect its ability to serve customers of defaulted Natural Gas Suppliers under more than one rate schedule in its tariff, it proposes to modify the Section by deleting "Firm Delivery Service Gas Supplier Agreement Tariff" and substituting in its place "Natural Gas Company's tariff."

33. **Decision.** The Commission accepts WGL's proposed modification of Section 4702.12. We accept WGL's rationale that customers of defaulted Natural Gas Suppliers may be served by WGL not only under Rate Schedule No. 5, as provided in the current version of Section 4702.12, but also under Rate Schedule No. 6, under the proposed revised version. The revision shall also include a new definition of "Natural Gas Company's Tariff" in Section 4799.1. Accordingly, the final version of Section 4702.12 shall state:

4702.12 **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 Natural Gas 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, the Natural Gas Company shall immediately provide the Defaulted Licensee's Customers Default Service in accordance with the Natural Gas Company's tariff, unless or until a Customer notifies the Natural Gas Company that the Customer has selected a new Natural Gas Supplier.

Section 4702.7 Term of Natural Gas Supplier License (Formerly Section 4703.9)

34. Only RESA commented on this Section. As proposed in the First NOPR, Section 4703.9, Term of Natural Gas License, would limit the term of a natural gas supplier the Commission required a Natural Gas Supplier to renew its license every five years. RESA asserts that this provision would require licensed suppliers to incur the significant costs and risk their license lapsing during a renewal proceeding at the conclusion of each five-year term.⁴³ RESA argues, therefore, that a natural gas supplier's license should not be limited to five years.⁴⁴ RESA believes the license renewal requirement is unduly burdensome on natural gas suppliers serving District consumers, and will require the Commission and its staff to dedicate additional resources to undertake ongoing license renewal proceedings for all current and future District natural gas suppliers.⁴⁵

35. RESA argues that the proposed renewal requirement would discourage new suppliers from entering the competitive natural gas market in the District and may encourage currently licensed suppliers to exit the market, resulting in a less competitive market for retail natural gas, to the detriment of District consumers.⁴⁶ RESA argues further that the costs relating to license renewal would need to be recovered through prices suppliers would charge their customers, driving up natural gas costs for District consumers.⁴⁷ RESA adds that the renewal requirement may be redundant because natural gas suppliers are already required under Section 4608 to provide ongoing updates to the Commission regarding the information contained in the license application.⁴⁸ RESA argues that the Commission already receives on an annual, or more frequent basis, updated information about each licensed supplier, so any updated information about a licensee will

⁴³ RESA Reply Comments at 7.

⁴⁴ RESA Reply Comments at 7.

⁴⁵ RESA Reply Comments at 7.

⁴⁶ RESA Reply Comments at 7.

⁴⁷ RESA Reply Comments at 7-8.

⁴⁸ RESA Reply Comments at 8.

already be provided via existing reporting requirements.⁴⁹ RESA argues that, because the proposed license renewal requirement is duplicative of existing reporting requirements, and unduly burdensome to both the Commission’s staff and natural gas suppliers, it speculates that the proposed license renewal requirement will have a negative effect on competition in the District.⁵⁰ RESA therefore recommends that the Commission eliminate this Section.

36. In response to the Second NOPR, RESA continues to recommend that the Commission not limit a natural gas supplier’s license to five years as indicated in the Second NOPR.⁵¹ RESA cites how the Commission modified Section 4603.9 of the Electric Supplier Rules from a license renewal to a license review process every five years and requests that Section 4703.9 of the Natural Gas Supplier Licensing Rules be revised as well to match the updated language in Section 4603.9.⁵² RESA reiterates the same arguments it made in response to the First NOPR regarding this Section. RESA again recommends that the Commission update Section 4703.9 of the Licensing Rules to be consistent with Section 4603.9 of the pending Electric Supplier Licensing Rules. It proposes the following language:

4703.9 **Term of Natural Gas Supplier License.** A Natural Gas Supplier License is valid until revoked by the Commission or surrendered by the licensed Natural Gas Supplier. A Natural Gas Supplier is subject to review every five (5) years after the date on which the license was issued or was last reviewed. Not less than forty-five days before the five-year anniversary of the date on which the license was issued or was last reviewed, a Natural Gas Supplier shall file with the Commission a review application pursuant to the licensing requirements and procedures set forth in Sections 4701 and 4702. The Commission shall complete its review of the application within thirty (30) days after its filing. Currently licensed Natural Gas Suppliers shall submit a review application not less than forty-five days before five years after the effective date of this chapter.⁵³

⁴⁹ RESA Reply Comments at 8.

⁵⁰ RESA Reply Comments at 8.

⁵¹ RESA Comments to Second NOPR at 2.

⁵² RESA Comments to Second NOPR at 2.

⁵³ RESA Comments to Second NOPR at 3-4.

37. **Decision.** The Commission revised Section 4703.9 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 exit the market, resulting in a less competitive market for retail natural gas. Licensed Natural Gas Suppliers shall file instead an application for Commission review before its five-year anniversary. By the Fifth NOPR, the Section was further revised, substituting the term "Licensee" for "Natural Gas 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. This Section in the Fifth NOPR is renumbered as 4702.7 and now states:

4702.7 **Term of Natural Gas Supplier License.** A Natural Gas Supplier License is valid until revoked by the Commission or surrendered by the Licensed Natural Gas Supplier. A Licensee is subject to review every five (5) years after the date on which the license was issued or was last reviewed. A Natural Gas 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 §§ 4701 and 4702 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 Natural Gas Supplier License shall remain in effect.

**Section 4703.10 Transfer of Natural Gas Supplier License
(Deleted in the Fifth NOPR)**

38. OPC recommends in its Comments to the First NOPR that the Section be revised to require Natural Gas Licensees to post the Transfer Applications in the *D.C. Register* as well as on the Commission's website.⁵⁴ RESA did not object to OPC's recommendation. By the Fifth NOPR this Section was deleted in its entirety.

⁵⁴ OPC Initial Comments at 3, citing *RM 46-2015-01-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 Increase Sustainability*, Notice of Second Proposed Rulemaking, 64 *D.C. Reg.* 001818 - 001871 (Feb. 17, 2017), at 5.

39. **Decision.** A license granted to a Natural Gas Supplier by Commission order is particular to that Licensee solely. Accordingly, transfer of that license is not permissible. If a Licensee wishes to sell or merge its business with another supplier or company, and includes the transfer of its customers in the transaction, the acquiring supplier or company must either be an already licensed Natural Gas Supplier or, if it is not, must file an application with the Commission for a Natural Gas Supplier license. For these reasons, the Commission deletes Section 4703.10.

Section 4703.11 Solicitation of Customers (Renumbered as Section 4702.8 in the Fifth NOPR)

40. OPC recommends in its Initial Comments that it be revised to require a notification period of 30 days before the licensee begins soliciting and/or marketing to customers.⁵⁵ As proposed in the First NOPR, Section 4703.11 permits a notification period of seven days before a natural gas supplier or licensee begins soliciting or marketing to customers.⁵⁶ OPC provides two reasons in proposing the 30-day notification period. First, in furthering OPC's mandate to advocate effectively on behalf of consumers and to file and manage consumer complaints, OPC requires timely and appropriate information about gas suppliers and their marketing and solicitation strategies.⁵⁷ In the First NOPR, Section 4703.11 requires notification only to be filed with the Commission, but OPC maintains that it should also receive copies of what the Commission receives regarding the marketing and/or solicitation strategies to be implemented by the licensee.⁵⁸ OPC's second reason is that it considers seven days to be an insufficient period to inform potential customers of licensees about proposed marketing and/or solicitation strategies.⁵⁹ OPC, therefore, suggests that the change in marketing and solicitation strategies should be filed within 30 days prior to the licensee implementing its strategies.

41. In addition, OPC proposes that Section 4703.11 be revised to apply to both new and existing licensees.⁶⁰ OPC expresses concern that Section 4703.11 only addresses solicitations by new licensees instead of both new and existing licensees. Section 4703.11 currently requires a licensed natural gas supplier "who has not initially started serving customers [to] notify the Commission within seven (7) days of when the Licensee begins

⁵⁵ OPC Initial Comments at 3.

⁵⁶ OPC Initial Comments at 3, *citing* the First NOPR at 7.

⁵⁷ OPC Initial Comments at 3.

⁵⁸ OPC Initial Comments at 4.

⁵⁹ OPC Initial Comments at 4.

⁶⁰ OPC Initial Comments at 4.

soliciting or marketing to customers....”⁶¹ OPC states that it regularly receives complaints about solicitations from consumers who cannot identify the company marketing to them. According to OPC, this subsection would make it more difficult for it to investigate the actual non-complying natural gas suppliers who may possibly be existing licensees as well as new suppliers.⁶² OPC adds that the inclusion of existing licensees would provide the Commission a history of natural gas suppliers’ solicitations and marketing practices.⁶³ For such reasons, OPC recommends revising the language of Section 4703.11 to include existing natural gas suppliers.⁶⁴

42. In its Reply Comments to Section 4703.11, RESA notes that OPC requested that the seven-day notice be expanded to 30 days, and that notice be provided to both the Commission and OPC.⁶⁵ RESA adds that OPC also requested that the provision be modified to require ongoing notice of natural gas supplier marketing activities.⁶⁶ RESA recommends instead that the seven-day notice be removed, not expanded to 30 days.⁶⁷ RESA asserts that the Commission should attempt to ensure consistency between Chapter 46 of DCMR Title 15 (Electric Supplier Licensing Rules) and these Licensing Rules for natural gas suppliers where possible.⁶⁸ RESA states that the related Section in the proposed Electric Supplier Licensing Rules, Section 4603.11, provides for Licensees to provide notice at the time they begin marketing in the District, but not seven days in advance (much less 30 days in advance).⁶⁹ Accordingly, RESA recommends that Section 4703.11 of the Licensing Rules remove the advance notice requirement altogether.⁷⁰ The current draft version stating that “A licensee who has not initially started serving customers shall notify the Commission within seven (7) days the [sic] Licensee begins soliciting or marketing to Customers directly or through an authorized representative in the District of Columbia[.]” should be modified to read:

⁶¹ OPC Initial Comments at 4, *citing* the First NOPR at 7.

⁶² OPC Initial Comments at 4.

⁶³ OPC Initial Comments at 4.

⁶⁴ OPC Initial Comments at 4.

⁶⁵ RESA Reply Comments at 3, *citing* OPC Initial Comments at 3-4.

⁶⁶ RESA Reply Comments at 3, *citing* OPC Initial Comments at 4.

⁶⁷ RESA Reply Comments at 3.

⁶⁸ RESA Reply Comments at 3.

⁶⁹ RESA Reply Comments at 3.

⁷⁰ RESA Reply Comments at 3.

A licensee who has not initially started serving customers is required to notify the Commission as soon as the Licensee begins soliciting or marketing to customers directly or through an authorized representative in the District of Columbia.⁷¹

43. With regard to the applicability to existing licensees, RESA recommends that the Commission retain the existing language in the rule.⁷² RESA indicates that the plain language of 4703.11 requires a “Licensee” not yet serving customers to notify the Commission as soon as the Licensee begins soliciting or marketing to customers.⁷³ RESA then points out that the term “Licensee” is defined in Section 4799.1 to mean “A Natural Gas Supplier who has been granted a valid Natural Gas Supplier License by the Commission.”⁷⁴ RESA argues that since both new and existing Licensees fall within the Licensee definition, under a straightforward interpretation of Section 4703.11, the notice requirement as proposed applies to both new and existing Licensees, but only requires them to provide notice when they initially begin marketing or soliciting customers regardless of when they received their license.⁷⁵

44. In its Comments to the Second NOPR, RESA reiterates its opposition to Section 4703.11, Solicitation of Customers. This provision in the Second NOPR requires a new Licensee or one that has not started serving customers to notify the Commission within seven days before the Licensee begins soliciting or marketing to District customers. RESA continues to recommend that the seven-day notice be removed and replaced with a day-of-notice requirement.⁷⁶ RESA also recommends that the Commission remove the last sentence of Section 4703.11, which it states is duplicative of the training requirement in Section 4703.13 (Serving Customers).⁷⁷ RESA recommends that the Commission revise Section 4703.11 by removing the advance notice requirement altogether (and that the same

⁷¹ RESA Reply Comments at 3.

⁷² RESA Reply Comments at 3.

⁷³ RESA Reply Comments at 3.

⁷⁴ RESA Reply Comments at 3-4.

⁷⁵ RESA Reply Comments at 4.

⁷⁶ RESA Comments to Second NOPR at 4.

⁷⁷ RESA Comments to Second NOPR at 4.

change be reflected in the pending Electricity Supplier Licensing Rules).⁷⁸ RESA proposes the revised Section 4703.11 to read as follows:

4703.11 **Solicitation of Customers.** 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. This is a one-time initial notice prior to the Licensee beginning its marketing to or soliciting of District consumers. The notice shall include the name of the licensed Natural Gas Supplier's designated contact person for pricing information and the URL address of the Natural Gas Supplier's website. The Licensee shall provide the Commission with a copy of its flyers, consumer pamphlets, scripts and other proposed marketing materials, as applicable, at the time of notification. 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. 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, including the company photo identification, and make the record available upon request to the Commission. Also, the Natural Gas Supplier shall maintain the photo identification record for a period of six months after the representative or agent has been employed or marketing on the Natural Gas Supplier's behalf.⁷⁹

45. As it had in its comments to the two earlier NOPRs, RESA recommends that the Commission: (1) retain the 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.⁸⁰ The corresponding Section in the proposed Natural Gas Licensing Rules, 4703.11, specifies "three (3) business days" for the notice. RESA recommends that the Commission modify Section 4703.11 to the day-of notice.⁸¹

⁷⁸ RESA Comments to Second NOPR at 4.

⁷⁹ RESA Comments to Second NOPR at 4-5.

⁸⁰ RESA Comments to Third NOPR at 4, *citing RM 46-2014-01-E and Formal Case No. 1130*, Reply Comments of the Retail Energy Supply Association at 2-5, filed April 3, 2017.

⁸¹ RESA Comments to Third NOPR at 5.

46. RESA also contends that the way the notice period is phrased in this Section could be confusing to suppliers. RESA questions whether the phrase “within three (3) business days before” means *at least* three business days before or *not more than* three business days before. If the latter, RESA states that the rule could then be interpreted to allow the day-of notice that RESA continues to recommend.⁸²

47. OPC states in its comments to the Third NOPR that the Commission should retain the seven-day timeframe reflected in the Second NOPR for Licensees to notify the Commission and OPC prior to soliciting or marketing to consumers because seven days, according to OPC, is the absolute minimum amount of time the Office needs to adequately review a Licensee’s marketing materials to ensure they are in compliance with District law.⁸³ OPC points out that in the Third NOPR, Section 4703.11 reduces the timeframe for notice from seven days to three days, which the Office states is an inadequate amount of time. OPC believes that this one-time requirement is an opportunity for the Commission and OPC to evaluate whether the proposed marketing materials provide adequate disclosures and are not misleading.⁸⁴ To OPC, it represents the sole opportunity to the Commission and OPC to ensure that a Licensee’s proposed marketing materials fully comply with District law prior to them being disseminated to D.C. residents.⁸⁵ OPC offers that its Consumer Services Division routinely fields a myriad number of complaints about suspicious third-party supplier marketing campaigns.⁸⁶ OPC has received several complaints from non- and limited- English speaking consumers regarding grossly misleading solicitations.⁸⁷ OPC offers as examples several complaints concerning a District Licensee’s solicitations, which, according to consumers, were designed to appear to originate from a District government agency.⁸⁸ OPC states that one envelope of the misleading solicitation in question was imprinted with a map of the District and addressed to “District of Columbia Resident.”⁸⁹ OPC asserts that it determined that the solicitation was not official correspondence from the District government, but was only able to do so

⁸² RESA Comments to Third NOPR at 5.

⁸³ OPC Comments to Third NOPR at 3.

⁸⁴ OPC Comments to Third NOPR at 3.

⁸⁵ OPC Comments to Third NOPR at 3.

⁸⁶ OPC Comments to Third NOPR at 3.

⁸⁷ OPC Comments to Third NOPR at 3-4.

⁸⁸ OPC Comments to Third NOPR at 4.

⁸⁹ OPC Comments to Third NOPR at 4.

only because a consumer forwarded the marketing materials to the Office.⁹⁰ OPC, therefore, requests that the seven day, advanced-notice period from the prior NOPR be reinstated.⁹¹

48. In its Comments to the Fourth NOPR regarding the notice requirement in Section 4703.11, NEM recommends that a supplier be required to provide notice “as soon as” the solicitation or marketing activity commences rather than three-days in advance.⁹² 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.⁹³ NEM adds that the advance notice requirement does not materially improve the quality of the notice received by the Commission in comparison with notice received “as soon as” the activity commences.⁹⁴ For these reasons, NEM requests that proposed Section 4703.11 incorporate language permitting supplier notice “as soon as” marketing and soliciting activities commence.

49. NEM also supports the language revision to Section 4703.11 removing the proposal to provide notice to OPC, in addition to the Commission. NEM states that competitive supplier licensing and bonding rules should be limited in their scope to the oversight exercised by this Commission inasmuch as the Commission and its Staff are the entities that enforce these rules.⁹⁵

50. **Decision.** The Commission adopts the language in renumbered Section 4702.8 in the Fifth NOPR, to now state:

4702.8 **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

⁹⁰ OPC Comments to Third NOPR at 4.

⁹¹ OPC Comments to Third NOPR at 4.

⁹² NEM Comments to Fourth NOPR at 3.

⁹³ NEM Comments to Fourth NOPR at 4.

⁹⁴ NEM Comments to Fourth NOPR at 4.

⁹⁵ NEM Comments to Fourth NOPR at 4.

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 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.

51. 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 Natural Gas Suppliers and the Natural Gas 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 changing or dynamic market conditions. More important, we find RESA's 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. With regard to 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 issue it may have with the Natural Gas 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 a Natural Gas Supplier at any time after the elapse of three-business day period if the Natural Gas Supplier subsequently begins to utilize unlawful or deceptive soliciting and marketing practices to potential customers.

52. 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 Natural Gas Suppliers and does not compromise OPC's ability to receive such notice as well. Specifically, when the Natural Gas 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 Natural Gas Suppliers to provide, in effect, duplicative notice to OPC at the same time it provides notice to the Commission.

53. The Commission also deletes the 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 Natural Gas 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 acquires knowledge that a Natural Gas Supplier is utilizing questionable, unethical or unlawful solicitation and marketing practices as depicted in its comments to this Section, it may request those materials from the Natural Gas Supplier itself, conduct its own investigation, and petition the Commission to initiate an investigation pursuant to OPC's authority under DC Code § 34-804.

54. In addition, the Commission clarifies that renumbered Section 4702.8 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. Customer is defined in Chapter 47 as "[a] purchaser of natural gas for their own end use in the District of Columbia."⁹⁶ 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 a Natural Gas Supplier (i.e., telemarketing campaigns and on-line enrollment activities) and not just by door to door soliciting. Lastly, this Section deletes the 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 4703.12 Electronic Solicitation (Deleted in the Fifth NOPR)

55. Only RESA commented on this Section. RESA argues that Section 4703.12, Electronic Solicitation, requiring natural gas suppliers to "provide the Commission with the electronic accessibility necessary to monitor the Licensee's compliance with previous Sections," should be replaced with a rule requiring natural gas suppliers to provide the Commission with screenshots of their online enrollment web pages upon request.⁹⁷ RESA argues that the proposed requirement is unnecessary and will not

⁹⁶ *GT96-3; RM47-2017-01-G; and Formal Case No. 1130*, Chapter 47, Section 4799.1.

⁹⁷ RESA Reply Comments at 8.

serve a meaningful purpose to the Commission or its staff in enforcing applicable rules. Instead, RESA proposes to require natural gas suppliers to provide screenshots detailing their online enrollment process upon request or prior to commencing online enrollments in the District, which, according to RESA, will provide the Commission with the ability to review each natural gas supplier’s enrollment process without interfering with the supplier’s systems.⁹⁸

56. Alternatively, RESA suggests that if the Commission were not inclined to revise the rule to require screenshots, as discussed above, RESA recommends that the Commission clarify that “electronic accessibility” to mean a supplier’s URL address, electronic enrollment information, or electronic files of transactions with customers.⁹⁹ RESA argues, however, if suppliers would be required to create some sort of specialized test enrollment process to provide the Commission “electronic accessibility,” such a requirement would be unduly burdensome, and provide no meaningful information beyond screenshots of the enrollment process.¹⁰⁰ Therefore, RESA recommends that the Commission replace the “electronic accessibility” language with a requirement that Licensees provide the Commission with screenshots of their online enrollment web pages upon request.¹⁰¹

57. **Decision.** Electronic Solicitations is discussed in detail in Section 327 of Chapter 3, Consumer Rights and Responsibilities and that Section’s applicability to Natural Gas Suppliers in Chapter 47 is apparent and unquestioned.¹⁰² Accordingly, in order to avoid duplication of, or any potential conflict with, those rules, the Commission deletes Section 4703.12 in its entirety.

Section 4703.13 Serving Customers (Renumbered as Section 4702.9 in the Fifth NOPR)

58. RESA points out in its Reply Comments to the First NOPR that, proposed Section 4703.13, Serving Customers, requires Natural Gas Suppliers to attest that sales and marketing and regulatory personnel, including independent contractors and vendors, “*have*

⁹⁸ RESA Reply Comments at 8.

⁹⁹ RESA Reply Comments at 9.

¹⁰⁰ RESA Reply Comments at 9.

¹⁰¹ RESA Reply Comments at 9.

¹⁰² See 15 DCMR § 327.26 (2008).

read the relevant provisions of Chapters 3 and 47 of Title 15 of the DCMR.”¹⁰³ RESA contends that retail suppliers often operate in many jurisdictions and, accordingly, tailor their regulatory compliance training to address multiple jurisdictions. RESA states that generally speaking a retail supplier’s training would include the District’s requirements, including those in Chapters 3 and 47 of Title 15 of the DCMR, but would not normally be presented as a District-specific training.¹⁰⁴ RESA is concerned that proposed Section 4703.13 may be problematic and therefore recommends that it be amended to require “reasonable training on the District’s regulatory requirements.”¹⁰⁵

59. RESA adds 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.¹⁰⁶ Rather, enrollment timing, including the effective date of enrollment, is controlled by utility switching procedures. Therefore, RESA recommends that the Commission modify Section 4703.13 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.¹⁰⁷ RESA recommends that reasonable training on the District’s regulatory requirements be required for natural gas suppliers’ sales, marketing, and regulatory personnel, and that the Commission change the affidavit requirement in Section 4703.13 to require natural gas suppliers to affirm that their sales, marketing and regulatory personnel have reasonable training regarding the District’s regulatory requirements. RESA proposes the following language:

Serving Customers. 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 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 have received reasonable training on the District’s regulatory requirements before they begin soliciting customers in the District of Columbia.¹⁰⁸

¹⁰³ RESA Reply Comments at 9, *citing* the First NOPR at 7.

¹⁰⁴ RESA Reply Comments at 9.

¹⁰⁵ RESA Reply Comments at 9-10.

¹⁰⁶ RESA Reply Comments at 10.

¹⁰⁷ RESA Reply Comments at 10.

¹⁰⁸ RESA Reply Comments at 10.

60. RESA continues to recommend in its Comments to the Second NOPR that Section 4703.13, Serving Customers, be modified to require that reasonable training on the District’s regulatory requirements be mandated for natural gas suppliers’ sales, marketing, and regulatory personnel.¹⁰⁹ Therefore, RESA recommends that the Commission change the affidavit requirement in Section 4703.13 to require natural gas suppliers to affirm that their sales, marketing and regulatory personnel have reasonable training regarding the District’s regulatory requirements.¹¹⁰

61. RESA states that it previously commented on this issue both in this proceeding, and in response to the Third Electricity Supplier Licensing Rules NOPR.¹¹¹ In the Second NOPR, the proposed Section requires natural gas suppliers to attest that sales and marketing and regulatory personnel, including independent contractors and vendors, “*have read* the relevant provisions of Chapters 3 and 47 of Title 15 of the DCMR.”¹¹² RESA states that retail suppliers often operate in many jurisdictions and, accordingly, tailor their regulatory compliance training to address multiple jurisdictions.

62. RESA offers that this type of information is typically presented as part of an overall training program, rather than simply instructing staff to read the regulations.¹¹³ Rather, according to RESA, 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.¹¹⁴ RESA explains that this kind of training depicts examples of acceptable behaviors and contrasts them with non-compliant behaviors to help sales and marketing agents understand what they are and are not permitted to do.¹¹⁵ RESA argues that simply requiring agents to read regulations is not a comprehensive training solution and warns that it can lead to confusion for sales and marketing agents not accustomed to reading and interpreting legal language.¹¹⁶ RESA proposes instead that

¹⁰⁹ RESA Comments to Second NOPR at 6.

¹¹⁰ RESA Comments to Second NOPR at 6-7.

¹¹¹ RESA Comments to Second NOPR at 7, *citing*; *RM 46-2015-01-E* and *F.C. 1130*, RESA Reply Comments at 9-10 Comments of the Retail Energy Supply Association at 4-5 (Sept. 11, 2017).

¹¹² RESA Comments to Second NOPR at 7, *citing* the Second NOPR at 7 (emphasis added).

¹¹³ RESA Comments to Second NOPR at 7.

¹¹⁴ RESA Comments to Second NOPR at 7.

¹¹⁵ RESA Comments to Second NOPR at 7.

¹¹⁶ RESA Comments to Second NOPR at 7.

professional regulatory compliance and training staff should continue to interpret the District’s regulatory requirements and train sales and marketing agents on all of the applicable rules and requirements, providing the context and insight to enable agents to understand and apply the important consumer protections in Chapters 3 and 47 of Title 15 of the DCMR.¹¹⁷

63. RESA expresses concern that proposed Section 4703.13 may be problematic and therefore recommends that it be modified to require “reasonable training on the District’s regulatory requirements.”¹¹⁸ RESA proposed the same changes to Section 4703.13 as it did in response to the First NOPR.¹¹⁹

64. OPC provided comments on the Third NOPR with regard to Section 4703.13(a). OPC points out that Section 4703.13(a) provides that, prior to serving customers in the District of Columbia, suppliers shall notify the Commission of the estimated start date it will begin to serve customers.¹²⁰ OPC asserts that the Commission should require Licensees to include notification not only to the Commission, but to OPC as well, before beginning to serve customers in the District of Columbia.¹²¹ OPC requests that the Commission amend this Section to include the following revised language: “Notify the Commission and OPC of estimated start date when it will begin to serve Customers in the District of Columbia.”¹²²

65. OPC argues that this change would ensure consistency with Sections 4703.11, 4708.1, and 4709.2 (sic) of the NOPR which require Licensees to provide notifications to both the Commission and OPC.¹²³ The Office adds that as the District’s utility consumer advocate, it 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.¹²⁴ OPC asserts that another reason to include notification to OPC is because it

¹¹⁷ RESA Comments to Second NOPR at 7-8.

¹¹⁸ RESA Comments to Second NOPR at 8.

¹¹⁹ RESA Comments to Second NOPR at 8.

¹²⁰ OPC Comments to Third NOPR at 4.

¹²¹ OPC Comments to Third NOPR at 4.

¹²² OPC Comments to Third NOPR at 4.

¹²³ OPC Comments to Third NOPR at 4.

¹²⁴ OPC Comments to Third NOPR at 4.

receives many complaints about energy suppliers whose identities as the source of the solicitation are difficult for consumers to know.¹²⁵ OPC, therefore, needs to be made aware when suppliers enter and exit the market.¹²⁶

66. The Commission in the earlier NOPRs accepted RESA's comments to require all sales and marketing and regulatory personnel including independent contractors and vendors to receive reasonable training rather than be required to have read all applicable regulations because the latter requirement could lead to confusion for sales and marketing agents not accustomed to reading and interpreting legal language. Thus, the Commission in the Third NOPR deleted the words "read the" and modified Section 4703.13(b) to read "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 **received reasonable training** on the relevant provisions of Chapters 3 and 47 of Title 15 of the DCMR."

67. **Decision.** In the Fifth NOPR, the Commission revised this Section further (now renumbered as Section 4702.9) 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 47 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 that persons acting on the Licensee's behalf "have been trained on the relevant provisions of Chapters 3 and 47 of Title 15 of the DCMR." In addition, we decline OPC's recommendation to include OPC in a Licensee's required notification to the Commission of its estimated start date of service to customers. Similar to what we expressed with regard to former Section 4703.11 (now Section 4702.8), when a Licensee files notice with the Commission of an estimated start date, copies of that notice will be available to OPC on the same day it is filed and will also be available on our website. There is no reason for a Licensee to provide duplicative notice to OPC. Thus, the language of Section 4703.13 as proposed in the Fourth NOPR is modified and is renumbered as Section 4702.9 to now read:

4702.9 **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

¹²⁵ OPC Comments to Third NOPR at 4.

¹²⁶ OPC Comments to Third NOPR at 4.

- (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 been trained on the relevant provisions of Chapters 3 and 47 of Title 15 DCMR before they begin soliciting Customers in the District of Columbia.

Section 4705.6 Bond Foreclosure (Renumbered as Section 4704.5 in the Fifth NOPR)

68. Only OPC commented on this Section. OPC suggests in its Initial Comments that Section 4705.6, Bond Foreclosure, be revised to include a provision to ensure the fair and lawful treatment of the District's Small Commercial Customers regarding bond foreclosure.¹²⁷ As drafted in the First NOPR, Section 4705.6 permits foreclosure "to ensure the fair and lawful treatment of the District of Columbia's Residential Customers by a Licensee..."¹²⁸ OPC submits that this Section should be revised to reflect consistency with the previous rulemaking governing the licensing and bonding requirements for electricity suppliers in proposed Section 4604.6 of Title 15.¹²⁹ OPC contends that, in order to maintain the fair and consistent application of the requirements pertaining to all energy providers in the District regarding Bond Requirements, the Commission should add the following language permitting the foreclosure of any bond posted with the Commission when "... foreclosure is necessary to ensure the fair and lawful treatment of the District's Residential and/or Small Commercial Customers by a Licensee, to ensure that Deposits and Prepayments collected by a licensee from a Customer will be paid."¹³⁰ RESA does not oppose OPC's proposed revision.

69. **Decision.** The Commission revised the language in Section 4705.6, pursuant to OPC's recommendation and consistency with the electricity supplier rules. The change was reflected in the Second NOPR. The Section was revised further in the Fifth NOPR, changing the manner in which the Commission may draw funds from the bond. Rather than presenting an affidavit from the Commission Secretary, the Commission will

¹²⁷ OPC Initial Comments at 4.

¹²⁸ OPC Initial Comments at 4, *citing* the First NOPR at 11.

¹²⁹ OPC Initial Comments at 4-5, *citing* 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*, 64 D.C. Reg. 001818 - 001871 (Feb. 17, 2017), at 10.

¹³⁰ OPC Initial Comments at 4-5.

issue an order instead to draw funds from the bond. Thus, renumbered Section 4704.5 from the Fifth NOPR is adopted and shall now state:

4704.5 Bond Foreclosure. The Commission may foreclose upon any bond posted with the Commission when, in the Commission’s discretion, foreclosure is necessary to ensure the fair and lawful treatment of the Licensee’s Customers to ensure that Deposits and Prepayments collected by a Licensee from a Customer will be repaid to the Customer. In order to draw funds on this Bond, the Commission 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 paid such Deposit or Prepayment.

Section 4706.1 Exclusion (b) (Renumbered as Section 4705.2 (c) in the Fifth NOPR)

70. OPC proposes to revise Section 4706.1(b), Submission of an Integrity Bond, which provides, as currently drafted, that after two years, any Licensee can request that the Commission return its previously posted Integrity Bond and waive the requirement for a future bond, provided the Licensee shows it has provided continuous and uninterrupted service without meaningful and substantiated consumer complaints.¹³¹ OPC expresses concern about the two-year term, asserting that if a licensee were to obtain a service agreement for more than two years, and the bond is returned at that time, customers with longer terms may be at risk of not receiving an agreed-upon delivery service.¹³² OPC, therefore, recommends that the return of the Integrity Bond be contingent upon a service agreement of no more than two years and with no pending contractual service when the licensee requests return of the bond money.¹³³

71. RESA opposes OPC’s suggested changes to Section 4706.1(b), Submission of an Integrity Bond. RESA states that Section 4706.1(b) should not be changed.¹³⁴ RESA asserts that this Section provides the Commission the option to, but not the obligation to, return an integrity bond to a Licensee if the Commission is satisfied that an integrity bond is no longer necessary for that Licensee.¹³⁵ RESA interprets the Section to mean that such

¹³¹ OPC Initial Comments at 5.

¹³² OPC Initial Comments at 5.

¹³³ OPC Initial Comments at 5.

¹³⁴ RESA Reply Comments at 4.

¹³⁵ RESA Reply Comments at 4.

determinations are to be done by the Commission on a case-by-case basis. RESA points out that OPC argues that Section 4706.1(b) be revised to prohibit the Commission from returning a Licensee’s integrity bond under this Section if the Licensee has long-term contracts in place (two years or more).¹³⁶ Moreover, RESA contends that OPC’s position on this Section would lead to the Commission prohibiting itself from returning an integrity bond if a Licensee has “pending contractual service.”¹³⁷ Thus, RESA recommends that the Commission reject OPC’s proposed changes to this Section.

72. RESA reads Section 4706.1(b) as enabling the Commission to return a previously posted integrity bond to a Licensee and waive the requirement for a future bond “based upon the Licensee’s demonstrated record of continuous and uninterrupted service in the District, without meaningful substantiated consumer complaints, as determined by and in the opinion of the Commission, and such other information as the Licensee may choose to present to the Commission.”¹³⁸ According to RESA, this broad language provides the Commission with discretion to return a bond based upon the record before the Commission at the time a Licensee requests return of the bond, adding that the Commission can always require a bond at a later period of time of the same Licensee if circumstances change.¹³⁹

73. RESA contends that OPC has not presented any reason why the broad language in Section 4706.1(b) is insufficient, adding that if the Commission has concerns about long term contracts or “pending contractual service,” the Commission would still have the discretion under the existing language in Section 4706.1(b) to (1) request information regarding such contracts and (2) reject the Licensee’s bond return request.¹⁴⁰ RESA concludes that because the Commission is already empowered under Section 4706.1(b) to consider the circumstances raised by OPC and to respond accordingly, it recommends that the Commission reject OPC’s requested modifications to Section 4706.1(b).¹⁴¹

74. **Decision.** OPC is concerned about the two-year term, asserting that if a licensee were to obtain a service agreement for more than two years, and the bond is returned at that time, customers with longer terms may be at risk of not receiving an agreed-

¹³⁶ RESA Reply Comments at 4, *citing* OPC Initial Comments at 5.

¹³⁷ RESA Reply Comments at 4.

¹³⁸ RESA Reply Comments at 4.

¹³⁹ RESA Reply Comments at 4.

¹⁴⁰ RESA Reply Comments at 5.

¹⁴¹ RESA Reply Comments at 5.

upon delivery service. However, the Commission interprets this Section in much the same way as RESA, in that this Section provides the Commission with the option, not the obligation, to return an integrity bond to a Licensee if the Commission were to be satisfied that an integrity bond is no longer necessary for that Licensee. Accordingly, the Commission shall retain the language of Section 4706.1(b) as proposed in the Third NOPR, and adds a sentence to the bottom of the paragraph that suspends a Licensee's license if it currently is not providing service and cancels its bond. Thus, renumbered Section 4705.2 (c) in the Fifth NOPR shall now state:

- 4705.2 (c)** After continuously providing service in the District for two (2) years, any Licensee that has submitted an Integrity Bond to the Commission in compliance with these requirements may request that the Commission return the previously posted Integrity Bond and waive the requirement for a future bond based upon the Licensee's demonstrated record of continuous and uninterrupted service in the District of Columbia, without meaningful substantiated consumer complaints, as determined by and in the opinion of the Commission, and such other information as the Licensee may choose to present to the Commission. The Commission may accept or reject this request based on a review of the information provided by the Licensee and such other information as the Commission may deem appropriate. The Commission retains the discretion to require an Integrity Bond of the Licensee at a later date if circumstances change, or if the Commission otherwise deems the requirement of an Integrity Bond to be necessary and appropriate. A Licensee that is not currently providing service and cancels its bond shall have its license suspended immediately, and is subject to revocation of its license in thirty (30) days following the bond cancellation.

Section 4708.1(a) Updates to an Approved Application (Deleted in the Fourth NOPR)

75. OPC recommends in its Initial Comments that Section 4708.1(a), Submission of Marketing Materials, be revised to require Licensees to also provide to OPC the same marketing materials submitted to the Commission.¹⁴² In the First NOPR, Section 4708.1(a) stated:

¹⁴² OPC Initial Comments at 6.

If a Licensee changes any of its marketing materials, it shall provide the new materials to the Commission within thirty (30) days prior to when the Licensee starts using the new material to solicit Customers.¹⁴³

OPC contends that it requires updated information on solicitations or marketing campaigns to allow it to properly investigate complaints from consumers who cannot identify which companies market to them.¹⁴⁴ OPC argues that, as drafted, this Section hampers its ability to investigate the correct natural gas supplier and to better identify the nature and types of solicitations. OPC therefore recommends that the Section be revised to include the Office as follows:

If a Licensee changes any of its marketing materials, it shall provide the new materials to the Commission and the Office of the People's Counsel, within thirty (30) days prior to when the Licensee starts using the new material to solicit Customers.¹⁴⁵

76. In its response to the First NOPR, RESA argues for either revising or removing Section 4708.1(a).¹⁴⁶ RESA alludes to a similar issue in the context of the pending Electric Supplier Licensing Rules in Section 4607.1, where it states that the Commission incorporated RESA's suggested revisions to the associated Section of the proposed Electric Supplier Licensing Rules. RESA recommends that the Commission revise Section 4708.1(a) for the same kind of consistency between the Natural Gas Supplier Licensing Rules and the Electric Supplier Licensing Rules.¹⁴⁷

77. RESA asserts that Section 4708.1(a), as proposed in the First NOPR, would require natural gas suppliers to provide copies of any new marketing materials to the Commission "within thirty (30) days prior to when the Licensee starts using the new material to solicit Customers."¹⁴⁸ According to RESA, 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 energy in the District.¹⁴⁹ RESA argues that the provision as drafted would

¹⁴³ OPC Initial Comments at 6.

¹⁴⁴ OPC Initial Comments at 6.

¹⁴⁵ OPC Initial Comments at 6.

¹⁴⁶ RESA Reply Comments at 5.

¹⁴⁷ RESA Reply Comments at 5.

¹⁴⁸ RESA Reply Comments at 5, *citing* the First NOPR at 15.

¹⁴⁹ RESA Reply Comments at 5.

be operationally untenable for natural gas suppliers to comply with and would interfere with natural gas suppliers' efforts to expeditiously respond to consumer interests and demands.¹⁵⁰ RESA professes to not know of any other industry that requires what it calls a "hold time" before beginning a marketing campaign.¹⁵¹ According to RESA, examples such as restaurants, department stores, telecommunications providers, big box stores, fast-food establishments, insurance and financial institutions, all can respond to market opportunities and shifting consumer demands to implement day-of marketing campaigns and, for this reason, energy suppliers should not be treated differently.¹⁵² RESA recommends, therefore, that the Commission modify Section 4708.1(a) to require that retail suppliers provide the Commission with marketing materials at the time of licensing or, for active suppliers, within a certain time following promulgation of the Licensing Rules.¹⁵³ According to RESA, this will allow the Commission to monitor the current marketing materials used by natural gas suppliers operating within the District, but there should not be any requirement for natural gas suppliers to provide marketing materials to the Commission at any point in advance of their use in the market.¹⁵⁴

78. RESA also proposes that natural gas suppliers be required to provide marketing materials to the Commission only upon Commission request.¹⁵⁵ According to RESA, adopting this provision will enable the Commission to obtain any marketing materials at any time from any natural gas supplier the Commission is concerned about, without getting inundated with voluminous marketing materials from others.¹⁵⁶ The currently proposed marketing materials requirement, according to RESA, will flood the Commission with marketing collateral. If the Commission were to modify the requirement as proposed by RESA, the Commission and its staff would be able to manage compliance and enforcement resources more efficiently. Therefore, RESA recommends that the Commission modify Section 4708.1(a) to read as follows:

- (a) If a Licensee changes any of its marketing materials, it shall maintain a record of the new marketing

¹⁵⁰ RESA Reply Comments at 5-6.

¹⁵¹ RESA Reply Comments at 6.

¹⁵² RESA Reply Comments at 6.

¹⁵³ RESA Reply Comments at 6.

¹⁵⁴ RESA Reply Comments at 6.

¹⁵⁵ RESA Reply Comments at 6.

¹⁵⁶ RESA Reply Comments at 6.

materials and make such materials available to the Commission upon request; and¹⁵⁷

79. RESA also opposes OPC recommendation that Section 4708.1(a) be expanded to require natural gas suppliers to provide marketing materials to both the Commission and OPC.¹⁵⁸ RESA opposes the change because it would create an additional administrative requirement for natural gas suppliers operating in the District.¹⁵⁹ RESA points out that this issue has been addressed in the pending Electric Supplier Licensing Rules and asserts the importance that the Natural Gas Supplier Licensing Rules incorporate the changes that have been made to the Electric Supplier Licensing Rules.¹⁶⁰ Therefore, RESA recommends that the Commission revise Section 4708.1(a) as explained above and reject OPC's requested changes to this Section.¹⁶¹

80. In its comments to the Second NOPR, RESA reiterates its concerns about Section 4708.1(a).¹⁶² RESA believes that as proposed, this provision would require Natural Gas Suppliers to provide copies of each piece of marketing material to both the Commission and OPC every time the most minor changes are made.¹⁶³ RESA asserts that in examples such as a change in logo, formatting, color scheme, price, term, or effective date would trigger this requirement for each and every piece of marketing collateral.¹⁶⁴ RESA also restates that it is not aware of any other industry that mandates a "hold time" before beginning a marketing campaign.¹⁶⁵

¹⁵⁷ RESA Reply Comments at 6.

¹⁵⁸ RESA Reply Comments at 7.

¹⁵⁹ RESA Reply Comments at 7.

¹⁶⁰ RESA Reply Comments at 7. RESA adds that if the Commission were inclined to require Licensees to provide marketing materials in some fashion, RESA recommends that the Commission direct OPC to establish a dedicated email account to which Licensees may submit marketing materials electronically.

¹⁶¹ RESA Reply Comments at 7.

¹⁶² RESA Comments to Second NOPR at 5.

¹⁶³ RESA Comments to Second NOPR at 5.

¹⁶⁴ RESA Comments to Second NOPR at 5.

¹⁶⁵ RESA Comments to Second NOPR at 5-6.

81. RESA argues that energy suppliers should not be treated differently.¹⁶⁶ RESA reiterates its recommendation that the Commission modify Section 4708.1(a) to require that retail suppliers provide the Commission with marketing materials at the time of licensing or, for active suppliers, within a certain time following promulgation of the Licensing Rules.¹⁶⁷

82. RESA again recommends that natural gas suppliers be required to provide marketing materials only upon Commission request.¹⁶⁸ RESA supports this recommendation by stating that the Commission may still obtain any marketing materials at any time from any natural gas supplier the Commission is concerned about, and not become inundated with voluminous marketing materials from others.¹⁶⁹ RESA again proposes the same modifications to Section 4708.1(a) as it did in response to the First NOPR.¹⁷⁰

83. In its comments on the Third NOPR, RESA restates its opposition to the changes made to proposed Section 4708.1(a) in the Third NOPR. Specifically, RESA opposes the requirement that natural gas suppliers provide a copy of any change in marketing materials to the both Commission and OPC, and that it be provided “within three (3) business days before” the supplier starts to use the materials in the District.¹⁷¹ According to RESA, as written, this provision would require suppliers to provide copies of each piece of marketing material to both the Commission and OPC every time even the most minor change is made. RESA repeats its earlier argument that changes in logo, formatting, color scheme, price, term, or effective date would trigger this requirement for every piece of marketing collateral. RESA cautions that electronic marketing materials change daily with market conditions (or even changes in the date), and warns that the Commission and OPC could foreseeably receive hundreds or thousands of pieces of marketing collateral each month, between all electricity and natural gas suppliers in the District.¹⁷²

¹⁶⁶ RESA Comments to Second NOPR at 6.

¹⁶⁷ RESA Comments to Second NOPR at 6.

¹⁶⁸ RESA Comments to Second NOPR at 6.

¹⁶⁹ RESA Comments to Second NOPR at 6.

¹⁷⁰ RESA Comments to Second NOPR at 6.

¹⁷¹ RESA Comments to Third NOPR at 6.

¹⁷² RESA Comments to Third NOPR at 6-7.

84. RESA repeats that it considers it critical for the Commission to revise Section 4708.1(a), arguing 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 markets for retail electricity and natural gas in the District.¹⁷³

85. RESA recommends to the Commission, as it did in the two previous NOPRs, that it require suppliers to retain copies of all marketing materials used in the District, which suppliers could make available to the Commission upon request.¹⁷⁴ With this modification to Section 4708.1(a), according to RESA, the Commission would be able to obtain any marketing materials at any time from any supplier, without getting inundated with voluminous marketing materials from other suppliers.¹⁷⁵

86. As another alternative, RESA offers that if there is a natural gas supplier that concerns the Commission, the Commission could issue a continuing request that the supplier provide ongoing updates for any marketing materials used in the District.¹⁷⁶ RESA claims that this type of approach would be more effective than the blanket market-wide requirement because (1) the Commission would receive all of the relevant marketing materials, without having to sift through reams of extraneous marketing collateral from other suppliers, and (2) such a request would put the subject supplier on notice that the Commission may have concerns about the supplier's marketing activity, prompting the supplier to double its regulatory compliance efforts.¹⁷⁷

87. RESA warns that if the Commission were to adopt the current version of Section 4708.1(a), it would result in flooding the Commission with unwanted marketing material.¹⁷⁸ On the other hand, if the Commission were to modify the requirement as proposed by RESA, the Commission and its staff would be able to more efficiently manage its compliance and enforcement resources.¹⁷⁹ RESA recommends that, as it had in its previous comments, the Commission modify Section 4708.1(a) to read as follows:

¹⁷³ RESA Comments to Third NOPR at 7.

¹⁷⁴ RESA Comments to Third NOPR at 7.

¹⁷⁵ RESA Comments to Third NOPR at 7.

¹⁷⁶ RESA Comments to Third NOPR at 7.

¹⁷⁷ RESA Comments to Third NOPR at 7-8.

¹⁷⁸ RESA Comments to Third NOPR at 8.

¹⁷⁹ RESA Comments to Third NOPR at 8.

- (a) Licensees shall provide copies of marketing materials to the Commission upon request; and¹⁸⁰

88. In its comments to the Third NOPR, OPC points out that the current version of Section 4708.1(a) proposes reducing the timeframe for Licensees to notify the Commission and OPC of changes to marketing materials from 30 days to three days.¹⁸¹ OPC argues that the Commission should retain the thirty-day timeframe proposed in the Second NOPR.¹⁸² OPC proposes that the Commission retain the 30-day timeframe because the Office contends that it has witnessed firsthand through myriad complaints and inquiries from District residents that third-party supplier mailings can be grossly misleading, confusing, or both, whether intentional or not.¹⁸³ OPC claims that for this reason it is imperative for the District’s sole statutory utility consumer advocate be accorded the necessary time to review marketing materials prior to distribution.¹⁸⁴ The thirty day notice would enable the Office to fulfill its statutory mandate of advocating on behalf of and protecting the District’s utility ratepayers and consumers from misleading and unlawful advertisements and practices by third-party suppliers.¹⁸⁵ Although OPC suggests that it is not dictating to suppliers on how they conduct their marketing campaigns; it does argue that suppliers’ marketing campaigns are not conceived and instituted in the same day.¹⁸⁶ OPC contends that it is wholly within the control of third-party suppliers to include a thirty-day, advanced-notice requirement into their schedules when rolling out new advertising materials in the District.¹⁸⁷

89. In an alternative proposition, OPC recommends that Licensees be required to submit altered materials to the Commission and OPC a minimum of 15 days to allow for a meaningful review.¹⁸⁸ OPC states that, where licensees make changes to their offers,

¹⁸⁰ RESA Comments to Third NOPR at 8.
¹⁸¹ OPC Comments to Third NOPR at 5.
¹⁸² OPC Comments to Third NOPR at 5.
¹⁸³ OPC Comments to Third NOPR at 5.
¹⁸⁴ OPC Comments to Third NOPR at 5.
¹⁸⁵ OPC Comments to Third NOPR at 5.
¹⁸⁶ OPC Comments to Third NOPR at 5.
¹⁸⁷ OPC Comments to Third NOPR at 5.
¹⁸⁸ OPC Comments to Third NOPR at 5.

terms, and conditions that are substantive enough to warrant updated marketing materials, it should also trigger a review by OPC and the Commission.¹⁸⁹

Section 4708.1 Updates to an Approved Application (Replacing 4708.1(a) and Renumbered as Section 4707.1 in the Fifth NOPR)

90. In its Comments to the Fourth NOPR, NEM supports proposed Section 4708.1 removing the requirement that licensees provide to the Commission and OPC new marketing materials whenever the licensee changes “any of its marketing materials.”¹⁹⁰ 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.¹⁹¹ NEM had also previously asserted that the requirement would likely result in a deluge of supplier filings that would be administratively infeasible to review.¹⁹² 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.¹⁹³

91. **Decision.** The Commission adopts the language of Section 4708.1 as proposed in the Fourth NOPR, and is revised slightly in the Fifth NOPR in renumbered Section 4707.1 to remove the term “Applicant.” Section 4708.1(a) as proposed in the Third 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 4708.1(a) was deleted in the Fourth NOPR. Thus, renumbered Section 4707.1 shall now state:

4707.1 **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

¹⁸⁹ OPC Comments to Third NOPR at 5.

¹⁹⁰ NEM Comments to the Fourth NOPR at 3.

¹⁹¹ NEM Comments to the Fourth NOPR at 3.

¹⁹² NEM Comments to the Fourth NOPR at 3.

¹⁹³ NEM Comments to the Fourth NOPR at 4.

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.

92. 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 4702.8. 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 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.

93. 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. The Commission also declines to adopt OPC's recommendation to reinstitute the 30-day notice or the alternative proposal of 15 days. Either requirement may become overly intrusive upon a supplier's decision-making in light of possible changes in strategy or materials a supplier may make during or within the 30 days, or 15 days' time-period, prior to when it actually begins to market or solicit.

Section 4708.2 Annual Reporting Requirements (Deleted in the Fifth NOPR)

94. RESA was the sole commenter to the Third NOPR on Section 4708.2, Annual Reporting Requirements. RESA's comment dealt with a typographical error in the Section regarding a cite to another Section; it did not relate to a substantive issue.¹⁹⁴

¹⁹⁴ RESA Comments to Third NOPR at 8.

95. **Decision.** Renumbered Section 4707.1 requires Licensees to inform the Commission of any changes or updates to an approved Application. Thus, Section 4708.2 is a superfluous requirement. Accordingly, Section 4708.2 is deleted in its entirety.

Section 4709.2 (u) (Renumbered as Section 4708.2 (s) in the Fifth NOPR)

96. In its Comments to the Fourth NOPR, NEM requests that language regarding grounds for Commission action against Licensees in proposed Section 4709.2(u) be modified to incorporate an “as soon as” activities commence standard instead of the three business days’ notice requirement for soliciting and marketing.¹⁹⁵

97. **Decision.** Section 4709.2 (u) in the Fourth NOPR provides that:

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 4703.11[.]

98. Section 4709.2 (u) was drafted to reflect the potential consequence of Commission action against Licensees who do not comply with the three business days advance notice of requirement of Section 4703.11. Section 4709.2 (u) has been revised and renumbered to Section 4708.2 (s) to remove reference to Section 4703.11. As such, renumbered Section 4708.2 (s) in the Fifth NOPR is adopted and shall now state:

(s) 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 4799.1

99. RESA was the sole commenter on this Section. The First NOPR included in Section 4799.1, Definitions, the term “Customer Consent Form” and its definition.¹⁹⁶

¹⁹⁵ NEM Comments to Fourth NOPR at 4.

¹⁹⁶ *GT96-3; RM47-2017-01-G; and Formal Case No. 1130*, First NOPR, Section 4799.1, Definition. **Customer Consent Form** means the manner in which a customer can enroll with a Natural Gas Supplier. The Customer Consent Form must be executed by a residential customer, and received by a Natural Gas Supplier, for an enrollment transaction to be valid. Natural Gas Suppliers are required to maintain the customer consent forms for the duration of the contract. Upon request by the Company or the Commission, the Natural Gas Supplier is required to provide a copy of the consent form. If the supplier cannot provide a

RESA recommends in its comments to the First NOPR that the “Customer Consent Form” term and definition be removed from Section 4799.1, asserting that because the term “Customer Consent Form” is not used elsewhere in the proposed Licensing Rules, the definition could cause confusion among Licensees and other stakeholders.¹⁹⁷ RESA points out that the Definitions Section in the Electric Supplier Licensing Rules in Section 4699 of the does not include a definition for “Customer Consent Form,” so it would be inconsistent to add a new placeholder in the Natural Gas Supplier Licensing Rules. Therefore, RESA recommends that the Commission delete the definition for Customer Consent Form from Section 4799.1.¹⁹⁸

100. In its comments to the second NOPR, RESA again recommends as it did in comments to the First NOPR that the “Customer Consent Form” term and definition in the Definitions Section, Section 4799.1, be removed, providing the same reasons to support the deletion of the term and definition as it did in the First NOPR.¹⁹⁹

101. **Decision.** The term “Customer Consent Form” and its definition were deleted in the Third NOPR. Other changes in Section 4799.1 as reflected in the Fifth 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;” “Deposit;” “Disconnection;” “Enrollment;” “Initiating Service in the District;” “Market Participant;” “Nontraditional Marketers;” “Residential Customer;” “Small Commercial Customer;” “Termination of Contract;” and “Transfer Application. Definitions for the following terms are revised: “Prepayments” and “Solicitation.”

IV. CONCLUSION

102. With the noted prior amendments, the Commission hereby adopts the final rules governing the licensing of Natural Gas 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

copy of the consent form, then the customer will be returned to sales service or back to their alternative Natural Gas Supplier. The Commission has the authority to institute, at any time, a requirement that the Natural Gas Supplier continuously provide the Commission with copies of each of its consent forms. The Commission will make such a determination on a case-by-case basis, if it finds just cause and if it determines that such a requirement is in the best interest of consumers.

¹⁹⁷ RESA Reply Comments at 10.

¹⁹⁸ RESA Reply Comments at 10.

¹⁹⁹ RESA Comments to Second NOPR at 8.

Integrity Bond for Natural Gas 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 47 shall become effective upon publication in the *D.C. Register*.

THEREFORE, IT IS ORDERED THAT:

103. The rules in Chapter 47 of Title 15 of the District of Columbia Municipal Regulations as discussed in this Order are **ADOPTED** and shall become effective upon publication in the *D.C. Register*.

A TRUE COPY:

BY DIRECTION OF THE COMMISSION:

A handwritten signature in black ink, reading "Brinda Westbrook-Sedgwick". The signature is written in a cursive, flowing style.

CHIEF CLERK

**BRINDA WESTBROOK-SEDGWICK
COMMISSION SECRETARY**

ATTACHMENT A

APPLICATION FOR LICENSE TO SUPPLY NATURAL GAS OR NATURAL GAS SUPPLY SERVICES TO 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/Natural Gas 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 does not take title to natural gas 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 Natural Gas Suppliers and the provision of natural gas supply and natural gas supply services are addressed in detail in the “Retail Natural Gas Supplier Licensing and Consumer Protection Act of 2004,” 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 D.C. 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 Commission regulations is subject to the penalties found in the “Retail Natural Gas Supplier Licensing and Consumer Protection Act of 2004,” D.C. Code Section 34-1671.11.

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 natural gas 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 natural gas 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 natural gas 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 natural gas service 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(s) _____

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 PREDECESSOR(S), ENGAGED IN THE SALE OR TRANSPORTATION/DELIVERY OF NATURAL GAS 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. Applicant is an Affiliate of a regulated utility. Please provide the regulated utility's Name and the jurisdictions in which it operates: _____

- c. Affiliate(s), or Predecessor(s), other than a regulated utility that provides, or provided, sale or transportation/delivery of natural gas 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 transportation/delivery of natural gas 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. RELIABILITY AND ENVIRONMENTAL OFFICIAL ACTIONS AGAINST APPLICANTS/AFFILIATES: Provide the following information for Official Actions that have been taken against the Applicant, any Predecessor(s), and any unregulated Affiliate (if available to the Applicant) that engages in the retail or wholesale sale of natural gas for matters relating to environmental or reliability status for the past five years.

- Official Actions such as Suspensions/Revocations/Limitations/

Reprimands/Fines/Regulatory Investigations (state agencies, FERC, EPA, or other federal agencies) have been taken against the Applicant, any Predecessor(s) or unregulated affiliate(s), and are described in the attached statement, including docket numbers, offense dates, and case numbers, if applicable.

State(s): _____

Name(s): _____

- No such action has been taken.

OPERATIONAL CAPABILITY

TECHNICAL FITNESS

8. Provide sufficient information to demonstrate technical fitness to provide the service proposed in this Application. Examples of such information which may be submitted include the following:

- A general description of Applicant's retail natural gas supply activities in the District of Columbia, if any, including other service territories in which Applicant has provided service and the time period.
- A copy of each agreement (if applicable) entered into with District of Columbia natural gas distribution companies.
- Biographies, including titles, of relevant experienced personnel in key technical positions.
- Other.

9. **SOURCE OF SUPPLY:** (Check all that apply) This is for informational purposes only. No update required.

- Not applicable. Applicant will not be supplying retail natural gas.
- Applicant owns natural gas supply.
- Applicant contracts for natural gas.
- Applicant obtains natural gas on the spot market
- Other. Applicant must attach s statement detailing its source of natural gas supply.

- Aggregator or Broker only

SCOPE OF OPERATIONS

(Check all that apply)

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

- Natural Gas Supplier/Marketer of natural gas.
- Aggregator acting on behalf of Customers to purchase natural gas and does not take title to natural gas.
- Broker acting as an agent or intermediary on behalf of Customers in the sale and purchase of natural gas and who does not take title to natural gas.

Which natural gas supply related service(s) does the Applicant offer?

- Billing
- Other (Please specify the nature of such other services in an attached statement.)

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 Washington Gas Light Company territory in the District of Columbia, Applicant must, in an attached statement, describe in detail the area within the Natural Gas Company's service territory in which Applicant's services will be offered.

- Applicant intends to offer service throughout the Washington Gas Light Company territory in the District of Columbia.
- Applicant intends to offer services in only a portion of Washington Gas Light 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 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 natural gas 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 4705 of Chapter 47 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 a natural gas 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 4705.

However, an Applicant who can provide credible evidence that it meets the financial integrity standards listed in Section 4705 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 4704 and 4705 of Chapter 47 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 natural gas 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 the Washington Gas Light Company is provided to the Commission.
- (g) Agree to not transfer its license to sell natural gas and natural gas supply services without the prior approval of the District of Columbia Public Service Commission.
- (h) Attend a Natural Gas 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 not disclose information about a Customer or the Customer's use of natural gas or natural gas services without the Customer's written consent.
- (k) Agrees to comply with 15 DCMR § 4702.11 Natural Gas Company and Licensee Responsibilities in the event of a default after certification, and with the District of Columbia Natural Gas 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: _____

AFFIDAVIT OF TAX COMPLIANCE

State of _____ :
County of _____ : ss
_____ :

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

That he/she is the _____ (office of Affiant) of _____ (Name of Applicant);

That he/she is authorized to and does make this affidavit for said Applicant:

That _____, the Applicant herein, certifies to the Public Service Commission of the District of Columbia (“Commission”) that it is subject to, will pay, and in the past has paid, the full amount of District of Columbia and Federal taxes imposed by applicable statutes and ordinances, as may be amended from time to time. The Applicant acknowledges that failure to pay such taxes or otherwise comply with the taxation requirements of the District of Columbia, shall be cause for the Commission to revoke the license of the Applicant. The Applicant acknowledges that it shall provide to the Commission its jurisdictional Gross Receipts and revenues from retail sales in the District, for the previous year or as otherwise required by the Commission.

As provided by applicable Law, Applicant, by filing of this application waives confidentiality with respect to its tax information in the possession of the (appropriate taxing authority), regardless of the source of the information, and shall consent to the (appropriate taxing authority) providing that information to the Commission. The Commission shall retain such information confidentially. This does not constitute a waiver of the confidentiality of such information with respect to any party other than the Commission.

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

Applicant agrees to abide by any periodic reporting requirements set by the Commission by regulation, including any required periodic reporting to the (appropriate taxing authority).

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

The Applicant agrees that it shall neither disclose nor resell individual residential Customer data provided to the Applicant by Washington Gas Light Company. Disclosure or resale of individual non-residential Customer data provided to the Applicant by a District of Columbia natural gas company will be governed by Customer contract.

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 § 4702.11, Natural Gas Company and Licensee Responsibilities in the event of a default, and with the District of Columbia Natural Gas Supplier Coordination Tariff.

The Applicant agrees, pursuant to the requirements of § 4703, to complete the Natural Gas 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 affiliates that engages in or engaged in the sale or transportation/delivery of natural gas 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 consents 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 _____ :
County of _____ : SS

_____, 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 natural gas in the District of Columbia, sell or market natural gas, 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 a Natural Gas Supplier, or to provide certain Natural Gas 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

PREPAYMENT AND DEPOSIT BONDING REQUIREMENTS ADDENDUM

1. DEFINITION AND EXCLUSION

- a. Any natural gas supplier or aggregator or broker who charges or collects deposits or prepayments shall maintain a bond in an amount at least equal to the total amount of such deposits and prepayments as specified in this Section. Prepayments and/or deposits from non-residential customers whose metered use during any month of the previous twelve-month period was in excess of 625 dekatherms per month are exempt from the calculation of the bond requirement. For new non-residential customers, the exemption will apply if the sales to that customer are expected to be in excess of 625 dekatherms per month.
- b. “Deposits” include all payments made by a consumer to a natural gas supplier to secure the natural gas supplier against the consumer’s nonpayment or default.
- c. “Prepayments” include all payments made by a consumer to a natural gas supplier for services that have not been rendered at the time of payment.
 1. Where a natural gas supplier charges for services based on a quantity of natural gas, such as a price per therm, then prepayments include any payments for any quantity that has not been delivered to the consumer at the time of payment.
 2. Where a natural gas supplier charges for services based on a period of time, such as charging a membership fee, initiation fee or other fee for services for a time period, then prepayments include the amount of the total charges collected by the natural gas supplier for the period of time less the prorated value of the period of time for which services have been rendered.
 3. Where a natural gas supplier charges for services based on a measure other than quantity of natural gas delivered or a period of time, the Commission shall determine, on a case by case basis, whether the charges involve a prepayment and the appropriate method of calculating the required bond.

4. Prepayments do not include any funds received in advance of the services being rendered as a result of the consumer's voluntary participation in a budget billing or level billing plan by which the consumer's anticipated natural gas costs are averaged over a period of time.

2. WHO MUST POST BOND

Any natural gas supplier or aggregator or broker who charges or collects deposits or prepayments shall maintain a bond in an amount at least equal to the total amount of such deposits and prepayments as specified in this Section. Prepayments and/or deposits from non-residential customers whose metered use during any month of the previous twelve-month period was in excess of 625 dekatherms per month are exempt from the calculation of the bond requirement. For new non-residential customers, the exemption will apply if the sales to that customer are expected to be in excess of 625 dekatherms per month.

3. PROCEDURE FOR DETERMINING AMOUNT OF BOND

- a. **INITIAL BOND:** Before accepting any deposits or prepayments, or for active suppliers prior to who have deposits or prepayments from current customers, a natural gas supplier must (1) notify the PSC on its license Application, within thirty (30) days of the change for an existing license holder, or by separate communication that it intends to begin charging deposits or prepayments, and (2) post an initial bond of fifty thousand dollars (\$50,000). If a bond is required of an aggregator or broker the amount shall be ten thousand dollars (\$10,000).
- b. **SIX MONTH CERTIFICATION:** Within six months after the initial bond is posted, (1) the natural gas supplier shall provide to the PSC, an audited certification conducted by either an independent certified accountant ("CPA") or the PSC Accounting Division (see below) of the amount of the deposits and prepayments and (2) a bond in the amount certified by either an independent CPA or by the PSC Accounting Division.
- c. **ANNUAL CERTIFICATION:** Annually thereafter, coinciding with the annual update requirements of the PSC license application, the natural gas supplier shall provide to the PSC (1) a statement of the amount of the deposits and prepayments conducted by either an

independent CPA or the PSC Accounting Division and (2) a bond in that amount.

- d. **QUARTERLY UPDATES:** Following submittal of the first annual update, the natural gas supplier must provide to the PSC (1) a quarterly management report stating the amount of deposits and prepayments collected and (2) an adjustment to the bond in that amount.
4. **CPA/PSC ACCOUNTING DIVISION AUDIT REPORT.** The natural gas supplier shall provide appropriate certification at the intervals discussed in the above paragraphs, on funds collected by a Supplier for prepayments or deposits. The Supplier will have the option of certifying funds through an audit conducted by independent certified public accountant or by the PSC Accounting Division. The audit will verify collections and balances of prepayments and deposits as of a specific date and whether the Supplier has appropriate bond coverage.
5. **BOND FORM: BENEFICIARY, CLAIMS, DISTRIBUTION.** The natural gas supplier shall provide a bond on the form required by the PSC.
6. **COMPLIANCE INVESTIGATIONS.** The PSC has the right to initiate appropriate investigations if it determines a Supplier is collecting prepayments and/or deposits from customers without appropriate bond coverage. The PSC will utilize appropriate legal remedies both to investigate and/or enforce actions necessary to ensure suppliers have appropriate bonds.

**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 natural gas service to retail Customers in the District of Columbia, and

WHEREAS, pursuant to the Retail Natural Gas Licensing and Consumer Protection Act of 2004, the Public Service Commission of the District of Columbia is authorized to require the Principal to maintain a bond in order to provide retail natural gas 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 natural gas 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 4704 and 4705 of Chapter 47 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 4704 and 4705 of Chapter 47 of Title 15 DCMR) in a specific amount by means of failure, or by reason of breach of contract or violation of the Retail Natural Gas Licensing and Consumer Protection Act of 2004 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 NATURAL GAS 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 natural gas service to retail Customers in the District of Columbia, and

WHEREAS, pursuant to the Retail Natural Gas Licensing and Consumer Protection Act of 2004, (D.C. Code §34-1671.05), the Public Service Commission of the District of

Columbia is authorized to require the Principal to maintain a bond in order to provide retail natural gas 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 natural gas 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 4704 and 4705 of Chapter 47 of Title 15 DCMR) in a specific amount by means of failure, or by reason of breach of contract or violation of the Retail Natural Gas Licensing and Consumer Protection Act of 2004 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 natural gas service to retail Customers in the District of Columbia, and

WHEREAS, pursuant to the Retail Natural Gas Licensing and Consumer Protection Act of 2004, the Public Service Commission of the District of Columbia is authorized to require the Principal to maintain a bond in order to provide retail natural gas 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 natural gas 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 and directly damaged or suffers any actual or direct 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 4704 and 4705 of Chapter 47 of Title 15 DCMR) in a specific amount by means of failure, or by reason of breach of contract or violation of the Retail Natural Gas Licensing and Consumer Protection Act of 2004 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