

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

ORDER

December 5, 2018

**FORMAL CASE NO. 712, IN THE MATTER OF THE INVESTIGATION OF THE
PUBLIC SERVICE COMMISSION'S RULES OF PRACTICE AND PROCEDURE;**

AND

RM3-2014-01, CONSUMER RIGHTS AND RESPONSIBILITIES, Order No. 19759

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) adopts final rules containing amendments to the Consumer Rights and Responsibilities in the District of Columbia in Chapter 3 of Title 15, District of Columbia Municipal Regulations (“DCMR”). The rules in Attachment A shall become effective upon publication of the Notice of Final Rulemaking (“NOFR”) in the *D.C. Register*. The Electric Utility and Energy Suppliers shall have until September 10, 2019, to comply with revised Subsections 327.29 and 327.35.

II. BACKGROUND

2. On October 17, 2014, the Commission published a Notice of Proposed Rulemaking (“First NOFR”) on Chapter 3 (Consumer Rights and Responsibilities) of Title 15 DCMR, commonly referred to as the “Consumer Bill of Rights” (“CBOR”), inviting comments from interested persons.¹ The Commission initiated this rule review in the wake of a formal investigation into the business and solicitation practices of retail Energy Suppliers² in the District of Columbia (“District”) after receiving a number of allegations of slamming, misrepresentation and rate confusion.³ As a result, the Commission determined that there was a need to update the

¹ 61 *D.C. Reg.* 10807-10822 (October 17, 2014) (“1st NOFR”). There were several subsequent NOFRs published as follows: 2nd NOFR 64 *D.C. Reg.* 006128 – 006144 (June 30, 2017); 3rd NOFR 64 *D.C. Reg.* 013113 – 013129 (December 22, 2017); 4th NOFR 65 *D.C. Reg.* 002979 – 002995 (March 23, 2018); 5th NOFR 65 *D.C. Reg.* 6179 – 6180 (June 8, 2018); and 6th NOFR 65 *D.C. Reg.* 011734-011752 (October 19, 2018).

² The term “Energy Suppliers” generally refers to individuals or persons who are brokering, arranging or marketing natural gas or electricity for sale to customers. Energy Suppliers are not representatives of utilities.

³ See, *Formal Case No 1105, In the Matter of the Investigation into the Business and Solicitation Practices of Starion Energy in the District of Columbia and Addressing the Petition of the Office of the People's Counsel to Open a Wide-Ranging Investigation of all Alternative Energy Suppliers Licensed in the District of Columbia* (“*Formal Case No. 1105*”), Order No. 17206, rel. July 30, 2013.

consumer protection rules regarding various requirements for Energy Suppliers including use of Customer Information (Section 308), Privacy Protection Policy (Section 309), Grounds for Disconnection of Services (Section 310), Field Service Identification and Payment Procedures (Section 313), Publication of Consumer Pamphlets (Section 321), Formal Hearing Procedures (Section 325), Decisions and Appeals (Section 326), and Customer Protection Standards Applicable to Energy Suppliers (Section 327).

3. On November 17, 2014, the Office of the People’s Counsel (“OPC”), the Potomac Electric Power Company (“Pepco”), Verizon Washington, DC Inc. (“Verizon”), Ethical Electric Inc. (“Ethical Electric”), National Energy Marketers Association (“NEMA”), NRG Energy, Inc. Retail Affiliates (“NRG Retail”), Retail Energy Supply Association (“RESA”), and Washington Gas Energy Services (“WGES”) filed Comments and amendments to the proposed rules.⁴ Subsequently, Pepco, RESA, and WGES filed Reply Comments on December 1, 2014.⁵

4. After receiving comments, the Commission convened a technical conference and workshop on August 4, 2015, to discuss and describe the Commission’s current consumer complaint process, the current requirements for licensed suppliers, and the proposed rule changes.⁶ The District of Columbia Government (“DCG”), District of Columbia Department of Energy & Environment (“DOEE”), OPC, Pepco, Verizon, Apartment and Office Building Association of Metropolitan Washington (“AOBA”), Ambit Energy, ConEdison Solutions, IGS Energy, P.A. Quinlan, RESA, Starion Energy (“Starion”), WGES in addition to Commission Staff attended the technical conference.⁷ The stakeholders requested an opportunity to attempt to reach consensus on a number of issues. Participants were given until the end of August to collectively submit a

⁴ *RM3-2014-01, Consumer Rights and Responsibilities and Formal Case No. 712, In the Matter of the Investigation into the Public Service Commission’s Rules of Practice and Procedure (collectively, “RM3-2014-01”),* Potomac Electric Power Company’s Comments to the First NOPR (Pepco’s 1st NOPR Comments”); Office of the People’s Counsel’s Comments to the First NOPR (“OPC’s 1st NOPR Comments”); Verizon Washington, DC Inc.’s Comments to the First NOPR (“Verizon’s 1st NOPR Comments”); Ethical Electric Inc.’s Comments to the First NOPR, (“Ethical Electric’s 1st NOPR Comments”); National Energy Marketers Association’s Comments to the First NOPR (“NEMA’s 1st NOPR Comments”); NRG Energy, Inc. Retail Affiliates’ Comments to the First NOPR (“NRG Retail’s 1st NOPR Comments”); Retail Energy Supply Association’s Comments to the First NOPR (“RESA’s 1st NOPR Comments”); and Washington Gas Energy Services’ Comments to the First NOPR (“WGES’ 1st NOPR Comments”), filed November 17, 2014.

⁵ *RM3-2014-01,* Potomac Electric Power Company’s Reply Comments to the First NOPR (“Pepco’s 1st NOPR Reply Comments”); Retail Energy Supply Association’s Reply Comments to the First NOPR (“RESA’s 1st NOPR Reply Comments”); and Washington Gas Energy Services’ Reply Comments to the First NOPR (“WGES’ 1st NOPR Reply Comments”), filed December 1, 2014.

⁶ 62 *D.C. Reg.* 9611-9612 (July 10, 2015).

⁷ *RM3-2014-01,* Transcript (“Tr.”) at 2, filed August 12, 2015. Major Energy participated via teleconference.

consensus filing.⁸ Several requests to extend the time to submit the consensus filing were granted.⁹ On December 31, 2015, the Consensus Filing was submitted.¹⁰

5. Based on the technical conference, prior comments and the Consensus Filing, the Commission issued a Second NOPR that was published on June 30, 2017.¹¹ OPC, Pepco, WGL, WGL Energy Services, Inc. and WGL Energy Systems, Inc. (“WGL Energy”), and RESA, filed Comments to the Second NOPR.¹² On August 14, 2017, RESA, WGL Energy Services, Solar Energy Industry Association (“Solar Energy”), and Sunrun Inc. (“Sunrun”) filed Reply Comments.¹³ OPC filed a corrected version of its Comments on August 22, 2017.¹⁴

6. After considering the comments, on December 22, 2017, the Commission issued another NOPR (“Third NOPR”). Both Pepco and Verizon filed Comments to the Third NOPR on January 22, 2018, and RESA filed a motion requesting until January 29, 2018 to submit its comments (“RESA’s Motion”).¹⁵ Subsequently on January 29, 2018, RESA filed its Comments.¹⁶

⁸ Tr. at 64-65.

⁹ *RM3-2014-01*, Order No. 18007, ¶ 1, rel. October 16, 2015; *see also RM3-2014-01*, Order No. 18052, ¶ 1, rel. December 8, 2015.

¹⁰ *RM3-2014-01*, Stakeholders Consensus Filing, filed December 31, 2015 (“Consensus Filing”). RESA and NRG Retail filed a letter noting that the Consensus Filing failed to include NRG Retail’s “proposal to include a new section in the CBORs relating to assignment of customer contracts from one licensed retail supplier to another licensed retail supplier. *See RM3-2014-01*, Retail Energy Supply Association and NRG Energy, Inc.’s Letter, filed February 16, 2016.

¹¹ 64 *D.C. Reg.* 6128-6144 (June 30, 2017).

¹² *RM3-2014-01*, Office of the People’s Counsel’s Comments to the Second NOPR, filed July 31, 2017 (“OPC’s 2nd NOPR Comments”), also note that revised comments were submitted by OPC on August 22, 2017; Potomac Electric Power Company’s Comments to the Second NOPR, filed July 31, 2017 (Pepco’s 2nd NOPR Comments”); Washington Gas Light Company’s Comments to the Second NOPR, filed July 30, 2017 (“WGL 2nd NOPR Comments”); Washington Gas Energy Inc. and WGL Energy Systems, Inc.’s Comments to the Second NOPR, filed July 28, 2017 (“WGL Energy’s 2nd NOPR Comments”); and Retail Energy Supply Association’s Comments to the Second NOPR, filed July 31, 2017 (“RESA’s 2nd NOPR Comments”).

¹³ *RM3-2014-01*, Washington Gas Energy Inc. and WGL Energy Systems, Inc.’s Reply Comments to the Second NOPR, (“WGL Energy’s 2nd NOPR Reply Comments”); Retail Energy Supply Association’s Reply Comments to the Second NOPR (“RESA’s 2nd NOPR Reply Comments”); Solar Energy Industry Association’s Reply Comments to the Second NOPR (“Solar Energy’s 2nd NOPR Reply Comments”), filed August 14, 2017; and Sunrun, Inc.’s Motion for Extension of Time and Comments to the Second NOPR at 4, filed August 14, 2017 (“Sunrun’s 2nd NOPR Reply Comments”).

¹⁴ OPC’s filing was to delete a misstatement regarding Starion Energy. *See Formal Case No. 1105*, Order No. 17148, rel. May 3, 2013.

¹⁵ *RM3-2014-01*, Washington Gas Energy Inc. and WGL Energy Systems, Inc.’s Comments to the Third NOPR, (“WGL Energy’s 3rd NOPR Comments”); Verizon Washington, DC Inc.’s Comments to the Third NOPR (“Verizon’s 3rd NOPR Comments”); Potomac Electric Power Company’s Comments to the Third NOPR (“Pepco’s 3rd NOPR Comments”), filed January 22, 2018; and Retail Energy Supply Association’s Motion to Extend Time to Comment to Third NOPR, filed January 22, 2018.

¹⁶ *RM3-2014-01*, Retail Energy Supply Association’s Comments to the Third NOPR, filed January 29, 2018

Both Pepco and RESA filed Reply Comments on February 2, and February 5, 2018, respectively.¹⁷ By Order No. 19291, RESA's Motion was granted and its Comments were accepted.¹⁸ All comments and reply comments were reviewed and on March 23, 2018, the Commission issued another NOPR ("Fourth NOPR").¹⁹ On April 9, 2018, WGL submitted its Comments to the Fourth NOPR, but on April 25, 2018, withdrew those comments.²⁰ RESA, Pepco, WGL Energy and OPC submitted their Comments to the Fourth NOPR on April 23, 2018.²¹

7. On June 8, 2018, to address a concern WGL raised in the context of *Formal Case No. 1140*²² regarding the implementation of the WGL's Purchase of Receivables Program, the Commission issued another NOPR ("Fifth NOPR"), which proposed an additional amendment to Subsection 327.37.²³ On September 28, 2018, a Notice of Final Rulemaking ("NOFR") was published in the *D.C. Register* noting that the Commission, by Order No. 19675, adopted Subsections 327.36 and 327.37 of the CBOR to address the Purchase of Receivable Program ("POR").²⁴

("RESA's 3rd NOPR Comments").

¹⁷ *RM3-2014-01*, Potomac Electric Power Company's Reply Comments to the Third NOPR, filed February 2, 2018 ("Pepco's 3rd NOPR Reply Comments"); *RM3-2014-01*, Retail Energy Supply Association's Reply Comments to the Third NOPR, filed February 5, 2018 ("RESA's 3rd NOPR Reply Comments").

¹⁸ *RM3-2014-01*, Order No. 19291, rel. March 8, 2018.

¹⁹ 65 *D.C. Reg.* 2979-2995 (March 23, 2018).

²⁰ *RM3-2014-01*, Washington Gas Light Company Comments to the Fourth NOPR, filed April 9, 2018 ("WGL's 4th NOPR Comments"); and Washington Gas Light Company's Withdrawal of Comments and Request for Approval of Revised Regulation, filed April 25, 2018 ("WGL's Request").

²¹ *RM3-2014-01*, Washington Gas Energy Inc. and WGL Energy Systems, Inc.'s Comments to the Fourth NOPR, ("WGL Energy's 4th NOPR Comments"); Retail Energy Supply Association's Reply Comments to the Fourth NOPR ("RESA's 4th NOPR Comments"); Potomac Electric Power Company's Comments to the Fourth NOPR Comments, (Pepco's 4th NOPR Comments"); Office of the People's Counsel's Comments to the Fourth NOPR ("OPC's 4th NOPR Comments"), filed April 23, 2018.

²² *Formal Case No. 1140, In the Matter of the Investigation into the Establishment of a Purchase of Receivables Program for Natural Gas Suppliers and Their Customers in the District of Columbia* ("Formal Case No. 1140"), Order No. 18638, ¶ 6, rel. December 15, 2016.

²³ 65 *D.C. Reg.* 6179-6180 (June 8, 2018). The Commission opened *Formal Case No. 1140* to consider a Purchase of Receivable ("POR") program in the District of Columbia for natural gas suppliers and their customers and directed WGL to develop and submit a POR program to the Commission. In compliance with the Commission's directive, WGL submitted a POR program, and among other things, also identified amendments to the Commission's rules necessary for the program's implementation. WGL filed its POR program Implementation Plan ("Implementation Plan") with the Commission, proposing initially a revision to 15 DCMR § 327.36 and subsequently a revision to §327.37.

²⁴ 65 *D.C. Reg.* 9968-9969 (September 28, 2018); *RM3-2014-01*, Order No. 19675, rel. September 19, 2018 ("Order No. 19675").

8. On October 19, 2018, a Sixth NOPR was published in the *D.C. Register* to further clarify certain requirements of the Energy Supplier rules, to amend the Field Service Identification and Payment Procedures of Section 313 and to enhance the definition section of the rules.²⁵ The revisions to Section 313 would no longer require field service representatives to accept cash payments on the premises when disconnecting services but require the field service representatives to provide customers with alternative payment arrangements to avoid disconnection. On November 19, 2018, OPC, Pepco and RESA filed Comments.²⁶

III. DISCUSSION

A. NOPRs

9. The NOPRs provided broad amendments to the rules governing Consumer Rights and Responsibilities in the District of Columbia. The amendments specifically dealt with enhancing consumer protections in the retail choice market to provide appropriate safeguards for consumers who purchase services in this more competitive environment. More specifically, the Commission's revisions to the rules: (1) amended Section 308 (Use of Customer's Information) to protect against disclosure of customer information or a customer's use of service without express consent, except when providing information to the Commission; (2) added a new provision Section 309 (Privacy Protection Policy) requiring utilities and service providers to institute a privacy protection policy to protect against unauthorized disclosure of customer information; (3) amended Section 310 (Grounds for Disconnection) to address a change in the law which prohibits disconnection of services when there is a forecast of extreme weather conditions during a specified period that is 95° Fahrenheit or above, or 32° Fahrenheit or below;²⁷ (4) amended Section 313 (Field Service Identification and Payment Procedures) to no longer require a utility's field service representative to accept cash payments on the premises when disconnecting services but would require the field service representative to provide customers with alternative payment arrangements to avoid disconnection; (5) amended Section 321 (Publication of Consumer Pamphlet) to provide a 10 business day timeframe for OPC to file comments on consumer pamphlets submitted by Energy Suppliers; and (6) amended Sections 325 (Formal Hearing Procedures) and 326 (Decisions and Appeals) to clarify that complaints can be dismissed with prejudice when the sole form of relief requested is for monetary damages or if the Commission lacks jurisdiction.

10. In addition, the NOPRs amended or added various provisions in Section 327 (Customer Protection Standards for Energy Suppliers) to address what information must be contained in a solicitation to residential customers, the manner of solicitation of customers, and to provide parties with enforceable timelines in the rules for implementing a customer's decision to switch service providers. More specifically, the amendments provide, among other things, that: (1) a variable

²⁵ 65 *D.C. Reg.* 011734-011752 (October 19, 2018).

²⁶ *RM3-2014-01*, Office of the People's Counsel's Comments to the 6th NOPR, filed November 19, 2018 ("OPC's 6th NOPR Comments"); Potomac Electric Power Company's Comments to the 6th NOPR ("Pepco's 6th NOPR Comments"), filed November 19, 2018; and Retail Energy Supply Association's Comments to the 6th NOPR, filed November 19, 2018 ("RESA's 6th NOPR Comments").

²⁷ *See*, D.C. Code §§ 34-1506.01 (a) and (b) and 1601.01(a) and (b) (Supp. 2017). These provisions prohibit the electric utility and natural gas utility from disconnecting a customer's service in extreme temperatures.

price is based on market conditions and that the rate could result in higher or lower costs over the introductory rate (Subsection 327.7(c)); (2) there should be detailed up-front disclosures made by the energy supplier to the prospective customer to ensure that the customer understands the product that he or she is choosing (Subsection 327.8); (3) there are three principal ways a residential Customer may enter into a contract (recorded verbal consent, electronic, or written) with an Energy Supplier (Subsection 327.11); (4) contract renewals are not negative option contracts (Subsection 327.12); (5) there is a three business day rescission period, the commencement of which depends on the manner of solicitation (Telephone Solicitation, Internet Solicitation, Home Solicitation, and Direct Mail Solicitation), contract verification (recorded verbal consent, electronic, or written) (Subsections 327.16 – 327.24), and contracting (Subsection 327.15)²⁸; (6) for Direct Mail Solicitations, an electronic signature constitutes an executed contract (Subsection 327.28); (7) the Natural Gas Utility, Electric Utility and Energy Suppliers display prominently on their websites' homepages links to the Commission's website pages for Customer Retail Choice and Customer Supplier Offers (Subsection 327.30); (8) the customer enrollment process address the time for transferring an enrollment from a Utility or Energy Supplier, the process for transferring enrollment of customers, and the effective date for transfers (Subsections 327.29 – 327.43)²⁹; and (9) a new subsection be added for the assignment of contracts (Subsection 327.46).³⁰ Lastly, the NOPRs proposed several new or amended definitions (Completed Written Contract, Drop, Energy Supplier, Slamming, and Third Party Verification) (Subsection 399.1).

B. Comments, Reply Comments, and Consensus Filing

11. OPC, Pepco, Verizon, WGL, Ethical Energy, NEMA, NRG, RESA, Solar Energy, Sunrun, and WGES filed comments and/or reply comments to one or more of the NOPRs. The comments or reply comments noted concerns with the provisions of the rules dealing with the use of Customer Information (Section 308), Privacy Protections (Section 309), and Customer Protection Standards for Energy Suppliers (Section 327). The majority of the comments focused on the revisions to Section 327 such as the rescission period for customers, the permitted forms of solicitation, the manner of contracting, the use of digital voice recordings, the use of electronic signatures, and the customer enrollment process.

12. On August 4, 2015, a Technical Conference was convened and a number of the stakeholders (OPC, DCG, Pepco, NRG Energy, and WGES) submitted a Consensus Filing on December 31, 2015, with comments which represented a significant give-and-take by the stakeholders. The consensus included greater protections for residential customers and to make it easier for customers to switch energy suppliers.

²⁸ OPC and RESA consistently requested dueling amendments to Subsections 327.15 and 327.18. The rules as finally drafted clarify Subsections 327.15 (d) and 327.18 to indicate that the particular rescission period begins when a Completed Written Contract is deposited in the U.S. Mail.

²⁹ A Fifth NOPR was published as a result of the Commission opening *Formal Case No. 1140*, which addresses the Natural Gas Purchase of Receivables program in the District of Columbia. By Order No. 19675, issued on October 19, 2018, the Commission adopted the amendments to Subsections 327.36 and 327.37 which became effective upon publication in the D.C. Register on September 28, 2018 (65 *D.C. Reg.* 9968-9969 (September 28, 2018)).

³⁰ A new subsection 327.46 was added and all rules from this point forward were renumbered.

13. The more significant comments and reply comments are summarized herein. First, Verizon commented on Sections 308 and 309, raising concerns that the new restrictions on use of customer information would impair a provider's ability to serve customers and that some of the privacy protection provisions (i.e., annually providing a copy of the privacy protection plan) are counterproductive.³¹ Second, WGL requested that the Commission clarify Subsection 310.3 to reflect that the prohibition from service disconnection when the temperature is 95° and above was not applicable to natural gas since it is primarily used to heat homes during heating season in the winter.³² Third, Pepco and RESA support the proposed revisions to Subsection 325.3 regarding the grounds upon which the Commission can dismiss a complaint but suggest that the rule be revised further to allow the Commission to dismiss a complaint when the complainant alleges other legal grounds not within the Commission's jurisdiction.³³ Fourth, RESA and WGL Energy raised concerns about the language in Subsection 327.7(c), dealing with suppliers offering variable price products and requested that the Commission clarify that provision.³⁴ Fifth, OPC requests that Subsection 327.11 be modified to require a written or electronic signature for solicitations via telephone.³⁵ Sixth, WGL Energy seeks clarification of Subsection 327.12 and requests that the rule specifically state that contract renewals are not negative option contracts.³⁶ Seventh, Pepco, OPC, WGL Energy, and RESA suggest that the Commission clarify and/or modify the rules to ensure that the rescission period in Subsections 327.15 and 327.18 are the same (three day rescission period).³⁷ Eighth, OPC, RESA and WGL Energy took different positions with respect to the need to modify the language in Subsections 327.23(c) and (d) regarding contracts for home solicitations.³⁸ Ninth, in Subsection 327.29, regarding acceptance, acknowledgement, and receipt of electronic enrollments, Pepco states that the rule does not conform with its current practice and

³¹ Verizon's 3rd NOPR Comments at 1-4.

³² WGL's 2nd NOPR Comments at 2.

³³ Pepco's 3rd NOPR Comments at 3; and RESA 3rd Reply Comments at 4.

³⁴ RESA's 2nd Comments at 2-3; WGL Energy's 2nd Comments at 2. The clarification was requested because RESA believes that in some instances it would be impossible to comply with the rule (i.e., disclosures should be in writing for telephone solicitations) and WGL Energy believes that it would discourage customers (i.e., by using the proposed higher and lower cost language) from contracting for variable price products.

³⁵ OPC's 2nd Comments at 13; WGL Energy's 2nd NOPR Reply Comments at 6; and RESA's 2nd NOPR Comments at 5-6.

³⁶ WGL Energy's 2nd Comments at 3.

³⁷ Pepco's 2nd NOPR Comments at 2; OPC's 2nd NOPR Comments at 14; WGL Energy's 2nd NOPR Reply Comments at 2-3; RESA's 2nd NOPR Comments at 5; RESA's 3rd NOPR Comments at 2-4; and RESA's 4th NOPR Comments at 5-6.

³⁸ OPC's 2nd Comments at 12; WGL Energy's 2nd NOPR Reply Comments at 6; and RESA's 2nd NOPR Comments at 5-6. OPC recommends that home solicitation contracts for Subsection 327.23 (c) be valid and enforceable only if it contains the written or electronic signature of the consumer. RESA recommends simplifying the language to require a written or electronic signature for home solicitations. WGL Energy disagrees that new language needs to be added to clarify the required contracting methods since Subsection 327.11 already exists and sets forth the acceptable methods of contracting.

that the new procedure will take approximately three months from approval of the rules to implement.³⁹ Tenth, Pepco comments that it does not object to the accelerated time for customers to switch providers required by Subsection 327.35, but states that it will take approximately nine (9) months to implement the accelerated process at a cost of between \$200,000-\$300,000.⁴⁰ Pepco also noted that the timing in the proposed rule is in conflict with the Standard Offer Service (“SOS”) rules and Pepco’s supplier tariff, therefore, Pepco would need to file a revised tariff in order to comply with the revised rule.⁴¹ Eleventh, WGL recommended revisions to Subsection 327.37 to reflect the automatic drop/enrollment process instead of having to wait to receive the customer’s notice of contract termination before WGL can accept an enrollment from another CSP.⁴² Lastly, RESA recommends deleting the term “Completed Written Contract” from the definitions in Subsection 399.1 because RESA believes the term could cause confusion.⁴³

IV. DECISION

14. The purpose of this rulemaking proceeding has been to ensure consumer protections for District of Columbia utility customers and to clarify various requirements for Energy Suppliers. Based on the comments received in this proceeding, the Commission modified its NOPRs to ensure that the language in the NOFR strikes a balance between consumers, utility companies and Energy Suppliers. The revised rules provide reasonable protections to consumers while also allowing Energy Suppliers the necessary flexibility in the provision of competitive services in the District.

15. The Commission appreciates the input from the stakeholders on a number of revisions to the rules such as: the Use of Customer Information (Section 308); the Privacy Protection Policy (Section 309); and the Consumer Protection Standards (Section 327). Because, the majority of the stakeholders’ comments focused on the Customer Protection Standards for Energy Suppliers (Section 327), the Commission convened a Technical Conference and Workshop on August 4, 2015, to allow stakeholders the opportunity to discuss among each other their concerns with the proposed rules. As a follow-up to the Technical Conference, on December 31, 2015, the stakeholders filed a report providing consensus provisions on many of the proposed rules. The Commission reviewed that report and incorporated many of the modifications into the NOFR.

16. The Commission notes that the most debated provisions centered on the Customer Protection Standards in Section 327. The comments primarily concerned when the rescission period begins for the distinct types of solicitation (Telephone, Internet, Home, and Direct Mail) and the customer transfer and enrollment processes. With respect to the rescission period, the rules

³⁹ Pepco’s 2nd NOPR Comments at 4.

⁴⁰ Pepco’s 2nd NOPR Comments at 5; Pepco’s 3rd NOPR Comments at 5-7, and Pepco’s 4th NOPR Comments at 6. Pepco notes that the changes conflict with the SOS rules.

⁴¹ Pepco’s 2nd NOPR Comments at 5; Pepco’s 4th NOPR Comments at 6.

⁴² WGL Request’s at 1-2.

⁴³ RESA’s 4th NOPR Comments at 7; RESA’s 6th NOPR Comments at 1-2.

have made it clear that customers have a three (3) business day period in which to rescind or cancel a Completed Written Contract regardless of the manner of contracting (327.15 – 327.26).⁴⁴ These provisions as written in the Sixth NOPR will become final because they represent what we believe is sound policy and reasonable consumer protections.

17. Pepco requests a three-month implementation period for Subsection 327.29, and a nine-month implementation period for Subsection 327.35 to make operational changes and to file revised tariffs. The Commission finds that Pepco's request for a delayed implementation period for Subsections 327.29 and 327.35 to make operational changes and to file revised tariffs to be reasonable. Pepco has explained, and the Commission understands that it will take some time to update Pepco's technological and operational systems in order to comply with the revised rules. Pepco also notes that it will cost between \$200,000-\$300,000 to implement the accelerated enrollment period in Subsection 327.35. While these costs are more appropriately addressed in a base rate case proceeding, Pepco still has the burden of showing the prudence of all costs when it seeks recovery in the next rate case. In order to provide Pepco with sufficient time to implement Subsections 327.29 and 327.35, the Commission will grant Pepco until September 10, 2019, or approximately nine months, in which to comply fully with these provisions.

18. Pepco also raises a concern about the timing of switching and the minimum stay notice provisions as it relates to customer transfers with the SOS rules. The Commission has undertaken a rulemaking in *RM41-2017-01*, which is to be simultaneously published with these rules as final rules to address these areas of concern.

19. WGL raised a concern about Subsection 327.37 and requested a change that would allow for an automatic drop/enrollment process. The Commission addressed WGL's concern by modifying Subsections 327.36 and 327.37 in a final rulemaking adopted by Order No. 19675 and published in the *D.C. Register* on September 28, 2018.⁴⁵

20. Although RESA raised concerns that the inclusion of the term "Completed Written Contract" could create confusion, after reviewing various comments regarding contracts and rescission periods, the Commission determined that adding the term to the definitions (Subsection 399.1) actually clarifies what constitutes an executed contract (Signed/TPV/Electronic Signature/Recorded) for purposes of the Chapter 3 rules. Therefore, the Commission will retain this term in the final rules. Also, the Commission added other terms (Drop, Energy Supplier and Third-Party Verification) to the definitions to provide clarity. For the reasons articulated above, the Commission adopts the Sixth NOPR as final and it shall become effective upon publication in the *D.C. Register*.

⁴⁴ A Completed Written Contract is an agreement between a Customer and an Energy Supplier that specifies the terms, conditions and charges for the provision of electric or natural gas services to the Customer and the agreement is signed or acknowledged through Third-Party Verification, an electronic signature, or an electronic recording. There is a scrivener's error in Subsection 327.15, the rule should read that "An Energy Supplier shall advise a Customer that he/she has the right to rescind the Contract agreement within the **three (3) business day** Rescission Period" The bold print notes the language which was inadvertently dropped from the Sixth NOPR.

⁴⁵ 65 *D.C. Reg.* 011734-011752 (October 19, 2018).

THEREFORE, IT IS ORDERED THAT:

21. By Order No. 19675, issued September 28, 2018, the Commission adopted as Final Rules, Subsections 327.36 from the Fourth Notice of Proposed Rulemaking, and 327.37, from the Fifth Notice of Proposed Rulemaking, for the implementation of the Purchase of Receivables program;

22. Except for the noted prior adoption of amendments to Subsections 327.36 and 327.37, the Commission hereby adopts these amendments in Attachment A as final;

23. The Electric Utility and Energy Suppliers shall have until September 10, 2019, to comply with revised Subsections 327.29 and 327.35; and

24. These rules shall become effective upon publication of 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**

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING

RULEMAKING 3-2014-01 – UTILITY CONSUMER BILL OF RIGHTS

1. The Public Service Commission of the District of Columbia (Commission), pursuant to its authority under D.C. Official Code §§ 2-505 (2016 Repl.) and 34-802 (2012), hereby gives notice of its final rulemaking action adopting the following amendments to Chapter 3 (Consumer Rights and Responsibilities) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations (DCMR), commonly referred to as the “Consumer Bill of Rights (CBOR).”

2. As indicated in the notices of proposed rulemaking (NOPR),¹ the purpose of the amendments was to clarify various requirements for Energy Suppliers² including Use of Customer’s Information (Section 308), Privacy Protection Policy (Section 309), Grounds for Disconnection of Services (Section 310), Field Service Identification and Payment Procedures (Section 313), Publication of Consumer Pamphlets (Section 321), Formal Hearing Procedures (Section 325), Decisions and Appeals (Section 326), Customer Protection Standards Applicable to Energy Suppliers (Section 327), and Definitions (Section 399). Accordingly, after fully considering the comments and reply comments filed, the Commission by Order No. 19759, adopted the revised. rules as final. The Electric Utility and Energy Suppliers shall have until September 10, 2019, to comply with Subsections 327.29 and 327.35.

¹ The published NOPRs are as follows: 1st NOPR *61 D.C. Reg.* 010807 – 010822 (October 17, 2014); 2nd NOPR *64 D.C. Reg.* 006128 – 006144 (June 30, 2017); 3rd NOPR *64 D.C. Reg.* 013113 – 013129 (December 22, 2017); 4th NOPR *65 D.C. Reg.* 002979 – 002995 (March 23, 2018); 5th NOPR *65 D.C. Reg.* 006179 – 006180 (June 8, 2018); and 6th NOPR *65 D.C. Reg.* 011734 – 011752 (October 19, 2018). The Sixth NOPR superseded all previous NOPRs that were not adopted as final.

² Energy Suppliers generally cover individuals or persons who are brokering, arranging or marketing electricity for sale to customers. Energy Suppliers are not representatives of utilities.

Chapter 3, Consumer Rights and Responsibilities, of Title 15, Public Utilities and Cable Television, of the DCMR is amended as follows:

Section 308, USE OF CUSTOMER’S INFORMATION is amended as follows:

- 308.1 An Applicant or a Customer need not disclose his or her Social Security number to the Utility, Energy Supplier, or Telecommunications Service Provider to obtain or maintain service. Upon requesting a Customer’s Social Security number, the Utility, Energy Supplier, or Telecommunications Service Provider shall inform the Customer that the provision of this number is voluntary and will not affect the provision of service to that Customer.
- 308.3 Unless a Customer consents in writing or through electronic means such as Third-Party Verification, recorded voice or electronic signature, the Utility, Energy Supplier or Telecommunications Service Provider may not disclose or use Customer information or the Customer’s use of service (types and amounts) except to the Commission and in accordance with the Utility, Energy Supplier or Telecommunications Service Provider’s Privacy Policy. The Utility, Energy Supplier, or Telecommunications Service Provider shall reasonably protect the confidentiality of customer information.
- 308.4 The restrictions in §§ 308.2 and 308.3 above do not apply to lawful disclosures for bill collection, credit rating reports, provision of service, legitimate business activities, to assist Customers who have had, or may have, their service involuntarily disconnected, or as otherwise authorized by law. It shall be the responsibility of the Utility, Energy Supplier or Telecommunications Service Provider to obtain and maintain the written or electronic consent, referred to in Subsections 308.2 and 308.3 above. A Customer’s information shall be made available to the Commission upon request.

Section 309, PRIVACY PROTECTION POLICY, is amended as follows:

- 309.1 Each Utility, Energy Supplier or Telecommunications Service Provider shall institute a Privacy Protection Policy to protect against the unauthorized disclosure of Customer information or a Customer’s use of service (types and amounts). 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 to the Commission and posted in a prominent place on each company’s website.

Section 310, GROUNDS FOR DISCONNECTION, is amended as follows:

- 310.3 Disconnection of natural gas or electric utility service for non-payment of bills, failure to post a cash Security Deposit, or failure to comply with the terms of a DPA where natural gas or electricity is used as the primary source of heating or cooling the residence is prohibited:

- (a) An electric utility shall not disconnect residential electric service during the day preceding and the day of a forecast of extreme temperature, when the National Weather Service forecast for the District of Columbia is ninety-five (95°) degrees Fahrenheit or above or thirty-two (32°) degrees Fahrenheit or below during any time of a day, or if the forecast of extreme temperature precedes a holiday or weekend day, on any day during a holiday or weekend; or
- (b) A Natural Gas Utility shall not disconnect residential gas service during the day preceding and the day of a forecast of extreme temperature, when the National Weather Service forecast for the District of Columbia is thirty-two (32°) degrees Fahrenheit or below during any time of a day, or if the forecast of extreme temperature precedes a holiday or weekend day, on any day during a holiday or weekend.

Section 313, FIELD SERVICE IDENTIFICATION AND PAYMENT PROCEDURES is amended as follows:

313.3 The natural gas or electric field service representative shall be authorized to accept payment. If payment in full of all Charges due and owing is tendered, service shall not be disconnected. Tender of payment by personal check shall be accepted unless the Customer has within the past twelve (12) months paid the Utility with a check not honored by a bank. However, the natural gas or electric field representative shall not accept payment by cash. Where the customer offers full payment of all charges by cash, the natural gas or electric field service representative shall make other payment arrangements with the customer to avoid disconnection.

Section 321, PUBLICATION OF CONSUMER PAMPHLET, is amended as follows:

321.1 Each Utility, Energy Supplier, and Telecommunications Service Provider shall prepare a consumer pamphlet in English and Spanish in layman's terms summarizing the rights and responsibilities of Customers in accordance with the utilities' tariff provisions and the Commission's regulations. Prior to distribution, the Utility, Energy Supplier, or Telecommunication Service Provider shall provide the Commission and OPC with a copy of the consumer pamphlet. OPC shall submit any comments on the consumer pamphlet to the Commission and to the Utility, Energy Supplier, and Telecommunication Service Provider within ten (10) business days. If the Commission does not reject or otherwise act on the pamphlet within thirty (30) days of its filing, the consumer pamphlet shall be deemed approved.

Section 325, FORMAL HEARING PROCEDURES, is amended as follows:

325.3 If a review of the Formal Complaint by the Hearing Officer determines that the Complainant is solely requesting monetary damages, compensatory or punitive damages, or if the Complaint alleges matters or legal grounds otherwise not

within the Commission’s jurisdiction, the Hearing Officer shall issue an order dismissing the case with prejudice for failure to state a claim upon which relief may be granted or for lack of jurisdiction by the Commission.

- 325.4 The Commission shall provide notice of the hearing by first-class mail or other technological means, as authorized by the Commission, to the Customer and the Customer’s Designated Representative and to the Utility, Energy Supplier or Telecommunications Service Provider. Service shall be made by first-class mail postage prepaid at least fourteen (14) days prior to the hearing date unless the parties agree on a shorter time. The notice shall also state that in the event that the Complainant fails to attend a scheduled hearing without evidence of good cause, the Hearing Officer may dismiss the Complaint with prejudice. The Hearing Officer may reschedule any hearing to a date or time agreed upon by the parties or, upon notice and for good cause shown, at the request of any party.
- 325.5 A party requesting a second continuance will be required to provide good cause for the continuance. If the party is the Complainant and he or she does not provide good cause, as determined by the Hearing Officer, the Complaint may be dismissed, with prejudice. If the party is a Utility, Energy Supplier or Telecommunications Service Provider and it fails to provide good cause, the matter may be heard, without continuance. The Hearing Officer may, at his or her discretion, postpone or adjourn a hearing for reasonable cause. If a hearing is continued, adequate notice shall be provided to the parties.
- 325.6 In the event the Complainant fails to attend any scheduled hearing without good cause, the Hearing Officer may dismiss the Complaint with prejudice.
- 325.7 In the event a Utility, Energy Supplier or Telecommunications Service Provider fails to attend a scheduled hearing without good cause, the Hearing Officer may hear evidence and render a decision.
- 325.8 Upon a reasonable request from each other, the parties shall, within the timeframe prescribed in Chapter 1 of Title 15, provide all information they have that is relevant to the matters at issue in the Complaint including relevant documents, Account data, files and the names of witnesses. Nothing herein shall preclude a party from filing a request or motion to compel responses to information requests.
- 325.9 Parties may examine any relevant records of the Commission. However, information deemed to be confidential may be reviewed in a manner that is consistent with the Commission’s Rules of Practice and Procedure.
- 325.10 On any evidentiary issue or procedure where Chapter 3 of Title 15 is silent, the Hearing Officer may at his or her discretion utilize Chapter 1 of Title 15 regulations as appropriate.
- 325.11 Parties may represent themselves or be represented by counsel, conservator, legal guardian or someone with power of attorney. If a Complainant proceeds *pro se*,

the Hearing Officer may construe the pleadings liberally. If it appears to the hearing officer that a party appearing without an attorney should be represented by an attorney, the Hearing Officer shall suggest that the party secure counsel or contact the Office of the People’s Counsel concerning representation and allow a reasonable time to secure such representation.

- 325.12 Parties shall have the right to present evidence, call witnesses, and present written and oral argument.
- 325.13 Witnesses shall testify under oath, and the parties shall have the right to examine and cross-examine all witnesses.
- 325.14 The Hearing Officer may, in his or her discretion, limit any line of questioning, testimony and the time for argument.
- 325.15 Unless otherwise ordered by the Hearing Officer, the Complainant’s witnesses shall testify first, followed by the Utility’s, Energy Supplier’s or Telecommunications Service Provider’s witnesses. A reasonable opportunity will be afforded all parties to present rebuttal evidence.
- 325.16 The Hearing Officer may elicit testimony from any witness regarding the issue(s) in dispute.
- 325.17 The Hearing Officer has the obligation, especially when a Complainant is not represented by counsel, to ensure that all material facts are developed to the fullest extent consistent with his or her responsibility to preside impartially throughout the proceeding.
- 325.18 The formal rules of evidence shall not apply, but the Hearing Officer shall exclude irrelevant or unduly repetitious evidence.
- 325.19 Parties may stipulate to any facts, and such stipulation shall be put into evidence.
- 325.20 All proceedings shall be recorded or transcribed by a certified court reporter. The transcriptions shall be made available promptly to any party upon request, at the party’s expense.

Section 326, DECISION AND APPEALS, is amended as follows:

- 326.2 (c) Complaints requesting monetary, compensatory or punitive damages as the sole basis for relief shall be dismissed with prejudice by the Hearing Officer for failure to state a claim upon which relief may be granted or for lack of jurisdiction by the Commission.

327 CUSTOMER PROTECTION STANDARDS APPLICABLE TO ENERGY SUPPLIERS is amended as follows:

- 327.1 This section sets forth billing, Deposit, Enrollment, Termination of Contract, supplier switching, advertising and minimum Contract standards that apply to Energy Suppliers, Marketers, Aggregators, and Consolidators licensed to provide competitive electric and gas services by the Public Service Commission of the District of Columbia. If a Customer has a Complaint about an alleged violation of this section, the Complaint procedures in § 320 of these regulations shall apply.
- 327.2 An Energy Supplier may not engage in a marketing, advertising, Solicitation or trade practice that is unlawful, misleading, or deceptive as set forth in D.C. Code § 28-3904.
- 327.3 An Energy Supplier shall not engage in Cramming.
- 327.4 An Energy Supplier shall not engage in Slamming.
- 327.5 Any prohibition regarding the disclosure of Account status and Customer information should not preclude Energy Suppliers from obtaining or providing Account status and Customer information for acquisition or sale of a book of business as long as the review of such information during a proposed acquisition or sale is subject to confidentiality agreements.
- 327.6 Energy Suppliers must maintain documentation to substantiate any advertisement of energy supply that contains specific environmental claims. Such documentation shall be made available, upon request, through a hard copy or other technological means.
- 327.7 Any Solicitation of energy supply that contains any specific offering to a residential Customer must at a minimum include the following:
- (a) The Energy Supplier's name, address, telephone number, and web site address, if applicable;
 - (b) The Energy Supplier's District of Columbia license number in a clear and conspicuous manner;
 - (c) The price offered for natural gas supply or electricity supply may be either a fixed or variable rate. An explanation of a variable rate should indicate that:
 - (1) A variable rate may be based on market conditions; and
 - (2) A variable rate may result in higher or lower costs over an initial introductory rate;
 - (d) A statement that the advertised rate is only for the specified natural gas supply or electricity supply and does not include any additional tax, Utility Distribution Service Charge, or other Utility fee or Charge;

- (e) Any minimum Contract duration necessary to obtain an advertised price;
- (f) A statement of minimum use requirements, if any; and
- (g) If the advertisement offers several services and does not break out individual prices for the services, the following disclaimer must accompany the advertisement: “Disclaimer: This offer includes several services at a single price. You should compare this price to the total of the prices you currently pay for each of the individual services.”

327.8 An electricity supply or natural gas supply Contract with a Customer shall, at a minimum, contain the following material terms and conditions:

- (a) A list and description of the Contract services;
- (b) A statement of minimum use requirements, if any;
- (c) A description of any time of use restrictions, including the time of day or season;
- (d) A price description of each service, including all fixed and variable costs;
- (e) A notice that the Contract does not include Utility Charges;
- (f) A billing procedure description;
- (g) In the case of consolidated billing, a notice that the Customer acknowledges that Customer billing and payment information may be provided to the Energy Supplier;
- (h) A statement of Contract duration, including initial time period and any rollover provision;
- (i) A Deposit requirement, if any, including: the amount of the Deposit; a description of when and under what circumstances the Deposit shall be returned; a description of how the Deposit may be used; and a description of how the Deposit shall be protected;
- (j) A description of any fee or Charge and the circumstances under which a Customer may incur a fee or Charge;
- (k) A statement that the Customer may rescind the Contract within three (3) business days from the start of the Rescission Period;

- (l) A statement that the Energy Supplier may terminate the Contract early including the circumstances under which early cancellation by the Energy Supplier may occur; the manner in which the Energy Supplier shall notify the Customer of the early cancellation of the Contract; the duration of the notice period before early cancellation; remedies available to the Customer if early cancellation occurs;
- (m) A statement that the Customer may terminate the Contract early including the circumstances under which early cancellation by the Customer may occur; the manner in which the Customer shall notify the Energy Supplier of the early cancellation of the Contract; the duration of the notice period before early cancellation; and remedies available to the Energy Supplier if early cancellation occurs; and the amount of any early cancellation fee;
- (n) A statement describing Contract renewal procedures, if any;
- (o) A dispute resolution procedure;
- (p) The Commission’s telephone number and website address; and
- (q) The Office of the People’s Counsel’s telephone number and website address.

327.9 If an Energy Supplier receives a request from a Customer not to receive any Solicitations from that solicitor, the Energy Supplier shall no longer contact the Customer. If an Energy Supplier receives a request from a Customer not to receive a particular type of Solicitation from that solicitor, which includes, but is not limited to, in-person Solicitation, telephone Solicitation, electronic Solicitation or any form of mail or post card by the solicitor, the Energy Supplier shall not use that type of Solicitation with that Customer in the future.

327.10 Nothing in these regulations shall affect the applicability of any Federal or District Telephone Solicitation and consumer protection laws and regulations including, but not limited to, the fines and penalties thereunder for violation of such laws and regulations. Any Energy Supplier soliciting customers by telephone shall comply with all applicable District and federal laws, including the Telephone Consumer Protection Act of 1991 (15 U.S.C. § 6151 *et seq.*) and the Telemarketing Consumer Fraud and Abuse Prevention Act of 1994 (15 U.S.C § 6101 *et seq.*).

327.11 There are three (3) principal ways in which a Customer may enter into a Contract with an Energy Supplier:

- (a) Through a recorded verbal consent via telephone Solicitation;
- (b) Electronic Contract; or

(c) Written Contract.

327.12 An Energy Supplier may not use “negative option contracts,” in which Contracts are created if the Customer takes no action. Therefore, an Energy Supplier may not enter into a Contract with a Customer if the Customer simply refrains from action. However, Contract renewals are not negative option contracts.

327.13 If a Customer wishes to enter into a Contract with an Energy Supplier, the Energy Supplier may request from the Customer the following information, by telephone, in writing, or Internet or other technological means:

- (a) The customer’s name;
- (b) Billing address;
- (c) Service address;
- (d) Electronic mail address;
- (e) Telephone number;
- (f) Utility Account and any other number designated by the utility as necessary to process an enrollment;
- (g) Employment information; and
- (h) Usage information.

327.14 An Energy Supplier may ask for additional information beyond that specified in Subsection 327.13 only after first informing the Customer of his or her right not to provide such information.

327.15 An Energy Supplier shall advise a Customer that he/she has the right to rescind the Contract agreement within the three (3) business day Rescission Period that begins on one of the following dates:

- (a) When the Customer signs the Contract;
- (b) When a positive Third-Party Verification or electronic recording has been made;
- (c) When the Customer transmits the electronic acceptance of the Contract electronically; or
- (d) When the Completed Written Contract is deposited in the U.S. Mail.

327.16 **FOR A TELEPHONE SOLICITATION:** Telephone Solicitations shall be made only between the hours of 9:00 a.m. and 9:00 p.m. If a Customer is solicited to enter into a Contract by telephone, whether the Energy Supplier or its authorized agent first contacts the Customer, or the Customer calls the Energy Supplier or its authorized agent in response to a direct mail Solicitation, the Energy Supplier or its authorized representative shall:

- a) Begin the conversation by accurately stating the following:
 1. His or her name;
 2. The name of the business or organization calling;
 3. The nature of the call, i.e. a Solicitation;
 4. A brief description of the subject-matter being solicited; and
 5. An offer to the Customer to hear the full Solicitation;
- b) Describe the rates, terms, and conditions of the Contract;
- c) Arrange to have the Customer's intent to contract with the Energy Supplier independently verified. To verify a residential Customer's intent to contract with an Energy Supplier by telephone, an Energy Supplier must utilize either:
 1. An Independent Third-Party telephone verification;
 2. An automated, computerized system; or
 3. An electronic recording of the entire conversation between the Customer and the Energy Supplier which the Energy Supplier shall maintain for three (3) years.

327.17 All verifications performed pursuant to Subsection 327.16 shall be required to ask the Customer the following questions:

- (a) "Are you the Customer of record?";
- (b) "Did you agree to switch your natural gas supply service or electric supply service to [New Supplier]?"; and
- (c) "Is [Customer's address] your correct address?" or "Is [Customer's Utility Account number] your correct Utility Account number?"

327.18 Once the Customer's choice of Energy Supplier is verified by an Independent Third-Party Verifier or an electronic recording is made, the Energy Supplier shall, within five (5) business days from the day the Customer agreed telephonically to

Contract with the Energy Supplier, provide to the Customer via U.S. Mail or electronic mail a copy of the Completed Written Contract.

327.19 Once a positive verification has been obtained or an electronic recording has been made, and a written Contract has been sent to the Customer, and after the Rescission Period has expired, the Energy Supplier shall transmit the Enrollment transaction to the Natural Gas or the Electric Utility, whichever is appropriate.

327.20 **FOR AN INTERNET SOLICITATION:** The Energy Supplier may post on its website an electronic version of its Solicitation for the supply of natural gas or electricity. The electronic solicitation shall include:

- (a) An electronic application form for the Customer to enter into a Contract for the supply of natural gas or electricity;
- (b) An electronic version of the actual Contract;
- (c) Instructions on how the Customer may rescind the Contract; and
- (d) A link to the Commission's website to obtain the applicable rules and regulations governing the relationship between the Customer and the Energy Supplier.

327.21 After the Customer completes the electronic application form and electronically accepts the Contract terms and conditions, the Customer has a three (3) business day Rescission Period from the completed online Contract authorization date to rescind his or her Contract.

327.22 Upon receipt of the Customer's electronic application and electronic acceptance of the Contract terms and conditions and after the Rescission Period has expired, the Energy Supplier shall transmit the enrollment transaction to the Natural Gas Utility or the Electric Utility, whichever is appropriate.

327.23 **FOR HOME SOLICITATIONS:** Home Solicitations shall be limited to the hours between 9:00 a.m. and sunset. During a home Solicitation, the Energy Supplier or its authorized agent shall:

- (a) Present the Customer with a photo identification card that identifies the name of the person making the solicitation and the name of the Energy Supplier that he or she is representing;
- (b) Begin the conversation by stating the following:
 - 1. The name of the business or organization;
 - 2. The nature of the visit, i.e., a Solicitation;
 - 3. A brief description of the subject matter being solicited;

4. Ask the customer if he/she would like to hear the full Solicitation;
- (c) Present the Customer with a complete copy of the written or electronic Contract being offered and obtain the Customer’s consent consistent with one of the methods described in Subsection 327.11;
- (d) Obtain either an Independent Third-Party telephone verification of the Customer’s intent or obtain a signed contract that includes a statement in the Contract under the conspicuous Caption” “BUYER’S RIGHT TO CANCEL” which states: “If this agreement was solicited at or near your residence, and you do not want the goods or services, you may cancel this agreement by mailing a notice to the seller. The notice must say that you do not want the goods or services and must be mailed before midnight on the third business day after you signed this agreement. This notice must be mailed to: (name and address of seller)”; and
- (e) Transmit the enrollment transaction to the Natural Gas Utility or the Electric Utility, after the Rescission Period has expired.

327.24 **FOR DIRECT MAIL SOLICITATIONS:** If a Customer is solicited at home through a direct mail Solicitation by an Energy Supplier, the Energy Supplier shall follow the Solicitation and contracting requirements in Subsections 327.7 and 327.8, respectively, and Subsections 327.13 and 327.14 with respect to telephone Solicitation where the customer calls the Energy Supplier or its authorized representative in response to the direct mail Solicitation.

327.25 In the event of a dispute over the existence of a Contract, the Energy Supplier shall bear the burden of proving the Contract’s existence.

327.26 When using any of the permitted forms of Solicitation, the Energy Supplier shall provide the Customer with a notification of his or her right to rescind the Contract pursuant to Subsection 327.15.

327.27 Upon completion of the Customer’s electronic enrollment request and after the Rescission Period has expired, the Energy Supplier shall transmit the enrollment transaction to the Natural Gas Utility or Electric Utility, whichever is appropriate.

327.28 For purposes of these rules, the electronic submission by the Customer of the application to Contract with the Energy Supplier constitutes an “electronic signature” and an executed Contract.

327.29 If the Customer submits an electronic application and electronic Contract, the Energy Supplier shall acknowledge the Customer’s submission with a Confirmation of receipt of the electronic enrollment within twenty-four (24) hours of receipt.

ATTACHMENT A – ORDER NO. 19759

- 327.30 It is the responsibility of the Energy Supplier to provide its website address to the Commission. The Natural Gas Utility, Electric Utility, and Energy Suppliers shall prominently display on their websites' homepages links to the Commission's website pages for Customer Retail Choice and Consumer Suppliers' Offers.
- 327.31 For electronic contracting, the Energy Supplier's website shall allow a Customer to print or save a copy of the Contract.
- 327.32 During the electronic enrollment procedure, each web screen shall clearly display a "Cancel" icon enabling the Customer to terminate the Enrollment transaction at any time. In addition, the cancellation feature shall be clearly explained to the Customer at the beginning of the electronic enrollment process.
- 327.33 At the completion of the electronic enrollment process, and at the end of the three (3) business day Rescission Period, the Energy Supplier, at the Customer's request, shall provide a secure website location or a telephone number where the Customer can verify that he or she has been enrolled in the Energy Supplier's program.
- 327.34 All online transactions between Energy Suppliers and Customers shall be encrypted using Secure Socket Layer (SSL) or similar encryption standards to ensure the privacy of Customer's information consistent with Subsection 309.1.
- 327.35 The Electric Utility shall transfer a Customer to a competitive electricity supplier in no later than three (3) business days after receiving the notice of an enrollment transaction from the competitive electricity supplier. The Electric Utility shall transfer a Customer to Standard Offer Service in no later than 3 business days after receiving the Customer's request. The Electric Utility shall accept the last enrollment received from the Energy Supplier at the relevant days' end.
- 327.38 Energy Suppliers must process all Customer cancellation requests within three (3) business days after receipt of the cancellation request.
- 327.39 The transmittal of an EDI Transaction by the Electric Supplier to the Electric Utility shall not occur until after the three (3) business day Rescission Period.
- 327.40 The transmittal of an enrollment transaction by the Gas Supplier to the Gas Utility shall not occur until after the three (3) business day Rescission Period.
- 327.41 Upon an Energy Supplier's Enrollment of a Customer, the Energy Supplier shall provide to the Customer, within a reasonable period of time the following:
- (a) A statement of enrollment;
 - (b) A description of the agreed-upon billing option and the Company's billing date, if applicable and if different from the Utility's; and

- (c) Customer service information (including toll-free telephone number, mailing address, and dispute resolution process information).

327.42 The Customer shall notify the Energy Supplier, not the Utility, of his or her intent to rescind the Contract within the Rescission Period. If the Customer does request to rescind their Contract within the three (3) business day Rescission Period, the Enrollment shall be considered effective. If the Customer notifies the Energy Supplier of his or her intent to rescind the Contract within the three (3) business day Rescission Period, the Contract is deemed invalid and non-binding.

327.43 After the three (3) business day Rescission Period expires and the enrollment is processed by the Utility, the relationship between the Customer and the Energy Supplier shall be governed by the terms and conditions contained in the Contract.

327.44 An Energy Supplier shall provide the Customer with written notice of Contract expiration or termination at least thirty-five (35) days before the expiration or termination of the current Contract. The Energy Supplier's written expiration or termination notice shall include the following:

- (a) Final Bill payment instructions;
- (b) A statement informing the Customer that unless the Customer selects a new Energy Supplier, Termination of Contract shall return the Customer to the Utility; and
- (c) The Commission's telephone number and website address.

327.45 If an Energy Supplier's Contract provides for voluntary renewal of the Contract or for automatic renewal of the Contract (also known as an "Evergreen Contract"):

- (a) The Energy Supplier shall provide written notice to the Customer of the pending renewal of the Contract at least forty-five (45) days before the renewal is scheduled to occur;
- (b) Written notice of any changes to the material terms and conditions (including, but not limited to, changes to the rate, the billing option or the Billing Cycle), shall be provided with or before the forty-five (45) day written notice. The notification of renewal and of any change in Contract terms shall be highlighted and clearly stated; and
- (c) If the Contract is an Evergreen Contract, the forty-five (45) day written notice shall inform the Customer how to terminate the renewal of the Contract without penalty and advise the Customer that terminating the Evergreen Contract without selecting another Energy Supplier shall return the Customer to Natural Gas Sales Service or Electric Standard Offer

Service. The written notice shall also inform the Customer that the Commission has additional information on the energy supply choices available to the Customer. The telephone number and website for the Commission shall be included in the written notice.

327.46 ASSIGNMENT OF CONTRACT

- (a) At least thirty (30) days prior to the effective date of any assignment or transfer of an Energy Supplier contract from one District of Columbia licensed Energy Supplier to another, the Energy Suppliers shall jointly provide written notice to the Customers of the Energy Supplier, the Commission, the utility and the Office of the People’s Counsel of the assignment or transfer.
 - 1. Notice to Customer. The Energy Suppliers shall jointly send a letter to the Customer informing them of the assignment or transfer. The letter shall include:
 - (a) A description of the transaction in clear and concise language including the effective date of the assignment or transfer; and
 - (b) Customer service Contact information for the assignee;
 - 2. The terms and conditions of the Customer’s Contract at the time of assignment shall remain the same for the remainder of the contract term; and
 - 3. The Energy Suppliers shall file a notice with the Commission, with a copy to the Office of the People’s Counsel and the utility, of the assignment or transfer of the Customer Contracts and include a copy of the letter sent to Customers;
- (b) Upon request by the Commission, the assignee shall be responsible for providing documents and records related to the assigned Contracts. Records shall be maintained for a period of three years or until the Contracts are expired, whichever is longer; and
- (c) An assignment or transfer of an Energy Supplier Contract from one Energy Supplier to another is not an enrollment or drop.

327.47 An Energy Supplier shall post on its website current and understandable information about its rates, charges and services.

327.48 An Energy Supplier shall not conduct Meter test.

327.49 If an Energy Supplier’s charges are based on usage, an Energy Supplier shall rely on the Meter reading (actual, estimated, or customer meter readings) provided to

it by the respective Utility, unless the Energy Supplier has installed, owns, and reads metering equipment, consistent with the applicable Utility's tariff.

327.50 An Energy Supplier may, at the election of a Customer, Bill a Customer in accordance with a level payment billing plan. If an Energy Supplier utilizes the billing services of a Utility, an Energy Supplier may use the level payment plan as part of the Utility's billing service. The Energy Supplier shall inform the Customer of this option and explain how the monthly payments are calculated. Prior to implementation of the level payment billing plan, the Energy Supplier shall provide the Customer with the following information in writing:

- (a) An acknowledgement that the Customer shall be on the level payment billing plan effective the next billing period;
- (b) An estimate of the Customer's use on an annual basis and an explanation of how the monthly payment has been calculated;
- (c) An indication that the final bill for the level payment billing plan effective period shall reflect the last level payment billing plan installment adjusted for any difference between actual and budgeted usage. Amounts overpaid shall be credited to the Customer's account or refunded, if requested by the Customer. Amounts underpaid that are equal to or greater than the monthly payment may be paid in up to three (3) monthly installments; and
- (d) Final bills are issued when either a Customer account is closed or in the case of a Customer with an Energy Supplier, the supply Contract is closed or changed. Any level payment billing plan in effect shall be reconciled upon rendering the final bill. Amounts underpaid shall be due within twenty (20) days of final bill rendering. Amounts overpaid shall be refunded or credited to the Customer's utility account within twenty (20) days of final bill rendering.

327.51 The Energy Supplier may perform a periodic analysis of a Customer's level payment billing plan and notify the Customer, within twenty-one (21) days thereafter, if actual usage varies significantly from that upon which the level payment billing plan was based and give the Customer an opportunity for revision of the level payment billing plan. If an Energy Supplier utilizes the billing services of a Utility, the Customer may have an opportunity for revision of the level payment billing plan at the same time as the Utility allows under the Utility's level payment billing plan procedures or at a time designated by the Energy Supplier.

327.52 If the Customer enters into a Deferred Payment Agreement (DPA) with the Utility pursuant to § 306, and the Energy Supplier utilizes the billing services of the Utility, the Utility may include the Energy Supplier's balance as part of its DPA.

327.53 Pursuant to D.C. Official Code § 34-1671.11 (d)(1) and § 34-1508 (b)(1), any Energy Supplier that violates this section, either directly or through its authorized agent, may be subject to Sanctions and Penalties including license revocation, upon notice given by the Commission.

Section 399, DEFINITIONS, is amended as follows:

399.1 When used in this chapter, the following terms and phrases shall have the meaning ascribed:

Completed Written Contract: An agreement between a Customer and an Energy Supplier that specifies the terms, conditions and charges for the provision of electric or natural gas services to the Customer and the agreement is signed or acknowledged through Third Party Verification, an electronic signature, or an electronic recording.

Drop: the removal of a Customer from a supplier's service.

Energy Supplier: An Electricity Supplier or Natural Gas Supplier as defined below:

Electricity Supplier: A person, including an Aggregator, Broker, or Marketer, who generates electricity; sells electricity; or purchases, brokers, arranges or markets electricity for sale to Customers. The term excludes the following:

- (a) Building owners, lessees, or managers who manage the internal distribution system serving such building and who supply electricity solely to the occupants of the building for use by the occupants;
- (b) Any Person who purchases electricity for its own use or for the use of its subsidiaries or affiliates;
- (c) Any apartment building or office building manager who aggregates electric service requirements for his or her building or buildings, and who does not: (1) Take title to electricity; (2) Market electric services to the individually-metered tenants of his or her building; or (3) Engage in the resale of electric services to others;
- (d) Property owners who supply small amounts of power, at cost, as an accommodation to lessors or licensees of the property;
- (e) Consolidators;
- (f) A Community Renewable Energy Facilities (CREFs) as defined in 15 DCMR § 4199.1 and as described in 15 DCMR §§ 4109.1-4109.3 pursuant to the Community Renewable Energy Amendment

Act of 2013 (D.C. Law 20-47; D.C. Official Code §§ 34-1518 et seq.);

- (g) An Electric Company; and
- (h) Any Person or entity that owns a behind-the-meter generator and sells or supplies the electricity from that generator to a single retail customer or customers behind the same meter located on the same premise.

Natural Gas Supplier: A licensed Person, broker, or marketer, who generates natural gas; sells natural gas; or purchases, brokers, arranges or markets natural gas for sale to customers.

Slamming (for Energy Suppliers): the practice of switching, or causing to be switched, a Customer's natural gas or electric supplier Account without the express authorization of the Customer.

Third Party Verification (TPV): the process of getting consent from a Customer to the below-listed material contract terms that is recorded by an independent person not party to the agreement or may be performed by an automated, computerized system. To be valid, the TPV must occur without the presence of the sales agent, and at the outset must describe how the Customer can cancel the TPV at any time prior to completion. The consent for the Customer must include an acknowledgement: (a) that he or she is voluntarily choosing to enroll with a supplier; (b) of the type of product offered such as variable, fixed, or a combination of both; (c) of the price and duration of the contract; (d) of the amount of an early termination fee if applicable; (e) that the Customer is authorized to make the switch; (f) of the contract renewal procedures; (g) that the Customer may access future pricing information; and (h) that the Customer has received the supplier's Customer support contact information.