

945-E-552

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., WASHINGTON, D.C. 20005

ORDER

December 18, 2000

FORMAL CASE NO. 945, PHASE II, IN THE MATTER OF THE
INVESTIGATION INTO ELECTRIC SERVICE MARKET COMPETITION AND
REGULATORY PRACTICES

Order No. 11862

Before the Commission:

Angel M. Cartagena, Jr., Chairman
Edward M. Meyers, Commissioner
Agnes M. Alexander, Commissioner

APPEARANCES:

Mindy Herman and Paul H. Harrington for *Potomac Electric Power Company*; Elizabeth A. Noel, Sandra Mattavous-Frye, Barbara L. Burton, Phyllis G. Kimmel, John M. Adragna, James Byrd, and Lawrence Thurston for *Office of the People's Counsel*; Frann G. Francis for *Apartment & Office Building Association*; Herbert Harris for *District of Columbia Consumer Utility Board*; Leslie H. Nelson for *District of Columbia Government*; Robert I. White for *D.C. Water and Sewer Authority*; Brian Lederer for *International Brotherhood of Electric Workers*; Excetral K. Caldwell for *Washington Gas Light Company*; Joseph J. Zimmerman for *Washington Metropolitan Area Transit Authority*; Belva D. Newsome, *Moore Energy Resources, Incorporated*; Timothy R. Robinson, General Counsel, and Lawrence D. Crocker, Senior Attorney Advisor, for the *Public Service Commission*.

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia ("Commission") approves and adopts, in part and subject to the modifications discussed in this Order, the recommendations contained in the Report of the Retail Competition Working Group Regarding Customer Deposits and Bonding Issues ("Deposits and Bonding Report") filed on October 16, 2000 by the Retail Competition Working Group ("Working Group").¹ The Commission also grants the Motion to Accept Out-of-Time Petition to Intervene, and the Petition to Intervene of NewEnergy, Inc. ("NewEnergy") filed on September 15, 2000.

2. Upon review of the record of this proceeding, and after balancing the interests of all parties to this case, the Commission finds that most of the recommendations contained in the Deposits and Bonding Report, as discussed herein, are fair, reasonable, and in the public interest. This Order establishes licensing standards and operational standards for energy suppliers in the District of Columbia ("District"), which help protect District consumers from certain potentially unscrupulous financial practices of energy suppliers. At the same time, this Order reflects the Commission's intent to encourage new energy suppliers to compete in the District. Significant opportunities are afforded residential and non-residential customers to participate fully in a competitive electricity generation market. Importantly, the standards established by this Order do not construct artificial barriers to entry for alternative energy suppliers that may seek to participate in the District's electricity market. For these and other reasons detailed more fully in this Order, the Commission adopts and approves, in part and subject to the modifications discussed in this Order, the recommendations contained in the Deposits and Bonding Report.

II. PROCEDURAL HISTORY

3. On December 30, 1999, the Commission approved, in Order No. 11576, the Joint Motion For Approval of Non-Unanimous Agreement of Stipulation and Full Settlement ("Joint Motion") and the Non-Unanimous Agreement of Stipulation and Full Settlement ("Settlement Agreement") that were filed by the Potomac Electric Power Company ("PEPCO") and the following signatory parties: General Services Administration ("GSA"); Washington Metropolitan Area Transit Authority ("WMATA"); Apartment and Office Building Association of Metropolitan Washington ("AOBA"); International Brotherhood of Electrical Workers ("IBEW"); and Washington Gas Light Company ("Washington Gas"). The Office of the People's Counsel ("OPC") and the District of Columbia Consumer Utility Board ("CUB") opposed the Settlement Agreement and, therefore, declined to sign it. Although the District of Columbia

¹ The Deposits and Bonding Report is attached to this Order as Appendix A.

Government ("DCG") initially opposed the Settlement, DCG subsequently agreed to the settlement.²

4. Order No. 11576 approved the full settlement of Phase I³ in Formal Case No. 945 and directed the parties to this proceeding to establish the Working Group to make recommendations to the Commission regarding the steps required to implement retail competition in the District.⁴ The Working Group participants are: PEPCO; GSA; WMATA; AOBA; IBEW; Washington Gas; OPC; DCG; the District of Columbia Energy Office ("DCEO"); CUB; FirstEnergy Services Corp. ("FirstEnergy"); and the District of Columbia Water and Sewer Authority ("DCWASA") (collectively, all Working Group participants are "Parties").

5. On February 8, 2000, the Working Group submitted to the Commission a proposed list of issues, procedures to address those issues, and an implementation schedule. By Order No. 11637, dated March 20, 2000 (and the subsequent Errata thereto, Order No. 11642, dated March 21, 2000), the Commission adopted, with modifications, these issues and the recommended procedural schedule. The Working Group filed its Report ("Working Group Report") with the Commission on May 23, 2000. Because the Working Group was unable to reach consensus on all of the issues, the Parties were directed to file initial comments on contested issues by May 31, 2000, and reply comments by June 7, 2000.⁵ Certain Parties, in response to Commission Order No. 11704, dated June 8, 2000, also filed, on June 9, 2000, comments on the necessity of holding a hearing on the non-consensus issues.⁶ Pursuant to Commission Order No. 11711, issued on June 13, 2000, the Parties were permitted to file a final round of comments on June 23, 2000,⁷ and the Commission held an informal hearing on the non-consensus issues on June 30, 2000. During the hearing, the Commission requested the Parties to file comments on several discrete non-consensus issues by July 7, 2000.⁸

² See the PEPCO and DCG November 24, 1999 Letter to the Commission.

³ The Commission's approval of the Settlement Agreement allowed PEPCO to proceed with divesting certain of its generating assets.

⁴ Order No. 11576 at 68-69.

⁵ The following Parties filed initial comments on May 31, 2000: PEPCO; OPC; AOBA; FirstEnergy; Washington Gas; DCG; and DCEO; and the following Parties filed reply comments on June 7, 2000: PEPCO; OPC; Washington Gas; FirstEnergy; and DCG.

⁶ On June 9, 2000 PEPCO filed comments on behalf of itself, FirstEnergy, Washington Gas, AOBA, WMATA, DCG, and IBEW on this issue; and OPC filed separate comments, also on June 9, 2000, as to the need for a hearing.

⁷ PEPCO filed additional comments on June 23, 2000.

⁸ PEPCO, DCG, OPC and FirstEnergy filed comments on these discrete non-consensus issues on July 7, 2000. DCWASA filed comments on July 10, 2000 on issues for which the Working Group has not yet completed its discussions. OPC subsequently responded to DCWASA on July 20, 2000.

6. On September 18, 2000 in Order No. 11796, the Commission approved and adopted, with modifications, the Working Group Report. Order No. 11796 established standards regarding electric consumer protection, licensing to supply electricity, a form of application for a license to supply electricity, a supplier coordination agreement, an electronic data interchange trading partner agreement, and a scheduling coordinator designation form. In Order No. 11796, the Commission also directed the Working Group to hold further discussions on several topics, including customer deposits held by licensed electricity suppliers⁹ and bonding in connection with electricity supplier licenses.¹⁰ On October 16, 2000, the Working Group filed the Deposits and Bonding Report with the Commission, containing recommendations on those issues. In addition, OPC, FirstEnergy, and NewEnergy each separately filed comments regarding the Deposits and Bonding Report.¹¹

III. ISSUES ARISING FROM THE DEPOSITS AND BONDING REPORT

A. Customer Deposits

1. Background

7. In Order No. 11796, the Commission ordered that a deposit required of a residential customer should not exceed the lesser of \$100 or twice the maximum bill incurred over a twelve-month period.¹² We expressed concern that small commercial customers may not have the same amount of negotiating power as large commercial entities, and as such, the Commission found that “[s]mall commercial customers shall be accorded the same deposit protection as those proposed by the Working Group for residential customers.”¹³ In addition, we requested that the Working Group provide recommendations regarding the manner in which deposits should be processed.¹⁴

⁹ Order No. 11796 ¶ 57.

¹⁰ Order No. 11796 ¶¶ 167-75.

¹¹ NewEnergy Comments, filed on October 20, 2000; OPC Comments, filed on October 24, 2000; and FirstEnergy Comments, filed on October 24, 2000.

¹² Order No. 11796 ¶ 56.

¹³ Order No. 11796 ¶ 57.

¹⁴ *Id.*

2. Parties' Positions

8. In the Deposits and Bonding Report, the Working Group recommends that it would not be appropriate to impose a \$100 cap on deposits from small commercial customers.¹⁵ The Working Group asserts that there is a great disparity between the level of usage by small commercial customers, making it impossible to have a "one-size fits all" limit on all commercial customer deposits.¹⁶ Accordingly, instead of recommending the same treatment for small commercial customers as residential customers, the Working Group recommends that small commercial deposits shall not "exceed the lesser of twice the estimated maximum monthly production and transmission portion of the customer's bill over twelve (12) months or, if applicable, the maximum monthly production and transmission portion of the customer's bill over the prior twelve (12) months," and residential deposits shall not "exceed the lesser of one hundred dollars or twice the estimated maximum monthly production and transmission portion of the customer's bill over twelve (12) months."¹⁷

9. The Working Group also made recommendations regarding the policy for PEPCO refunds of residential and small commercial customer deposits. The Working Group recommends that PEPCO should refund the production and transmission portion of a residential or small commercial customer's deposit after the customer begins taking service from another supplier.¹⁸ Under this proposal, PEPCO would retain the portion of the deposit that is attributable to PEPCO's distribution charge.¹⁹

3. Commission Decision

10. The Commission rejects the Working Group's recommendation to treat small commercial customers differently than residential customers. In Attachment A of Order No. 11796, small commercial customers are defined as "those customers served under PEPCO Rate Schedule DC-GS or DC-GS-3A, as proposed by PEPCO in Formal Case No. 945, subject to any revisions made to those tariff sheets by the Commission."²⁰ Rate schedules DC-GS and DC-GS-3A are generally limited to customers whose maximum 30-minute demand is less than 100 KW. Thus, there is a maximum demand limit to be qualified as a small commercial customer. Because of this, we reject the reasoning of the Working Group that there is a great disparity among the levels of use of

¹⁵ Deposits and Bonding Report at 2-3.

¹⁶ *Id.*

¹⁷ Deposits and Bonding Report at 3.

¹⁸ Deposits and Bonding Report at 4.

¹⁹ *Id.*

²⁰ Order No. 11796, Attachment A at 5.

small commercial customers. Further, the Commission finds that small commercial customers will require protection because of their relative lack of bargaining power. Therefore, we reiterate the requirement, which we adopted in Order No. 11796, to impose the same deposit cap that applies to residential customers on small commercial customers as well.²¹

The Working Group's recommendations also change the residential customer deposit limitation language to make it applicable only to the production and transmission portion of customers' bills. In addition, the Commission accepts and adopts the Working Group's recommendations regarding the policy for refunding residential and small commercial customers' deposits held by PEPCO. The recommendation fairly allocates such deposits among the entities that bear the risk of customer defaults. Therefore, the Commission finds that the Working Group's recommendation on this matter is in the public interest.

B. Bonding Requirements

1. Background

11. In Order No. 11796, we adopted an Interim Application for License to Supply Electricity or Electric Generation Services to the Public in the District of Columbia ("Interim License Application")²² and Interim Licensing Standards of the District of Columbia ("Interim Licensing Standards").²³ Under the Interim License Application and Interim Licensing Standards, we review each application for an electricity supplier license on a case-by-case basis to determine whether the applicant will be required to provide a bond.²⁴ If the Commission determines that a bond is required, the amount of the bond would be set at a fixed amount of \$50,000.²⁵ Further, we found that mandatory bonding for all electricity suppliers is not in the public interest because it could serve as an artificial market entry barrier to smaller and newer suppliers in the District.²⁶

12. In addition, we limited the purposes for which any bond is required to cover the purpose of "assurance of financial integrity, including deposits and prepayments."²⁷ We declined to allow any required bond to cover taxes.²⁸

²¹ See Order No. 11796 ¶ 57.

²² See Attachment B to Order No. 11796.

²³ See Attachment B to Order No. 11796.

²⁴ See Attachment B to Order No. 11796 at Item No. 15.

²⁵ See *Id.* and Order No. 11796 ¶ 174 (Commission ordered bond level to be set at \$50,000 on interim basis).

²⁶ Order No. 11796 ¶ 167.

²⁷ Order No. 11796 ¶ 171.

13. In order for the Commission to create final bonding standards, we ordered the Working Group to recommend "bonding standards that provide us the flexibility and discretion necessary to make case-by-case assessments on a comprehensive and impartial basis."²⁹ We also ordered the Working Group to recommend "bond amounts, including the possibility of a sliding scale mechanism for bonds or other surety amounts based upon applicant revenues or some other index."³⁰ Finally, we stated that the Working Group could also propose "additional specific consumer protection type purposes [other than financial integrity, customer deposits and prepayments] for which the bond may be required."³¹

2. Parties' Positions

14. The Deposits and Bonding Report included recommended revisions to the Interim License Application in Attachments A and B and revisions to the Interim Licensing Standards in Attachment C. In the Deposits and Bonding Report and its attachments, the Working Group recommends the provision of two separate bonds.

15. One bond would be provided by certain applicants as evidence of financial integrity ("Integrity Bond").³² Applicants that could not provide certain enumerated types of evidence of financial integrity, as listed in the Required Documentation of Financial Integrity section of the Interim License Application, would be required to provide the Integrity Bond.³³ On the other hand, those applicants that could provide such evidence would not be required to provide the Integrity Bond.³⁴ The Working Group also recommends that an applicant may request that it be permitted to provide an Integrity Bond in lieu of providing the enumerated evidence of financial integrity listed in the Required Documentation of Financial Integrity section of the Interim License Application (Section 14).³⁵

16. For those applicants that must provide the Integrity Bond, the Working Group recommends that the Integrity Bond be in an initial amount of \$50,000, except that

²⁸ *Id.*

²⁹ Order No. 11796 ¶ 174.

³⁰ *Id.*

³¹ *Id.*

³² Deposits and Bonding Report, Attachment B at section 15, and Attachment C at section II.

³³ Deposits and Bonding Report, Attachment C at section II.1.a and II.2.

³⁴ *Id.*

³⁵ Deposits and Bonding Report, Attachment A.

the initial amount would be \$10,000 for brokers and aggregators that do not take title to electricity.³⁶ The Working Group recommends this lower amount for such brokers and aggregators because they restrict their activities to arranging contracts between customers and electricity generators, and thus, there is less risk that their activities could result in financial harm to consumers.³⁷ In addition, the Working Group agreed that the Commission may wish to modify the initial \$50,000 amount of the Integrity Bond provided by a supplier depending upon the electricity supplier's performance within the District marketplace.³⁸ The Working Group also agreed that a supplier that provides an Integrity Bond should be able to ask the Commission to waive its Integrity Bond, and to return the previously posted bond, if, after two years of operation in the District, the supplier can demonstrate a record of continuous and high-quality service.³⁹ However, the Working Group disagreed on whether and to what extent the initial amount of a supplier's Integrity Bond should be adjusted following six months of operations in the District.⁴⁰ Some Parties to the Working Group submitted separate comments on this and related issues, as discussed below.

17. In addition to the Integrity Bond, the Working Group recommends that the Commission require that a separate bond, in an initial amount of \$50,000, be provided by those applicants that intend to accept customer deposits or prepayments from residential and small commercial customers ("Customer Payments Bond").⁴¹ Further, the Working Group recommends that the amount of the Customer Payments Bond be periodically adjusted to ensure that it covers the actual amount of deposits or prepayments held by the supplier.⁴² The Working Group proposes a series of certifications and updates, and review of those certifications and updates by the Commission, to effectuate adjustments to the amount of the Customer Payments Bond provided by the supplier.⁴³

18. OPC filed comments on the non-consensus issue of the Deposits and Bonding Report, namely, the amount of the Integrity Bond beginning six months after the initial bond is posted. OPC recommends that after the initial six-month period, electricity suppliers with revenues from residential and small commercial customers in the District of less than or equal to \$2,000,000 should post an Integrity Bond of \$150,000 and electricity suppliers with revenues from those District customers in excess of \$2,000,000

³⁶ Deposits and Bonding Report, Attachment C at section II.3.a.

³⁷ Deposits and Bonding Report at 5.

³⁸ Deposits and Bonding Report at 8.

³⁹ Deposits and Bonding Report, Attachment C at section II.1.c.

⁴⁰ Deposits and Bonding Report at 7-8 and Attachment C at section II.3.b.

⁴¹ Deposits and Bonding Report, Attachment B at section 15 and Attachment C at section I.

⁴² Deposits and Bonding Report, Attachment C at section I.3. and I.4.

⁴³ *Id.*

should post an Integrity Bond of no more than \$250,000.⁴⁴ OPC asserts that \$50,000 is wholly inadequate to protect consumers.

19. Additionally, OPC submitted a few clarifications regarding certain other portions of the Deposits and Bonding Report, which do not affect OPC's support for that report.⁴⁵ While OPC supports an applicant's right to elect to submit an Integrity Bond in lieu of providing financial documentation, OPC notes that this provision in the Deposits and Bonding Report is not intended to circumscribe the Commission's authority to require such documentation in these circumstances in addition to the Integrity Bond.⁴⁶ OPC observes that the acknowledgment, in the Deposits and Bonding Report, that certain electricity supplier information may require "appropriate confidentiality protections"⁴⁷ is not intended to act as a presumption as to the confidential nature of information provided in the Interim License Application.⁴⁸ Finally, OPC recommends that, in lieu of placing the entire burden for verification of suppliers' collected prepayment and/or deposit amounts upon the Commission's Accounting Division, the Commission consider requiring each supplier to have such collection statements certified by a certified public account ("CPA").⁴⁹

20. FirstEnergy also filed comments on the amount of the Integrity Bond beginning six months after the bond is posted. Although FirstEnergy is receptive to a variable bond amount, it asserts that basing the amount of the bond on the revenues that the electricity supplier receives from operations in the District is fundamentally unfair because it penalizes those electricity suppliers that participate and compete most actively in the District.⁵⁰ FirstEnergy claims that the relatively smaller size of the market in the District, when compared to neighboring states, justifies a relatively smaller bond in the District.⁵¹ Moreover, FirstEnergy explains that the Customer Deposits Bond, which increases as more deposits and prepayments are accepted, adequately protects consumers, without having to increase the amount of the Integrity Bond after six months.⁵² FirstEnergy also argues that the best protection against unscrupulous electricity suppliers is the reporting protocol regarding supplier defaults to the PJM Interconnection LLC,

⁴⁴ OPC Comments at 2.

⁴⁵ OPC Comments at 5-6.

⁴⁶ OPC Comments at 5.

⁴⁷ *Id.*

⁴⁸ OPC Comments at 6.

⁴⁹ *Id.*

⁵⁰ FirstEnergy Comments at 2.

⁵¹ FirstEnergy Comments at 3.

⁵² *Id.*

which would alert the Commission to problems regarding an electricity supplier in other PJM states so that the Commission could adjust the size of the bond in the District to protect District consumers.⁵³

21. NewEnergy also filed comments on the amount of the Integrity Bond beginning six months after the bond is posted. NewEnergy, like FirstEnergy, claims that the relatively smaller size of the market in the District, when compared to neighboring states (*i.e.*, Pennsylvania, New Jersey and Maryland), justifies a relatively smaller bond in the District.⁵⁴ NewEnergy also asserts that basing the amount of the bond on the size of the electricity suppliers' customer base in the District penalizes those electricity suppliers that participate and compete most actively in the District.⁵⁵ In addition, NewEnergy stresses that the imposition of higher bond amounts erects another barrier to entry into the market.⁵⁶

3. Commission Decision

22. The Commission accepts and adopts, with the modifications described below, the Working Group's recommendation for two separate bonds. The Commission finds that the Working Group's recommendations, as modified, provide the Commission with reasonable standards to determine when bonds will be required and the amount of any such bonds, while maintaining the Commission's flexibility to review each applicant's financial integrity on a case-by-case basis to ensure the financial integrity of an applicant and to protect the District's consumers. Moreover, the Commission finds that, by providing two different bonds, the Commission can better protect consumers from potentially unscrupulous suppliers, while still inhibiting the formation of potential barriers to entry into the District's electricity supply market. Thus, the Commission finds the Working Group's recommendations on bonding, with certain modifications discussed below and reflected in Attachments A, B and C of this Order, to be in the public interest and, the Commission orders that Sections 14 and 15 of the Interim License Application be replaced with the language contained in Attachments A and B of this Order and that the Interim Licensing Standards be modified to add the language contained in Attachment C of this Order.

a. Integrity Bond

23. Regarding the Integrity Bond, the Commission accepts and adopts the Working Group's Recommendations, with some modifications. In general, the

⁵³ FirstEnergy Comments at 5. The District is within the control area of a regional operating system, the PJM Independent System Operator, which includes Pennsylvania, New Jersey, Maryland, the District of Columbia, Delaware and part of Virginia.

⁵⁴ NewEnergy Comments at 1.

⁵⁵ NewEnergy Comments at 1.

⁵⁶ NewEnergy Comments at 1.

Commission finds that the Integrity Bond will provide useful evidence of an applicant's financial integrity. It is vital to the public interest that only those applicants which meet the financial integrity standards established by this Order be allowed to provide electricity supply services to District consumers.

24. Specifically, the Commission accepts and adopts the Working Group's recommendation to set the amount of an Integrity Bond initially provided by the applicant at (a) \$10,000 for brokers and aggregators, and (b) \$50,000 for all other electricity suppliers. The Commission finds that \$50,000 provides an adequate measure of financial integrity and that, as discussed below and as asserted by FirstEnergy, the separate Customer Payments Bond provides protection for consumers that provide deposits or prepayments to their electricity supplier in advance of receiving any electricity service. In making these findings, the Commission recognizes that \$50,000 is a lower threshold than in some other states, such as Pennsylvania, New Jersey and Maryland. Nonetheless, the Commission finds that because the District has fewer customers than those other states, the maximum possible damages subject to the bond would likely be lower. Moreover, the Commission finds that a higher bond amount would be a potential barrier to electricity suppliers. Given the lower numbers of customers in the District compared to these other states, such potential barriers must be carefully assessed in order to ensure that consumers both benefit from competition and simultaneously are protected by an appropriate bond. As to brokers and aggregators, \$10,000 is an appropriate level. These suppliers do not take title to the electricity; they are simply facilitators of the sale of power. Thus, their activities are less likely to adversely impact District consumers. The Commission finds, upon balancing these factors, that \$50,000 and \$10,000 are appropriate initial amounts for the Integrity Bond and that the public interest is best served at these levels.

25. The Working Group failed to reach consensus regarding whether the amount of an Integrity Bond should be updated and increased six months after the initial Integrity Bond is posted, based on revenues received by the electricity supplier from District customers. The Commission finds that \$50,000 and \$10,000 for supplier and brokers/aggregators respectively, are appropriate amounts for an Integrity Bond. Thus, the Commission declines to order an increase in the amount of an Integrity Bond after six months.

26. The Commission agrees with the consensus position of the Working Group that the Commission may review the appropriateness of the amount of an Integrity Bond. The Commission, in its sole discretion, will determine whether or not to evaluate the amount of an Integrity Bond in light of the changing conditions of the District's electricity market at that time, and considering the past experience of the Commission and consumers with the electricity supplier. The Commission may request such information from the electricity supplier as may be necessary to make this evaluation. Thus, the Commission finds that it is in the public interest to review, as it deems necessary, the amount of an Integrity Bond, in accordance with the standards set forth in Section II.3.b. of Attachment C to this Order. We also agree with OPC and find that, while truly confidential information should be protected in the process of evaluating the

amount of an electricity supplier's Integrity Bond, information submitted to the Commission will only be treated confidentially, if the Commission determines to allow such treatment, based on the electricity supplier's written request and justification of such treatment.

27. Regarding which applicants must provide an Integrity Bond, the Commission accepts and adopts the Working Group's recommendation that the Integrity Bond should not be required if an applicant provides adequate evidence of its financial integrity. In cases in which such evidence is provided, requiring a bond as well would constitute unnecessarily duplicative evidence of financial integrity. We would not want to adopt a requirement, especially an unnecessary one, that might discourage alternative suppliers from entering the District's retail electricity market. Moreover, as discussed below, the separate Customer Payments Bond should provide adequate protection for consumers that provide deposits or prepayments to their supplier in advance of receiving any electricity service. Thus, the Commission orders that applicants who provide adequate evidence of financial integrity, which in the Commission's opinion satisfies the standards set forth in Section II.2 of Attachment C to this Order, will not be required to provide an Integrity Bond as part of their application.

28. In addition, the Commission accepts, with modifications, the Working Group's recommendations regarding the types of evidence of financial integrity that must be submitted by applicants. Section 14 of the Interim License Application sets forth a list of such evidence, and the Working Group modified that list by removing "statements of cash flow" from the first and second items on the list. The Commission finds, however, that information regarding cash flow provides useful evidence of the ability of the applicant to finance its electricity supply activities. Therefore, the Commission orders, as reflected in Attachment A to this Order, that statements of cash flow be provided as a further step to assure the protection of the retail electricity consumers of the District who may rely upon service from these electricity suppliers.

29. The Working Group also has modified Section 14 of the Interim License Application by adding that an applicant may request that it be permitted to provide an Integrity Bond in lieu of the financial documents listed in Section 14. The Commission finds, however, that some basic information listed in Section 14 of the Interim Application (including financial statements, organizational structure, evidence of general liability insurance, and any guarantees that exist) must be provided in order to enable the Commission to properly evaluate the applicant's financial integrity. Moreover, the Commission finds that it is relatively simple for any reputable business to provide such information. Finally, providing the Integrity Bond evidences financial integrity, but can not replace the basic financial and organizational information about the applicant that is needed to make an informed determination regarding financial integrity. The Commission's mandate to protect the public interest supports our requirement that every applicant submit this basic information. Thus, the Commission modifies the Working Group's recommendation, as reflected in Attachment A to this Order, to provide that an applicant may request that an Integrity Bond be submitted in lieu of some items listed in

Section 14, but all of the items listed in Section 14 must be provided, to the extent they are available.

30. The Working Group did not address the circumstances under which the Integrity Bond could be foreclosed by the Commission. The Working Group did, however, state that the Commission would provide a bond form to be used by applicants to meet the Integrity Bond requirements. A bond form would address the terms of its foreclosure, and therefore, the Commission finds, as reflected in the bond forms set forth in Attachments D & E of this Order, that the Integrity Bond may be foreclosed by the Commission upon the Commission's presentation to the surety of an affidavit stating that the Principal under the bond (*i.e.* the electricity supplier) has not satisfactorily performed its obligations to a person or entity causing actual and direct damages to that person or entity by reason of a breach of contract or violation of the District's Retail Electric Competition and Consumer Protection Act of 1999.⁵⁷ In Order No. 11796, we stated that bond foreclosure requirements must be defined with some degree of specificity.⁵⁸ In accordance with that Order, we have narrowed circumstances of foreclosure of the Integrity Bond to those instances where damages caused by the electricity supplier are "actual and direct." We intend for such language to exclude the types of damages that are commonly referred to as incidental damages and as consequential damages. Thus, we find that the bond forms in Attachments D and E of this Order are in the public interest, and we order that all applicants who provide an Integrity Bond use the appropriate form contained in either Attachment D or Attachment E of this Order.

b. Customer Payments Bond

31. Regarding the Customer Payments Bond, the Commission accepts and adopts the Working Group's recommendations with a few clarifications. In general, the Commission finds that the Customer Payments Bond is an important protection for those consumers that provide money to their electricity supplier in advance of receiving electricity supply or as a deposit against future bills for supply from the supplier. We find that District consumers must be assured that advance payments spent for electricity is protected.

32. Specifically, the Commission accepts and adopts the Working Group's recommendation that any applicant that intends to, or that actually does, accept deposits or prepayments from customers must provide a Customer Payments Bond in an initial amount of \$50,000. The Commission finds that the amount of \$50,000 is an adequate measure of protection for consumers and that the amount of \$50,000 is not too high to discourage legitimate entities from entering and competing in the District's market. Further, the Commission finds that the Working Group's recommended definitions of "deposits" and "prepayments" are broad enough to capture all funds that a supplier may possess but which rightfully belong to the consumer. As such, the Commission orders that all electricity suppliers that intend to, or that actually do, accept customer

⁵⁷ D.C. Law 13-107.

⁵⁸ Order No. 11796 ¶ 169-71.

prepayments and/or deposits will be required to provide the Commission with a Customer Payments Bond using the form contained in Attachment F of this Order and in accordance with the standards set forth in Attachments B and C of this Order.

33. In addition, the Commission accepts and adopts the Working Group's recommendation that the amount of the Customer Payments Bond be periodically adjusted to ensure that it covers the actual amount of deposits or prepayments held by the supplier, and that a series of certifications and updates, and review of those certifications and updates by the Commission, be used to effectuate adjustments to the amount of the Customer Payments Bond, as set forth in Attachment C of this Order. Such updating of the Customer Payments Bond amount is an appropriate safeguard to assure consumers that their deposits will be refunded in accordance with the agreement between the supplier and the consumer. The Commission declines, however, to require review by a Certified Public Accountant ("CPA") of reports submitted by the electricity suppliers in conjunction with the updating process, as recommended by OPC.⁵⁹ The Commission finds that such CPA review may represent a significant cost to suppliers. Nevertheless, the Commission reserves the right, as it deems necessary, to order an electricity supplier to conduct a CPA review should conditions warrant such a review. Moreover, under the language found in Attachment C of this Order, any Commission audit would be conducted at the Commission's discretion.

34. Finally, the Commission agrees with and adopts the Working Group's recommendation to limit the purpose of the Customer Payments Bond to protect deposits and prepayments. We find that it is fair to suppliers that foreclosure of the Customer Payments Bond be predicated upon the purpose for which it was provided. Thus, the Commission decides that foreclosure of the Customer Payments Bond will only be ordered to reimburse customers for their lost deposits and prepayments, as set forth in the form of the Customer Payments Bond in Attachment F of this Order.

THEREFORE, THE COMMISSION ORDERS THAT:

35. The Deposits and Bonding Report of the Working Group is hereby approved in part and adopted, with modifications as set forth in the body of this Order.

36. The Motion to Accept Out-of-Time Petition to Intervene and the Petition to Intervene of NewEnergy, Inc., filed on September 15, 2000, are granted.

37. Small commercial customers shall be subject to the same deposit cap requirements as residential customers.

38. The Commission reaffirms its decision, which is memorialized in Section 8-2 of Attachment A to Order No. 11796, to treat small commercial customers the same as residential customers with respect to deposit caps. Accordingly, the Commission rejects the Working Group's recommendation to treat small commercial customers differently than residential customers.

⁵⁹ OPC Comments at 6.

50. The Commission, in its sole discretion, may determine if all items listed in Section 14 of Attachment A to this Order shall be required.

51. Foreclosure of an Integrity Bond shall be limited to those instances where damages caused by the electricity supplier are "actual and direct."

52. The Integrity Bond forms set forth in Attachments D and E to this Order are approved.

53. Any electricity supplier applicant that intends to, or that actually does, accept deposits and/or prepayments from customers must provide a Customer Payments Bond in an initial amount of \$50,000, which amount shall be periodically adjusted to ensure that it covers the actual amount of deposits and/or prepayments.

54. The Customer Payments Bond set forth in Attachment F to this Order is approved.

55. The Commission reserves the right to require an electricity supplier to conduct a CPA review of the reports provided in the adjustment process of the amount of a Customer Payments Bond.

56. Foreclosure of a Customer Payments Bond may only be for the purpose of reimbursing customers for their lost deposits and/or prepayments to the electricity supplier.

A TRUE COPY:

CHIEF CLERK

**BY THE DIRECTION OF THE
COMMISSION:**


JESSE P. CLAY, JR.

COMMISSION SECRETARY

ATTACHMENT A**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:

- ☐ Balance sheets, income statements and statements of cash flow for the two 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 available quarterly financial statements subsequent to the most recent annual financial statements.
- ☐ In the event that a parent or other corporation or company has undertaken to guarantee the financial integrity of the Applicant, the Applicant must submit such parent's, other corporation's or company'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 other corporation or company has not been in existence for at least two 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 the Applicant. Include the Applicant's parent, affiliate(s), and subsidiary(ies), if applicable.
- ☐ Evidence of general liability insurance.
- ☐ If the Applicant has engaged in the retail supply of electricity supply services in any other jurisdiction, evidence that the Applicant is a licensed supplier in good standing.
- ☐ Credit reports or ratings prepared by established credit bureaus or agencies regarding the Applicant's payment and credit history.
- ☐ 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 guarantee.

ATTACHMENT B

(Note: Underlining below is provided to highlight differences between Integrity Bond and Customer Payments Bond requirements.)

15. BONDING REQUIREMENTS**Integrity Bond**

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

However, an Applicant who can provide credible evidence that it meets the financial integrity standards listed in Section II of the Bonding Requirements Addendum to this Application 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 and/or deposits from residential and small commercial customers. Applicant must comply with Bonding Requirements Addendum governing the Customer Payments Bond.

Further details regarding the District of Columbia's bonding requirements are included in the Bonding Requirements Addendum attached to this Application.

ATTACHMENT C**BONDING REQUIREMENTS ADDENDUM****I. BOND REQUIREMENTS FOR ELECTRICITY SUPPLIERS CHARGING OR COLLECTING DEPOSITS OR PREPAYMENTS ("CUSTOMER PAYMENTS BOND")****1. DEFINITION AND EXCLUSION**

a. Any Electricity Supplier who charges or collects deposits or prepayments from residential or small commercial consumers (as those terms are defined in the Commission's Interim Licensing Standards and/or regulations) shall maintain a bond or other form of acceptable financial instrument ("Customer Payments Bond") in an amount at least equal to the total amount of such deposits and prepayments as specified in this section. The Customer Payments Bond is required in addition to any Integrity Bond that may be required or submitted.

b. "Deposits" include all payments made by a consumer to an Electricity Supplier to secure the Electricity Supplier against the consumer's nonpayment or default.

c. "Prepayments" include all payments made by a consumer to an Electricity Supplier for services that have not been rendered at the time of payment.

(1) Where an Electricity Supplier charges for services based on a quantity of electricity, such as a price per kilowatt/hour, then prepayments include any payments for any quantity that has not been delivered to the consumer at the time of payment.

(2) Where an Electricity 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 Electricity Supplier for the period of time less the prorated value of the period of time for which services have been rendered.

(3) Where an Electricity Supplier charges for services based on a measure other than quantity of electricity 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 Customer Payments 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 electrical costs are averaged over a period of time.

2. **WHO MUST POST A CUSTOMER PAYMENTS BOND.** Any Electricity Supplier that states on its license application that it intends to charge deposits or prepayments, or does in fact charge a deposit or prepayment, must post the Customer Payments Bond, in addition to any Integrity Bond that may be required or submitted. Any Electricity Supplier that states on its license application that it does not intend to charge deposits or prepayments will not be required to post a Customer Payments Bond or provide the certification described below. Any Electricity Supplier that actually charges a deposit or prepayment without notifying the Commission within the required 30-day deadline, as provided below in paragraph 3 of Attachment C, and posting the required Customer Payments Bond may be subject to suspension, revocation, or other action against its license, as well as liable for restitution to any consumers who paid such deposits or prepayments.

3. **PROCEDURE FOR DETERMINING AMOUNT OF A CUSTOMER PAYMENTS BOND**

- a. **INITIAL BOND:** Before accepting any deposits or prepayments, an Electricity Supplier must (1) notify the Commission on its license application, within 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 Customer Payments Bond of \$50,000.
- b. **SIX MONTH CERTIFICATION:** Within six months after the initial bond is posted, (1) the Electricity Supplier shall provide to the Commission (with appropriate confidentiality protections), a certification, subject to review by the Commission's Accounting Division, of the amount of the deposits and prepayments held by the Electricity Supplier and (2) a Customer Payments Bond in the amount consistent with that certification.
- c. **ANNUAL CERTIFICATION:** Annually thereafter, coinciding with the annual update requirements of the Commission's license application, the Electricity Supplier shall provide to the Commission (with appropriate confidentiality protections) (1) certification of the amount of the deposits and prepayments held by the Electricity Supplier, and (2) a Customer Payments Bond consistent with that amount.
- d. **BI-ANNUAL UPDATES:** Following submission of the first annual update, the Electricity Supplier must provide to the Commission (1) a bi-annual management report stating the amount of deposits and prepayments collected and (2) an adjustment to the Customer Payments Bond in that amount.

4. **COMMISSION VERIFICATION.** The Electricity Supplier shall provide appropriate certification, at the intervals discussed in the above paragraphs, of funds collected by an Electricity Supplier for prepayments and/or deposits. The Electricity Supplier shall certify funds through a notarized statement, subject to verification by the Commission's Accounting Division at the Commission's discretion. The statement and any audit by the Accounting Division will verify collections and balances of prepayments and deposits as of a specific date and whether the Electricity Supplier has appropriate Customer Payments Bond coverage. The Commission reserves the right, in its sole discretion, to order the Electricity Supplier to conduct a CPA review should conditions warrant such a review.

5. **BOND FORM: BENEFICIARY, CLAIMS, DISTRIBUTION.** The Electricity Supplier shall provide a Customer Payments Bond in the appropriate form attached to this Bonding Requirements Addendum.

6. **COMPLIANCE INVESTIGATIONS.** The Commission has the right to initiate appropriate investigations if it determines an Electricity Supplier is collecting prepayments and/or deposits from customers without appropriate Customer Payments Bond coverage. The Commission will utilize appropriate legal remedies both to investigate and/or enforce actions necessary to ensure suppliers have the appropriate Customer Payments Bond.

II. BOND REQUIREMENTS FOR FINANCIAL INTEGRITY ("INTEGRITY BOND")

1. DEFINITION AND EXCLUSION

a. An Electricity Supplier who can provide credible evidence that it meets the standards listed in section 2 below will not be required to submit a bond ("Integrity Bond") to the Commission.

b. An Electricity Supplier who cannot provide credible evidence that it meets the standards listed in section 2 below will be required to submit an initial Integrity Bond of \$50,000, unless that Electricity Supplier is applying to provide service as an Aggregator (as defined in the "Retail Electric Competition and Consumer Protection Act of 1999" at Section 101(2) and as defined in the Commission's Interim Licensing Standards and/or regulations) who does not take title to electricity or as a Broker (as defined in the "Retail Electric Competition and Consumer Protection Act of 1999" at Section 101(7) and as defined in the Commission's Interim Licensing Standards and/or regulations), in which case a \$10,000 Integrity Bond will be required. This initial Integrity Bond is subject to the update requirements discussed below, except that aggregators who do not take title and brokers will not be required to update the initial \$10,000 Integrity Bond.

c. After continuously providing service in the District for two years, any Electricity Supplier who has submitted an Integrity Bond to the Commission in

compliance with these requirements to establish financial integrity may request that the Commission return the previously posted Integrity Bond and waive the requirement for a future bond based upon the Electricity Supplier's demonstrated record of continuous and high quality service in the District, without meaningful substantiated consumer complaint, as determined by and in the opinion of the Commission, and such other information as the Electricity Supplier may choose to present to the Commission. The Commission may accept or reject this request based on a review of information provided by the Electricity Supplier and such other information as the Commission may deem appropriate. The Commission retains the discretion to require an Integrity Bond of said Electricity Supplier at a later date if the circumstances prompting the bond return, or waiver change, or if the Commission otherwise deems the re-institution of an Integrity Bond to be necessary and appropriate. Any Electricity Supplier charging, collecting or holding deposits or prepayments may not request return of a current Customer Payments Bond (as defined above) or waiver of the requirements for a future Customer Payments Bond, unless and until the Electricity Supplier returns the deposits or prepayments to its customers or provides the services to which the prepayments applied.

2. WHO MUST POST AN INTEGRITY BOND

Any Electricity Supplier that can provide credible evidence that it meets the following standards is not required to post an Integrity Bond in the District of Columbia:

- a. A credit rating of BBB- or higher from a nationally-recognized credit rating service;
- b. A commercial paper rating of A2 or higher by Standard & Poor's and/or P2 or higher by Moody's, or similar rating by another nationally-recognized rating service;
- c. An unused line of bank credit or parent guarantee deemed adequate by the Commission; and/or
- d. Any other evidence of financial integrity that the Commission may deem appropriate.

Any Electricity Supplier that cannot provide credible evidence that it meets the above standards must provide the Commission with an Integrity Bond.

3. PROCEDURE FOR DETERMINING AMOUNT OF AN INTEGRITY BOND

- a. **INITIAL INTEGRITY BOND:** Any Electricity Supplier that cannot meet the above criteria for financial integrity, and that is not applying to provide service as an aggregator, that does not take title to electricity or a broker, must post an initial Integrity Bond of \$50,000. If the Electricity Supplier is applying to

provide service as an Aggregator that does not take title to electricity or as a Broker, the required Integrity Bond amount is \$10,000.

b. **FUTURE UPDATES:** The Commission, in its sole discretion, will determine whether or not to evaluate the overall appropriateness of the amount of an Integrity Bond in light of the changing conditions of the electricity market at the time of the update and considering the past experience of the Commission and consumers with the Electricity Supplier. The Commission may request such information from the Electricity Supplier as may be necessary to make its evaluation.

4. **COMMISSION VERIFICATION.** The Electricity Supplier shall provide appropriate certification at the intervals discussed in the above paragraphs. The Commission may request such information from the Electricity Supplier as is necessary to verify the accuracy of the notarized statements at any time.

5. **BOND FORM: BENEFICIARY, CLAIMS, DISTRIBUTION.** The Electricity Supplier shall provide an Integrity Bond on the appropriate form attached to this Bonding Requirements Addendum.

6. **COMPLIANCE INVESTIGATIONS.** The Commission has the right to initiate appropriate investigations if it has reason to believe that an Electricity Supplier may be providing service without appropriate Integrity Bond coverage. The Commission will utilize appropriate legal remedies both to investigate and/or enforce actions necessary to ensure that Electricity Suppliers have the appropriate Integrity Bond.

ATTACHMENT D – FORM OF INTEGRITY BOND**SURETY BOND**

Bond No. _____

DISTRICT OF COLUMBIA

KNOW ALL PEOPLE BY THIS DOCUMENT, that we _____ hereinafter referred as to the Principal, with principal offices and place of business respectively located at _____ and _____, a corporation organized and existing under the laws of the State of _____, and authorized to do business in the District of Columbia, hereinafter referred to as Surety, are held and firmly bound unto the Public Service Commission of the District of Columbia, as obligee for the use and benefit of all persons establishing legal rights hereinunder, 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 made application to the Public Service Commission of the District of Columbia for a license to provide electric service to retail customers in the District of Columbia, and

WHEREAS, pursuant to the Retail Electric Competition and Consumer Protection Act of 1999, D.C. Law 13-107, Section 105, the Public Service Commission of the District of Columbia is authorized to require the Principal to maintain a bond in order to provide retail electric service.

NOW, THEREFORE, if the Principal shall faithfully and truly fulfill all of its service or product contracts and other contractual commitments to deliver retail electric services, and not file for bankruptcy or for similar protection under law, then this obligation shall be void, otherwise to remain in full force and effect as security for the use of the Public Service Commission of the District of Columbia or of any person or entity, who after entering into a service or product contract or third party supplier agreement for service in the District of Columbia with the above named Principal is actually 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 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 Secretary of the Public Service Commission of the District of Columbia shall present the following document to the Surety, and attach thereto documentation in support thereof:

Affidavit sworn to and signed by the Secretary of the Public Service Commission of the District of Columbia, stating that at its public agenda meeting of _____, the Public Service Commission of the District of Columbia determined that _____ has not satisfactorily performed its obligations to a person or entity, who has been suffered actual and direct damages or loss in a specific amount by means of failure, or by reason of breach of contract or violation of the Retail Electric Competition and Consumer Protection Act of 1999, D.C. Law 13-107 and/or regulations, rules or standards promulgated pursuant thereto.

SIGNED, SEALED AND DATED this _____ day of _____.

Principal

By:

Surety

Address of Surety

By:

Notary Seal

ATTACHMENT E – FORM OF INTEGRITY BOND
FOR AGGREGATORS AND BROKERS

SURETY BOND

Bond No. _____

DISTRICT OF COLUMBIA

KNOW ALL PEOPLE BY THIS DOCUMENT, that we _____
hereinafter referred as to the Principal, with principal offices and place of business
respectively located at _____ and
_____, a corporation
organized and existing under the laws of the State of _____, and
authorized to do business in the District of Columbia, hereinafter referred to as Surety,
are held and firmly bound unto the Public Service Commission of the District of
Columbia, as obligee for the use and benefit of all persons establishing legal rights
hereinunder, in the sum of TEN THOUSAND AND NO/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 made application to the Public Service Commission of the
District of Columbia for a license to provide electric service to retail customers in the
District of Columbia, and

WHEREAS, pursuant to the Retail Electric Competition and Consumer Protection Act of
1999, D.C. Law 13-107, Section 105, the Public Service Commission of the District of
Columbia is authorized to require the Principal to maintain a bond in order to provide
retail electric service.

NOW, THEREFORE, if the Principal shall faithfully and truly fulfill all of its service or
product contracts and other contractual commitments to deliver retail electric services,
and not file for bankruptcy or for similar protection under law, then this obligation shall
be void, otherwise to remain in full force and effect as security for the use of the Public
Service Commission of the District of Columbia or of any person or entity, who after
entering into a service or product contract or third party supplier agreement for service in
the District of Columbia with the above named Principal is actually 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 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 Secretary of the Public Service Commission of the District of Columbia shall present the following document to the Surety, and attach thereto documentation in support thereof:

Affidavit sworn to and signed by the Secretary of the Public Service Commission of the District of Columbia, stating that at its public agenda meeting of _____, the Public Service Commission of the District of Columbia determined that _____ has not satisfactorily performed its obligations to a person or entity, who has been suffered actual and direct damages or loss in a specific amount by means of failure, or by reason of breach of contract or violation of the Retail Electric Competition and Consumer Protection Act of 1999, D.C. Law 13-107 and/or regulations, rules or standards promulgated pursuant thereto.

SIGNED, SEALED AND DATED this _____ day of _____.

Principal

By:

Surety

Address of Surety

By:

Notary Seal

ATTACHMENT F – FORM OF CUSTOMER PAYMENTS BOND**SURETY BOND**

Bond No. _____

DISTRICT OF COLUMBIA

KNOW ALL PEOPLE BY THIS DOCUMENT, that we _____ hereinafter referred as to the Principal, with principal offices and place of business respectively located at _____ and _____, a corporation organized and existing under the laws of the State of _____, and authorized to do business in the District of Columbia, hereinafter referred to as Surety, are held and firmly bound unto the Public Service Commission of the District of Columbia, as obligee for the use and benefit of all persons establishing legal rights hereinunder, 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 made application to the Public Service Commission of the District of Columbia for a license to provide electric service to retail customers in the District of Columbia, and

WHEREAS, pursuant to the Retail Electric Competition and Consumer Protection Act of 1999, D.C. Law 13-107, Section 105, the Public Service Commission of the District of Columbia is authorized to require the Principal to maintain a bond in order to provide retail electric service.

NOW, THEREFORE, if the Principal shall faithfully and truly fulfill all of its service or product contracts and other contractual commitments to deliver retail electric services, and not file for bankruptcy or for similar protection under law, then this obligation shall be void, otherwise to remain in full force and effect as security for the use of the Public Service Commission of the District of Columbia or of any person or entity, who after entering into a service or product contract or third party supplier agreement for service in the District of Columbia with the above named Principal is damaged or suffers any loss of a deposit or prepayment (as such terms are defined in Attachment C of Order No. _____ of the Public Service Commission of the District of Columbia) 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 Secretary of the Public Service Commission of the District of Columbia shall present the following document to the Surety, and attach thereto documentation in support thereof:

Affidavit sworn to and signed by the Secretary of the Public Service Commission of the District of Columbia, stating that at its public agenda meeting of _____, the Public Service Commission of the District of Columbia determined that _____ has not satisfactorily performed its obligations to a person or entity, who has been suffered actual and direct damages or loss of a deposit or prepayment (as such terms are defined in Attachment C of Order No. _____ of the Public Service Commission of the District of Columbia) in a specific amount by means of failure, or by reason of breach of contract or violation of the Retail Electric Competition and Consumer Protection Act of 1999, D.C. Law 13-107 and/or regulations, rules or standards promulgated pursuant thereto.

SIGNED, SEALED AND DATED this _____ day of _____.

Principal

By:

Surety

Address of Surety

By:

Notary Seal

1900 PENNSYLVANIA AVE., N. W.
WASHINGTON, D. C. 20068
(202) 872-2890

RECEIVED

00 OCT 16 PM 3:35

CHIEF CLERK

PAUL H. HARRINGTON
ASSOCIATE GENERAL COUNSEL

October 16, 2000

Mr. Jesse P. Clay, Jr.
Secretary
Public Service Commission
of the District of Columbia
1333 H Street, N.W.
2nd Floor West Tower
Washington, D.C. 20005

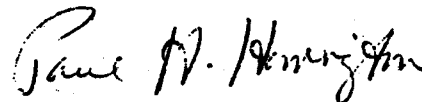
Re: Formal Case No. 945
Phase II

Dear Mr. Clay:

On behalf of the Retail Competition Working Group, enclosed for filing with the Commission in the above matter are the original and fifteen (15) copies of the Report Of The Retail Competition Working Group To The District Of Columbia Public Service Commission Regarding Customer Deposits And Bonding Issues.

If you have any questions, please call me.

Very truly yours,



Paul H. Harrington

PHH/kdt

cc: All Parties in Formal Case No. 945, Phase II
Enclosure

October 16, 2000

**REPORT OF THE
RETAIL COMPETITION WORKING GROUP
TO THE
DISTRICT OF COLUMBIA PUBLIC SERVICE COMMISSION
REGARDING CUSTOMER DEPOSITS AND BONDING ISSUES**

I. PURPOSE OF THIS REPORT

On September 18, 2000, the Public Service Commission of the District of Columbia ("Commission") issued Order No. 11796 in Formal Case No. 945, Phase II. In Order No. 11796, the Commission examined an earlier Report of the Retail Competition Working Group, filed in Formal Case No. 945, Phase II on May 23, 2000. In its Order, the Commission adopted consensus recommendations of the Working Group, and decided most of the issues on which the Working Group's members were unable to reach agreement.

In Order No. 11796, the Commission directed the Working Group to hold additional discussions on several topics. Two of those topics are addressed in this Report: customer deposits, and bonding.

II. OVERVIEW OF DISCUSSIONS

The Working Group is pleased to report that it has reached agreement on all but one of the issues that the Commission asked it to address. The one issue on which the

Working Group did not reach consensus is the size of the bond that a supplier may be required to post with the Commission as evidence of financial integrity. The Working Group includes salient information on this issue in this Report. The Working Group also decided that members interested in the issue should present the Commission with written comments by close of business on Monday, October 23, 2000.

The following entities participated in the discussions leading to this Report: Apartment and Office Building Association of Metropolitan Washington ("AOBA"); the Association and Agency Consortium for Energy ("AACE"); the Consumer Utility Board ("CUB"); District of Columbia Energy Office ("DCEO"); District of Columbia Government ("DCG"); Energy Services Management, Inc. ("ESM"); FirstEnergy Services Corp. ("FirstEnergy"); International Brotherhood of Electrical Workers ("IBEW"); Mona Energy Partners, Inc. ("Mona"); New Energy, Inc. ("New Energy"); the Office of People's Counsel ("OPC"); Potomac Electric Power Company ("Pepco"); and Washington Gas Light Company ("Washington Gas").

III. CUSTOMER DEPOSITS

The Working Group recommends¹ that the Commission adopt the following proposed standards relating to the maximum deposit that electricity suppliers may charge and collect from small commercial customers. While recognizing the Commission's concern that small commercial customers may not have the same amount of negotiating leverage as large commercial customers (Order No. 11796, p. 21), the Working Group

¹ The reader should note that Washington Gas takes no position regarding the proposed standards relating to the maximum deposits that may be charged and on the refunding of customers' deposits.

believes it is not appropriate to impose a \$100 cap on deposits from small commercial customers. There is great disparity between the level of usage by small commercial customers. While some may be small local grocers or merchants, others may be much larger entities with greater electricity usage. This disparity makes it impossible to have a "one-size fits all" limit on small commercial customer deposits. Therefore, the Working Group recommends that the limit of \$100 on deposits be applicable to residential customers only.

A. Additions/Amendments to the Electric Consumer Protection Standards

The Working Group proposes that the following be added to Section 8-2 of The Electric Consumer Protection Standards ("ECPS") as set forth in Attachment 1 to the May 23, 2000 Report Of The Retail Competition Working Group and filed with the Commission in this proceeding.

(1) Change the first paragraph in Section 8-2 to state "A. No deposit for residential electric service shall exceed the lesser of one hundred dollars or twice the estimated maximum monthly production and transmission portion² of the customer's bill over twelve (12) months.

(3) Add the following as the second paragraph in Section 8-2: "B. No deposit for small commercial electric service shall exceed the lesser of twice the estimated maximum monthly production and transmission portion of the customer's bill over twelve (12) months or, if applicable, the maximum monthly production and transmission portion of the customer's bill over the prior twelve (12) months."

² Since Suppliers do not provide distribution services, deposit amounts for Suppliers should be limited to the production and transmission portions of customers' bills.

B. Refunding Portions of the Customers' Deposits

The Working Group recommends the Commission adopt the following policy regarding refunding of residential and small commercial customer deposits if the customer chooses to take service from an alternative supplier:

Pepco will refund the production and transmission portion of a residential or small commercial customer's deposit, net of the amount owed to Pepco, after the customer begins taking production and transmission services from a supplier other than Pepco. The amount of the refund will vary by customer inasmuch as the maximum monthly usage of individual customers differs. Pepco will retain that portion of the customer's deposit allocable to Pepco's distribution charge and refund to the customer the remaining portion of the customer's deposit, which represents the production and transmission portion of the deposit. This is the procedure which Pepco has been following in Maryland.

IV. BONDING

The Commission directed the Working Group to discuss several issues relating to Bonding requirements for Electricity Suppliers. Page 59 of Order No. 11796 contains the Commission's directive that the Working Group recommend "bonding standards that provide us with the flexibility and discretion necessary to make case-by-case assessments on a comprehensive and impartial basis." The Commission further directed the Working Group to address "bond amounts, including the possibility of a sliding scale mechanism for bonds . . . based upon applicant revenues or some other index." *Id.* The Commission

permitted the Working Group to propose additional "consumer protection type purposes for which the bond may be required." *Id.*

In response to the directives and invitation, the Working Group met several times to discuss these issues. The Working Group has produced several documents, attached to this Report, in fulfillment of the Commission's requirements.

Attachment A is a revised section 14 to the Electricity Supplier License Application. The revised section 14 retains the existing option for a Supplier to provide, initially, a \$50,000 bond in lieu of other evidence of financial integrity. The revised section 14 also reduces that bond amount to \$10,000, but only for Brokers and Aggregators that will not be taking title to electricity. The Working Group observes that these classes of Electricity Suppliers do not take title to electricity, but restrict their activities to arranging contracts between customers and other Electricity Suppliers. Therefore, there is less risk that their activities could result in financial harm to consumers. The Group also notes that Brokers and Aggregators not taking title to electricity may well be small in size and/or new participants in the market, to whom sizable bonding requirements would constitute significant barriers to entry. Such barriers may be most significant to the customer-based aggregation programs provided for by the Retail Electric Competition and Consumer Protection Act of 1999.

Attachment B is a revised section 15 to the Electricity Supplier License Application. It sets forth the criterion that applicants that meet certain specified financial integrity standards do not need to post a bond, *unless the Applicant requires customer deposits or prepayments*. Under those circumstances, a bond will always be required, as

shown in Attachment C, a Bonding Requirements Addendum for the Supplier License Application.

In Attachment C, the Working Group proposes standards establishing when a bond is required, and procedures for determining bond amounts. As noted above, the Working Group recommends that an Electricity Supplier always post a bond if it intends to charge customers deposits or prepayments. The initial bond for those purposes would be \$50,000. The Working Group further proposes a series of certifications and updates, and provides for review of those certifications and updates by the Commission's Accounting Division, to ensure that bond amounts for a Supplier charging deposits or prepayments are sufficient to cover the amount of deposits and prepayments held by the Supplier.

A similar series of certifications and updates, and Commission Accounting Division review, are recommended for a Supplier that uses a bond as evidence of financial integrity. The Working Group is cognizant of the fact that this recommendation imposes possible additional duties on the Accounting Division, but believes the recommended procedures best balance the concurrent needs of ensuring accountability and accuracy while minimizing market entry costs.

The Working Group recommends that an Electricity Supplier that provides a bond for financial integrity should be able to ask the Commission to reduce the size of its bond if, after two years of operation in the District of Columbia, the Electricity Supplier can demonstrate a record of continuous and high-quality service. However, an Electricity Supplier that holds customer deposits and prepayments would not be entitled to a return

of the associated bond unless and until it returns the deposits or prepayments or provides the services for which the prepayments were made.

The Working Group did agree that the Commission should continue to require an initial bond of \$50,000 of Applicants that use a bond to demonstrate financial integrity. However, the Working Group disagreed on whether and to what extent the bond amount should be adjusted following six months of operations in the District by a Supplier. See **Attachment C, Section II.3.b.**

Members' positions on this issue are briefly stated below. As noted earlier, the members that wish to provide more extensive comment to the Commission shall do so, in writing, by the close of business on Monday, October 23, 2000.

OPC recommends that Electricity Suppliers with revenues in the District of Columbia from residential and small commercial customers of less than or equal to \$2,000,000 should post a bond of \$150,000, and that Suppliers with revenues from those customers in excess of \$2,000,000 should post a bond of no more than \$250,000. OPC believes that these amounts are necessary to afford meaningful protection to residential and small business customers. OPC also believes that these levels are consistent with the bond requirements in nearby jurisdictions, such as Pennsylvania and New Jersey.

New Energy and FirstEnergy propose the continuation of the \$50,000 bond amount stated in Order No. 11796 for those Suppliers that do not meet or choose not to utilize the other measures of financial integrity. While nearby jurisdictions have used bond amounts consistent with those proposed by OPC, New Energy and FirstEnergy observe that the electricity markets in nearby states are much larger than those in Washington, D.C. Therefore, they believe that it is appropriate to scale the size of the

District of Columbia's bond to the size of the market, leading to bond amounts no greater than \$50,000. Pepco supports the position set forth by New Energy and FirstEnergy.

All members agree that the Commission may wish to increase or decrease the size of the bond, depending upon the performance of the electricity supplier once it enters the District's marketplace. The Working Group has not discussed this matter in significant detail. However, enough discussion did occur for the Working Group to realize that any such determination by the Commission would be extremely dependent upon factual circumstances.

V. CONCLUSION

The Retail Competition Working Group appreciates the opportunity afforded it by the Commission to discuss the matters addressed above. The Working Group is discussing the remaining topics detailed by the Commission in Order No. 11796, and hopes to be able to continue the successes that it has achieved to date.

ATTACHMENT A

14. REQUIRED DOCUMENTATION OF FINANCIAL INTEGRITY: To the extent available, Applicant shall provide the most recent versions of the following documents. Check each that is attached:

- ☐ Balance sheet and income statement for the two most recent 12 month periods for which information is available. Balance sheets and income statements must be for the Applicant, and not a parent corporation in the event one exists. Audited financial statements must be provided if they exist. Applicant may also provide 10Ks and 10Qs if available.
- ☐ If the Applicant has not been in existence for at least two-12 month periods, it must provide balance sheets and income statements for the life of the business. Audited financial statements must be provided if they exist.
- ☐ In the event that a parent or other corporation or company has undertaken to guarantee the financial integrity of the Applicant, Applicant must submit such parent's, other corporation's or company's balance sheet and income statement together with documentation of such undertaking to insure the financial integrity of the Applicant.
- ☐ Evidence that the Applicant is a licensed supplier in good standing or has engaged in the retail supply of electricity or electricity supply services in any other jurisdiction.
- ☐ Credit reports or ratings prepared by established credit bureaus or agencies regarding the Applicant's payment and credit history.
- ☐ A current long-term bond rating, or other senior debt rating, if available.
- ☐ Organizational structure of Applicant. Include Applicant's parent, affiliate(s), and subsidiary(ies) if applicable.
- ☐ Evidence of general liability insurance.
- ☐ Other evidence of financial integrity (Please attach additional information to application).

An Applicant may request that it be permitted to submit a \$50,000 initial bond (\$10,000 for Brokers and Aggregators not taking title to electricity) in lieu of the financial documents listed above. Such bond may be subject to update/revision as discussed in Section II of the Bonding Requirements Addendum attached to this Application.

ATTACHMENT B

15. BONDING REQUIREMENTS

Each Applicant who applies to provide service as an Electricity Supplier in the District of Columbia must provide evidence of financial integrity before the Commission will approve the application and issue a license. An Applicant who can provide credible evidence that it meets the financial integrity standards listed in Section II of the Bonding Requirements Addendum will not be required to submit a bond or other form of acceptable financial instrument ("bond") to the Commission, unless the Applicant requires customer prepayments and/or deposits, as discussed below.

An Applicant who does not meet these financial standards will be required to submit a bond in a form acceptable to the Commission. The Applicant, if licensed by the Commission as an Electricity Supplier, may be required to update/revise this initial bond, by revising the initial bond or posting an additional bond.

A separate bond is mandatory if an Applicant requires prepayments and/or deposits from residential or small commercial customers. Please check one of the boxes below to state whether you, the Applicant, intend to charge, collect, or hold prepayments and/or deposits:

- ☐ Applicant will not accept prepayments or deposits from residential and small commercial customers.
- ☐ Applicant intends to accept prepayments and/or deposits from residential and small commercial customers. Applicant must comply with Bonding Requirements Addendum governing collection of prepayments and deposits.

Further details regarding the District of Columbia's bonding requirements are included in the Bonding Requirements Addendum, attached to this Application.

ATTACHMENT C

BONDING REQUIREMENTS ADDENDUM

I. BOND REQUIREMENTS FOR ELECTRICITY SUPPLIERS CHARGING OR COLLECTING DEPOSITS OR PRE-PAYMENTS

1. DEFINITION AND EXCLUSION

- a. Any Electricity Supplier who charges or collects deposits or prepayments from residential or small commercial consumers (as those terms are defined in the Commission's interim licensing standards and/or regulations) shall maintain a bond or other form of acceptable financial instrument ("bond") in an amount at least equal to the total amount of such deposits and prepayments as specified in this section.
- b. "Deposits" include all payments made by a consumer to an Electricity Supplier to secure the Electricity Supplier against the consumer's nonpayment or default.
- c. "Prepayments" include all payments made by a consumer to an Electricity Supplier for services that have not been rendered at the time of payment.

(1) Where an Electricity Supplier charges for services based on a quantity of electricity, such as a price per kilowatt/hour, then prepayments include any payments for any quantity that has not been delivered to the consumer at the time of payment.

(2) Where an Electricity 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 Electricity Supplier for the period of time less the prorated value of the period of time for which services have been rendered.

(3) Where an Electricity Supplier charges for services based on a measure other than quantity of electricity 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 electrical costs are averaged over a period of time.

2. WHO MUST POST BOND

Any Electricity Supplier who states on its license application that it intends to charge deposits or prepayments, or who does in fact charge a deposit or prepayment, must post the bond. Any Electricity Supplier who states on its license application that it does not intend to charge deposits or prepayments will not be required to post a bond or provide the certification described below. Any Electricity Supplier who actually charges a deposit or prepayment without notifying the Commission within the required deadline and posting the required bond may be subject to suspension, revocation, or other action against its license, as well as for restitution to any consumers who paid such deposits or prepayments.

3. PROCEDURE FOR DETERMINING AMOUNT OF BOND

- a. **INITIAL BOND:** Before accepting any deposits or prepayments, an Electricity Supplier must (1) notify the Commission on its license application, within 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 \$50,000.
- b. **SIX MONTH CERTIFICATION:** Within six months after the initial bond is posted, (1) the Electricity Supplier shall provide to the Commission (with appropriate confidentiality protections), a certification, subject to review by the Commission's Accounting Division, of the amount of the deposits and prepayments held by the Electricity Supplier and (2) a bond in the amount consistent with that certification.
- c. **ANNUAL CERTIFICATION:** Annually thereafter, coinciding with the annual update requirements of the Commission's license application, the Electricity Supplier shall provide to the Commission (with appropriate confidentiality protections) (1) certification of the amount of the deposits and prepayments held by the Electricity Supplier, and (2) a bond consistent with that amount.
- d. **BI-ANNUAL UPDATES:** Following submittal of the first annual update, the Electricity Supplier must provide to the Commission (1) a bi-annual management report stating the amount of deposits and prepayments collected and (2) an adjustment to the bond in that amount.

4. COMMISSION ACCOUNTING DIVISION AUDIT REPORT. The Electricity Supplier shall provide appropriate certification, at the intervals discussed in the above paragraphs, of funds collected by an Electricity Supplier for prepayments or deposits. The Electricity Supplier shall certifying funds through a notarized statement, subject to verification by the Commission's Accounting Division upon request. The statement and any audit by the

Accounting Division will verify collections and balances of prepayments and deposits as of a specific date and whether the Electricity Supplier has appropriate bond coverage.

5. **BOND FORM: BENEFICIARY, CLAIMS, DISTRIBUTION.** The Electricity Supplier shall provide a bond on the form required by the Commission.
6. **COMPLIANCE INVESTIGATIONS.** The Commission has the right to initiate appropriate investigations if it determines an Electricity Supplier is collecting prepayments and/or deposits from customers without appropriate bond coverage. The Commission will utilize appropriate legal remedies both to investigate and/or enforce actions necessary to ensure suppliers have appropriate bonds.

II. BOND REQUIREMENTS FOR FINANCIAL INTEGRITY

1. DEFINITION AND EXCLUSION

- a. An Electricity Supplier who can provide credible evidence that it meets the standards listed in section 2 below will not be required to submit a bond, parent guarantee, or other form of acceptable financial instrument ("bond") to the Commission
- b. An Electricity Supplier who cannot provide credible evidence that it meets the standards listed in section 2 below will be required to submit an initial bond of \$50,000, unless that Electricity Supplier is applying to provide service as an aggregator (as defined in the "Retail Electric Competition and Consumer Protection Act of 1999" at Section 101(2) and as defined in the Commission's interim licensing standards and/or regulations) who does not take title to electricity or as a broker (as defined in the "Retail Electric Competition and Consumer Protection Act of 1999" at Section 101(7) and as defined in the Commission's interim licensing standards and/or regulations), in which case a \$10,000 bond will be required. This initial bond is subject to the update requirements discussed below, except that aggregators who do not take title and brokers will not be required to update the initial \$10,000 bond.
- c. After continuously providing service in the District for two years, any Electricity Supplier who has submitted a bond to the Commission in compliance with these requirements to establish financial integrity may request that the Commission return the previously posted bond and waive the requirement for a future bond based upon the Electricity Supplier's demonstrated record of continuous and high quality service in the District, without meaningful substantiated consumer complaint, as determined by and in the opinion of the Commission, and such other information as the Electricity Supplier may choose to present to the Commission. The Commission may accept or reject this request based on a review of information provided by the Electricity Supplier and such other information as

the Commission may deem appropriate. The Commission retains the discretion to require a bond of said Electricity Supplier at a later date if the circumstances prompting the bond return or waiver change, or if the Commission otherwise deems the re-institution of a bond to be necessary and appropriate. Any Electricity Supplier charging, collecting or holding deposits or prepayments may not request return of a current bond or waiver of the requirement for a future bond, unless and until the Electricity Supplier returns the deposits or prepayments to its customers or provides the services to which the prepayments applied.

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2. WHO MUST POST BOND

Any Electricity Supplier that can provide credible evidence that it meets the following standards is not required to post a bond in the District of Columbia:

1. A credit rating of BBB- or higher from a nationally-recognized credit rating service;
2. A commercial paper rating of A2 or higher by Standard & Poor's and/or P2 or higher by Moody's, or similar rating by another nationally-recognized rating service;
3. An unused line of bank credit or parent guarantee, pledged to satisfy Commission-ordered sanctions, equal to or exceeding the amount of any bond that would otherwise be required by application of the Commission's bonding requirements; and/or
4. Any other evidence of financial integrity that the Commission may deem appropriate.

Any Electricity Supplier that cannot provide credible evidence that it meets the above standards must meet the bond requirements set forth below.

3. PROCEDURE FOR DETERMINING AMOUNT OF BOND

- a. **INITIAL BOND:** Any Electricity Supplier that cannot meet the above criteria for financial integrity, and who is not applying to provide service as an aggregator who does not take title to electricity or a broker, must post an initial bond of \$50,000. If the Electricity Supplier is applying to provide service as an Aggregator that does not take title to electricity or as a Broker, the required bond amount is \$10,000.
- b. **SIX MONTH CERTIFICATION:** Within six months after the initial bond is posted, (1) the Electricity Supplier shall provide to the Commission (with appropriate confidentiality protections) a notarized certification, subject to review upon request by the Commission's Accounting Division, of the amount of the gross revenues the Electricity Supplier has collected to date from residential and/or small commercial customers in the District. Based upon the Electricity Supplier's level of revenues

calculated on an annualized basis, the Commission will require that the Electricity Supplier provide a bond in the following amount: **NOTE TO COMMISSION: This is the sole area of dispute among Work Group members. Please see the Report prefacing this Attachment for details.**

- c. **ANNUAL CERTIFICATION:** Annually thereafter, coinciding with the annual update requirements of the Commission's license application, the Electricity Supplier shall provide to the Commission (with appropriate confidentiality protections) a notarized statement of the amount of the gross annual revenue collected from residential and/or small commercial customers in the District. The Electricity Supplier will update its bond to coincide with the above requirements (bond based on annual revenues).
4. **COMMISSION ACCOUNTING DIVISION AUDIT REPORT.** The Electricity Supplier shall provide appropriate certification at the intervals discussed in the above paragraphs. The Commission's Accounting Division may request such information from the Electricity Supplier as is necessary to verify the accuracy of the notarized statements at any time.
5. **BOND FORM: BENEFICIARY, CLAIMS, DISTRIBUTION.** The Electricity Supplier shall provide a bond on the form required by the Commission.
6. **COMPLIANCE INVESTIGATIONS.** The Commission has the right to initiate appropriate investigations if it determines an Electricity Supplier is providing service without appropriate bond coverage. The Commission will utilize appropriate legal remedies both to investigate and/or enforce actions necessary to ensure Electricity Suppliers have appropriate bonds.