

945-E-483

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

**ORDER**

September 18, 2000

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

**Order No. 11796**

**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, John M. Adragna 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*; 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*; Timothy R. Robinson, General Counsel and Lawrence D. Crocker, Senior Attorney Advisor, for the *Public Service Commission*.

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## I. Introduction

1. By this Order, the Public Service Commission of the District of Columbia ("Commission") approves and adopts, with modifications as set forth in the body of this Order, the Report ("Report") of the Retail Competition Working Group ("Working Group"), which includes: 1) the proposed Electric Consumer Protection Standards ("Proposed ECPS"); 2) the proposed Application for License to Supply Electricity or Electric Generation Services to the Public in the District of Columbia ("Proposed Supplier Application"); and 3) the Proposed Licensing Standards of the District of Columbia Public Service Commission ("Proposed Licensing Standards"). The Commission also accepts, as modified herein: 4) the proposed Supplier Coordination Agreement ("Proposed SCA"); 5) the proposed Electronic Data Interchange ("EDI") Trading Partner Agreement ("Proposed EDITPA"); and 6) the proposed Scheduling Coordinator Designation Form ("Proposed SCDF").<sup>1</sup> The Commission finds, after balancing and judging the interests of all of the parties to this proceeding and taking into consideration all elements of the record before us, that the Report, as modified herein, is in the best interests of the ratepayers of the District of Columbia ("District"), and, therefore, is in the public interest.

2. This Order represents the implementation of a competitive retail electricity market in the District and is consistent with the movement toward electricity choice occurring in most states throughout the country.<sup>2</sup> In adopting this Order, moreover, the Commission implements the District Council's findings that a deregulated market should allow for: 1) efficiencies and innovations in the provision of electric service that have not developed and will not develop in a regulated market; 2) lower rates for many businesses, particularly large ones, and such lower rates, in turn, should lead to an increase in economic development in the District; and 3) over the long

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<sup>1/</sup> Attached hereto as Attachments A, B, C, D, E, and F, respectively, are Interim Electric Consumer Protection Standards ("Interim ECPS" also referred to as the "Proposed ECPS" throughout this order), Interim Application for License to Supply Electricity or Electric Generation Services to the Public in the District of Columbia ("Interim License Application"), Interim Licensing Standards of the District of Columbia Public Service Commission ("Interim Licensing Standards"), Supplier Coordination Agreement ("SCA"), Scheduling Coordinator Designation Form ("SCDF"), and Electronic Data Interchange (EDI) Trading Partner Agreement ("EDITPA"). Attachments A, B and C to this Order are hereby adopted and made effective as discussed subsequently in the body of this Order. Attachments D, E and F are accepted and have been modified from Attachments 5, 6 and 7 to the Report.

<sup>2/</sup> See Committee on Consumer and Regulatory Affairs, Council of the District of Columbia, Report on Bill 13- 284 (Dec. 2, 1999) ("Committee Report") at 5-6, which states that "since 1996, 24 states have deregulated the generation components of their electricity markets; most notable among these are Virginia, and all of the jurisdictions in the PJM region except the District of Columbia. . . . The implementation of a competitive retail electricity market in the District of Columbia almost certainly will provide immediate advantages to all citizens of the city. Most of the District's largest electricity purchasers, including the Washington Metropolitan Area Transit Authority, the federal government, and the District of Columbia government, are organizations that provide substantial services to the public. Competition should allow these entities to realize immediate and quite substantial savings--totaling millions of dollars--in electricity costs; and those savings can be used for other public purposes. Further, the Committee anticipates that the introduction of a competitive retail electricity supply market will impose price pressures on all segments of the electricity market; and those price pressures should ultimately lead to distinct cost savings for residential electricity consumers." See also Federal Energy Regulatory Commission ("FERC"), Order No. 888 (April 24, 1996), FERC (CCH), Regulations Preambles ¶ 31, 036 at 31, 635, which facilitates retail competition by providing for non-discriminatory access to the transmission of electricity, and which states "[t]he Commission estimates that the potential quantitative benefits from the Final Rule will be approximately \$3.8 to \$5.4 billion per year of cost savings, in addition to the non-quantifiable benefits that include better use of existing assets and institutions, new market mechanisms, technical innovation, and less rate distortion."

term, lower prices for residential customers.<sup>3</sup> With these benefits in mind and pursuant to the authority and framework provided in the Retail Electric Competition and Consumer Protection Act of 1999 (the "Act"), this Order establishes procedures and standards designed to ensure a fair, orderly, and effective transition to a competitive retail electricity market in the District. This Order represents the culmination of many months of input, study, negotiations and work by the parties, the Commission and its staff. Through the combined efforts of the Working Group and the Commission, we have devised a workable plan that includes valuable input from all District representatives, including consumers, suppliers, and service providers. As set forth below in detail, the Commission's Order fulfills the intent and requirements of the District Council, and consumers will benefit in multiple ways from these steps to open the District to competition in the electricity market.

## **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"). OPC and CUB opposed the Settlement Agreement and, therefore, declined to sign it. Although DCG initially opposed the Settlement, DCG subsequently agreed to the settlement.<sup>6</sup>

4. Order No. 11576 approved the full settlement of Phase I<sup>4</sup> in Formal Case No. 945 and directed the parties to this proceeding to establish the Working Group to make recommendations to the Commission on the steps required to implement retail competition in the District.<sup>5</sup> The Working Group participants are: PEPCO; GSA; WMATA; AOBA; IBEW; Washington Gas; the Office of the People's Counsel ("OPC"); the District of Columbia Government ("DCG"); the District of Columbia Energy Office ("DCEO"); the Consumer Utility Board ("CUB"); First Energy Services Corp. ("First Energy"); 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 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

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<sup>3/</sup> See Committee Report at 7-8.

<sup>4/</sup> The Commission's approval of the Settlement Agreement allowed PEPCO to proceed with divesting certain of its generating assets.

<sup>5/</sup> Order No. 11576 at 68-69.

7, 2000.<sup>6</sup> 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.<sup>7</sup> 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,<sup>8</sup> 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 a few discrete non-consensus issues by July 7, 2000.<sup>9</sup>

### III. Working Group Report

#### A. Customer Protection

6. Customer protection is of paramount concern to the Commission and must be seriously considered. The District Council expressly stated that the goal of deregulation is to provide adequate protection for all consumers, especially residential and small business consumers, and the environment, while keeping barriers to entry low enough for the development of a competitive market.<sup>10</sup> In this new marketplace, we must ensure that District consumers are not subjected to unfair or unscrupulous marketing and contracting practices. Moreover, we must be vigilant in requiring Market Participants<sup>11</sup>, including Electricity Suppliers,<sup>12</sup> to provide fair and equitable billing and contracting services. At the same time, we recognize that the burdens of regulation should not be so overwhelming as to squelch reasonable competition among legitimate

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<sup>6/</sup> The following Parties filed initial comments on May 31, 2000: PEPCO; OPC; AOBA; First Energy; Washington Gas; DCG; and DCEO; and the following Parties filed reply comments on June 7, 2000: PEPCO; OPC; Washington Gas; First Energy; and DCG.

<sup>7/</sup> On June 9, 2000, PEPCO filed comments on behalf of itself, First Energy, 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.

<sup>8/</sup> PEPCO filed additional comments on June 23, 2000.

<sup>9/</sup> PEPCO, DCG, OPC and First Energy 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.

<sup>10/</sup> See Committee Report at 8.

<sup>11/</sup> "Market Participant" is defined in § 101(20) of the Act and in the Proposed ECPS at 4 as "any Electricity Supplier (including an affiliate of the Electric Company) or any person providing billing services or services declared by the Commission to be Potentially Competitive Services."

<sup>12/</sup> Electricity Supplier is defined within Section 101(17) of the Act as "a person, including an aggregator, broker, or marketer, who generates electricity; sells electricity; or purchases, brokers, arranges or markets electricity for sale to customers. The term excludes the following: (A) Building owners, lessees, or managers who manage the internal distribution system serving such building and who supply electricity solely to occupants of the building for use by the occupants; (B) Any person who purchases electricity for its own use or for the use of its subsidiaries or affiliates, or any apartment building or office building manager who aggregates electric service requirements for his or her building or buildings, and who does not take title to electricity, market electric services to the individually-metered tenants of his or her building, or engage in the resale of electric services to others; (C) Property owners who supply small amounts of power, at cost, as an accommodation to lessors or licensees of the property; and (D) A consolidator."

providers of electric service. Thus, this Order recognizes and addresses the delicate balance necessary for establishing a competitive retail electric market. The establishment of competition for long-distance telephone services has instructed us and guided our perspective in our adoption of meaningful and effective consumer protections in this Order.

7. The customer issues in the Report are addressed *in seriatim* below. These issues are discussed in detail, by setting out the key concerns and positions of the Parties, examining legislative history, and finally, our decision of the issues. The Commission's deliberations on the issues: 1) set up the framework to open opportunities for receiving competition's benefits, not for a limited class of consumers, but for all; 2) set in motion a reasonable mechanism by which customers will be able to understand options and acquire competitively-priced electricity; 3) protect customer information; 4) establish payment arrangements and prevent improper service termination; 5) protect consumers from illegitimate would-be providers; 6) protect against fraud abuse and unfair dealing; 7) establish reasonable customer service standards; 8) protect low income consumers; 9) educate consumers; 10) provide comprehensive billing data; 11) preserve and extend deposit protections to select customer classes; and 12) license Electricity Suppliers.

ISSUE NO. 1: WHAT PERCENTAGE OF RESIDENTIAL CUSTOMERS SHOULD BE ELIGIBLE FOR THE PILOT PROGRAM? WHAT SIZE, AND TIMETABLE FOR, THE PHASE-IN IS RECOMMENDED?

**a. Parties' Positions**

8. On this issue, the Working Group unanimously agrees that 100 percent (100%) of residential customers should be eligible for participation in the retail competition pilot program ("Pilot Program") beginning January 1, 2001. Making retail competition available to all District consumers will lead to the widespread enjoyment of the benefits of competition and a more open marketplace.<sup>13</sup>

**b. Commission Decision**

9. The Commission agrees with, and hereby adopts, the Working Group recommendation to establish a Pilot Program that is open to all residential consumers in the District. While the Settlement Agreement provides for the implementation of a Pilot Program that only requires the participation of ten percent (10%) of the District's residents, the Commission believes that the Working Group recommendation for one hundred percent (100%) residential participation is a desirable approach. There is no reason to restrict the number of Pilot Program participants given the size of the District and the willingness of the Parties participating in the Working Group to encourage such a widespread effort. The Commission is accorded broad discretion, under the Act, to establish a Pilot Program,<sup>14</sup> and we believe that the adoption of the Working Group's recommendation is consistent with both the Act and the public interest. Pilot programs preview competition for consumers and allow distribution companies and energy providers to enhance customer education programs and to hone their administrative, technical and operational skills.<sup>15</sup>

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<sup>13/</sup> Report at 5.

<sup>14/</sup> See the Act at §102(d), which provides that "the Commission may establish a pilot program . . . [in which] a minimum of 10 percent of each customer class shall be eligible to participate."

With the safeguards and procedures adopted by the Commission herein, we find that all consumers will be adequately protected both during the Pilot Program period and beyond. Thus, there is a strong policy basis for allowing all residential consumers to participate in the economic benefits of the restructured marketplace.

**ISSUE NO. 2: SHOULD MASTER-METERED APARTMENT HOUSES BE CONSIDERED RESIDENTIAL CUSTOMERS FOR PURPOSES OF RETAIL COMPETITION?**

**a. Parties' Positions**

9. The Working Group also reaches consensus on this issue, recommending that master-metered customers should be treated as commercial customers for purposes of implementing retail competition.<sup>16</sup> The Working Group further states that treating master-metered customers like commercial customers, during retail competition should not alter their current rate status as residential customers.<sup>17</sup> This continuity of treatment during retail competition is consistent with the purpose of the Proposed ECPS, which is to establish uniform standards for customer treatment, protection, and service.<sup>18</sup>

**b. Commission Decision**

10. The Commission finds that, for the purposes of retail electric competition, master-metered apartment customers should be treated as commercial customers and not like residential customers.<sup>19</sup> The Working Group states that its recommendation is not intended to change the rates under which master-metered customers are currently served or to change how these customers are treated for any other purpose under Title 43 of the D.C. Code.<sup>20</sup> Moreover, the current tariffs for the majority of master-metered apartment customers apply residential rate schedules.<sup>21</sup> Our decision does not alter the tariff rate classifications of any master-metered customers. Nevertheless, under the Act, we retain broad discretion to establish standards for customer services and rates during retail competition, which includes the authority to treat master-metered customers as commercial solely for the purpose of implementing retail competition in the District.<sup>23</sup> Therefore, the Commission agrees with the Working Group recommendation that master-metered customers shall be treated as commercial customers for purposes of implementing retail competition as set forth in this Order.

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15/ See Committee Report at 29, remarks of Steven Jumper, Director of Public Affairs, Washington Gas.

16/ Report at 5. (Washington Gas does not disagree with the consensus position, but has no position on this issue.)

17/ *Id.*

18/ *Id.* at Attachment 1 – Proposed ECPS at 1.

19/ See, e.g., the Commission's discussions in this Section A on issues such as third-party verification and switching Electricity Suppliers.

20/ See Report at 5.

21/ See Tariff Page DC-R, Fifteenth Revised Page No. R-3.

ISSUE NO. 3: WHAT PROCESS SHOULD BE ESTABLISHED FOR RESIDENTIAL AND SMALL COMMERCIAL CUSTOMERS TO CONTRACT WITH AN ELECTRIC SUPPLIER? (*SEE* SECTION 104(C)(B) OF THE ACT)

**a. Parties' Positions**

11. Consensus. The Working Group supports three methods for customers to contract with Electricity Suppliers: by telephone; the Internet; and the use of paper contracts.<sup>22</sup> Section IV of the Proposed ECPS would govern the Electricity Supplier's relationship with customers, including requirements for telephone solicitations and required contract provisions. Section IV also sets forth the types of customer contracts that are prohibited, such as contracts for which consumer inaction means contractual assent.<sup>23</sup>

12. Non-Consensus. The Working Group did not reach consensus on one issue associated with telephone contracting, the issue of third-party verification. OPC proposes that all contracts entered into by telephone require independent third-party verification, as provided in Section IV-4 of the Proposed ECPS. OPC states that its preference is that third-party verification be conducted in a separate telephone call, rather than at the conclusion of the Electricity Supplier's telephone call.<sup>24</sup> OPC proposes independent third-party verification for all telephone contracts entered into by residential and small commercial customers. OPC maintains that mandatory third-party verification will provide: 1) an essential level of protection to ensure that electricity customers are not unduly coerced into switching Electricity Suppliers by unsolicited telephone marketing; and 2) additional protection against slamming. OPC also points out that long-distance telephone companies conducting business in the District are required to conduct independent verification.<sup>25</sup> In addition, OPC maintains that residential customers are particularly vulnerable to unscrupulous behavior by potential alternative service providers.<sup>26</sup> OPC does not believe, therefore, that maintaining tape recordings of the telephone contracts is sufficient third-party verification.<sup>27</sup> Finally, OPC asserts that the purpose of third-party verification is to prevent harm from occurring to residential and small commercial customers, rather than to serve as punishment for unscrupulous Electricity Suppliers.<sup>28</sup>

13. CUB also supports third-party verification.<sup>29</sup> CUB maintains that, since we are entering uncharted territory, the issue of third-party verification will provide the residents of the

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<sup>22/</sup> Report at 5.

<sup>23/</sup> *Id.* at Attachment 1 – Proposed ECPS at 9-14.

<sup>24/</sup> Tr. at 74.

<sup>25/</sup> OPC Initial Comments at 4-6.

<sup>26/</sup> Tr. at 11.

<sup>27/</sup> OPC Reply Comment at 3.

<sup>28/</sup> OPC Reply Comments at 3-4.

<sup>29/</sup> Tr. at 64.



District some time to gain their footing and an understanding of the new environment. CUB also believes that third-party verification will add a measure of protection to ensure that choices consumers make actually do reflect their decisions.<sup>30</sup>

14. Washington Gas opposes OPC's proposal, claiming it is overly burdensome and potentially cost prohibitive for Electricity Suppliers. Washington Gas notes that gas suppliers participating in the Washington Gas Customer Choice Program in Maryland are allowed to enroll gas customers over the telephone by recording all telephonic enrollments and providing a copy of the tape of the telephone call to the Maryland Public Service Commission ("MDPSC") upon request.<sup>31</sup> Washington Gas proposes that, if third-party verification is adopted, it should be revisited after the Pilot Program to ensure that it is necessary after the Pilot Program ends.<sup>32</sup>

15. First Energy believes third-party verification in all circumstances is unnecessary and costly for Electricity Suppliers. First Energy recommends that third-party verification not be required until such time as the Commission is given reason to believe that a particular Electricity Supplier is operating in a manner that is harmful to customers.<sup>33</sup> However, in the Report and also at the June 30, 2000 hearing, First Energy represented that it supports a compromise position that would provide for third-party verification for residential customers only.<sup>34</sup>

16. PEPCO also opposes third-party verification and proposes instead that a tape be made of telephone contracts that would also be made available to the Commission upon request.<sup>35</sup> PEPCO further proposes that, if an Electricity Supplier cannot produce the tape of the recorded contract, the customer would prevail in any complaint proceeding.<sup>36</sup>

17. At the Commission's request,<sup>37</sup> some of the Parties provided certain cost estimates for third-party verification. PEPCO indicated that third-party service providers charge approximately \$27 per hour for their services, and that the length of the script determines the actual cost per verification.<sup>38</sup> First Energy stated that, while it is not able to provide data to demonstrate the cost of supporting third-party verifications of telephone solicitations, a contact with a verifier of

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30/ Tr. at 64-65.

31/ Report at 6; Washington Gas Initial Comments at 2-3; Tr. at 53-54 and 62.

32/ Tr. at 63.

33/ Report at 6; First Energy Initial Comments at 2-4; Tr. at 60-61.

34/ Report at 6; Tr. at 63-64.

35/ PEPCO Reply Comments at 1-2.

36/ Tr. at 17-18.

37/ Tr. at 59.

38/ PEPCO Supplemental Comments at 3.

telephone services claimed that the overall costs associated with “patching in” a third-party verifier is \$1.50 to \$3.00 per call.<sup>39</sup>

**b. Commission Decision**

18. We adopt the consensus aspects of the Report on this issue and the consensus portions of Section IV of the Proposed ECPS.<sup>40</sup> These provisions establish criteria for soliciting consumers as well as detailed standards for the type of information that Electricity Suppliers may request from consumers.<sup>41</sup> Given the breadth and scope of these standards, we believe that the consensus aspects discussed herein provide sufficient criteria for Electricity Suppliers. The Commission finds that these measures further our mandate to ensure consumer protection as set forth under the Act.<sup>42</sup> Moreover, we conclude that the public interest will be best served under these criteria because the measures set forth in the Report are comprehensive and cost-effective in protecting consumers.

19. As to the non-consensus aspects of telephone contracts, the Commission agrees, in part, with the positions of OPC and CUB<sup>43</sup> and orders that independent third-party verification shall be required for all telephone contracts made with residential customers, and that all telephone contracts shall be recorded and preserved for a period of two years from the date of the recording.<sup>44</sup> Adoption of this requirement fulfills the Commission’s responsibility to ensure compliance with the Act’s requirement that customers receive accurate and adequate information.<sup>45</sup> We order further that third-party verification shall be required at least throughout the Pilot Program and shall be reviewed at a later date for its continued necessity and effectiveness.

20. In reaching this decision, we are following the lead of the Federal Communications Commission (“FCC”), which has instituted a requirement for independent third-party verification for the long-established competitive long distance telephone market. In implementing rules that require independent third-party verification, the FCC stated that its goal was to “eliminate the practice of ‘slamming.’”<sup>46</sup> In desiring to reach that laudable goal, the FCC

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<sup>39/</sup> First Energy Supplemental Comments at 2.

<sup>40/</sup> See Report at 5; Report at Attachment 1 – Proposed ECPS at 9-14.

<sup>41/</sup> See *Id.* at Attachment 1 – Proposed ECPS at 9-12.

<sup>42/</sup> See the Act at §§104 and 107, which generally vests with the Commission broad powers to regulate the impact the new paradigm will have on District consumers.

<sup>43/</sup> See OPC Initial Comments at 6; OPC Reply Comments at 2-4; and Tr. at 64-65.

<sup>44/</sup> This approach has been adopted by the MDPSC. In Maryland PSC Order No. 76110 in Case No. 8738, “In the Matter of the Commission’s Inquiring into the Provision and Regulation of Electric Service,” page 10, the MDPSC states: “In addition to the requirement for third-party verification, the Commission requires that the entire conversation between the customer and the offerer of electric service be taped and dated.”

<sup>45/</sup> See the Act at §107(e), which prohibits market participants from engaging in “marketing, advertising, or trade practices that are unfair, false, misleading or deceptive.”

determined that the independence of a third-party verifier is critical to the integrity of consumer protection in a competitive long distance telephone market. Therefore, the FCC amended its original verification rules and adopted additional safeguards to ensure that third-party verifiers are truly independent.<sup>47</sup> Specifically, the FCC ruled that any third-party verifier should not be owned, managed, controlled, or directed by the carrier; should not be given financial incentives to approve carrier changes; and must operate in a location that is physically separate from the carrier.<sup>48</sup> The FCC also required that the records (*i.e.*, "scripts") created by third-party verifiers clearly and conspicuously confirm that the subscriber previously authorized a carrier change; that such records not mirror either the marketing pitch of any particular carrier or the carrier's services.<sup>51</sup>

21. Because of the experiences in the long distance telephone market, the Commission has concerns that a restructured electricity market in the District could be inviting to unscrupulous players, who engage in fraudulent practices, such as slamming.<sup>49</sup> It is essential that the Commission also adopt third-party verification for the protection of District consumers. Therefore, we take the steps proposed by OPC and CUB that are outlined in the Report, as modified by this Order. The Commission will allow third-party verification to occur in either a separate telephone call or at the conclusion of the Electricity Supplier's call to the prospective customer.<sup>50</sup> We see no reason to limit Electricity Suppliers to one method or another.<sup>51</sup> We do, however, direct Electricity Suppliers to take steps to ensure that third party verifiers are sufficiently independent to guarantee that District consumers are willingly signing up for a particular service.

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46/ 64 *Fed. Reg.* 7746, 7749 (February 16, 1999). "Slamming" is defined by the FCC as a practice that "occurs when a company changes a subscriber's carrier selection without that subscriber's knowledge or explicit authorization." *Id.*

47/ *Id.*

48/ *Id.* at 7754. The FCC indicated that these criteria were intended to be examples, and not an exhaustive list of evaluative criteria to be used in determining the independence of third-party verifiers. *Id.* at 7753. Instead, the FCC stated that as issues arose regarding the independence of third-party verifiers it would evaluate each case on its own merits, thereby subjecting each on a case-by-case basis, using these criteria as general guidelines. *Id.* at 7753-7754.

<sup>49</sup>Slamming is the most frequently raised consumer complaint at the FCC. This year alone, the FCC has assessed forfeitures against slamming violators, totaling more than \$5.5 million dollars. In addition, the FCC received 3300 slamming complaints from long distance callers between December 1999- May 2000. These figures demonstrate the prevalence of slamming and the ease with which it can occur in increasingly competitive markets. *See* FCC Enforcement Bureau, Notices of Apparent Liability Issued for Slamming Violations.

50/ *See* Tr. at 74-76.

51/ There appear to be benefits to each. On the one hand, administrative convenience is best served if third-party verification occurs at the end of the Electricity Supplier's telephone call. On the other hand, we note PEPCO's concern that merely "patching" a verifier in at the end raises the possibility that the verifier is not "independent" at all. Tr. at 76. Under either method, the Commission will not tolerate deceptive practices on the part of Electricity Suppliers and will take aggressive steps to protect consumers from such practices.

ISSUE NO. 4: HOW CAN “SEASONAL GAMING” OR EXCESSIVE “CHURNING” BE REDUCED OR REGULATED?

**a. Parties’ Positions**

22. Consensus. The Working Group recommends that residential customers be permitted to switch back and forth from an Electricity Supplier to Standard Offer Service (“SOS”) as often as they wish. The Working Group agrees that, if it can be shown that residential seasonal switching results in gaming that has a material adverse effect upon PEPCO, PEPCO should request Commission reconsideration of any rule that permits residential customers to switch.<sup>52</sup>

23. Non-Consensus. The Parties differ on whether to allow small commercial customers the same flexibility in switching from Electricity Suppliers to SOS. PEPCO states that if small commercial customers were to have the same switching rights as residential customers, the potential for serious adverse impacts upon PEPCO would be significant.<sup>53</sup>

24. AOBA submits a proposed definition of “small commercial customers,” which the Working Group agrees to include in the Proposed ECPS.<sup>54</sup> AOBA also proposes that master-metered apartments should be treated as residential customers for purposes of switching privileges.<sup>55</sup> PEPCO disagrees with this position.

25. OPC contends that small commercial customers should receive the same treatment, for purposes of this issue, as residential customers.<sup>56</sup> In OPC’s opinion, small commercial customers are no more sophisticated than are residential customers. Therefore, small commercial customers should receive the same flexibility in switching suppliers. OPC further contends that small commercial customers lack the bargaining power to negotiate with Electricity Suppliers in a manner that would result in gaming.<sup>57</sup>

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<sup>52/</sup> Report at 6; Tr. at 20-21.

<sup>53/</sup> PEPCO Initial Comments at 2-5; PEPCO Additional Comments at 2.

<sup>54/</sup> AOBA Initial Comments at 3-4, in which AOBA proposes that “small commercial customer” be defined as “those customers served under PEPCO Rate Schedule DC-GS or DC-GS-3A, subject to any revisions made to those tariff sheets by the [Commission]. Small commercial customers exclude accounts on the above rate schedules in (1) apartment buildings with four or more units, (2) commercial office buildings or (3) accounts owned or managed by a consolidator.” *See also* Tr. at 40.

<sup>55/</sup> Report at 16.

<sup>56/</sup> OPC Reply Comments at 7-8; OPC Supplemental Comments at 3.

<sup>57/</sup> OPC Reply Comments at 7-8.

**b. Commission Decision**

26. The Commission agrees with the Working Group's recommendation as to residential customers' ability to change back and forth from Electricity Supplier service to SOS. The new competitive electric marketplace will provide new billing and contracting formats, multiple choices and more service providers to District customers. We find that it is in the public interest to accord residential customers the flexibility to develop an understanding of their choices over time and to change such choices if necessary. We also approve AOBA's proposed definition of "small commercial customer."<sup>58</sup> Small commercial customers and master-metered customers, however, will not have the same flexibility as residential consumers during the Pilot Program. To the extent that the Parties receive data on seasonal gaming during the Pilot Program, they may file such data with the Commission by October 1, 2001, and, if warranted, we may, at that time, revisit our decision regarding small commercial customers.

ISSUE NO. 5: WHAT SHOULD BE THE MECHANICS FOR OBTAINING AND MAINTAINING CUSTOMER CONSENT FOR RELEASE OF CUSTOMER INFORMATION?

**a. Parties' Positions**

27. The Working Group unanimously agrees that Market Participants are to be responsible for obtaining and maintaining customer consent for the release of customer-specific information provided to Market Participants. The Working Group also agrees that such information must be kept confidential and should be used exclusively by the Market Participant in furtherance of providing services to that customer, absent customer consent for release of the information.<sup>59</sup> To that end, Section 2-6 of the Proposed ECPS requires that 1) customer information be kept confidential, and 2) absent written customer consent, the Market Participant may not use that information for any other purpose.<sup>60</sup> If PEPCO receives an EDI Enrollment Transaction<sup>61</sup> from an

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<sup>58/</sup> See n. 63.

<sup>59/</sup> Report at 7.

<sup>60/</sup> See also § 108 of the Act for remedies for violations of any standard within the Proposed ECPS. We discuss these remedies subsequently at Issue Nos. 5 and 8 of Section D of this Order.

<sup>61/</sup> The Working Group generally discusses EDI transactions. See Report at 43-44. Based upon this discussion and the "Electronic Data Exchange Standards for Electric Deregulation in the Commonwealth of Pennsylvania, Revised Plan by Order of the Pennsylvania Public Utility Commission Order (Docket No. M-000960890, F.0015)" at 10-11, we adopt the following definition: EDI Enrollment Transaction is the "electronic exchange of information between entities using standardized, machine-processable, structured data formats. EDI transactions are governed by a standard (ASC X12). The American National Standards Institute ("ANSI") chartered the Accredited Standards Committee ("ASC") X12 to develop uniform standards for inter-industry electronic interchange of business transactions. ASC X12 develops, maintains, interprets, publishes and promotes the proper use of American National Electronic Data Interchange Standards. The X12 standards facilitate transactions by establishing common, uniform business language for computers to communicate. The X12 standards facilitate transactions between the electric company [PEPCO] and Electricity Suppliers by establishing a common, uniform business language for computers to communicate. Thus, each Electricity Supplier will communicate with the electric company using the same language. The EDI Enrollment Transaction is a term used to describe a business document (a customer enrollment document),

Electricity Supplier, PEPCO will assume, without any additional verification, that the customer has consented to the enrollment and to the release of customer-specific information.<sup>62</sup> As noted in the Report, the customer has an opportunity to rescind its enrollment with an Electricity Supplier.<sup>63</sup>

**b. Commission Decision**

28. We find that the measures proposed by the Working Group that require 1) customer consent prior to release of customer information, and 2) that Market Participants use the information in furtherance of the customer's contract, are consistent with the Act's requirement that customer consent is necessary in order for customer information to be used for any other purpose.<sup>64</sup> Section 2-6 of the Proposed ECPS states that a customer must provide consent in writing before any Market Participant discloses information about that customer to anyone else.<sup>65</sup> This section affords protection to customers from the misuse of their personal and account information without their specific written consent. Section 2-6 further requires the Market Participant to retain the written consent forms and make the same available to the Commission upon request. This provision results in additional privacy protection safeguards. Section 2-6 is in the public interest because it discourages improper, unauthorized use of customer information. The Commission agrees with the Working Group recommendation that Market Participants can only disclose an individual customer's information after receiving written consent from that customer.<sup>66</sup> The Market Participant, furthermore, will retain the customer's written consent and provide it to the Commission upon request.

ISSUE NO. 6: WHAT SHOULD BE THE PROCESS FOR ENROLLING AND SWITCHING CUSTOMERS?

**a. Parties' Positions**

29. Consensus. The Working Group is mostly in agreement on this issue, recommending that the Commission adopt the following enrollment and switching process: 1) the customer contracts with an Electricity Supplier through a variety of means (telephone, Internet or direct mail); 2) the Electricity Supplier sends to PEPCO an EDI Enrollment Transaction, which PEPCO downloads if received by 5:00 p.m. each day; 3) the next day, a letter will be generated and

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which is created by one of the parties. Such business document will be used to communicate enrollment (supplier selection) information between the electric company and the Electricity Supplier."

<sup>62/</sup> *Id.* at 7.

<sup>63/</sup> *Id.*

<sup>64/</sup> See the Act at §107(b), which provides that "[u]nless a customer consents in writing, a market participant or the electric company may not use information...for any other purpose other than the purpose for which the information was originally acquired."

<sup>65/</sup> See Report at Attachment 1 – Proposed ECPS at 7.

<sup>66/</sup> See Report at 7.

sent by PEPCO or the Electricity Supplier,<sup>67</sup> notifying the customer of its enrollment with the Electricity Supplier; and 4) the new service will begin as of the next scheduled meter read date,<sup>68</sup> as long as PEPCO receives the enrollment at least 17 days before the next scheduled meter read date.<sup>69</sup> The process for switching customers is the same as that for enrolling a customer for the first time with an Electricity Supplier.<sup>70</sup>

30 Non-Consensus. The primary non-consensus aspects of this issue focus on three related questions concerning the rescission notice: 1) should there be a rescission period; 2) should a rescission period begin on the same day the customer enrolls with the Electricity Supplier; and 3) should PEPCO or the Electricity Supplier send the rescission notice to the customer?

1) Should there be a rescission period?

31. PEPCO and OPC both support a rescission period,<sup>71</sup> which would provide the customer with 10 days from the date listed on the letter to notify the appropriate entity<sup>72</sup> if it chooses to rescind the enrollment. Only Washington Gas opposes a rescission period, asserting that 1) a rescission period will impose costs on the electric company which will ultimately be borne by ratepayers, 2) Washington Gas's own experience in the gas industry since 1995 indicates no evidence that such notification is necessary, and 3) notification from the Electric Company is duplicative of the notice already sent by the Electricity Supplier.<sup>73</sup>

32. PEPCO responds that although there are costs associated with the notice, the right to rescind a contract is not unusual and is a reasonable consumer protection measure to notify the customer of this right. PEPCO also claims that it has been generally recognized in other jurisdictions (e.g., Maryland ) that there is a need for such a notification, particularly at the start of retail choice.<sup>74</sup> On this concern, OPC asserts that a rescission period helps protect the customer against slamming. OPC also notes that the fact that Washington Gas does not receive rescission requests does not mean that customers should not be given rescission rights.<sup>75</sup>

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<sup>67/</sup> The Parties are not agreed as to which entity sends the letter, as is discussed below.

<sup>68/</sup> "Meter read date" is a generic term for the date upon which a customer's meter is read for billing purposes.

<sup>69/</sup> Report at 7-9.

<sup>70/</sup> *Id.* at 8.

<sup>71/</sup> PEPCO Initial Comments at 5-6; OPC Initial Comments at 8-9.

<sup>72/</sup> As noted earlier, the Working Group could not agree on who should send the letter to the customer or receive any rescission notification from the customer. This issue is discussed subsequently in para. 37 of the text.

<sup>73/</sup> Washington Gas Initial Comments at 4-6; Tr. at 56.

<sup>74/</sup> PEPCO Reply Comments at 2-3; Tr. at 23-25.

<sup>75/</sup> OPC Reply Comments at 5-7.

33. First Energy indicates that it is sympathetic to Washington Gas's opposition to a rescission period. Nevertheless, First Energy observes that such processes have worked well in other states, particularly as competition and customer choice begin.<sup>76</sup>

- 2) Should the rescission period begin on the same day the customer enrolls with the Electricity Supplier?

34. PEPCO and OPC propose that PEPCO send the rescission notice the next business day after receiving the EDI enrollment.<sup>77</sup> The 17-day period that was agreed upon by the Working Group allows 10 days for the customer to rescind the enrollment and 7 days for PEPCO to process the enrollment. First Energy proposes that PEPCO should be required to send the rescission notice the same day the EDI enrollment is received by PEPCO, as long as the enrollment is received by noon. First Energy states this process will help eliminate questions about the timing of enrollment transactions and the subsequent generation by PEPCO of the rescission letter, which dictates the start of the 10-day rescission period.<sup>78</sup>

35. PEPCO states that the First Energy proposal is unrealistic in that it does not give PEPCO time to process the enrollment and the customer rescission letter. Additionally, PEPCO claims that its proposal also ensures that the customer has the full 10-day rescission period.<sup>79</sup>

36. OPC also opposes First Energy's proposal. OPC understands PEPCO's position that it may be impractical to require a downloading of EDI transactions by noon, as opposed to 5 p.m. OPC notes that, under First Energy's proposal, the Electricity Supplier would gain at most a half day in terms of the timely enrollment of new customers, but customers would lose at least one full day, and likely more, of the 10-day rescission period.<sup>80</sup>

- 3) Should PEPCO or the Electricity Supplier send the rescission letter to the customer?

37. PEPCO and OPC both propose that the rescission letter be sent by PEPCO.<sup>81</sup> First Energy also agrees the letter should be sent by PEPCO.<sup>82</sup> Washington Gas proposes that the Electricity Supplier send the rescission letter. Washington Gas states that there could be an unintentional adverse effect in the direct relationship between the customer and the Electricity

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<sup>76/</sup> First Energy Reply Comments at 3.

<sup>77/</sup> PEPCO Initial Comments at 5-6; OPC Initial Comments at 8-9.

<sup>78/</sup> First Energy Initial Comments at 4; Tr. at 46-47.

<sup>79/</sup> PEPCO Reply Comments at 2-3.

<sup>80/</sup> OPC Reply Comments at 5-7.

<sup>81/</sup> PEPCO Initial Comments at 5-6; OPC Initial Comments at 8-9.

<sup>82/</sup> First Energy Initial Comments at 4.



Supplier if PEPCO sends the rescission notice.<sup>83</sup> PEPCO disputes Washington Gas claim as to the adverse impact upon the Electricity Supplier/customer relationship. PEPCO asserts that it has repeatedly stated that it favors retail competition, and that it has no intention of promoting SOS.<sup>84</sup>

**b. Commission Decision**

38. The Commission is charged with protecting consumer interests and ensuring that all aspects of retail competition are in the public interest. We find that offering the customer and the Electricity Supplier a variety of contracting methods, while imposing requirements that customers be notified of their enrollment contracts, provides consumers with enrollment flexibility as well as reminders of their selections. Accordingly, we adopt these consensus aspects of the Report on this issue.<sup>85</sup> We concur with the Working Group that it has worked out a realistic enrollment and switching process, which should be understood by customers with a minimum of confusion. We find that these measures satisfy the mandate under the Act that customer comprehension of retail competition, as it may apply to them, must be maintained.<sup>86</sup>

39. With respect to the three non-consensus aspects of Issue No. 6, we make the following determinations. First, we adopt the proposal supported by PEPCO and OPC that there should be a rescission period of 10 days.<sup>87</sup> We are of the view that a reasonable rescission period is necessary for customers to make informed, non-coerced decisions.<sup>88</sup> We also note that choosing an Electricity Supplier is a new process for most customers and adoption of a rescission period will give many customers added confidence in their choices and the ability to thoroughly consider the contract. Such flexibility is critical to conserving consumer acceptance of the benefits of competition in the initial steps of this process. We agree with OPC that a rescission period may help protect the customer against slamming.<sup>89</sup> However, we are not opposed to considering eliminating this requirement once there is full robust competition for electric services in the District, and consumers are considered to be educated in how the market for retail electric service works and how they may benefit from such competition.

40. Second, the Commission adopts the proposal supported by PEPCO and OPC that the letter notifying the customer of the opportunity to rescind the choice of Electricity Suppliers within the 10-day rescission period be sent by PEPCO the next business day after the day upon

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<sup>83/</sup> Washington Gas Initial Comments at 5.

<sup>84/</sup> PEPCO Reply Comments at 3.

<sup>85/</sup> See Report at 7-8.

<sup>86/</sup> See the Act at §107, which generally sets forth the standards for consumer protection to which Market Participants and PEPCO must adhere.

<sup>87/</sup> See PEPCO Initial Comments at 5-6; OPC Initial Comments at 8-9.

<sup>88/</sup> Section 107(e) of the Act prohibits an electricity provider from engaging in false or misleading practices in this situation.

<sup>89/</sup> See OPC Initial Comments at 8-9.

which PEPCO receives the EDI enrollment.<sup>90</sup> We concur that same-day notification, based upon a noon cut-off, may be confusing to customers, burdensome to PEPCO, and is unlikely to provide even a marginal benefit of an extra half a day of enrollment time to Electricity Suppliers at the expense of customers.<sup>91</sup>

41. Third, the Commission agrees with PEPCO, OPC and First Energy that PEPCO should send the rescission letter to the customer, at least during the Pilot Program.<sup>92</sup> PEPCO is the logical entity to send out the rescission letter because PEPCO receives the enrollment order from the Electricity Supplier.<sup>93</sup> More importantly, Customers must be able to comprehend easily their rights and the terms and conditions pursuant to which they can invoke rescission. We therefore urge that rescission letters be as clear and concise as possible. We will require PEPCO to distribute to the other Parties a draft of PEPCO's form rescission letter for the Parties' review and comment. If, as of the Initial Implementation date of January 1, 2002,<sup>94</sup> any Party to the Working Group, or the group as a whole, wishes to modify this process and propose an alternative to PEPCO, application may be made to the Commission for its review and approval of any proposed changes.

**ISSUE NO. 7:** WHAT SHOULD BE THE PROCESS OR PRIORITY IN THE EVENT THAT A CUSTOMER CHOOSES MORE THAN ONE SUPPLIER?

**a. Parties' Position**

42. Non-Consensus. All of the Parties with the exception of First Energy support Section 4-7 of the Proposed ECPS, which reads as follows: "Once an Electric Company receives an EDI enrollment transaction from an Electricity Supplier, the Electric Company will not accept enrollments from any other Electric Supplier in that monthly cycle." This is referred to as the "first-in" priority of enrollment.

43. According to PEPCO, the "first-in" priority : 1) encourages Electricity Suppliers to submit enrollments promptly; 2) promotes and ensures the processing of enrollments shortly after the customer contracts with an Electricity Supplier; and 3) results in less customer confusion.<sup>95</sup> OPC also supports the "first-in" priority because it believes this satisfies public policy and provides the greatest degree of protection to residential customers. OPC maintains that "first-in" priority is consistent with traditional interpretation of contracts, as it recognizes that the first contract is the binding agreement. According to OPC, "first-in" is the generic contracting method with which consumers are familiar. Moreover, OPC also asserts that "first-in" enrollment will encourage

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90/ See PEPCO Initial Comments at 5-6; OPC Initial Comments at 8-9.

91/ See First Energy Initial Comments at 4.

92/ See PEPCO Initial Comments at 5-6; OPC Initial Comments at 8-9; First Energy Initial Comments at 4.

93/ See Report at 7.

94/ See the Act of Section 101(18), which gives the Commission the authority to accelerate or delay such date.

95/ PEPCO Initial Comments at 6-8.

Electricity Suppliers to enroll customers immediately rather than hold onto the enrollments until the end of the enrollment cycle.<sup>96</sup>

44. First Energy is the only Party that supports the “last-in” priority.<sup>97</sup> First Energy maintains that “last-in” is in the best interest of customers, and this process works best for enrolling customers. First Energy also maintains that this method has been implemented in Pennsylvania, New Jersey, Delaware and Maryland and, as a result, adoption of “first-in” will constitute a break from the “regional standards concept” and would have an adverse impact on First Energy of some \$50,000 to \$100,000 in terms of testing and computer programming changes.<sup>98</sup>

45. PEPCO and OPC dispute First Energy’s “last-in” proposal. PEPCO claims that First Energy has failed to provide any support for the costs to be incurred to change their computer systems.<sup>99</sup> OPC also disputes First Energy’s reference to other jurisdictions as an indication of the need for continuity. OPC maintains that “first-in” priority protects customers against slamming. OPC states that the District must create appropriate standards for its own customers.<sup>100</sup>

**b. Commission Decision**

46. The Commission agrees with OPC and PEPCO and adopts the “first-in” priority of customer enrollment.<sup>101</sup> The first-in priority appears to be the best measure for ensuring that the restructuring occurs as part of an orderly, comprehensive process.<sup>102</sup> If a customer wishes to change Electricity Suppliers after making the initial choice, the customer may rescind the original contract and then sign on with another Electricity Supplier. This position is consistent with the common law rules of contract formation and reduces customer confusion regarding the status of the contract the customer signed.<sup>103</sup> Further, this priority will sufficiently encourage Electricity Suppliers to enroll customers as soon as the contract is complete and not to hold them until near the end of the time period necessary for the next billing period enrollment.<sup>104</sup>

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96/ OPC Initial Comments at 6-8.

97/ Under a “last-in” priority method, PEPCO, as the electric company, would only accept the very last EDI enrollment transaction for a customer that is sent to PEPCO from an Electricity Supplier during a monthly cycle.

98/ First Energy Initial Comments at 5-6.

99/ PEPCO Reply Comments at 3-5.

100/ OPC Reply Comments at 4-5.

101/ See OPC Initial Comments at 6-8; OPC Reply Comments at 4-5; PEPCO Initial Comments at 6-8; PEPCO Reply Comments at 3-5.

102/ See the Preamble to the Act, *mimeo* at 1, which requires the Commission to “assure orderliness, electric system reliability, and consideration of customers, electric companies, and electric suppliers.”

103/ See RESTATEMENT (SECOND) OF CONTRACTS § 24 (1979); John D. Calamari & Joseph M. Perillo, CONTRACTS § 2-11 (3d ed. 1987).

104/ See OPC Initial Comments at 7.

**ISSUE NO. 8:** IF THE SELECTION OF A NEW SUPPLIER DOES NOT GO FORTH, WOULD A CUSTOMER BE PLACED ON STANDARD OFFER SERVICE OR RETURNED TO THE CUSTOMER'S FORMER SUPPLIER?

**a. Parties' Position**

47. The Working Group unanimously agrees on this issue, deciding that a customer should remain with its current Electricity Supplier in the event that the customer's selection of a new Electricity Supplier fails to be processed.<sup>105</sup> The Working Group recommends that the customer should not be placed on SOS if the choice of a new Electricity Supplier is not processed. If, however, the customer was already on SOS and the switch to an Electricity Supplier was not effectuated, then the customer would be placed back on SOS.<sup>106</sup>

**b. Commission Decision**

48. In instances where there is a failure to process a customer's selection of a new Electricity Supplier, the Commission believes that the potential for confusion to customers should be minimized. The Commission looks to the long-distance telephone industry for guidance because it was the first utility industry to be subject to competition. If a long-distance telephone service customer seeks to change providers and fails, that customer is not assigned to a third provider, but remains with its original long-distance service provider. Because District consumers have experienced many years of long-distance telephone competition, this Commission believes that confusion in the electric retail market will be minimized by considering the practices used in the long-distance telephone industry. In addition to harmonizing contracting practices and customer expectations across our various utility industries, the Commission's adoption of the Working Group recommendation<sup>107</sup> will ensure that customers are not charged unexpected rates by provider(s) they did not choose. Hence, the Commission agrees that a customer should stay with its current Electricity Supplier when its change order to a new supplier has not been processed.

**ISSUE NO. 9:** WHAT SHOULD THE PROCESS BE FOR ESTABLISHING NEW SERVICE FROM AN ALTERNATIVE SUPPLIER? WHEN SHOULD THE SERVICE AND CHARGES BY THE NEW SUPPLIER BEGIN?

**a. Parties' Position**

49. The Working Group has presented the Commission with a consensus recommendation that, whenever a customer signs up with a new Electricity Supplier, that supplier's service should begin on the next scheduled meter read date.<sup>108</sup> This start date would be conditioned on the receipt by PEPCO of the EDI enrollment at least 17 days prior to the scheduled meter read date. With regard to those customers that are new residents of the District or have

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<sup>105/</sup> Report at 10.

<sup>106/</sup> *Id.* at 10.

<sup>107/</sup> See Report at 10.

<sup>108/</sup> *Id.* at 10-11.

recently changed locations within the District, the Working Group recommends that they be placed on SOS for the first billing cycle following their move. The Working Group feels that by placing them on SOS, rather than immediately allowing them to choose an Electricity Supplier, there will be less disruption to the ordering process.<sup>109</sup>

**b. Commission Decision**

50. The Commission adopts the Working Group's recommendation and hereby establishes the meter read date as the starting date for new service.<sup>110</sup> The meter read date is the logical time to change a service or to establish a new service with an Electricity Supplier because it is a standard date that can be applied to the retail market in the District. Given the Commission's legislative mandate to ensure that District residents and businesses have access to an orderly retail market,<sup>111</sup> it would be unwise to create some other timing system or process when the meter read date is recognized by all of the Working Group Parties as an ideal time for processing a customer's new service. The Commission also adopts the Working Group's recommendation that a customer's order should be submitted at least 17 days prior to that customer's next meter read date because this period will allow ample time for a customer's order to be processed before its next meter read date.<sup>112</sup>

51. Ideally, the Commission would like to see the retail electric market function in such a way that a new resident moving into the District or a District resident that is changing locations could immediately sign up with the Electricity Supplier of its choice.<sup>113</sup> The Working Group has advised the Commission that immediate changes in service are not technically feasible at this time.<sup>114</sup> Because of this technical infeasibility, the Commission is compelled to accept the Working Group's recommendation that these customers be placed on SOS for their first billing cycle. We direct the Working Group to make recommendations to the Commission, by December 1, 2000, on how to overcome the technical infeasibility so that seamless moves are made possible both for customers moving into the District and those customers who are changing locations within the District.

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<sup>109/</sup> *Id.* at 10-11.

<sup>110/</sup> *Id.* at 10-11.

<sup>111/</sup> See the Preamble to the Act, *mimeo* at 1, discussed at n. 109 herein.

<sup>112/</sup> See Report at 10-11.

<sup>113/</sup> This is known as a "seamless move."

<sup>114/</sup> See Report at 10.

ISSUE NO. 10: WHO SHOULD HAVE THE AUTHORITY AND RESPONSIBILITY FOR TERMINATING A CUSTOMER'S SERVICE FOR FAILURE TO PAY AND WHAT GUIDELINES SHOULD THE COMMISSION ADOPT?

**a. Parties' Positions**

52. The Working Group unanimously recommends that only PEPCO should have the authority to disconnect a customer's service for failure to pay PEPCO for its regulated service. Moreover, the Working Group acknowledges that Electricity Suppliers do not have the authority to order PEPCO to physically disconnect a customer for failure to pay their charges. The Working Group does recommend, however, that the Commission grant Electricity Suppliers the authority to terminate a customer's contract for failure to pay pursuant to the terms of the contract.<sup>115</sup>

**b. Commission Decision**

53. The Commission hereby adopts the Working Group's recommendation that only PEPCO be given the authority to disconnect a customer for non-payment of PEPCO regulated service.<sup>116</sup> This issue presents yet another opportunity for the Commission to draw a parallel between our proposed restructuring of the electric industry and the long-distance telephone industry, which has becoming increasingly competitive since the divestiture of AT&T in 1984.<sup>117</sup> In that industry, local exchange companies ("LECs") control that part of the telephone network that connects long-distance telephone companies to their customers. Long-distance telephone companies do not have the ability to terminate a customer's local telephone service for non-payment of their services. Instead, that authority is vested in the LEC that serves that same customer. Because PEPCO will have the same relationship to electricity customers that LECs have to telephone customers, the Commission believes that it would be prudent to adopt a similar structure of disconnection authority for the electric industry. The arrangement, which exists in the telephone industry, parallels the Working Group's recommendation. We, therefore, adopt the group's recommendation.

54. While Electricity Suppliers will not have the ability to disconnect District customers, the Commission will certainly allow any Electricity Supplier to discontinue its contract with any customer that fails to pay for that supplier's service.<sup>118</sup> Just as long-distance telephone

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<sup>115/</sup> *Id.* at 11; *Id.* at Attachment 1 – Proposed ECPS, Section 4-10 at 15.

<sup>116/</sup> *See* Report at 10-11.

<sup>117/</sup> *See* *United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982); *aff'd*, *Maryland v. United States*, 460 U.S. 1001 (1983).

<sup>118/</sup> Section 4-10 of the Proposed ECPS requires the Electricity Supplier to provide the customer and PEPCO with at least 35 days written notice prior to contract termination. Report at Attachment 1 – Proposed ECPS at 15. We note that none of the Parties opposed this 35-day requirement, and only Washington Gas addressed it in comments. Washington Gas states that, while it does not oppose the proposed termination requirements, it notes that the 35-day requirement may create unintended confusion on the automatic renewal requirements. Washington Gas Reply Comments at 7-8. Washington Gas states that the timing confusion is due to the requirement, in the Proposed ECPS, for an Electricity Supplier to provide notice of the pending renewal of the contract 60 days before the renewal is scheduled to occur, and another 30 days prior to the customer's automatic renewal date. Report at Attachment 1 – Proposal ECPS at 15. At the June 30, 2000 hearing, PEPCO contended that Washington Gas' concern was unfounded. PEPCO

companies have the option of refusing to carry the calls of customers that fail to pay their long-distance telephone charges, Electricity Suppliers will not be compelled to continue providing service to any customer who fails to pay charges incurred for electric service.

**ISSUE NO. 11:** WHAT SHOULD BE THE REASONABLE REQUIREMENTS, GUIDELINES, AND LIMITATIONS RELATING TO DEPOSITS?

**a. Parties' Positions**

55. The Working Group recommends that a deposit required of a residential customer should not exceed the lesser of \$100 or twice the maximum bill incurred over a 12-month period. A deposit is any up-front payment that may be required by an Electricity Supplier. The Working Group also proposes that commercial and industrial customers be allowed to negotiate their respective deposits with the Electricity Suppliers. The Working Group makes no recommendation, however, regarding how those deposits will be processed or refunded.<sup>119</sup>

**b. Commission Decision**

56. The Commission fully supports its legislative mandate to ensure that District customers are not required to pay excessive deposits before receiving electric service.<sup>120</sup> This mandate is directly addressed by the Working Group recommendation that residential customer deposits should be limited to the lesser of \$100 or twice the amount of the maximum bill incurred by a customer over a 12-month period.<sup>121</sup> Therefore, the Commission adopts the Working Group's recommendation. We also agree with the Working Group that large commercial and industrial customers, for the most part, do not warrant the same level of protection as residential customers. Having more negotiating leverage than residential customers, they will generally be able to negotiate acceptable deposits.

57. The Commission is concerned, however, that small commercial customers may not have the same amount of negotiating leverage as large commercial entities when it comes to establishing a reasonable deposit with Electricity Suppliers. Because small commercial customers fare no better in their ability to negotiate for a reasonable deposit than residential customers, the Commission finds that small commercial customers shall be accorded the same deposit protection as those proposed by the Working Group for residential customers. We also direct the Working Group within the next 30 days to develop recommendations regarding the manner in which deposits should be processed.

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indicated that the 35-day provision relates to a contract termination by an Electricity Supplier, while the 60-day provision applies to a renewal of a contract. PEPCO also noted that all Parties agreed upon the 35-day contract termination requirement. Tr. at 24-25. We agree with PEPCO that the 35-day contract termination requirement will not cause complications in contract renewal.

<sup>119/</sup> Report at 11.

<sup>120/</sup> See the Act at § 104(c)(5), which requires the Commission to "[e]stablish reasonable requirements and limitations relating to deposits, billing and contract cancellations."

<sup>121/</sup> See Report at 11.

ISSUE NO. 12: WHAT ARE THE APPROPRIATE REQUIREMENTS FOR MARKETING OF ELECTRICITY, INCLUDING GUIDELINES AND REASONABLE RESTRICTIONS FOR TELEMARKETING AND DOOR-TO-DOOR CONTACTS?

**a. Parties' Positions**

58. Consensus. The Working Group agrees upon the following marketing requirements for Electricity Suppliers: 1) advertisements shall not be false or misleading; 2) information in advertisements must be clear, accurate and supported by the Electricity Supplier; 3) solicitations to customers must contain all material terms and conditions of the service offered; 4) Electricity Suppliers may solicit customers in a number of ways, including the Internet; 5) telephone solicitations must convey certain standard information and be conducted during certain hours of the day; and 6) an Electricity Supplier must maintain and honor its own "do-not-call list."<sup>122</sup>

59. Non-Consensus. OPC proposes a provision for telephone solicitations that would require Electricity Suppliers to ask customers if they would care to hear the full solicitation.<sup>123</sup> OPC proposes that solicitors ask this question after the first minute of the solicitation, and that the solicitor be required to terminate the call if the customer states its disinterest in hearing the full offer. OPC believes the inclusion of this question is necessary to adequately protect customers against unwanted solicitations.<sup>124</sup> None of the other Parties commented on this proposal in their comments.

**b. Commission Decision**

60. The Commission adopts the Working Group's consensus recommendation that Electricity Suppliers' advertising and solicitation of customers must meet the standards detailed in the Report.<sup>125</sup> It is essential that consumers receive information from Electricity Suppliers that is true, accurate and clearly comprehensible.<sup>126</sup> Therefore, we concur with the Working Group that solicitations to customers must contain all material terms and conditions that pertain to the service offered by the Electricity Supplier. The cornerstone of consumer protection is that District consumers are able to make Electricity Supplier choices based upon truthful and understandable marketing information. Moreover, as noted above, we have a legislative mandate to ensure that Electricity Suppliers engage in advertising, soliciting, and any other trade practices that comport with these standards.<sup>127</sup>

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<sup>122/</sup> Report at 12; Report at Attachment 1 – Proposed ECPS, §§ 3-1 to 3-7 at 7-10.

<sup>123/</sup> *Id.* at Attachment 1 – Proposed ECPS at 1-9.

<sup>124/</sup> OPC Initial Comments at 9-10.

<sup>125/</sup> *See* Report at 12.

<sup>126/</sup> *See* the Act at § 107(e), which states that "[a] market participant may not engage in marketing, advertising, or other trade practices that are unfair, false, misleading, or deceptive."

<sup>127/</sup> *Id.*



61. With respect to OPC's proposed telephone solicitation termination language,<sup>128</sup> the Commission concurs that customers must be asked if they wish to hear the full solicitation. This provision gives customers, in conjunction with the "do-not-call list," protection against excessive or lengthy telephone solicitations. An actual ability to comprehend and compare information about market participants and their offerings, while maintaining rights to full consumer protection is tantamount to customer choice. We find that such a requirement is necessary to meet the Act's standards for protecting consumers against unfair practices and false, misleading or deceptive information.

**ISSUE NO. 13: WHAT ARE THE APPROPRIATE BILLING AND COLLECTION PROCEDURES?**

**a. Parties' Positions**

62. The Working Group recommends a series of standards for Market Participant billing and collection procedures.<sup>129</sup> These standards, which are addressed in detail in this Order at Issue Nos. 3 and 4 in Section C on Billing and Metering, establish requirements for billing frequency, rendering of bills, information to be included in residential bills, bill due dates and receipt dates, and late payment charges.<sup>130</sup> The Working Group recommendations on these standards are set forth in Section III, Billing and Metering Issues, of the Report.<sup>131</sup>

**b. Commission Decision**

63. The Commission believes that billing and collection standards are integral to a successful deregulated retail market. Consumers must be able to understand their rights and obligations with respect to their electricity bills. The Working Group does not address these standards under Issue No. 13. Instead, billing and collection procedures are fully explored in Issue Nos. 3 and 4 of Section III, Billing and Metering Issues in the Report.<sup>132</sup> Given the Working Group's treatment of billing and collection, we agree that billing and collection issues are more appropriately dealt with under Section C, Billing and Metering, herein.

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<sup>128/</sup> See OPC Initial Comments at 9-10.

<sup>129/</sup> Report at 12.

<sup>130/</sup> Report at Attachment 1 – Proposed ECPS at §§ 6-7 at 16-18.

<sup>131/</sup> *Id.* at 12.

<sup>132/</sup> See *Id.* at 23-29.

ISSUE NO. 14: HOW SHOULD THE D.C. CONSUMER BILL OF RIGHTS (CBR) BE INCORPORATED INTO THE PROCESS, AND WHAT REVISIONS TO THE CONSUMER BILL OF RIGHTS SHOULD BE ADOPTED?

**a. Parties' Positions**

64. The Working Group recommends that the Proposed ECPS apply to the relationship between customers and suppliers other than PEPCO.<sup>133</sup> The Working Group also recommends that the Commission ensure that the Proposed ECPS are consistent with and incorporate the District's Consumer Bill of Rights, which is applicable currently to the regulated service provided by PEPCO.<sup>134</sup>

**b. Commission Decision**

65. The Commission agrees with the Working Group recommendation regarding the applicability of the Proposed ECPS and the Consumer Bill of Rights.<sup>135</sup> The Proposed ECPS is the appropriate vehicle in which to incorporate the Consumer Bill of Rights. Incorporating the Consumer Bill of Rights into the Proposed ECPS and ensuring continuity of their provisions is proper so as not to diminish the rights and privileges of customers under the Pilot Program and when full-scale competition is implemented. It is our responsibility to ensure that, in this new competitive environment, District consumers will continue to receive the same level of protection against unfair or unscrupulous business practices. The Consumer Bill of Rights, which establishes processes and procedures for utilities related to billing, metering, and termination, among others, has been vitally important for District consumers.<sup>136</sup> For these reasons, the Commission will implement a proposed rulemaking to amend its regulations to incorporate the Proposed ECPS and the Consumer Bill of Rights. The Working Group did not propose any revisions to the Consumer Bill of Rights since at some future date, it will petition the Commission for review of the Consumer Bill of Rights to ensure it reflects the necessary standards for all competitive industries in the District.<sup>137</sup> At this time, however, for purposes of establishing the Electricity Supplier licensing process in the District, we will adopt the Proposed ECPS, as modified by this Order. In taking this approach, we conclude that we are implementing retail competition in a consistent and comprehensive manner that will safeguard the rights of consumers.<sup>138</sup>

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<sup>133/</sup> *Id.* at 12.

<sup>134/</sup> *See* D.C.M.R. tit. 15, chapter 300.

<sup>135/</sup> *See* Report at 12.

<sup>136/</sup> D.C. Mun. Regs. tit. 15, § 301 *et seq.*

<sup>137/</sup> *See* Tr. at 105-106.

<sup>138/</sup> *See* the Preamble to the Act, *mimeo* at 1, and §§104 and 107 thereof, which, as discussed earlier, generally provide for consumer protection and rights in this deregulated marketplace.

**ISSUE NO. 15:** WHAT ARE THE APPROPRIATE SAFEGUARDS TO ENSURE THAT CUSTOMERS ARE PROTECTED AGAINST FRAUD AND ABUSE?

**a. Parties' Positions**

66. The Working Group recommends that the Commission adopt the following standards to safeguard the consumer from fraud and abuse by Market Participants, including Electricity Suppliers.<sup>139</sup> Market Participants may not unilaterally: 1) engage in unlawful trade practices; 2) add or change a customer's existing electric service options or charges by providing that customer with an incorrect bill;<sup>140</sup> or 3) switch a customer's current supplier without the customer's consent.<sup>141</sup> Furthermore, all advertisements regarding electric service must not be false or misleading.<sup>142</sup>

**b. Commission Decision**

67. The Commission agrees with the Working Group recommendation that the standards at Sections 2-2 to 2-4 and 3-1 of the Proposed ECPS, which address unfair practices, including cramming, slamming and false advertising, should be adopted.<sup>143</sup> We find that standards that prohibit fraudulent tactics such as cramming, slamming, and false or misleading advertising establish the appropriate safeguards necessary to protect District consumers from unfair trade practices during retail competition.

68. Experience with long-distance telephone marketing and advertising, and some marketers' unsavory, if not unlawful tactics, has left some consumers with a negative impression of the process for implementing competition in previously monopolistic industry sectors such as telecommunications. While the electric marketplace readies itself for competition aggressive protection of consumers will be critical to prevent such problems from developing.

**ISSUE NO. 16:** HOW TO ENSURE THAT UNRESOLVED BILLING DISPUTES BETWEEN CONSUMERS AND THIRD-PARTY SUPPLIERS DO NOT RESULT IN UNFAIR TERMINATION OF ELECTRIC SERVICE

**a. Parties' Positions**

69. The Working Group agrees that disputes between a customer and an Electricity Supplier or other Market Participant should not result in the disconnection of electric service, since only PEPCO may disconnect a customer's electric service.<sup>144</sup> Section 9-1 of the Proposed ECPS

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<sup>139/</sup> Report at 12.

<sup>140/</sup> This is referred to as "cramming."

<sup>141/</sup> This is referred to as "slamming."

<sup>142/</sup> Report at Attachment 1 – Proposed ECPS at §§ 2-2 to 2-4 and § 3-1 at 6-7.

<sup>143/</sup> See Report at 12.

<sup>144/</sup> *Id.* at 12-13.

states that only PEPCO, as the electric company authorized to physically connect to a customer, is, therefore, the only entity that may appear to terminate that connection.<sup>145</sup>

**b. Commission Decision**

70. The Commission agrees with the Working Group recommendation that Section 9-1 of the Proposed ECPS reasonably addresses the prospect of unfair termination of electric service to customers due to disputes between a customer and an Electricity Supplier.<sup>146</sup> Section 9-1 accurately states that only PEPCO has the authority to disconnect customers from the distribution system for nonpayment of regulated electric charges, and that any disconnection of electric service shall be done in accordance with the Consumer Bill of Rights. Adoption of this standard will result in less confusion to customers and will ensure that consistent standards apply to disconnections. We believe that customers' comprehension of this point will encourage them to participate in retail competition because they must understand all the consequences of their actions. As we have noted before, customer access to the distribution system must be provided on a non-discriminatory basis.<sup>147</sup>

ISSUE NO. 17: WHAT ARE VIABLE PROCEDURES OR MECHANISMS FOR EFFECTIVELY MONITORING MARKET POWER ON AN ONGOING BASIS?

**a. Parties' Positions**

71. The Working Group states that it has not had the opportunity to address fully market power, and requests that the Commission permit the group to continue to meet in order to more fully discuss this issue and develop recommendations for the Commission's consideration.<sup>148</sup>

**b. Commission Decision**

72. We accept the Working Group's request for additional time in which to continue its discussions regarding monitoring market power. Nevertheless, as with all of the outstanding issues that remain, as discussed herein, we expect for this further deliberative process to occur and be concluded as expeditiously as possible. Therefore, we order the Working Group to provide the Commission with a recommendation for monitoring market power no later than 60 days from the date of this Order. To the extent that the Parties fail to reach consensus, the individual Parties may submit non-consensus recommendations by that date.

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<sup>145/</sup> *Id.* at Attachment 1 – Proposed ECPS at 19.

<sup>146/</sup> *See Id.* at 12-13.

<sup>147/</sup> *See* the Act at §104(c)(1), which requires access to distribution systems on a non-discriminatory basis.

<sup>148/</sup> Report at 13; Tr. at 103.

ISSUE NO. 18: WHAT PROTECTIONS SHOULD BE ESTABLISHED FOR SLAMMING AND CRAMMING?**a. Parties' Position**

73. The Working Group recommends that the Commission adopt Sections 2-3 and 2-4 of the Proposed ECPS, which strictly prohibit cramming and slamming, respectively.<sup>149</sup> In addition to Sections 2-3 and 2-4, the Working Group believes the notice requirement, that a 10-day rescission period is in effect, provides protection against slamming.<sup>150</sup> This notice will inform customers that they have 10 days from the date of the notice to rescind the enrollment.<sup>151</sup> Moreover, independent third-party verification of telephone contracts (Section A, Issue No. 3 herein) also will safeguard consumers against slamming.

**b. Commission Decision**

74. The Commission approves Section 2-3 and 2-4 of the Proposed ECPS.<sup>152</sup> Retail electric competition is only meaningful if customers are free to make informed decisions in an environment that contains no fraud or deceit. Such an environment is distorted by practices such as slamming and cramming. As we noted earlier, we are aware of the problems the long-distance telephone industry has experienced with market players engaging in these practices.<sup>153</sup> We also agree with the Working Group that cramming and slamming prohibitions, in conjunction with independent third-party verification of telephone contracts and the 10-day rescission period, will adequately protect consumers and will address the concerns raised in the Act regarding consumer protection.<sup>154</sup>

ISSUE NO. 19: WHAT QUALITY OF SERVICE STANDARDS SHOULD BE ESTABLISHED FOR PEPCO AND THE ALTERNATIVE SUPPLIERS OF ELECTRICITY?**a. Parties' Positions**

75. The Working Group asserts that Section X of the Proposed ECPS embodies service standards necessary for Market Participants to respond to customer inquiries and complaints.<sup>155</sup> Under Section X, Market Participants must: 1) establish prompt and efficient procedures to address customer inquiries and complaints; 2) set up toll-free numbers and staffing for handling customers' calls; 3) make reasonable efforts to ensure that non-English speaking

<sup>149/</sup> *Id.* at 13; Report at Attachment 1 – Proposed ECPS at 6-7. (These Sections are discussed in greater detail in this Order at Issue No. 15 within Section A.)

<sup>150/</sup> *Id.* at 13.

<sup>151/</sup> The Commission addresses this notice period above in this Section A at Issue No. 6.

<sup>152/</sup> *See Report* at 13.

<sup>153/</sup> *See Order* at Issue No. 3 in this Section A.

<sup>154/</sup> *See the Act* at §§104 and 107, discussed *infra* in this Section A.

<sup>155/</sup> *Id.* at 14.

customers are assisted; and 4) create a mechanism whereby adjustments to customer bills will be handled promptly.<sup>156</sup>

**b. Commission Decision**

76. Under the Act, we are charged with ensuring that retail competition does not result in a lesser standard of service to District customers.<sup>157</sup> The Commission agrees with the Working Group that the provisions of Section X of the Proposed ECPS require that Market Participants establish standards for responding to customer inquiries and complaints that will ensure customers have a mechanism for addressing their concerns in a prompt and comprehensive manner.<sup>158</sup> We find that these standards are necessary for customer satisfaction and to maintaining the current level of quality of service provided in the District. Given the importance of quality of service in the District, we will monitor quality of service closely during the Pilot Program and will make any necessary changes if we decide that the currently proposed standards are insufficient to maintain or improve the current levels of service quality.

ISSUE NO. 20: WHAT AGGREGATION REGULATIONS OR PROGRAMS SHOULD BE IMPLEMENTED IN ORDER TO ENSURE THAT THE RESIDENTIAL AND SMALL BUSINESS LOADS ARE ATTRACTIVE TO COMPETITIVE SUPPLIERS AND WHAT SPECIFIC PROVISIONS, IF ANY, SHOULD BE ADOPTED FOR LOW-INCOME RESIDENTIAL CUSTOMERS?

ISSUE NO. 21: WHAT ROLES SHOULD EACH PARTY AND THE COMMISSION PLAY IN FACILITATING RESIDENTIAL AND SMALL BUSINESS CONSUMER PARTICIPATION THROUGH AGGREGATION OR OTHER CUSTOMER GROUPING PROGRAMS?

ISSUE NO. 22: WHAT AGGREGATION RULE, IF ANY, SHOULD THE COMMISSION ADOPT FOR THE PILOT PROGRAM? SHOULD THE COMMISSION TAKE STEPS TO ASSURE THAT ALTERNATIVE SERVICE SUPPLIERS SERVE RESIDENTIAL AND SMALL BUSINESS CUSTOMERS, WITHOUT GEOGRAPHIC OR INCOME-CLASS DISPARITY DURING AND AFTER THE PILOT PROGRAM? SHOULD PARTICULAR PROVISIONS BE ADOPTED FOR LOW-INCOME CUSTOMERS? WHAT ARE THE POTENTIAL PROBLEMS AND SOLUTIONS?

ISSUE NO. 23: SHOULD THE COMMISSION MONITOR PRICES PAID BY VARIOUS TYPES OF CUSTOMERS OBTAINED VIA AGGREGATION? AND IF SO, HOW? SHOULD THE COMMISSION TAKE ANY STEPS TO ASSURE THAT RESIDENTIAL CUSTOMERS, INCLUDING LOW-INCOME CUSTOMERS, DO NOT ENCOUNTER SIGNIFICANT PRICE DISPARITIES RELATIVE TO OTHER CUSTOMERS? IF SO, WHAT STEPS?

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<sup>156/</sup> *Id.* at Attachment 1 – Proposed ECPS at 19-20.

<sup>157/</sup> See the Preamble to the Act, *mimeo* at 1 and 2, which generally stands for the proposition that the Commission must require consistency of service during retail competition.

<sup>158/</sup> See Report at 13.

**ISSUE NO. 24:** WHAT REGULATIONS RELATING TO CUSTOMER-BASED AGGREGATION PROGRAMS ARE IN THE PUBLIC INTEREST? (SEE SECTION 115 OF THE ACT)

**a. Parties' Positions**

77. The Working Group does not address aggregation issues in its Report. Instead, the Working Group requests additional time in which to prepare recommendations on these issues. During the deliberative process for the Report, OPC presented several speakers to the Working Group on aggregation.<sup>159</sup> Additionally, DCEO committed to providing the Working Group with specific proposals on the issues concerning low-income customers.<sup>160</sup> At the June 30, 2000, hearing, on behalf of the Working Group, PEPCO, stated that the group intended to begin the deliberative process on the issue of aggregation within a few weeks after that hearing.<sup>161</sup>

**b. Commission Decision**

78. Given the Commission's mandate to create a competitive retail market that provides consumers with meaningful choice, we must consider aggregation as one of those options that will provide consumers with a choice. For this choice to be meaningful, however, aggregation must be widely available to all consumers at optimum rates that are available to all geographic areas of the District of Columbia. We also realize that our rules must permit the creation of aggregation arrangements that will give Electricity Suppliers an incentive to provide service to aggregate customers. Accordingly, while we appreciate the number of hours that the Working Group already has spent to date on these issues, we request that the group continue its negotiations and submit to the Commission comprehensive recommendations on Issue Nos. 20 through 24 within 45 days of the date of this Order.

**ISSUE NO. 25:** OTHER THAN THE CONSUMER PROTECTION ISSUES PROVIDED ABOVE, WHAT ADDITIONAL PROTECTIONS, IF ANY, SHOULD APPLY TO LOW-INCOME D.C. CONSUMERS?

**a. Parties' Positions**

79. The Working Group notes that the Commission, in Order No. 11637, directed the group to make recommendations on public purpose or "Universal Service" programs for the year 2001 by September 1, 2000.<sup>162</sup> Specifically, the Commission directed the Working Group to address and clarify funding for public purpose programs.<sup>163</sup> Also, in Order No. 11637, the Commission noted that the Working Group's recommendations for implementing such programs

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<sup>159/</sup> *Id.* at 14.

<sup>160/</sup> *Id.* at 14-15.

<sup>161/</sup> Tr. at 103-104.

<sup>162/</sup> Report at 15-16.

<sup>163/</sup> Order No. 11637 at 6.

furthered the Commission's historic commitment to make electricity affordable to all District consumers and to encourage energy efficiency.<sup>164</sup>

**b. Commission Decision**

80. Consistent with our Order No. 11637, we require the Working Group to submit its recommendations regarding universal service to the Commission no later than October 16, 2000. The Commission remains committed to assuring consumers that electricity in the District is affordable to all citizens and to encouraging energy efficiency. At the June 30, 2000 hearing, PEPCO, on behalf of the Working Group, stated that the group intended to begin meeting to discuss Universal Service issues within two weeks of that hearing in order to meet the original September 1, 2000 deadline. Additionally, we expect the Working Group to address in that report the following issues regarding Universal Service that are contained in Order No. 11637:

1. How should a low-income assistance program (such as the Residential Aid Discount) be financed and administered prior to the Initial Implementation date, January 1, 2002? What costs and charges should the Universal Service fund cover to ensure universal access?;
2. Should any energy efficiency programs (PEPCO's existing or new programs) be pursued prior to the Initial Implementation date? If so, state which ones, and provide reasoning and funding levels; and
3. How should the Reliable Energy Trust Fund be established and administered, and what kind of programs should be funded?<sup>165</sup>

**B. Customer Education**

81. The cornerstone of a competitive electricity supply market is customer choice, which is predicated on a complete understanding of the new market. The Commission is convinced that customers will not receive the full benefits of retail competition unless their choices are based on accurate and complete information. Customer education programs will allow customers to effectively understand the new market environment, and, therefore, such programs play a vital role in bringing about a successful transition to a competitive market for electricity in the District. Accordingly, this Order addresses the recommendations of the Working Group on establishing a comprehensive and customer-friendly education program.

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<sup>164/</sup> *Id.*

<sup>165/</sup> Order No. 11637 at 11.



ISSUE NO. 1: WHAT CONSUMER EDUCATION PROGRAM SHOULD BE ESTABLISHED?

- (A) WHEN SHOULD CONSUMER EDUCATION BEGIN?
- (B) WHAT ARE THE MOST APPROPRIATE AND EFFECTIVE MEANS TO EDUCATE AND INFORM RESIDENTIAL CUSTOMERS ABOUT RETAIL COMPETITION AND THEIR RIGHTS AND RESPONSIBILITIES UNDER THE NEW REGULATORY STRUCTURE?
- (C) WHAT ARE THE ROLES/RESPONSIBILITIES OF EACH PARTY AND THE COMMISSION TO EDUCATE CONSUMERS?

**a. Parties' Positions**

82. Concurrent with the Report, the Working Group filed a Report of the Retail Competition Working Group and Request for Commission Approval to Retain a Customer Education Consultant, dated May 23, 2000 ("Interim Report"). The Working Group asserts that the consultant will assist in drafting customer education recommendations. The Working Group also recommends that, assuming that retail competition, in the form of the Pilot Program, begins on January 1, 2001, customer education should commence around October 1, 2000.<sup>166</sup>

**b. Commission Decision**

83. In Order No. 11698, the Commission approved the Working Group's request set forth in the Interim Report. In that order, we also directed the Working Group to submit the Request For Proposals ("RFP") for such consulting services to the Commission for our review and approval.<sup>167</sup> In view of representations made at the June 30, 2000 hearing by the Working Group,<sup>168</sup> we anticipate that the group will submit the draft RFP to us within the next seven days. We agree that customer education should begin by October 1, 2000 in order for there to be meaningful customer participation in and comprehension of the Pilot Program commencing on January 1, 2001. Therefore, we will require the Working Group, in concert with the consultants, to submit customer education recommendations, to us by September 29, 2000.

ISSUE NO. 2: HOW MUCH FUNDING SHOULD BE ALLOCATED FOR CUSTOMER EDUCATION AND HOW SHOULD CUSTOMER EDUCATION BE FUNDED?**a. Parties' Positions**

84. The Working Group submits that it is premature to recommend how much funding should be allocated for customer education. The Working Group further states that if the Commission adopts the group's recommendation that a customer education consultant should be retained, "the cost of the winning bid approved by the Commission will be one component of the

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<sup>166/</sup> Report at 18.

<sup>167/</sup> Order No. 11698 at 1.

<sup>168/</sup> See Tr. at 25-26.

total cost of the customer education program.”<sup>169</sup> The Working Group’s position in the Report does not reflect the individual Parties’ concerns on customer education funding. The comments filed by PEPCO and OPC to date indicate some disagreement as to how PEPCO’s customer education costs are to be recovered.

85. OPC views customer education as the single most important factor in the transition to retail competition.<sup>170</sup> OPC submits that funding for customer education must be strictly controlled and scrutinized by the Commission to ensure that PEPCO does not pass through expenses to customers that are neither prudent nor reasonable.<sup>171</sup> Initially, OPC, AOBA and DCEO<sup>172</sup> took the position that customer education costs are transition costs and, as such, PEPCO should recover these costs from the \$10 million set aside for transition costs in the Settlement Agreement.<sup>173</sup>

86. PEPCO disagrees with the contention that customer education funding is a transition cost. PEPCO notes that Section 111(b) of the Act specifically allows for PEPCO to recover costs related to customer education consultants through a surcharge to be determined by the Commission.<sup>174</sup> During the June 30, 2000 hearing, however, OPC and PEPCO agreed that PEPCO can recover its customer education costs (without addressing the \$10 million cap or whether such costs should go through the surcharge), but that PEPCO’s claimed costs would be subject to extensive review by the Commission and, therefore, PEPCO must make a showing that the costs are reasonable, prudent, and verifiable.<sup>175</sup>

#### **b. Commission Decision**

87. The Commission has approved the Working Group’s recommendation to hire a customer education consultant.<sup>176</sup> We agree with the Working Group that it is premature to determine how much funding should be allocated for customer education. We will, therefore, make this determination after the costs have been identified. We will also reserve, until such time as cost recovery is sought, a determination as to PEPCO’s recovery of customer education costs.

88. Our decision to proceed cautiously on the question of customer education funding is based on our agreement with OPC that customer education is a measure by which the success or

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<sup>169/</sup> Report at 20.

<sup>170/</sup> OPC Initial Comments at 11.

<sup>171/</sup> *Id.* Initial Comments at 12.

<sup>172/</sup> *Id.* Initial Comments at 11-12; AOBA Initial Comments at 1-2; DCEO/DCG Initial Comments at 4; Tr. at 43.

<sup>173/</sup> Settlement Agreement at 6.

<sup>174/</sup> PEPCO Reply Comments at 6 (citation to the Act omitted).

<sup>175/</sup> Tr. at 15-16, 25-27.

<sup>176/</sup> Order No. 11698 at 2.

failure of retail competition can be evaluated.<sup>177</sup> As regulators, we have a responsibility to ensure that District consumers make decisions on electric choice that are predicated upon accurate and complete information. As to the method for recovery of customer education costs, we are in agreement with the Parties that PEPCO should be permitted to pass through to customers costs that, as OPC states, are “reasonable, prudent, and verifiable.”<sup>178</sup>

### **C. Billing and Metering**

89. The Commission views billing and metering standards as an important part of a competitive market, which are essential to protect customers from unreasonable billing and metering practices and to ensure an orderly market. The Commission has adopted various provisions as set forth below, which in certain cases and where applicable, follow the standards established by the Commission’s Consumer Bill of Rights.<sup>179</sup>

ISSUE NO. 1: AFTER THE COMMISSION DECIDES ON THE UNBUNDLED RATES, WHAT PROCESS SHOULD BE ESTABLISHED TO IMPLEMENT UNBUNDLED RATES?

#### **a. Parties’ Positions**

90. The Working Group recommends that this issue be addressed separately in the context of the procedural schedule established by the Commission for the unbundled rate proceeding of Phase II of Formal Case No. 945.<sup>180</sup>

#### **b. Commission Decision**

91. We agree with the Working Group that this matter is best addressed in the unbundled rate proceeding of Phase II.

ISSUE NO. 2: WHAT BILLING OPTIONS WILL BE AVAILABLE AT WHAT TIME?

92. Section 101(8) of the Act explains “competitive billing” as the right of the customer to receive: 1) consolidated PEPCO billing (PEPCO will bill the customer for both the PEPCO portion of the bill and the Electricity Supplier portion of the bill); 2) separate billing by the Electricity Suppliers for its charges and by PEPCO for PEPCO’s charges (“dual billing”); and 3) consolidated Electricity Supplier billing (where the Electricity Supplier bills for both its portion of the bill and PEPCO’s portion of the bill). The Working Group was not able to reach consensus on this issue, except to indicate that consolidated Electricity Supplier billing will not be available by January 1, 2001 because it is not technically feasible.

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<sup>177/</sup> See OPC Initial Comments at 11.

<sup>178/</sup> See Tr. at 25-27; OPC Initial Comments at 12.

<sup>179/</sup> D.C.M.R. tit. 15, § 305 (2000).

<sup>180/</sup> Report at 21.

**a. Parties' Positions**

93. Non-Consensus. PEPCO and OPC both propose that Electricity Suppliers must disclose to customers that all three billing options generally are available.<sup>181</sup> PEPCO states that the Act describes three billing options, and customers should, therefore, be made aware of all billing options before they make a billing selection choice.<sup>182</sup> PEPCO contends that if an Electricity Supplier will not serve customers that do not take consolidated billing, the Electricity Supplier should be required to publicize that fact.

94. OPC's position on this issue is more direct. OPC maintains that the Act frames the issue in terms of the right of a customer to three billing options. OPC avers that requiring Electricity Suppliers to inform customers of the billing options that are, by law, available will not competitively jeopardize the suppliers in a way that, for example, providing information about a competitor's budget billing plan might.<sup>183</sup>

95. First Energy opposes requiring an Electricity Supplier to disclose any services (*i.e.*, billing options) to customers that the supplier does not offer. First Energy disagrees with the position of PEPCO and OPC and maintains that it is unaware of any competitive business in which a company is required to notify customers of services offered by competitors. First Energy states that the establishment of a competitive retail electric market means that customers are empowered to choose among any services that a company is offering. First Energy also maintains that the disclosure requirement may be confusing to the customer.<sup>184</sup>

**b. Commission Decision**

96. The Commission agrees with PEPCO and OPC that the Act's definition of competitive billing gives customers the right to receive three billing options.<sup>185</sup> Moreover, the Act specifically allows the Commission to establish competitive billing in the Pilot Program.<sup>186</sup> The purpose of the Act is to allow customer choice, and the public interest benefits associated with such choice will be enhanced through competitive billing because consumers will be able to select the billing method that best fits their needs. As a result, we find that Electricity Suppliers must inform customers of all billing options that are available at the time the customer makes the choice of billing options. We further find that the disclosure should be made prior to the time the customer and the Electricity Supplier reach agreement on a contract for supply. This means that until consolidated Electricity Supplier billing is available in the District, Electricity Suppliers must

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<sup>181/</sup> PEPCO Initial Comments at 11-12; OPC Initial Comments at 14-15.

<sup>182/</sup> PEPCO Initial Comments at 11-12.

<sup>183/</sup> OPC Initial Comments at 14-15; OPC Reply Comments at 10.

<sup>184/</sup> First Energy Initial Comments at 6-7.

<sup>185/</sup> See PEPCO Initial Comments at 11-12; OPC Initial Comments at 14-15.

<sup>186/</sup> See the Act at §§ 102(d) and 103, which provide the Commission with the discretion to implement competitive billing pursuant to a schedule determined by the Commission and applicable to all consumers, if the Commission so chooses.

inform customers of their right to select either consolidated bills from PEPCO or separate bills from PEPCO and the Electricity Supplier. With respect to Electricity Suppliers providing consolidated billings, we will require the Working Group to report when consolidated billing will be technically feasible and available in the District.

ISSUE NO. 3: WHAT OPTIONS SHOULD BE REQUIRED OF THE BILLER? (E.G., "BILL-READY" AND/OR "RATE- READY")

**a. Parties' Positions**

97. In the context of issuing a consolidated bill, "bill-ready" and "rate-ready" refer to the manner in which information is passed from the non-billing entity to the billing entity. Assuming that PEPCO is issuing a consolidated bill, using the bill-ready format, the supplier would send to PEPCO, via EDI, its charges already calculated and with the specific mandatory bill lines already provided. In this case, PEPCO could effectively just copy the supplier portion of the bill directly onto the consolidated PEPCO bill. However, if an Electric Supplier sends PEPCO a rate-ready transaction, PEPCO would apply the customer's usage information and the rate that the supplier is charging that customer, and calculate the amount the customer owes the supplier.<sup>187</sup> The Working Group recommends that PEPCO should make billing available in a rate-ready format under the terms to be negotiated between the supplier and PEPCO. This procedure was approved in Maryland.<sup>188</sup>

**b. Commission Decision**

98. The Commission agrees with the Working Group that when PEPCO is the consolidated billing entity, PEPCO should be required to provide billing service in a bill-ready format to suppliers upon the commencement of the Pilot Program. We also agree with the Working Group that PEPCO should make billing available in a rate-ready format under terms to be negotiated between the supplier and PEPCO. PEPCO has proposed a monthly per bill charge to perform bill-ready billing for the supplier (and alternatively a monthly per bill credit when an Electricity Supplier provides a consolidated bill).<sup>189</sup> This charge or credit is further discussed in the Unbundled Rate Settlement Agreement.<sup>190</sup> Issues regarding the reasonableness and level of PEPCO's proposed charge or credit will be addressed in the unbundled rate phase of this proceeding.<sup>191</sup>

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<sup>187</sup> March 30, 2000 Hearing Transcript at 30-31.

<sup>188</sup> Report at 23.

<sup>189/</sup> See, PEPCO Rate Schedule for Electricity Service in the District of Columbia, dated June 29, 2000, Testimony of M. R. Browning, PEPCO (B) at 24-25.

<sup>190</sup> See, Unbundled Rates Settlement Agreement at 8 and 9.

<sup>191/</sup> See Report at 23 n. 1.

ISSUE NO. 4: WHAT REQUIREMENTS SHOULD BE ESTABLISHED FOR BILL CONTENT, FORMAT, DISCLOSURE AND NOTIFICATION?

(A) Should minimum requirements for bill content and format be established? If yes, what should be the content and format?

**a. Parties' Positions**

99. Consensus. The Working Group recommends that the following list of bill components be required on all bills, including consolidated bills:

- Meter readings - current, prior month's and differences between the two may be presented in the same place
- Meter reading date - may be presented in a single place on a consolidated bill
- Number and kind of units measured
- Applicable rate schedule
- Taxes and surcharges - each appropriate tax and surcharge will be separately displayed
- Notice of potential late payment charges
- Total due - for consolidated bills, show subtotals for PEPCO and Electricity Supplier portions and a total due
- Payment due date - if separate bills, then payment dates may differ
- Estimated bills - distinctive indication if bill is based on estimated meter reading
- Business address and telephone numbers for billing inquiries
- Conversion from meter reading units to billing units - show computation
- Service address - show on first page of bill
- Mailing address - show on first page of bill
- Account number - show on each page if multiple pages
- Bill payment plans (if applicable)
- Emergency number for PEPCO
- Required notices - *e.g.* Consumer Bill of Rights, legal notices - may be an insert
- Next meter reading date
- Prior bill amount and summary of Electricity Supplier and/or PEPCO charges
- Disclosure of previous payment activity
- Meter number/identifier
- Number of days in billing cycle
- Seasonal rate notice
- Billing period
- PSC address and telephone number
- Address to where payments are sent
- To whom the check is payable<sup>192</sup>

100. Non-Consensus. In addition to these agreed-upon bill components, individual Parties suggested several other bill components. The paragraphs below discuss these components and the Parties' individual recommendations:

101. (a) *Collection Messages* – PEPCO claims that collection messages are an important element of any bill that contains PEPCO's charges. Since PEPCO is the only entity that can physically discontinue service for failure to pay, it is important that customers get collection messages informing them that their service may be disconnected if they do not pay their PEPCO bill.<sup>193</sup> PEPCO's position is that only PEPCO's collection messages need be included on the bill, not the Electricity Supplier's collection messages.<sup>194</sup> OPC recommends that any entity that bills for the distribution portion of the bill be required to include any relevant collection messages about this portion of the bill. OPC notes that these collection messages pertain to regulated services only.<sup>195</sup> First Energy's position is that it explains to customers its collection procedures in its contracts and, therefore, any requirement that it provide a collection message on a bill would be duplicative. OPC disputes First Energy's duplicative claim and points out that only the regulated portion of the bill need contain collection messages.<sup>196</sup>

102. (b) *Bill Step Computations* – PEPCO notes that the Commission presently requires bill step computations on bills.<sup>197</sup> PEPCO claims it is important for customers to understand the PEPCO component of their bill, regardless of which entity sends the bill.<sup>198</sup> PEPCO maintains that bill step computations would only apply to the PEPCO portion of the bill.<sup>199</sup> OPC notes that PEPCO's current bills show how a customer's bill is computed, delineating the charges for each step where applicable. OPC indicates that the bill step requirement would only apply to the regulated distribution portion of the bill.<sup>200</sup> First Energy asserts that showing bill step computations is not necessary in a competitive environment. First Energy also claims that customers do not require this information and that such a requirement would require extensive system programming.<sup>201</sup>

103. (c) *Date of Bill Issuance* – PEPCO states that all bills should include the date the bill was prepared. PEPCO claims that this information is useful to the customer and is generally

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<sup>193/</sup> PEPCO Initial Comments at 12; Report at 25.

<sup>194/</sup> PEPCO Reply Comments at 10.

<sup>195/</sup> OPC Initial Comments at 15; Tr. at 15.

<sup>196/</sup> OPC Reply Comments at 11.

<sup>197/</sup> Bill step computation explains how the customer's bill is computed and shows the charges for each step, where applicable. Report at 25.

<sup>198/</sup> PEPCO Initial Comments at 13; Report at 26.

<sup>199/</sup> PEPCO Reply Comments at 10.

<sup>200/</sup> OPC Initial Comments at 16; OPC Reply Comments at 12.

<sup>201/</sup> First Energy Initial Comments at 8.

standard for all types of bills.<sup>202</sup> OPC states that forcing customers to rely on a postmark date on the envelope is insufficient, as consumers rarely save the envelope for such purposes.<sup>203</sup> First Energy states that the large majority of customers are not concerned about what day First Energy issues their bill. Instead, customers can rely on the meter reading date on the bill and the postmark date on the envelope for that type of information. First Energy maintains that requiring a bill issuance date increases clutter on the bill and may be confusing to the customer.<sup>204</sup> OPC disputes First Energy's claim that the bill issuance date may be confusing to customers. OPC submits that if a bill issuance date is clearly denoted, and a payment date is clearly indicated, there is little room for confusion.<sup>205</sup>

104. (d) *Historic Consumption Data* – PEPCO states it is planning to include on all customers' bills 13 individual months of rolling historic usage data. PEPCO notes this is a new service that PEPCO is providing to its customers, but it is not standard practice in the industry at this time. Therefore, PEPCO does not believe it is appropriate at this time to require it on all bills in the District.<sup>206</sup> OPC states that, in the new era of competitive electricity pricing, one of the most powerful tools available to a consumer who is trying to make an informed decision about alternative Electricity Suppliers is his or her historic consumption data. OPC believes that up to 12 months of historic kilowatt per hour ("KWH") consumption should be included as a minimum bill component. OPC maintains that consumers have not only a need but also a right to this data. OPC disputes PEPCO's argument that this is not yet an industry standard and claims that customer requirements are different in a competitive environment.<sup>207</sup> Washington Gas opposes the requirement to include historic consumption data on customer bills. Washington Gas states that this requirement is not an industry standard and that customers already have access to this information on their monthly bills.<sup>208</sup> First Energy opposes inclusion of historic data on customer bills. First Energy states this is not an industry standard. First Energy also claims it would be extremely costly from a programming standpoint for Electricity Suppliers to program their billing systems to implement this element.<sup>209</sup>

105. (e) *OPC's Address and Phone Number* – OPC asserts that, as the retail electric industry transitions from a monopoly system to a restructured one, it is extremely important that ratepayers be aware of their statutory representative before the Commission. OPC notes that, by statute, OPC is the only entity that may represent and appeal for the ratepayer, appearing before the

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<sup>202/</sup> PEPCO Initial Comments at 13; Report at 26.

<sup>203/</sup> OPC Initial Comments at 16.

<sup>204/</sup> First Energy Initial Comments at 8; First Energy Final Comments at 7.

<sup>205/</sup> OPC Reply Comments at 12.

<sup>206/</sup> PEPCO Initial Comments at 13; Report at 26-27.

<sup>207/</sup> OPC Initial Comments at 17-19; OPC Reply Comments at 13-14; Tr. at 15.

<sup>208/</sup> Washington Gas Initial Comments at 7.

<sup>209/</sup> First Energy Initial Comments at 9.



Commission for the purpose of complaining in matters of rates and services.<sup>210</sup> PEPCO opposes this requirement and notes that the inclusion of OPC's name and address is not mandatory on bills now, and customers are more than adequately informed of OPC's services in brochures mailed to customers.<sup>211</sup> First Energy also notes that including OPC's address and phone number is not a required element on bills now and should not be added as a result of retail competition. First Energy states that customers that wish to contact OPC have information on contacting OPC.<sup>212</sup>

106. (f) *Deposit Information* – CUB asserts that any deposits paid to secure service be included as a minimum component on all bills. CUB believes that this information should include the deposit amount and date of payment. CUB further asserts that providing this important information will enable customers to effectively monitor payment activity for satisfactory deposit repayment.<sup>213</sup> PEPCO opposes including deposit information on all monthly bills. PEPCO states that if customers inquire about the status of their deposit, they will receive that information from PEPCO. PEPCO also notes there is no similar requirement now.<sup>214</sup> First Energy believes that deposit information should not be required on bills. First Energy believes that their customers will know when they initiated a contract and will be informed when a contract is up for renewal or termination by a reminder letter from the Electricity Supplier.<sup>215</sup>

107. (g) *Font Size* – The Parties agree that the required elements of the bill should be in a font size that is readable. The Parties, however, do not agree on whether a single font size should be required. OPC maintains it is important to define “readable” by placing a minimum font size requirement on the bill. OPC maintains that it is more important for a bill to be readable and understandable by the customer than it is for the bill to be kept on a single page.<sup>216</sup> PEPCO does not support a font size requirement. PEPCO notes that all printed elements on the bill are not the same size. PEPCO states that this requirement would eliminate the flexibility of the billing entity to control its bill product and could require additional pages on the bill.<sup>217</sup> Washington Gas opposes the mandatory font size requirement, maintaining that such a requirement may limit the billing party's ability to present a single page bill and will add incremental costs to the biller.<sup>218</sup> First Energy opposes the minimum font size requirement and notes there is currently no such mandate.

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210/ OPC Initial Comments at 19-20; OPC Reply Comments at 14-15; Tr. at 14 and 100-101; Report at 27.

211/ PEPCO Initial Comments at 13-14; PEPCO Reply Comments at 10; Tr. at 27-29 and 99-100.

212/ First Energy Initial Comments at 9-10; First Energy Final Comments at 8.

213/ Report at 27.

214/ PEPCO Initial Comments at 14.

215/ First Energy Initial Comments at 10.

216/ OPC Initial Comments at 20-21; OPC Reply Comments at 15; Report at 28.

217/ PEPCO Initial Comments at 14-15.

218/ Washington Gas Initial Comments at 7-8.

First Energy also is concerned that this may limit the ability of the billing party to keep the bill to a single page.<sup>219</sup>

**b. Commission Decision**

108. Section 104 of the Act provides the Commission with broad discretionary powers to establish billing procedures that protect the public interest and support the goals of retail competition.<sup>220</sup> The consensus list agreed upon by the Working Group is comprehensive and generally contains similar information currently on PEPCO bills, which are subject to the Consumer Bill of Rights, and, thus, must satisfy the public interest requirement. Accordingly, the Commission accepts the Working Group's list of required bill components. Although the Working Group does not list it, we also require that the customer's name appear on each page of the bill. We assume that this was simply an oversight. We find that this current practice is helpful to consumers in referring to their bills and making photocopies when necessary. Moreover, no Party has ever suggested that the customer's name should not appear on each page.

109. The Commission rules on the inclusion of each of the non-consensus bill components as follows:

110. (a) *Collection Messages* – We adopt OPC's and PEPCO's recommendations that collection messages pertaining to regulated services be shown on bills.<sup>221</sup> This is a critical element of a customer's bill, and it is essential for customers to be informed that the service, ultimately, may be disconnected if bills are not paid by the bill due dates. Also collection messages are fundamental provisions pursuant to the Consumer Bill of Rights.<sup>222</sup>

111. (b) *Bill Step Computations* – We agree with PEPCO and OPC on this issue, and, therefore, order that bill step computations be included on bills.<sup>223</sup> It is important to allow consumers the ability to understand fully how their respective bills are calculated. This ability is required to make meaningful the consumer's availability of choice in this new retail electricity market.

112. (c) *Date of Bill Issuance* – We adopt PEPCO's and OPC's recommendations that bills contain the date the bill was issued.<sup>224</sup> This information is in the public interest because it is useful to customers and is generally standard for all types of bills, including utility bills in the District. We also agree with OPC that the meter read date is an insufficient substitute. Customers typically rely upon the bill issuance date and the bill payment date and make their payments

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<sup>219/</sup> First Energy Initial Comments at 11.

<sup>220/</sup> See §§ 104(c)(3), (4) and (5), which authorizes the Commission to unbundle rates and charges, require modifications to customers' bills, and establish reasonable requirements with respect to billing, respectively.

<sup>221/</sup> See OPC Initial Comments at 15; PEPCO Reply Comments at 10.

<sup>222/</sup> 15 D.C.M.R. tit. 15, § 305.

<sup>223</sup> See PEPCO Initial Comments at 12-13; OPC Initial Comments at 15-16.

<sup>224/</sup> See PEPCO Initial Comments at 13; OPC Initial Comments at 16.

accordingly.<sup>225</sup> The date of bill issuance is necessary to establish that a reasonable time period exists between the date the bill was issued and the date payment is due.

113. (d) *Historic Consumption Data* – The Commission does not at present see the need to require the provision of historic consumption data because it would impose undue costs on Electricity Suppliers. Under the regulatory scheme crafted by the Act, the Settlement Agreement, and the Working Group recommendations as adopted and modified by the Commission in this Order, PEPCO will provide the facilities in the District that will carry electric service from all Electricity Suppliers to consumers and, therefore, can be considered the “gatekeeper” for all electric service in the District. In its role as gatekeeper, PEPCO will be in the best position to calculate all consumption for individual ratepayers. As a matter of fact, PEPCO is already providing consumption data to ratepayers and has declared its intention to continue the practice. Requiring Electricity Suppliers to retrieve this information from PEPCO to send it to consumers, when PEPCO can provide this information to consumers directly, would be inefficient and would impose unnecessary costs on Electricity Suppliers. Requiring historic consumption data would also be inefficient because this information, by itself, would not be useful to consumers for comparing the rates and services offered by different Electricity Suppliers. Given our anticipation of a market in which Electricity Suppliers will be offering a variety of individual and combined services, the possession of historic consumption data will be meaningless without some framework for comparison. We see no reason, therefore, to burden Electricity Suppliers with this requirement at this time.

114. The Commission does find, however, that District consumers would benefit from having access to a framework that would allow them to easily compare the value being offered by the different Electricity Supplier services and service packages.<sup>226</sup> We note that the Working Group shares our concern. As evidenced by the comments filed by the Parties and in particular the discussion at the June 30, 2000 hearing, there is a genuine desire to provide customers with all of the tools necessary for them to make informed decisions on whether to change Electricity Suppliers.<sup>227</sup> Towards this end, the Working Group states that it will address this matter in the future.<sup>228</sup> Given the importance of enabling customers to make these comparisons, we will require the Working Group to provide its recommendations to us by November 1, 2000 on a procedure that will allow consumers to make meaningful comparisons among Electricity Supplier rates and charges. After such time, we will revisit this issue and decide whether or not PEPCO and Electric Suppliers will be required to provide historic consumption data. Therefore, we will expect that the Working Group recommendation include 1) a workable proposal for a procedure by which consumers will be able to make an appropriate comparison among the various Electricity Suppliers’ rates and charges packages, in a manner that consumes as little consumer time as possible, and 2) a long-term proposal for providing historic data on customer bills. On this latter point, we will require the Parties to address the feasibility of making historic consumption data available to customers via the Internet.

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<sup>225/</sup> See OPC Reply Comments at 12.

<sup>226/</sup> See *Id.*

<sup>227/</sup> See Tr. at 83-91.

<sup>228/</sup> See *id.*

115. (d) The Commission, moreover, suggests that the Working Group pursue the issue of assisting customers to facilitate Electricity Supplier cost comparisons within the capabilities of the EDI transaction/communication system that is addressed subsequently in this Order at Section E. We suggest that there may be a way, via EDI exchange of data, to enable customers to compare effectively benefits that may be available among Electricity Suppliers' rates and charges packages. The Commission notes that EDI in conjunction with the Value Added Network ("VAN") (also discussed in the Order at Section E) accomplishes the following: 1) provides a secure electronic communications medium; 2) interconnects the Electric Suppliers (the electricity providers for which customers would presumably like comparisons) and PEPCO; 3) provides access to a customer's consumption information (PEPCO's customer usage database) upon which such comparisons will be based; and 4) allows Electricity Suppliers the flexibility to participate or not to participate.<sup>229</sup> Finally, EDI could be the actual instrument for providing customers, upon their individual requests, with cost comparisons based upon their historic consumption.<sup>230</sup> Such an approach could eliminate the potential mistakes that a customer might make in developing its own bill comparisons. While more logistically complicated, perhaps, than other methods, this EDI approach reminds us of the parallel billing procedures we have directed with regard to customer pricing/costs that were predicated upon customer time-of-use in the past. The Commission requests the Working Group to investigate this EDI approach (and others) and address its feasibility in the group's November 1, 2000 submittal.

116. (e) *OPC's Address and Phone Number* – We adopt OPC's recommendation to include OPC's name and phone number on customer bills.<sup>231</sup> In a new and emerging environment, it is likely that customers will have an increased need for OPC's assistance in answering questions, given OPC's statutory mandate to represent ratepayers in the District of Columbia .

117. (f) *Deposit Information* – We will not require the inclusion of deposit information on bills. The Commission has never imposed this requirement in the past and sees no need to add this information to consumer bills. We agree, to some extent, with those who share the concern that bills can become cluttered with too much information. Customers can obtain this information directly from PEPCO or their Electricity Supplier.

118. (g) *Font Size* – We also refuse to dictate a specific font size for bills. This has not been required in the past and the Commission is not aware of any problems this has caused. We will only require that the Electric Supplier must ensure that the font is legible and readable. We remind Electricity Suppliers of their obligation, under the Americans with Disabilities Act, to serve the needs of seeing-impaired consumers.<sup>232</sup>

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<sup>229/</sup> See generally Report at 43-44. Additionally, we find that this method is practical because PEPCO, as the only existing service provider, is the entity that has customer consumption data. Finally, as to benefit 4) described herein, we suggest that a procedure be established whereby PEPCO requests from Electricity Suppliers the suppliers costs associated with customer consumption.

<sup>230/</sup> *Id.*

<sup>231/</sup> See OPC Initial Comments at 19-20.

<sup>232/</sup> 42 U.S.C. § 1201 *et seq.* at § 12132.

(B) Beyond the minimal requirement, what other optional billing item may be included?

**a. Parties' Positions**

119. The Working Group unanimously agrees that optional billing components may include the following:

- Scan lines
- Bill messages
- Multiple services (*e.g.*, gas)
- Merchandise/option payments
- Third party notifications
- Summary bill (charges to a customer that has services at multiple premises)
- Bill control number
- Rendition group number
- Federal ID number<sup>233</sup>

The Working Group also agrees that other bill components might be included on the bill including those for non-electric services. Inclusion of other bill components will require that the billing and non-billing parties negotiate the availability of and price for providing billing for non-electric services.<sup>234</sup>

**b. Commission Decision**

120. The Commission approves each of the optional billing components that the Working Group recommends. Pursuant to our obligations under the Act to consider fully the interests of all parties to retail competition, we find that these items will assist in the customers' comprehension of this new competitive marketplace.<sup>235</sup> We conclude that these components are appropriate optional billing items.<sup>236</sup> It is reasonable to expect that at least some consumers will find each one useful, and we reiterate here our commitment to furthering customer comprehension of retail competition.

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<sup>233/</sup> Report at 28-29.

<sup>234/</sup> *Id.* at 29.

<sup>235/</sup> See the Preamble to the Act, *mimeo* at 1.

<sup>236/</sup> See Report at 29.

ISSUE NO. 5: FOR PAYMENT PROCESSING, WHAT IS THE ORDER AND TIME LINE FOR SATISFYING CHARGES AND CREDITS, AND PROCESSING REMITTANCE OF PAYMENTS FROM THE CONSOLIDATED BILLER TO THE NON-BILLING ENTITY?

**a. Parties' Positions**

121. Non-Consensus. The Parties were unable to reach consensus on the payment order of outstanding charges. The issue arises when a customer does not remit the full payment due to a consolidated biller. In the event the customer makes only a partial payment, the issue is which billing entity, the Electricity Supplier or PEPCO, should be paid first.<sup>237</sup>

122. PEPCO, OPC and CUB support the following method of payment processing for partial payments: payments should first be applied to PEPCO's arrearage, followed by PEPCO's current charges, Electricity Supplier arrearage, and Electricity Supplier current charges.<sup>238</sup> These Parties support this payment processing priority because PEPCO is the only entity that can terminate a customer's service for non-payment. Thus, they agree that PEPCO should be paid in full before funds are transferred or applied to Electricity Supplier charges in order to minimize service disconnections.<sup>239</sup>

123. First Energy asserts that the partial payment allocation priorities advocated by PEPCO, OPC and CUB are unfair to Electricity Suppliers. First Energy proposes the following payment priority system: PEPCO arrearage amounts, Electricity Supplier arrearage amounts, PEPCO current amounts, and Electricity Supplier current amounts.<sup>240</sup> OPC states that First Energy's proposal would result in customer confusion and ultimately could create a complex cycle of arrearages that would be difficult, if not impossible, for the customer to break.<sup>241</sup> First Energy counters that a customer has no responsibility to pay an Electricity Supplier if its payments are credited to PEPCO first, especially residential customers, who are allowed to switch Electricity Suppliers every month. First Energy states it does not know of any state that provides such easy ability for customers to avoid paying legitimate charges to Electricity Suppliers.<sup>242</sup>

**b. Commission Decision**

124. The Commission concludes that First Energy's proposal is the most appropriate partial payment priority system because it satisfies all arrearages (first PEPCO's and then the Electricity Supplier's) prior to the application of payments to current charges.<sup>243</sup> Under the Act,

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<sup>237/</sup> Report at 29.

<sup>238/</sup> Report at 29.

<sup>239/</sup> PEPCO Initial Comments at 15-16; OPC Initial Comments at 21-22.

<sup>240/</sup> First Energy Initial Comments at 11-12.

<sup>241/</sup> OPC Reply Comments at 16-17.

<sup>242/</sup> Report at 29-30; First Energy Final Comments at 8; Tr. at 47-48.

the Commission is charged with establishing mechanisms that provide for reasonable billing and collection requirements.<sup>244</sup> We find that First Energy's proposal is consistent with the Act and is in the public interest. Under this method, all arrearages will be paid first, and, thus, no one Electricity Supplier has a financial advantage over another. It is a fundamental principle that, in order to attract more businesses such as Electricity Suppliers to the District, the rules must ensure that they are compensated similarly to other service providers. Accordingly, the Commission determines that the approach adopted here is fair to both Electricity Suppliers and PEPCO.

**ISSUE NO. 6: WHO SHOULD BE RESPONSIBLE FOR TAX COLLECTION AND REMITTANCE, AND SHOULD PROCEDURES BE ESTABLISHED?**

**a. Parties' Positions**

125. The Working Group recommends that the entity that is providing the taxable service be responsible for collecting and remitting applicable taxes, regardless of which entity provides the billing service. This places the burden of collection and remittance of taxes on the entity that is responsible for those taxes.<sup>245</sup>

**b. Commission Decision**

126. Pursuant to Section 105(b)(4)(F) of the Act, an Electricity Supplier must agree to be subject to all applicable taxes in applying to become licensed in the District. The entity providing the taxable service, moreover, is in the best position to collect and remit the taxes, and this approach minimizes disputes among the entity, PEPCO, the customer and the taxing authority.

127. The Commission agrees with the Working Group recommendation that the entity providing the taxable service shall be responsible for collecting and remitting the applicable tax to the appropriate authority, regardless of which entity provides the billing service.<sup>246</sup> If PEPCO provides consolidated billing, the Electricity Supplier is still responsible for collecting and remitting taxes for its services to the appropriate taxing authority; PEPCO will provide the payments received from the customer to the Electricity Supplier, who in turn will be responsible for remitting the applicable taxes. If the Electricity Supplier provides consolidated billing, the converse will be the case, *i.e.*, PEPCO will be responsible for collecting and remitting applicable taxes.

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<sup>243/</sup> See Report at 29-30.

<sup>244/</sup> See the Preamble to the Act, *mimeo* at 1-2, which generally addresses a purpose of the Act, which is to consider the interests of all parties involved in retail competition in the District.

<sup>245/</sup> Report at 30-33.

<sup>246/</sup> See *id.* at 30-33.

**ISSUE NO. 7:** WHAT ARE THE CATEGORIES FOR NEW SERVICES THAT RESULT FROM COMPETITION (E.G., UNSCHEDULED METER READINGS, ETC.) FOR WHICH INCREMENTAL COSTS WILL BE CALCULATED?

**a. Parties' Positions**

128. Non-Consensus. The Parties could not agree on either the categories of "new services" or the appropriate level and allocation of incremental costs for those services.<sup>247</sup> PEPCO asserts that it is appropriate for PEPCO to recover the cost of providing services to Electricity Suppliers, if PEPCO has not previously provided such services as a vertically integrated electricity utility company and when the costs of providing such services are not currently in PEPCO's rate structure. PEPCO also asserts that the recovery of such incremental costs should be from Electricity Suppliers, consistent with the proposition that the entity causing PEPCO to incur a cost should be responsible for paying the cost.<sup>248</sup>

129. First Energy has engaged in preliminary discussions with PEPCO and the other Working Group Parties on the issue of fees for services that PEPCO will provide to Electricity Suppliers. First Energy is largely in agreement with the statement of services that PEPCO will provide to Electricity Suppliers. First Energy, however, believes that PEPCO currently provides some of those services, or their equivalents, to itself in the provision of regulated services.<sup>249</sup> However, at the June 30, 2000 hearing, PEPCO stated that the Parties are committed to further discussions on this issue.<sup>250</sup>

**b. Commission Decision**

130. The Commission urges the Parties to continue to discuss new services and the allocation of costs therefore. PEPCO, during the June 30, 2000 hearing, stated that negotiations with First Energy on this issue are ongoing, and that they are willing to have further discussions on supplier coordination fees that are charged for various services for interactions between PEPCO and Electricity Suppliers. In addition, PEPCO has represented that this issue will be applicable to terms of the supplier coordination tariff, and that the Parties will resume meeting on this issue in the near future.<sup>251</sup> Accordingly, we require the Working Group to file its conclusions on this issue by October 16, 2000.

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<sup>247/</sup> See *id.* at 31-32.

<sup>248/</sup> *Id.* at 31-32.

<sup>249/</sup> Tr. at 29.

<sup>250/</sup> *Id.* at 102-103.

<sup>251/</sup> See *id.* at 29-30.



ISSUE NO. 8: WHAT QUALIFICATIONS MUST A SUPPLIER MEET TO BE ABLE TO BILL CUSTOMERS?**a. Parties' Positions**

131. The Working Group recommends that an Electricity Supplier must pass EDI testing requirements, demonstrate an ability to render a consolidated bill, and meet Commission and PEPSCO credit standards as they relate to consolidated billing. These requirements are in addition to the requirements that must be met by Electricity Suppliers providing service in the District as set forth in Section 105 of the Act.<sup>252</sup>

**b. Commission Decision**

132. The Commission agrees with the Working Group that Electricity Suppliers must pass EDI testing requirements, demonstrate an ability to render a consolidated bill, and meet Commission and PEPSCO credit standards as they relate to consolidated billing.<sup>253</sup> The Commission finds it is necessary to have some minimum standards to apply to Electricity Suppliers in order to ensure that customers receive adequate service. This is a cornerstone of our responsibility to ensure that customer choice is in the public interest, that each District customer receives the same kind of service, and that the level of services meets the customer's needs. The implementation of minimum standards should eliminate at least some potential Electricity Suppliers who are not capable of providing the level and quality of service required in the District. Section 105 of the Act sets forth a number of provisions in this regard that must be met by Electricity Suppliers.<sup>254</sup>

133. Further, as pointed out by the Working Group, an Electricity Supplier providing consolidated billing should be required to meet additional technical and financial operational requirements related to billing services.<sup>255</sup> That is, if the Electricity Supplier performs consolidated billing, it is essential that charges and payments for all services are properly received, billed, and forwarded to avoid termination of service to customers for failure to make payments.

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<sup>252/</sup> Report at 32. The applicable provisions in Section 105 require an Electricity Supplier to file with the Commission proof of (1) technical and managerial competence, (2) compliance with applicable federal and District environmental laws, (3) financial integrity, (4) registration to do business in the District, (5) compliance with all applicable FERC requirements and any regional transmission requirements, and (6) an agreement to comply with all Commission regulations and orders issued pursuant to the Act.

<sup>253/</sup> See Report at 32.

<sup>254/</sup> See Report n. 263.

<sup>255/</sup> See Report at 32.

**ISSUE NO. 9:** IF A CONSOLIDATED BILLING PARTY FAILS TO RENDER A BILL IN A TIMELY MANNER, SHOULD THE BILLING PARTY BE REQUIRED TO PURCHASE THE ACCOUNTS RECEIVABLE RELATED TO THOSE UNTIMELY BILLS FROM THE NON-BILLING PARTY?

**a. Parties' Positions**

134. Consensus. The Working Group recommends that, if an entity providing consolidated billing fails to render bills in a timely manner, that entity should be required to purchase the receivables of the non-billing party. This will ensure that the non-billing party will be held harmless in the event that the billing party fails to render timely bills.<sup>256</sup>

135. Non-Consensus. The Parties fail to agree on the timing for rendering bills. Some Parties believe that "timely manner" should be defined in terms of a specific number of days.<sup>257</sup> Other Parties disagree and maintain that timely should not be defined, but rather the non-billing party can file a complaint with the Commission if it believes bills are not being rendered in a timely fashion.<sup>258</sup>

136. OPC states that timely manner should be defined as seven days. OPC maintains that a seven-day requirement is reasonable and not unduly burdensome. OPC notes that PEPCO and Washington Gas generally process bills within five days of the meter read date, so a seven-day requirement is longer than the current practice.<sup>259</sup>

137. First Energy believes that five days should be the definition of timely manner. First Energy maintains that such a requirement will ensure that the billing party will take the appropriate steps to make certain that the bill is rendered within this period.<sup>260</sup> First Energy further states it is not interested in forcing the billing party into the mandatory purchase of each receivable each time the biller takes longer than the defined number of days. In fact, First Energy is amenable to language that would exempt actions by the biller from the operation of the definition under "circumstances beyond the control of the biller."<sup>261</sup>

138. PEPCO believes that a specific definition of timely manner fails to protect the billing party from unusual or unforeseen circumstances. PEPCO submits that the mandatory purchase of receivables should be applicable to situations where the billing entity is failing to bill large numbers of customers for significant amounts of time, and it is not necessary to impose this requirement on the occasional failure to bill single accounts due to a variety of circumstances.<sup>262</sup>

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<sup>256/</sup> Report at 32.

<sup>257/</sup> Report at 33.

<sup>258/</sup> Report at 32-33.

<sup>259/</sup> OPC Initial Comments at 22-24.

<sup>260/</sup> First Energy Initial Comments at 13-14.

<sup>261/</sup> First Energy Reply Comments at 9 and 10.

Washington Gas also disagrees with a mandatory definition of timely manner. It maintains that the time in which the purchase of the receivables occurs should be left to negotiation between the billing and non-billing parties.<sup>263</sup>

**b. Commission Decision**

139. The use of consolidated billing mandates that more than one entity will receive payment from a single bill. This means the non-billing entity will not be able to ensure that its bills are rendered in a timely manner. Only the billing entity will be able to ensure this. Requiring the party providing the consolidated bill to purchase the non-billing party's receivables will ensure that the non-billing party will be held harmless in the event the billing party fails to render timely bills.

140. The Act is not intended to protect solely the interests of District consumers. The Commission is aware of its responsibility to establish a fair and open business environment so that Market Participants and PEPCO, as the electric company, will be able to provide service. Consequently, we find that it is only fair that the billing party should be required to purchase the accounts receivable of the non-billing party if the consolidated bills are not rendered in a timely manner. This will provide an incentive to the billing party to render timely bills.

141. On the question of timely rendering of bills, the Commission does not believe we have sufficient data to accept OPC's proposal that "a timely manner" be defined as seven days from the meter read date to the rendering of the bill.<sup>264</sup> While we expect that timely billing will normally be accomplished in the seven-day period proposed by OPC, there currently are limited exceptions for billing customers in a timely manner. Therefore, we do not believe that a rigid seven-day period should be imposed at this time, although we do expect that the overwhelming majority of bills will be rendered within the seven-day period. If our experience with consolidated billing suggests a necessity for adopting a specific definition of what constitutes billing in a "timely manner," we will revisit this issue.

**D. Supplier Licensing/Procedures**

142. The Commission understands that supplier licensing is a vital role to be fulfilled by the Commission in the competitive market. In order to protect the public interest and in order to comply with the provisions of the Act, the Commission must ensure that the new Electricity Suppliers have sufficient financial integrity and technical and management expertise to reliably and competently supply the citizens of the District with their electricity requirements. The supplier licensing provisions adopted below provide a mechanism to screen the qualifications of potential and current Electricity Suppliers and ensure their ability to provide services in the District.

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<sup>262/</sup> PEPCO Initial Comments at 17-18; Tr. at 34-35.

<sup>263/</sup> Washington Gas Initial Comments at 9-10.

<sup>264/</sup> See OPC Initial Comments at 22-24.

ISSUE NO. 1: WHAT REQUIREMENTS MUST A SUPPLIER MEET TO OBTAIN A LICENSE?**a. Parties' Positions**

143. Consensus. The Working Group recommends that the Commission approve the Proposed Supplier Application, which is provided at Attachment B to this Order.<sup>265</sup> The Proposed Supplier Application contains requirements concerning: 1) basic identifying information about the Electricity Supplier and its affiliates; 2) information on the applicant's experiences in other states, including adverse actions; 3) operational capability, in conjunction with PJM reliability standards; 4) scope of operations of the Electricity Supplier, including how an applicant plans to serve the market (*i.e.*, as a broker, aggregator or supplier); 5) information on the financial integrity of the applicant, including bonding; and 6) miscellaneous issues such as providing certain affidavits, a continuing obligation to update the information provided in the application, and the payment of the application fee.<sup>266</sup>

144. The Proposed Supplier Application does not require those applicants who do not take title to the energy, and who will act as brokers or aggregators, to complete certain sections of the application. The Working Group distinguishes between those aggregators who do not take title to the energy from those who take title to the energy and resell it to the retail consumers. In the latter situation, the Working Group deems the aggregator to be performing the function of an Electricity Supplier, and as such, recommends that it should be licensed. However, the Working Group recognizes that aggregators who do not take title to the energy may be small, community-based organizations that should be encouraged to aggregate customers and load.<sup>267</sup> The Working Group recognizes that some of the questions on the application may not be applicable to this category of aggregators and is concerned that these aggregators may not have the resources to post a bond. An abbreviated license process is viewed by the Working Group as a reasonable method to encourage the participation of aggregators who do not take title to the energy.

145. Non-Consensus. The Working Group did not reach a consensus on two issues arising out of the Proposed Supplier Application: 1) whether PEPCO should be required to obtain a license as an Electricity Supplier because it will be an SOS provider; and 2) bonding requirements.

- 1) Should PEPCO be required to obtain a license as an Electricity Supplier as a precondition to operating as an SOS provider in the District of Columbia?

146. OPC argues that PEPCO, acting as an SOS provider, is included within the definition of an Electricity Supplier, in the Act.<sup>268</sup> In support of its argument, OPC cites sections 101(17), 105, and 109 of the Act. Relying on the definition of "Electricity Supplier" in section 101(17) of the Act, OPC notes that an SOS provider is not excluded from the definition and argues that, as an SOS provider, PEPCO will be selling, purchasing, and otherwise arranging for electricity

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<sup>265/</sup> Report at 35.

<sup>266/</sup> *Id.* at Attachment 3 – Proposed Supplier Application at 1-20.

<sup>267/</sup> *Id.* at 35.

<sup>268/</sup> OPC Initial Comments at 34-35.

on behalf of its SOS customers. According to OPC, these factors place PEPCO squarely within the Section 101(17) definition of an Electricity Supplier. Because PEPCO's operations come under the definition of an Electricity Supplier, OPC argues that PEPCO must comply with Section 105 of the Act and obtain a license to do business in the District.<sup>269</sup>

147. PEPCO disagrees with OPC's position that it must be licensed to be an Electricity Supplier in the District. PEPCO states that OPC failed to consider all relevant provisions of Sections 109 and 113 of the Act. According to PEPCO, Section 109 requires that it provide customers with SOS from the initial date customer choice is implemented in the District through January 1, 2005.<sup>270</sup> PEPCO also argues that pursuant to Section 113 of the Act, it is prohibited from engaging in the business of an Electricity Supplier, except through an affiliate.<sup>271</sup> PEPCO argues that, because the Act is silent on the necessity of PEPCO obtaining a license and expressly requires affiliates of PEPCO to obtain a license, the Act could not have intended for PEPCO to obtain a license to do business in the District as an Electricity Supplier. According to PEPCO, only when all pertinent sections of the Act are read together does it become clear that the Act does not require PEPCO to obtain any additional authorization from the Commission to be an SOS provider.<sup>272</sup>

148. In response to PEPCO's position, OPC argues that there is nothing in the Act that precludes licensing of PEPCO as the SOS provider.<sup>273</sup> OPC concedes that Section 109 of the Act requires PEPCO to be an SOS provider. However, OPC argues that there is no inconsistency in the language of the Act and reiterates its position that PEPCO must be licensed and bonded, relying on Section 113 of the Act in support thereof. According to OPC, the following language clearly suggests that PEPCO will be an Electricity Supplier and is subject to all statutory licensing requirements:

Other than its provision of standard offer service, the electric company shall not engage in the business of an electricity supplier in the District of Columbia except through an affiliate.<sup>274</sup>

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<sup>269/</sup> OPC also argues that there is nothing in Section 109 of the Act, entitled "Standard offer service", that excludes an SOS provider from the Section 101(17) definition of an Electricity Supplier. OPC Initial Comments at 35.

<sup>270/</sup> PEPCO Initial Comments at 19.

<sup>271/</sup> PEPCO notes that Section 113 (b) requires that affiliates of PEPCO must obtain a license pursuant to Section 105 of the Act prior to engaging in the business of an Electricity Supplier in the District. (We note that PEPCO erroneously referred to Section 205 of the Act in its comments, and herein acknowledge that it is Section 105 that addresses licensing of affiliates). *Id.*

<sup>272/</sup> *Id.* at 19-22; Tr. at 35-37.

<sup>273/</sup> OPC Reply Comments at 27.

<sup>274/</sup> *Id.*, citing § 109 of the Act.

2) Bonding Requirements

149. *Mandatory Bonding* – The issue of bonding is strongly disputed among the Parties. There are several contested issues that pertain to bonding, the first being whether bonding should be mandatory. OPC strongly supports a requirement that all applicants interested in providing service to residential and/or small commercial customers provide an initial bond with their application. Further, OPC states that these applicants should be required to provide a permanent bond based on the number of residential and/or small commercial customers served within 60 days of first providing such service.<sup>275</sup> In support of its position, OPC argues that a mandatory bond requirement is essential to protect small customers; mandatory bond requirements are consistent with how other jurisdictions have addressed this issue; and that a mandatory bond is preferred because it is administratively efficient.<sup>276</sup>

150. OPC also argues that a mandatory bond requirement will protect customers from prepayments required by “unscrupulous” applicants who have no actual intent to perform the services for which they require a prepayment. OPC states that the bond will likely dissuade such applicants from attempting to participate in the District market and will provide the Commission with a remedy to redress the actions of unscrupulous applicants who subsequently leave the District without providing the contracted services.<sup>277</sup>

151. OPC also urges the Commission to look at other jurisdictions that have instituted a mandatory bond requirement. Among those jurisdictions are Delaware, California, Connecticut, New Jersey, Maine, Montana, and Maryland. OPC points out that these states address the bond requirement as follows: 1) Delaware requires that suppliers who charge prepayments and deposits post a bond in the amount of the lesser of 150% of projected deposits and advances for the next year, or \$50,000; 2) California bases the amount of the security deposit on the number of customers served by the provider; 3) Connecticut requires some form of security in the amount of \$250,000 or 5% of the estimated gross receipts for the first year of operations (subject to annual adjustment), or alternatively, a 12-month estimate of gross receipts from the sale of electric generation in the state; 4) New Jersey requires that to obtain a license applicants must maintain a surety bond or equivalent financial instrument in the amount of \$250,000; 5) Maine’s financial security provision requires that applicants have a security bond or other irrevocable standby letter of credit of at least \$100,000; (this law excludes aggregators or brokers that exclusively serve customers with demand in excess of 100 KW); 6) Montana requires a demonstration of financial integrity by either a long-term bond rating of BBB or the equivalent, two years of audited financial statements, or posting of a \$100,000 performance bond; 7) Maryland addresses the issue on a case-by-case basis for applicants that intend to require small customers (less than 1 MW of metered demand during the previous 12

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<sup>275/</sup> OPC Initial Comments at 24-30. According to OPC, the language in the Proposed Application and Proposed Licensing Standards was proposed by OPC.

<sup>276/</sup> *Id.* at 25.

<sup>277/</sup> *Id.* at 25-26. OPC supports its argument with references to *Electric Utility Week* (May 1, 2000), which published an article describing an investigation opened by the California Public Utilities Commission to address similar issues. According to OPC, the article indicates that numerous customers paid deposits for low-cost electricity, but never received the energy supply. In referencing the article, OPC states that the electric service provider refused to return the deposits and indicated its financial incapability of providing the contracted service.

months) to prepay or make deposits; these applicants are required to post an initial bond of \$50,000 (subject to increase to cover all bonds and prepayments).<sup>278</sup>

152. OPC argues that if a mandatory bond requirement was established, the Commission would not be required to decide on a case-by-case basis whether a bond is necessary. According to OPC, elimination of such a case-by-case determination will diminish or eliminate claims from applicants that must post bonds that the Commission has provided unfair advantage or preference to those applicants that are exempted from posting bonds.<sup>279</sup>

153. PEPCO opposes requiring a bond of all Electricity Suppliers, without regard to the applicant's credit status, financial condition, and history. Instead of a mandatory bond requirement, PEPCO proposes that the Commission exercise its discretion by deciding which Electricity Suppliers should be bonded on a case-by-case basis. PEPCO points out that the Act gives the Commission the discretion to require a bond from entities that pose a risk by allowing the posting of a bond. PEPCO also argues that the bond requirements proposed by OPC are complex, will impose significant reporting requirements on Electricity Suppliers, and will require significant monitoring by the Commission.<sup>280</sup> Specifically, PEPCO notes that applicants must demonstrate evidence of the bond concurrently with the license application. PEPCO argues that because the license application can be rejected without such evidence, OPC's bond provision may discourage participation by small Electricity Suppliers or aggregators who may not be able to secure the bond. PEPCO also argues that OPC's requirements will be burdensome because 60 days after the Electricity Supplier begins to provide service, there may be an additional bond requirement or revision to the initial bond based on the number of customers being served at that time. PEPCO refers to additional burdens that Electricity Suppliers must endure, including an audited certification that the bond has been posted and a certified count to authenticate the number of customers being served.<sup>281</sup>

154. Washington Gas also opposes mandatory bonding. According to Washington Gas, the Act "mandates" that the Commission exercise its judgment in any determination as to whether a bond is required. While Washington Gas does not oppose imposing bond requirements on Electricity Suppliers who require deposits or prepayments from customers prior to the start of service, it believes that the Commission should use its discretion as to those suppliers who do not require such a deposit. Finally, Washington Gas agrees with First Energy that a mandatory bond requirement may unnecessarily drive up the costs for Electricity Suppliers, thereby limiting the ability of community-based aggregators and other small suppliers to participate in the retail electricity market in the District.<sup>282</sup> Ultimately, Washington Gas believes that bonding warrants a balancing between the desire to protect consumers from Electricity Suppliers who fail to perform,

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<sup>278/</sup> OPC Initial Comments at 24-30.

<sup>279/</sup> *Id.*

<sup>280/</sup> PEPCO Initial Comments at 20.

<sup>281/</sup> *Id.* at 20-21.

<sup>282/</sup> Washington Gas Reply Comments at 10-11.

and encouraging Electricity Suppliers to conduct business in the District. Washington Gas argues that Commission discretion best accomplishes this balancing.<sup>283</sup>

155. AOBA submits that the Commission should exercise its discretion to determine when a bond should be required. AOBA argues that a bond should not be required for those Electricity Suppliers that provide service only as a broker, as that term is defined in the Act.<sup>284</sup> In this regard, AOBA states that, because brokers do not take title to the electricity, they do not collect revenues on sales of power and, therefore, are not responsible for taxes resulting from the sale of the electricity. Finally, AOBA proposes the following language as an alternative to the language proposed by OPC:

The Commission will require that every marketer or aggregator, who applies for a license to serve residential or small commercial customers in the District of Columbia, post an initial bond with each application. Brokers shall not be required to post a bond with an application for a license.<sup>285</sup>

156. First Energy supports the position that a mandatory bond is unnecessary in many instances and that bonding will needlessly drive up costs for Electricity Suppliers and limit the ability of community-based aggregation groups and other small Electricity Suppliers to operate in the new retail market in the District. Further, First Energy argues that a mandatory bond requirement will unduly increase the costs for those applicants that are financially sound. It is First Energy's position that it is unnecessary for a proposed Electricity Supplier to post a bond unless the applicant has borderline financial qualifications or seeks deposits or prepayments from customers.<sup>286</sup> According to First Energy, whenever the Commission requires that a bond be posted, the purpose of the bond should be clearly stated.<sup>287</sup> First Energy suggests that the bonding requirements closely reflect the bond requirements established by the Maryland Public Service Commission.<sup>288</sup>

157. OPC responds to the other Parties' proposals for non-mandatory bonding with three concerns. First, OPC maintains that a discretionary bonding requirement will force the Commission to review, on a case-by-case basis, the financial situation of each applicant, adding administrative time and expense to the application review process. Second, OPC states that a mandatory bonding requirement is an absolute imperative for protection of small customers. In this regard, OPC specifically rebuts the assertion of First Energy that a bond requirement will needlessly drive up the costs for Electricity Suppliers, stating that a mandatory bond is the only protection that residential and small commercial customers will have against the unscrupulous or

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<sup>283/</sup> Tr. at 55-56.

<sup>284/</sup> AOBA Initial Comments at 2-3; Tr. at 40-41.

<sup>285/</sup> AOBA Initial Comments at 3.

<sup>286/</sup> First Energy Initial Comments at 14-15; Tr. at 45.

<sup>287/</sup> First Energy Initial Comments at 14.

<sup>288/</sup> *Id.* at 15-16.



illegal actions of Electricity Suppliers. Third, OPC indicates that Electricity Suppliers face bond requirements in states throughout the country that offer retail access, and that the District's residents deserve no less than the bond protection available in other jurisdictions.<sup>289</sup>

158. *Bond Foreclosure* – The second bond-related issue is the establishment of those conditions under which the Commission may foreclose on a bond. Resolution of this issue is tied to the purposes for which the bond is required. While all Parties generally agree that the bond may cover taxes, deposits and prepayments paid by residential and small commercial customers, some Parties assert that these purposes alone are not sufficiently exhaustive as to what the bond shall cover and that further bond coverage is necessary.<sup>290</sup>

159. OPC argues that because competition in the District is in its infancy, the Commission should maintain its flexibility regarding bond foreclosure and not limit the damages that the bond may be used to cover. In addition to taxes, deposits, and prepayments, OPC proposes broad language that would extend the purpose of the bond to “insure the fair and lawful treatment of the District’s residential and/or small commercial customers.”<sup>291</sup> According to OPC, its proposed language is broad enough to permit the bond to be used to rectify any damage caused by harmful practices of Electricity Suppliers, including but not limited to slamming and cramming.<sup>292</sup>

160. PEPCO is concerned with the lack of specificity for which the bond is held in OPC’s proposal. PEPCO says the definition of OPC’s proposed language, “insuring the fair and lawful treatment of residential and small commercial customers,” is unclear. PEPCO states that, when a bond is obtained, the bonding company requires specificity as to the purpose for which the bond is held. PEPCO argues that OPC’s proposed language does not provide this specificity.<sup>293</sup> First Energy also questions the language that OPC proposes, categorizing it as amorphous. According to First Energy, adoption of such vague language may have a negative effect on the cost of bonds because there are no bounds regarding the potential bases for foreclosure.<sup>294</sup>

161. OPC responds that the bond foreclosure language must be broad to cover situations in which Electricity Suppliers violate the terms of their agreements and subsequently refuse to refund wrongfully collected payments that are not included within the definition of taxes, deposits or prepayments. Finally, OPC argues that PEPCO has no evidence to support its claim that bonding companies require greater specificity than that set forth in the language proposed by OPC.

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<sup>289/</sup> OPC Reply Comments at 18-21; Tr. at 12-13. As an attachment to its Supplemental Comments OPC provided part of the Pennsylvania statute that addresses the bond issue. See Appendix B to OPC Supplemental Comments.

<sup>290/</sup> Report at 37-38.

<sup>291/</sup> OPC Initial Comments at 30-33.

<sup>292/</sup> *Id.* at 31-32.

<sup>293/</sup> PEPCO Initial Comments at 21-22.

<sup>294/</sup> First Energy Reply Comments at 11.

In support of this position, OPC relies on the fact that in California and other states suppliers are operating with “relatively flexible bond foreclosure language.”<sup>295</sup>

162. *Bond Structure* – The final bond-related issue presents the Commission with the question of how the bond should be structured. OPC’s proposed language is based in substantial part on the California rules applicable to Electricity Supplier bonding. Under the California approach, an Electricity Supplier would be required to post a bond based upon the number of customers served. Further, OPC proposes that all applicants, regardless of size, post a \$50,000 bond with the application.<sup>296</sup> In support of its proposal for an “up-front” bond to be presented with the application, OPC states that this will ensure that an Electricity Supplier does not take money from customers and then flees the District prior to posting the permanent bond.<sup>297</sup>

163. First Energy suggests that the Commission adopt language on bond structure that reflects the language adopted in Maryland for the bond requirements in the licensing application. First Energy also takes issue with OPC’s proposed sliding scale and maintains that it will likely be the smaller Electricity Suppliers who are most prone to default on customer deposits and/or prepayments.<sup>298</sup>

164. PEPCO provides information regarding alternatives to bonding requirements. Included as alternatives are limited guarantees and letters of credit. PEPCO references Maryland’s Application for a Supplier License and the accompanying standards adopted by the MDPSC as an example of when guarantees and letters of credit are used. The standards applied in Maryland indicate that the MDPSC may require a bond or other similar instrument if the commission determines it is necessary to insure the financial integrity of the applicant. The MDPSC also accepts a parent guarantee in lieu of the applicant posting a bond, when an affiliated company provides its financial statements and those of the parent corporation.<sup>299</sup> According to PEPCO, there have been no instances in Maryland in which a letter of credit was used by an Electricity Supplier to demonstrate financial integrity.<sup>300</sup>

#### **b. Commission Decision**

165. The Commission approves the consensus aspects of the Proposed Supplier Application contained in the Report.<sup>301</sup> We conclude that licensing requirements for issues such as

<sup>295/</sup> OPC Reply Comments at 22.

<sup>296/</sup> OPC Initial Comments at 33-34.

<sup>297/</sup> After the Electricity Supplier is established in the District and knows the number of customers it is serving, OPC states that the supplier should be required to supplement the initial bond or post an additional bond based on the number of residential and small commercial customers that it serves. *Id.*

<sup>298/</sup> First Energy Initial Comments at 15-16; Tr. at 45.

<sup>299/</sup> PEPCO Supplemental Comments at 2.

<sup>300/</sup> *Id.*

<sup>301/</sup> See Report at 38.

competence and applicant experience in providing energy services are important to ensuring that the public interest is safeguarded when dealing with the provision of retail energy service. The Commission also agrees with and hereby adopts the Working Group recommendation that those brokers and aggregators who do not take title to the energy should be exempt from completing certain parts of the Proposed Supplier Application.<sup>302</sup> Such an “abbreviated” license process is reasonable and likely to encourage small, community-based organizations to participate as aggregators in the new retail energy market in the District. We note that the Report encourages an abbreviated process for this Electricity Supplier group and recognizes that these potential suppliers will not engage in enrolling customers for service and/or selling electricity, and, therefore will not be liable to the District for taxes.<sup>303</sup>

- 1) Should PEPCO be required to obtain a license as an Electricity Supplier as a precondition to operating as an SOS provider in the District of Columbia?

166. Upon examination of the issue of whether PEPCO should be considered an Electricity Supplier because of its status as an SOS provider, we find that PEPCO should not. After careful consideration of the parties’ positions, we agree with PEPCO that the Act does not require it to file an application as an Electricity Supplier by virtue of its status as an SOS provider.<sup>304</sup> Clearly, Section 109 of the Act requires PEPCO to be an SOS provider from the initial date customer choice is implemented in the District through January 1, 2005. As to that there is no ambiguity. Further, Section 113(a) of the Act expressly prohibits PEPCO from engaging in the business of an Electricity Supplier:

Other than its provision of standard offer service, the electric company may not engage in the business of an electricity supplier in the District of Columbia unless it does so through an affiliate.

This language is clear and unambiguous, as is the language of Section 113(b), which requires that an affiliate of “the electric company” must obtain a license pursuant to Section 105 of the Act prior to engaging in the business of an Electricity Supplier. There certainly can be no confusion that in the District “the electric company” refers to PEPCO. In our view, OPC’s suggested interpretation is contrary to the plain language of the statute. Accordingly, the Commission rejects OPC’s interpretation of the Act and rejects its proposal to subject PEPCO to the licensing requirements of Section 105 of the Act.<sup>305</sup>

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302/ *See id.*

303/ *See Report at 35.*

304/ *See PEPCO Initial Comments at 19-22.*

305/ We note that there are also separate provisions in the Act, which establish the duties of the “electric company” and licensing requirements for Electricity Suppliers. *See the Act at §§ 105 and 106.*

## 2) Bonding Requirements

167. *Mandatory Bonding* – After careful consideration of the arguments presented by the Parties, the Commission finds that District residents and businesses will be adequately protected by requiring an applicant that fails to demonstrate, in the Commission’s judgment, financial integrity to post a bond, or similar instrument. This decision is consistent with Section 105(c) of the Act. Moreover, the Commission shares the concerns of PEPCO, Washington Gas and First Energy as to the potentially harmful effect mandatory bonding would have on the development of a competitive retail electric marketplace.<sup>306</sup> The Commission is committed to the creation of robust and open competition for energy services in the District. We find that mandatory bonding would serve as an artificial market entry barrier to smaller and newer players seeking to participate in the District retail electric market.

168. In reaching this conclusion we do not make light of OPC’s concerns about protecting the District’s residential and small commercial customers from the unscrupulous or illegal actions of Electricity Suppliers. Indeed, the Commission must comply with our statutory mandate in the event that an applicant fails to demonstrate the financial integrity and ability to provide safe and reliable energy services in the District. In doing so, we seek to exclude those companies or individuals seeking to enrich themselves by preying on unsuspecting District residents or businesses through the imposition of fraudulent business practices.

169. *Bond Foreclosure* – The Commission agrees with PEPCO that bond foreclosure requirements must be defined with some degree of specificity. We find that the absence of specificity regarding the circumstances under which the Commission may foreclose on a bond will potentially subject most, if not all suppliers, but small suppliers in particular, to rejection in obtaining a bond.<sup>307</sup> Alternatively, even if applicants are able to obtain a bond where the criteria for foreclosure on the bond are vague, the Commission agrees with First Energy that the cost of such a bond may become prohibitive.<sup>308</sup>

170. OPC seeks broad bond coverage to protect the District’s residential and small commercial customers. However, the Commission must consider the practical effects of OPC’s proposal. While we agree with the consensus position of the Working Group that the bond may cover deposits and prepayments, we cannot risk the chilling effect that open-ended and vague foreclosure provisions could have on the participation of Electricity Suppliers in the District. In particular, such vague provisions are likely to prevent small brokers and aggregators from participating in the retail electricity market.<sup>309</sup>

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<sup>306/</sup> See PEPCO Initial Comments at 20-21; Washington Gas Reply Comments at 10-11 and Tr. at 55-56; First Energy Initial Comments at 14-16 and Tr. at 45.

<sup>307/</sup> See PEPCO Initial Comments at 21-22.

<sup>308/</sup> See First Energy Reply Comments at 11.

<sup>309/</sup> Throughout the hearings conducted by the Council on Bill 13-284, Council member Ambrose expressed concern about whether consumer protections in the bill would create a barrier to entry by market participants. See Committee Report at 13. Although parties testifying at the hearings reached varying conclusions, they were consistent in stating that burdensome regulatory requirements could hinder business growth and development.

171. The Commission finds, therefore, that the interests of all parties to retail competition, including residential and small commercial customers, will not be served by attaching vague purposes to the bond requirement. Accordingly, the Commission shall limit the purposes for which a bond is required to cover assurance of financial integrity, including deposits and prepayments. The Commission does not adopt the use of a bond for the payment of outstanding tax liability. The Department of Finance and Revenue is responsible for collecting taxes due the District and has the authority to collect outstanding tax liabilities. Moreover, unlike using the bond proceeds to pay a default Energy Supplier's tax liability, the recovery of deposits and prepayments is appropriate to customer protection.

172. *Bond Structure* – The Commission notes that this issue is intricately tied to the prior bond-related issues. As a result, the Commission must carefully consider the relationship between the resolution of this issue and the other bond issues addressed in this Order.

173. Section 105(b) of the Act requires applicants to provide “proof of financial integrity.” Appropriately, the Proposed Supplier Application form contains a section requiring documentation of financial integrity. Section 105(c) of the Act provides the Commission with the authority to “[r]equire an applicant to post a bond or other similar instrument if, in the Commission’s judgment, the bond or similar instrument is necessary to insure an applicant’s financial integrity.” The Commission has the authority to require proof of an applicant’s financial integrity prior to permitting an applicant to operate in the District as an Electricity Supplier. Neither Section 105(c) nor any other provision of the Act limits the manner by which the Commission can assure itself of an applicant’s financial integrity. Accordingly, the Commission will consider bonding, limited guarantees and letters of credit as the primary means to ensure an applicant’s financial integrity.

174. Nevertheless, we will limit our review of an applicant's financial integrity to one financial instrument or another. The Commission must ensure that it has the flexibility and discretion necessary to assess each application on a comprehensive and impartial basis. Therefore, we will require the Working Group to recommend to us, by September 30 2000, bonding standards that provide us with the flexibility and discretion necessary to make case-by-case assessments on a comprehensive and impartial basis. We also require the Working Group, in its September 30, 2000 submittal, to address bond amounts, including the possibility of a sliding scale mechanism for bonds or other surety amounts based upon applicant revenues or some other index. The Working Group may also propose additional specific consumer protection type purposes for which the bond may be required in its September 30, 2000 filing. On an interim basis, the Commission is setting the level of any required bond at \$50,000.00.

175. For these reasons, we adopt the specific language discussing "Financial Integrity" in the Interim Supplier Application, which addresses our commitment to take whatever actions we deem appropriate to assure District customers that all Electricity Suppliers in the District are financially able, financially, to fulfill their service obligations.<sup>310</sup> In addition, the Commission reserves the authority to request additional information needed to assess an applicant's financial integrity.

**Issue No. 2: WHEN SHOULD THE COMMISSION BEGIN ACCEPTING APPLICATIONS FROM SUPPLIERS?**

**a. Parties' Positions**

176. The Working Group recommends that the Commission begin accepting applications from potential Electricity Suppliers no later than August 1, 2000, and earlier, if the proposed application and accompanying procedures are in place, before August 1, 2000.<sup>311</sup> The Working Group did not address an alternative date if the Commission did not begin to accept applications from potential Electricity Suppliers after August 1, 2000.

**b. Commission Decision**

177. The Commission sets October 1, 2000 as the date on which it will begin to accept applications from potential Electricity Suppliers. We recognize that the parties anticipated an earlier date for acceptance of applications, which would provide five months (August through December) for Electricity Suppliers to meet licensing and other requirements addressed in this Order. However, the Commission finds that the full 3-month period from October 1, 2000 through December 31, 2000 and the prior notice of licensing and other requirements set forth in this Order will provide Electricity Suppliers with adequate time to review our licensing requirements and prosecute their applications.

**ISSUE NO. 3: WHAT IS AN APPROPRIATE LICENSE FEE AND SHOULD THERE BE A RENEWAL PROCESS AND FEE FOR RENEWALS?**

**a. Parties' Positions**

178. The Working Group has no recommendation with respect to fee amount, but it notes that the \$400.00 application fee in Maryland is based on the time and materials used by the MDPSC staff in reviewing license applications.<sup>312</sup> The Working Group indicates there is no need for a renewal process.<sup>313</sup>

**b. Commission Decision**

179. Based on the Report, the Commission sets the application fee at \$400.00 subject to review based upon actual experience with the application process. If after review of the time and materials required to assess license applications, the Commission finds that \$400.00 is insufficient the Commission shall address the need for and imposition of another fee in a later order.

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311/ Report at 38.

312/ Report at 38-39. Similarly, the Working Group notes that there is a statutory \$1,000.00 fee for telecommunications applications in the District. *Id.*

313/ Report at 38-39.

180. The Commission agrees with the Working Group that there is no need for a renewal process. As discussed in Issue No. 4, immediately below, we find that there are sufficient safeguards provided in this Order under Sections A and C to protect consumers and to provide the Commission with the necessary data.

ISSUE NO. 4: HOW FREQUENTLY SHOULD LICENSED SUPPLIERS UPDATE THEIR APPLICATIONS?

**a. Parties' Positions**

181. The Working Group recommends that, after a license is granted, an Electricity Supplier's application should be updated annually, within 120 days of the licensee's fiscal year. Also, the Electricity Supplier would give the Commission notice of substantive changes within 30 days of the occurrence of those changes. Substantive information may include, but is not limited to the name of the licensee (Electricity Supplier), the contact person, or an adverse finding against the licensee. If a potential Electricity Supplier's information changes during the application process, the application should be updated immediately.<sup>314</sup>

**b. Commission Decision**

182. The Commission decides that the process proposed by the Working Group will provide the Commission with sufficient measures to monitor changes in the Electricity Supplier's application.<sup>315</sup> Prompt attention by Electricity Suppliers to correct informational inaccuracies during the application period and on into the licensing period is essential to protection of the public interest and the integrity of the retail electricity market in the District. As noted throughout this Order, the Commission will rely significantly on the information provided by Electricity Suppliers in numerous ways to promote retail competition in the District and to protect energy consumers. Access to accurate information is a primary means of achieving these goals.

ISSUE NO. 5: WHAT ARE THE APPROPRIATE LICENSING AND RENEWAL TIME LINES AND PROCESSES?

**a. Parties' Positions**

183. The Working Group recommends that the Commission complete its review and approve (or deny) a completed application by an Electricity Supplier within 45 days.<sup>316</sup>

**b. Commission Decision**

184. The Commission adopts the Working Group recommendation of a 45-day application period. Moreover, as discussed at Section D, Issue No. 3 above, the Commission also agrees with the Working Group recommendation that there is no need for a renewal process. The

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<sup>314/</sup> Report at 38.

<sup>315/</sup> See the Act at § 105(c)(3) and the discussion of the Commission's authority to impose public interest requirements, including, as discussed earlier, requirements designed to ensure financial integrity.

<sup>316/</sup> Report at 39.

Commission notes that, pursuant to Section 108 of the Act, it has the authority to revoke an Electricity Supplier's license for cause.<sup>317</sup>

**ISSUE NO. 6:** WHAT IS THE PROPER PROCEDURE AND TIME FRAME FOR A SUPPLIER TO NOTIFY THE COMMISSION OF ADVERSE MATERIAL CHANGES, SHORT OF BANKRUPTCY PROCEEDINGS, TO ITS FINANCIAL CONDITIONS?

**a. Parties' Positions**

185. The Working Group recommends a 30-day period for updating changes to an application, as discussed at Section D, Issue No. 4 above. The Working Group also recommends that with respect to any bankruptcy proceeding, however, the Electricity Supplier should notify the Commission immediately.<sup>318</sup>

**b. Commission Decision**

186. The Commission agrees with and adopts the Working Group recommendation to require that an Electricity Supplier notify the Commission of any material adverse changes to the information provided in its application within 30 days of the occurrence. Consistent with our broad mandate under the Act to establish licensing procedures that are in the public interest, we find that current information is essential to our ongoing responsibility to protect energy consumers in the District.<sup>319</sup> The Commission also agrees with and adopts the Working Group recommendation that the Commission be notified immediately of any voluntary or involuntary bankruptcy proceedings against an Electricity Supplier. Therefore, we order that Electricity Suppliers shall notify the Commission in writing within 24 hours of the filing of any voluntary bankruptcy petition under any chapter of the Bankruptcy Code or within 24 hours of receiving notice of the filing of any involuntary bankruptcy petition under any chapter of the Bankruptcy Code. All notices shall, at a minimum, identify the Electricity Supplier and provide specific information as to the chapter of the Bankruptcy Code under which the bankruptcy was filed, the court in which the bankruptcy was filed, the court case number, and the date of filing.

**ISSUE NO. 7:** WHAT IS THE PROPER PROCEDURE AND TIME FRAME FOR A SUPPLIER TO NOTIFY THE COMMISSION ABOUT RELIABILITY PROBLEMS ENCOUNTERED BY THE SUPPLIER IN OTHER STATES?

**a. Parties' Positions**

187. The Working Group indicates that the Commission should define in some detail the nature of the reliability problems that the Commission wants reported to it. According to the Working Group, the nature of the problems in which the Commission should be interested are those that will affect the reliability of the service to be provided to consumers. The Working Group did

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<sup>317/</sup> Additionally, Section 108 empowers the Commission to, among other customer remedies, suspend/revoke licenses, impose civil penalties and order refunds to customers.

<sup>318/</sup> See the Preamble of the Act and § 105; Report at 40.

<sup>319/</sup> See the Preamble to the Act and § 105, which generally set forth the Commission's responsibility to establish licensing procedures.



not propose specific types of problems that should be reported to the Commission. Instead, the Working Group noted that the nature of the problems will “depend on the nature of the other areas in the country in which the applicant does business.”<sup>320</sup> Examples provided by the Working Group include the fact that failure to deliver capacity and energy to a PJM region will not likely prevent an in-region customer from obtaining electricity supply. It is likely, however, to have an economic impact, and may in extreme circumstances have a physical impact.<sup>321</sup> The Working Group notes that in non-PJM areas, failure to deliver capacity and energy as promised could result in an interruption of service.<sup>322</sup> Finally, the Working Group seeks the Commission’s assistance in defining the reliability problems that should be reported to the Commission.<sup>323</sup>

**b. Commission Decision**

188. The Commission notes that the Working Group in its February 8, 2000 report raised this issue, which the Commission adopted in Order No. 11637.<sup>324</sup> The Working Group asks for more clarification as to what types of service reliability problems encountered by Market Participants in other jurisdictions should be reported to the Commission. The Commission takes a broad view on this question. At a minimum, the Commission directs suppliers to advise us of all pending matters in other jurisdictions relating to service reliability and to which they are a party. This requirement should not be unduly burdensome to suppliers. Moreover, the information that is furnished to the Commission will be greatly useful to the industry and the public as we effectuate our orderly transition to a deregulated electricity supply marketplace.

189. The Commission has authority for setting reliability, quality of service, requirements to connect, storm damage requirements, and outage/restoration service measures at the distribution level. The Commission will still regulate the delivery functions of PEPCO.<sup>325</sup> With respect to reliability of the distribution network, for which PEPCO is responsible, PEPCO should file relevant reliability information with the Commission. For example, in Formal Case No. 982, the Commission directed the Productivity Improvement Working Group (“PIWG”) to investigate and to report on the adequacy of initiatives undertaken by PEPCO regarding outage problems and other power related emergencies. We would leave to the Working Group to decide exactly what other type of issues to report and in what time frame.

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320/ Report at 40.

321/ Report at 40.

322/ *Id.*

323/ *Id.*

324/ See Order No. 11637 at 10.

325/ See DCWASA Comments at 9.

**ISSUE NO. 8: WHAT PROCEDURAL RULES FOR COMPLAINTS, INVESTIGATIONS AND DISPOSITIONAL HEARINGS UNDER SECTION 108 OF THE ACT SHOULD BE PROMULGATED?**

**a. Parties' Positions**

190. The Working Group recommends the following standards, among others, in the Proposed ECPS for complaints, investigations and dispositional hearings: 1) establishing a toll-free telephone number with a customer service staff to receive and discuss customer inquiries, service requests and complaints; 2) referring unresolved complaints to outside entities for informal resolution; 3) using a formal complaint process if the complaint cannot be resolved by the outside entity informally; 4) establishing the formal process including discovery, hearing and a decision; and 5) allowing an appeal of the decision.<sup>326</sup>

**b. Commission Decision**

191. The Commission agrees with the Working Group that Sections 10, 11, and 12 of the Proposed ECPS should provide a comprehensive and workable framework for addressing complaints, investigations and hearings under Section 108 ("Investigation of Violations, Penalties For Violations") of the Act. Section 10 addresses a Market Participant's internal measures for customer inquiries and complaints. Sections 11 and 12 pertain to informal and formal adjudicatory procedures before the Commission. The Working Group, however, was unable to reach consensus on many of the issues in the Proposed ECPS, and, thus, the Commission has modified the Proposed ECPS, which is attached to this Order as Attachment A.

**E. Technical Implementation**

192. The Commission believes that the new market should be implemented in a fashion that incorporates appropriate technology to ensure that the market functions as smoothly as possible and for information to flow between all parties as quickly as possible. A properly functioning competitive market must be based upon the uninterrupted, quick exchange of information, and the Commission feels that the appropriate technology should be utilized to accomplish that task.

**ISSUE NO. 1: WHAT ARE APPROPRIATE ELECTRONIC DATA INTERCHANGE ("EDI") AND OTHER STANDARDS FOR SUPPLIER INTERACTION WITH PEPCO?**

**a. Parties' Positions**

193. The Working Group recommends the use of EDI and states that full EDI testing should be mandatory for all Electricity Suppliers entering the market in the District. The Working Group cites a number of reasons for its recommended use of EDI. For example, since EDI replaces the need for manual data entry and communications, the risk of errors is reduced. Further, EDI is faster and more accurate than other, more traditional methods of communication and data transfer, and therefore is a preferable electronic medium capable of handling the large volumes of data

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<sup>326/</sup>

Report at 40-41 and Report at Attachment 1– Proposed ECPS at 19-25.

exchange demanded by retail competition. According to the Working Group, EDI will also provide a reliable audit trail and more timely communications between PEPCO and Electricity Suppliers.<sup>327</sup>

**b. Commission Decision**

194. EDI is the electronic exchange of information between entities using standardized machine-processable, structured data formats, thereby providing a common link between the sender and receiver of business information.

195. The EDI transaction process is such that a party creates a business document, *e.g.*, a billing invoice, which is transmitted to a Value Added Network ("VAN") and then to the other party. The VAN is a highly secure electronic mailbox that is maintained by each party. The Working Group recommends that parties (PEPCO and Electricity Suppliers) be permitted to negotiate bilateral agreements regarding the transmission of EDI transaction sets, such that parties can mutually agree to EDI transmission alternatives other than VAN.

196. Since EDI requires precise transmission of transaction sets, with multiple transaction fields containing specific data such as customers name, address, account number, monthly usage, etc., the Working Group believes it is imperative that Electricity Suppliers and PEPCO undertake substantial testing before "going live" with the system.<sup>328</sup> Such testing would allow for the detection and correction of data transmission and transaction field errors prior to the actual exchanging of information. This testing requirement has been adopted in other states and would seem to be an essential procedure in this transition to retail competition in the District.

197. The use of EDI will provide a consistent and technologically efficient mechanism for the exchange of information among customers, Electricity Suppliers and PEPCO. The use of EDI, moreover, will insure that Electricity Suppliers entering the Mid-Atlantic market will be able to follow the same standards for the District that may be applicable in surrounding states.

198. For the reasons set forth above, the Commission adopts the Working Group recommendation that EDI be used, as well as the requirement that there be full EDI testing for all Electricity Suppliers entering the market in the District. The Commission also adopts the Working Group's recommendation that Electricity Suppliers and PEPCO be allowed to mutually agree to some other EDI transmission alternative to VAN. Prior to implementation of any such EDI transmission alternative, the Commission shall receive written notification.

**ISSUE NO. 2: HOW SHOULD BILLING AND SETTLEMENT RECORDS BE INDEXED?**

**a. Parties' Positions**

199. The Working Group unanimously agrees that the customer's account number should be used for indexing, billing and settlement records.<sup>329</sup> The account number will be the identifier that PEPCO and the Electricity Supplier will use to identify a customer.

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<sup>327/</sup> Report at 43-45.

<sup>328/</sup> See Report at 45.

**b. Commission Decision**

200. The Commission agrees with and adopts the Working Group recommendation that the customer's account number be utilized by PEPCO and the Electricity Supplier to identify the customer for indexing, billing and settlement records. We conclude that utilizing the account number is consistent with the requirement in the Act that consumers be provided an understandable and clear method for accessing their own information.<sup>330</sup>

**III. Additional Issues**

201. In addition to the issues submitted by the Working Group in its Report, the Commission's Order No. 11637 presented several additional issues on which the Working Group was to provide recommendations, but which are not discussed in the Report.

**A. Code of Conduct**

- 1) What provisions are required to ensure that non-discriminatory access is provided by PEPCO?
- 2) What provisions should govern PEPCO's affiliate transactions?

**a. Parties' Positions**

202. As discussed in Order Nos. 11637 and 11642, the Working Group recommends that until such time as a "Code of Conduct" is established for the District, PEPCO should apply the code of conduct adopted by the MDPSC to PEPCO's activities in the District.<sup>331</sup>

**b. Commission Decision**

203. While our Order No. 11637 sets forth specific "Code of Conduct" issues, we agree with the Working Group that it is acceptable on an interim basis to apply the Code of Conduct adopted by the MDPSC to PEPCO's activities within the District. We direct the Working Group to provide the Commission with a deadline by when it will submit recommendations on those issues that should be raised for Commission review and determination.

**B. Rates For Churches, Mosques and Synagogues in the District**

1. Should churches, mosques and synagogues be placed in a different rate class? If so, what rate class should that be, *e.g.*, the residential class?

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329/ See Report at 45.

330/ See the Preamble of the Act and § 104(c)(6)(b), which generally addresses the requirement that customer information be maintained an accessible to customers in an understandable manner.

331/ Order No. 11637 at 5.

2. Alternatively, should churches, mosques and synagogues be offered a rate discount or rate cap?

**a. Parties' Positions**

204. The Working Group contends that this issue has been addressed in the Unbundled Rate Settlement Agreement, which provides that no special rate treatment, either by class or discount, be accorded to churches, mosques and synagogues.<sup>332</sup>

**b. Commission Decision**

205. The Unbundled Rate Settlement Agreement, which is pending before the Commission specifically provides that churches, mosques and synagogues should not be placed in a different rate class or receive a rate discount.<sup>333</sup> We will defer action on this issue until such time as we consider the Unbundled Rate Settlement Agreement.

**IV. Other Matters**

206. By this Order, the Commission also adopts the following Attachments to this Order, some of which, as discussed herein above, have been modified from the proposals submitted by the Working Group with the Report.

**A. Attachment A – Interim ECPS**

**a. Commission Decision**

207. A majority of the issues are embodied in the Interim ECPS, attached hereto as Attachment A. on Consumer Protection Issues that are set forth above in Section A, we hereby approve and adopt the Interim ECPS contained in Attachment A to this Order. This will allow the Interim ECPS to take effect immediately.<sup>334</sup> We agree with the Working Group's recommendation that a Commission rulemaking procedure should be established in the future to amend the Consumer Bill of Rights, which currently applies only to PEPCO, to make the ECPS applicable to Electricity Suppliers and other Market Participants, where appropriate.<sup>335</sup>

208. The Working Group submitted the "Proposed ECPS," to "establish uniform standards for billing, security deposits, disconnections and reconnections of service, resolution of complaints by residential electricity customers, enrollment procedures, advertising by Electricity Suppliers, termination of contracts by Electricity Suppliers, and switching Electricity Suppliers."<sup>336</sup>

<sup>332/</sup> Tr. at 101-102.

<sup>333/</sup> See Unbundled Rate Settlement Agreement at 11.

<sup>334/</sup> Pursuant to § 43-403 of the D.C. Code.

<sup>335/</sup> Report at 3.

<sup>336/</sup> Proposed ECPS at 1 (note 6 added); for purposes of the Commission's adopted Interim ECPS, the application thereof shall be to small commercial customers in addition to residential customers.

The Working Group, however, could not achieve consensus on each standard. Accordingly, the Working Group carefully noted that there is not full agreement on all issues and standards, and that certain issues, such as aggregation and universal service, remain the subject of further group discussion.

**B. Attachments B, C, D and E Hereto -- Interim Supplier Application, Interim Licensing Standards, SCA and SCDF**

209. The Working Group submitted the following documents as attachments to the Working Group Report:

- Proposed Supplier Application (Attachment 2 to the Report) - requires Electricity Supplier applicants to provide information necessary for the Commission to determine whether the applicant should be licensed to provide service in the District;<sup>337</sup>
- Proposed Licensing Standards (Attachment 3 to the Report) - describes the application process, the process for an Electricity Supplier to cease providing service in the District, and Commission investigation and enforcement of license requirements;<sup>338</sup>
- Proposed SCA (Attachment 5 to the Report) - constitutes the agreement between the Electricity Supplier and PEPCO for the coordination of delivery services necessary to serve District consumers;<sup>339</sup> and
- Proposed SCDF (Attachment 7 to the Report) - constitutes the form that the Electricity Supplier will send to PEPCO informing PEPCO of the supplier's choice of Scheduling Coordinator.<sup>340</sup>

**a. Commission Decision**

210. We hereby approve and adopt the Interim Supplier Application and the Interim Licensing Standards in Attachments B and C to this Order. We adopt the Interim Supplier Application (Attachment B hereto) and Interim Licensing Standards (Attachment C hereto) until the final Supplier Application and final Licensing Standards are approved in a rulemaking proceeding to be conducted in the future. With regard to the SCA and SCDF, we accept the SCA and SCDF in Attachments D and E hereto as the final versions of those agreements.

**C. Attachment F Hereto -- EDITPA**

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337/ Report at 35.

338/ Report at 38.

339/ Report at 4.

340/ *Id.*

**a. Commission Decision**

211. As discussed previously in this Order, we accept the EDITPA in Attachment F of this Order as the final version of that agreement.

**D. DCWASA July 10, 2000 Supplemental Comments**

212. DCWASA requests that the Commission adopt the recommendations contained in DCWASA's Supplemental Comments with respect to issues that have not yet been resolved by the Working Group (*i.e.*, aggregation, market power).<sup>341</sup>

213. On July 20, 2000, OPC filed responsive comments to DCWASA's request. OPC states that DCWASA's comments are not responsive to the Commission's request for supplemental comments made at the June 30, 2000 hearing. OPC further notes that the Working Group has begun scheduling additional meetings to address the issues raised by DCWASA. OPC requests that the Commission reject DCWASA's request.<sup>342</sup>

**b. Commission Decision**

214. The Commission agrees with OPC that DCWASA's recommendations are not responsive to the Commission's request for supplemental comments made at the June 30, 2000 hearing. Moreover, DCWASA's request is unnecessary and has been raised prematurely the issues of aggregation, market power, and others remain subject to further Working Group negotiations. The Commission hereby rejects DCWASA's request.

**E. Proprietary and Confidential Information**

215. The Proposed Supplier Application (in Attachment B) contains provisions as to the treatment of information designated as confidential by an applicant.<sup>343</sup> Additionally, language regarding this matter is contained in Section .03(16),<sup>344</sup> in the Proposed Licensing Standards as

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341/ DCWASA Supplemental Comments at 112.

342/ OPC July 20, 2000 Comments at 1-6.

343/ Report at Attachment 2 – Proposal Supplier Application at 1.

344/ Section .03(16) of Attachment 3 to the Report reads as follows:

In its application, the applicant may designate documentation provided in response to Sections 4d and 14 of the application related to ownership of the Applicant's corporation (to the extent such information is not already public) and financial information as confidential information. The Commission may, however, order release of this information upon request of an interested party. If such request is made, the Applicant shall have the burden of proving the confidential nature of the information. The Commission will notify the Applicant of any request for release of this information and will permit the Applicant to respond to the request through written motion filed with the Commission prior to the Commission's determination of the request. In the alternative, the requesting party may obtain the information from the Applicant by signing a confidentiality agreement mutually agreeable to the Applicant and the requesting party. Applicant

Attachment 3 to the Report. We designate this as being a considerable, non-consensus issue notwithstanding that the Working Group failed to identify it as an issue to be addressed.

216. Section .03 of Attachment 3 to the Report addressed the treatment of corporate and financial information designated as confidential by an applicant (Electricity Supplier).<sup>345</sup> Such information may be provided by the applicant in response to Section 4d<sup>346</sup> and 14<sup>347</sup> of the application. The issue is whether, and under what circumstances, the Commission should allow the documentation to be released to an interested party having requested the information.

**a. Parties' Positions**

217. The Report does not include a recommendation on the handling of proprietary and confidential information, since it was not a designated issue to be addressed by the Working Group. The Working Group, however, includes in Attachment 3 to the Report a paragraph addressing this matter designated as Section .03(.16). Additionally, OPC and Washington Gas provide comments on the confidentiality issue in their Commission filings.

218. OPC supports the proposed language of Section .03(.16) stating that the sharing of information through a confidentiality agreement is a well-established practice and far more efficient than filing formal pleadings with the Commission.<sup>348</sup> OPC opines that it, and other parties with legitimate concerns, should be allowed to review financial and other information to ensure the financial integrity of an applicant. OPC further acknowledges that this process would be pursuant to a mutually agreeable confidentiality agreement between the parties to protect information deemed confidential by the applicant from disclosure. OPC reiterates its view that the language in Section .03(.16) is necessary and should not restrict the ability of an applicant to refuse to disclose certain information.<sup>349</sup> OPC further suggests that the Commission clarify in its Order the circumstances under which an applicant can restrict access to information.

219. Washington Gas opposes generally the proposed language for Section .03(.16), especially the "alternative" language appearing at the end of the Section. Further, Washington Gas

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shall not unreasonably withhold access to confidential information if a requesting party agrees to sign a confidentiality agreement.

<sup>345/</sup> Report at Attachment 3 – Proposed Licensing Standards at 8.

<sup>346/</sup> Section 4(d) of Attachment 2 of the Report requires an Applicant to provide the following information: the names and addresses of all persons and entities that directly or indirectly own ten percent (10%) or more of the ownership interests in the Applicant, or have the right to vote ten percent (10%) or more of the Applicant's voting securities, or who otherwise have the power to control the Applicant.

<sup>347/</sup> Section 14 of Attachment 2 of the Report requires the Applicant to provide documentation including balance sheets and income statements; balance sheets and income statements of a parent guarantor (if applicable); evidence of good standing as an Electricity Supplier in another jurisdiction; credit reports or ratings; a current long-term bond rating; the organizational structure of the Applicant; evidence of general liability insurance; and other evidence of financial integrity.

<sup>348/</sup> OPC Initial Comments at 36 and 37.

<sup>349/</sup> OPC Reply Comments at 28.



interprets the proposed last sentence of Section .03(.16)<sup>350</sup> as “requiring an applicant to provide confidential information to an entity, even competitors, upon presentation of a confidentiality agreement.”<sup>351</sup> Washington Gas contends that even with the execution of a “mutually agreeable” confidentiality agreement, an applicant should be allowed to oppose the disclosure of confidential information.<sup>352</sup>

**b. Commission Decision**

220. Preserving confidentiality over sensitive and proprietary information is a matter of serious and well documented concern to the Commission. The Commission is charged with the legal duty to not only protect consumer interests, but also to protect the rights and interests of all parties that are before the Commission. Accordingly, the Commission finds that the provisions proposed in Section .03(.16) should be included, in part, as a means to ensure the integrity of the licensing process in the District. While OPC supports all the proposed language in Section .03(.16), Washington Gas opposes the last two sentences that address the “alternative.” The Commission finds the proposed provisions of Section .03(.16) to be consistent with historic practice without the need to include the last two sentences addressing the “alternative.” The Commission agrees with Washington Gas that an applicant should be allowed to oppose disclosure of confidential information.

221. The Commissions accepts the proposed language of Section .03(.16), with the deletion of the last two sentences, beginning with the words . . . “In the alternative.” This provision is included in Attachments B and C to this Order.

**THEREFORE, THE COMMISSION ORDERS THAT:**

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

223. The Interim ECPS, Interim Supplier Application and Interim Licensing Standards in Attachments A, B and C of this Order are hereby approved and adopted, and shall be effective until a final ECPS, a final Supplier Application and final Licensing Standards are approved in a rulemaking proceeding to be conducted by the Commission in the future.

224. The SCA, SCDF and EDITPA in Attachments D, E and F to this Order are hereby accepted as the final versions of those agreements.

225. A competitive, retail, electricity-supply market ‘Pilot Program’ shall be established that is open, from its inception, to all residential consumers in the District.

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<sup>350/</sup> The proposed last sentence of Section .03(.16) reads as follows: “Applicant agrees by filing this Application not to unreasonably withhold access to confidential information if a requesting party agrees to sign a confidentiality agreement.”

<sup>351/</sup> Washington Gas Comments at 11.

<sup>352/</sup> Washington Gas Reply Comments at 9.

226. All master-metered customers shall be treated as commercial customers for purposes of implementing retail competition.

227. Independent, third-party verification shall be required for all telephone contracts made with residential customers, and all telephone contracts shall be recorded and preserved for a period of two years from the date of the recording.

228. Independent, third-party verification of all telephone contracts may occur in either a separate telephone call or at the conclusion of the Electricity Supplier's call to the prospective customer.

229. Independent, third-party verification of all telephone contracts shall be required throughout the Pilot Program and shall be reviewed at a later date for its continued necessity and effectiveness following the Pilot Program.

230. Residential customers may change back and forth from Electricity Supplier service to SOS as often as they wish.

231. AOBA's proposed definition of "small commercial customer" is adopted.

232. Small commercial customers will not have the same flexibility as residential consumers in switching suppliers during the Pilot Program.

233. Once the parties have acquired more experience with respect to seasonal gaming (during the Pilot Program), the Commission directs the parties to submit their finding and supporting data to the Commission no later than October 1, 2001.

234. Market Participants must obtain customer consent, in writing, prior to release or disclosure of customer information and must retain the customer's written consent indefinitely.

235. An Electricity Supplier may utilize a variety of contracting methods with customers, including telephone, Internet and direct mail.

236. Upon contracting with a new customer, an Electricity Supplier must immediately send to PEPCO an EDI Enrollment Transaction.

237. A residential customer will have a 10-day rescission period beginning from the date (on the letter or other form of official communication) notifying them of their enrollment with their selected Electricity Supplier.

238. PEPCO will send the letter notifying the customer of his or her right to rescind their selection of Electricity Supplier the next business day following the day that PEPCO receives the EDI enrollment. If, as of the Initial Implementation date, any Party to the Working Group or the group as a whole wishes to propose an alternative entity, other than PEPCO, to send this letter, such an application may be made to the Commission.

239. The "first-in" priority shall apply to customer enrollment, pursuant to which the customer must rescind its currently effective supply contract and then sign a new supply contract.

240. Customers will remain with their current Electricity Supplier or SOS provider, when their order to be changed to a new supplier is not processed.

241. The meter read date is the starting date for new service.

242. A residential customer's order to switch to a new Electricity Supplier must be submitted at least 17 days prior to that customer's next meter read date. *By December 1, 2000*, the Commission orders the Working Group to make recommendations to the Commission on how to erase the technical infeasibilities relating to "seamless customer moves."

243. Only PEPCO will have the authority to disconnect a customer for non-payment of PEPCO regulated service.

244. Residential and small commercial customer deposits should be limited to the lesser of \$100 (one hundred dollars), or twice the amount of the maximum bill incurred by a customer over a 12-month period.

245. Commercial and industrial customers may negotiate their own individual deposits with their respective Electricity Suppliers.

246. *Within 30 days of the date of this Order*, the Working Group shall submit to the Commission consensus recommendations regarding the manner in which deposits should be processed.

247. Electricity Suppliers' advertising to, and solicitation of, customers shall meet the following standards: 1) advertisements shall not be false or misleading; 2) information in advertisements must be clear, accurate and supported by the Electricity Supplier; 3) solicitations to customers must contain all material terms and conditions of the service offered; 4) Electricity Suppliers may solicit customers in a number of ways, including the Internet; 5) telephone solicitations must convey certain standard information and be conducted during certain hours of the day; and 6) Electricity Suppliers must maintain and honor their own "do not call list."

248. Electricity Suppliers must ask potential customers, at the beginning of any telephone solicitation, if they wish to hear the full solicitation.

249. *Within 60 days of the date of this Order*, the Working Group shall provide the Commission with a recommendation for monitoring market power. Individual parties may submit non-consensus recommendations by that same date.

250. Cramming and slamming are strictly prohibited.

251. Under Section 10 of the Interim ECPS, Market Participants must: 1) establish prompt and efficient procedures to address customer inquiries and complaints, 2) set up toll-free numbers and staffing handling customers' calls, 3) make reasonable efforts to ensure non-English speaking customers are assisted, and 4) create a mechanism whereby adjustments to customer bills will be promptly handled.

252. *Within 45 days of the date of this Order*, the Working Group shall submit to the Commission comprehensive recommendations arising out of its continued negotiations on Issue Nos. 20 through 24 of Section A herein regarding aggregation.

253. *By September 29, 2000*, the Working Group shall, in concert with the consumer education consultants, submit consumer education recommendations.

254. The Commission will make a determination regarding how much funding should be allocated for customer education after such costs have been identified.

255. The Commission will make a specific determination as to PEPCO's method for recovering customer education costs at such time as such cost recovery is sought.

256. The process to implement unbundled rates shall be addressed in the unbundled rate proceeding of this Phase II.

257. Electricity Suppliers must disclose to customers all billing options that are available to the customer at the time the customer makes its choice of billing options.

258. Disclosure of all billing options must be made prior to the time the customer and the Electricity Supplier reach agreement on a contract for supply. Until consolidated Electricity Supplier billing is available in the District, Electricity Suppliers must inform customers of their right to select either consolidated bills from PEPCO or separate bills from PEPCO and the Electricity Supplier.

259. *By November 1, 2000*, the Working Group shall report to us regarding the date upon which the provision of consolidated billings by Electricity Suppliers will be technically feasible and available in the District.

260. PEPCO shall be required to provide billing service in a bill-ready format to the Electric Supplier.

261. PEPCO will make billing available in a rate-ready format under terms negotiated between the Electricity Supplier and PEPCO.

262. Issues regarding the reasonableness and level of PEPCO's proposed charge or credit for billing services will be addressed in the unbundled rate phase of this proceeding.

262. Electricity bills shall contain the following information:

- Meter readings - current, prior month's and differences between the two may be presented in the same place
- Meter reading date - may be presented in a single place on a consolidated bill
- Number and kind of units measured
- Applicable rate schedule
- Taxes and surcharges - each appropriate tax and surcharge will be separately displayed
- Notice of potential late payment charges

- Total due - for consolidated bills, show subtotals for PEPCO and Electricity Supplier portions and a total due
- Payment due date - if separate bills, then payment dates may differ
- Estimated bills - distinctive indication if bill is based on estimated meter reading
- Business address and telephone numbers for billing inquiries
- Conversion from meter reading units to billing units - show computation
- Service address - show on first page of bill
- Mailing address - show on first page of bill
- Customer name and account number - show on each page if multiple pages
- Bill payment plans (if applicable)
- Emergency number for PEPCO
- Required notices - *e.g.* Consumer Bill of Rights, legal notices - may be an insert
- Next meter reading date
- Prior bill amount and summary of Electricity Supplier and/or PEPCO charges
- Disclosure of previous payment activity
- Meter number/identifier
- Number of days in billing cycle
- Seasonal rate notice
- Billing period
- PSC address and telephone number
- Address to where payments are sent
- To whom the check is payable
- The customer's name on each page of the bill
- Collection messages pertaining to regulated services
- Bill step computations
- The date the bill was issued.
- OPC's name and phone number

263. Electricity suppliers are not required at this time to place historic consumption data on customer bills.

264. Deposit information need not be included on bills.

265. *By November 1, 2000*, the Working Group shall provide its recommendations on whether and in what form that PEPCO and Electric Suppliers should be required to include historical consumption data on customer bills.

266. Electricity Suppliers will ensure that the fonts on bills are legible and compliant with the Americans With Disabilities Act.

267. *By November 1, 2000*, the Working Group shall provide recommendations concerning how to assist customers in making appropriate and accurate rate comparisons, including recommendations as to whether EDI is feasible for this purpose.

268. The following components may be included on bills:

- Scan lines
- Bill messages
- Multiple services (e.g., gas)
- Merchandise/option payments
- Third party notifications
- Summary bill (charges to a customer that has services at multiple premises)
- Bill control number
- Rendition group number
- Federal ID number
- Optional billing components for non-electric services

269. For partial payment processing, payments should be made in the following order: PEPCO arrearage amounts; Electricity Supplier arrearage amounts; PEPCO current amounts; and Electricity Supplier current amounts.

270. The entity providing the taxable service shall be responsible for collecting and remitting the applicable tax to the appropriate authority, regardless of which entity provides the billing service.

271. *By October 16, 2000*, the Working Group shall file its conclusions regarding new services that are to result from competition and the allocation of costs for those services.

272. Electricity Suppliers must pass EDI testing requirements, demonstrate an ability to render a consolidated bill, and meet Commission and PEPCO credit standards as they relate to consolidated billing.

273. The billing party shall be required to purchase the accounts receivable of the non-billing party if the consolidated bills are not rendered in a timely manner.

274. The consensus aspects of the Proposed Supplier Application contained in the Report are approved and are incorporated in the Interim Supplier Application in Attachment B of this Order.

275. Brokers and aggregators who do not take title to the energy need not complete certain parts of the Interim Supplier Application, as reflected in the Interim Supplier Application in Attachment B of this Order.

276. PEPCO shall not be subject to the licensing requirements of Section 105 of the Act.

277. The Commission will seek to verify the financial integrity of each applicant, and will review the applicant's experiences in other states.

278. The Commission will determine, on a case-by-case basis whether a bond, limited guarantee, letter of credit or other surety will be required and the amount of any such surety.

279. If a bond is required of an Electricity Supplier, the bond will cover deposits and prepayments exclusively.

280. *By October 16, 2000*, the Working Group shall file its recommendations concerning bonding standards, including appropriate amounts for bonds or other forms of financial instruments.

281. The Commission will begin to accept applications from potential Electricity Suppliers on October 1, 2000.

282. The Electricity Supplier application fee shall be \$400.00 but subject to change based upon the Commission's further assessment of the application process.

283. There shall be no Electricity Supplier license renewal process.

285. All Electricity Suppliers' applications shall be updated annually, within 120 days of the licensee's fiscal year.

286. To the extent that substantive information submitted in the license application changes, the Electricity Supplier shall file those changes with the Commission within 30 days of the occurrence of such changes.

287. The Commission shall review and rule upon each Electricity Supplier license application within 45 days of filing.

288. An Electricity Supplier shall notify the Commission of any material adverse changes in its financial condition within 30 days of occurrence.

289. An Electricity Supplier shall notify the Commission in writing within 24 hours of the filing of any voluntary bankruptcy petition under any chapter of the Bankruptcy Code or within 24 hours of receiving notice of the filing of any involuntary bankruptcy petition under any chapter of the Bankruptcy Code. All such notices shall, at a minimum, identify the Electricity Supplier and shall provide specific information as to the chapter of the Bankruptcy Code under which the bankruptcy was filed, the court in which the bankruptcy was filed, the court case number, and the date of filing.

290. Electricity Suppliers shall notify the Commission of any action or proceeding related to overall reliability of electric services and Electricity Suppliers.

291. With respect to distribution network reliability, PEPCO must file relevant reliability information with the Commission.

292. EDI shall be used by PEPCO and Electricity Suppliers, and there shall be full EDI testing for all Electricity Suppliers entering the market in the District.

293. Electricity Suppliers and PEPCO shall be allowed to mutually agree to some other EDI transmission alternative to VAN. Prior to implementation of any such EDI transmission alternative, the Commission shall receive written notification.

294. A customer's account number shall be utilized by PEPCO and the Electricity Suppliers to identify the customer for indexing, billing and settlement records.

295. The code of conduct adopted by the MDPSC shall apply to PEPCO's activities within the District on an interim basis.

296. The Working Group shall provide the Commission with a deadline by which it will submit recommendations to the Commission regarding a final code of conduct for PEPCO.

297. The Commission's order on the Unbundled Rate Settlement Agreement will address the issue of whether or not churches, mosques and synagogues should be placed in a different rate class or receive a rate discount.

298. A Commission rulemaking procedure shall be initiated in the future to amend the Consumer Bill of Rights, which currently applies only to PEPCO, to make the ECPS applicable to Electricity Suppliers and other Market Participants.

299. DCWASA's request with respect to issues that remain outstanding to the Working Group is hereby rejected.

300. The Commission approves language proposed for Section .03(.16) of the Proposed Licensing Standards, regarding confidential information, with the deletion of the last two sentences that begin with the words: "In the alternative."

**A TRUE COPY:**

**CHIEF CLERK**

**BY THE DIRECTION OF THE  
COMMISSION:**

  
**JESSE P. CLAY, JR.  
COMMISSION SECRETARY**



## ATTACHMENT A

### INTERIM ELECTRIC CONSUMER PROTECTION STANDARDS<sup>1</sup>

#### I. PURPOSE AND APPLICABILITY

##### 1-1. Purpose

The purpose of the Electric Consumer Protection Standards ("ECPS") is to establish uniform standards for billing, security deposits, disconnections and reconnections of service, resolution of complaints of residential and small commercial electricity customers, enrollment procedures, advertising by Electricity Suppliers, termination of contracts with Electricity Suppliers, and switching Electricity Suppliers.

##### 1-2. Applicability

- A. These standards apply to service provided to residential customers and, unless otherwise indicated, small commercial customers by electric generation suppliers, marketers, aggregators, and consolidators licensed to provide competitive electricity services by the Public Service Commission of the District of Columbia.
- B. These standards are not applicable to the Electric Company as the provider of Standard Offer Service or distribution services. The Electric Company continues to be subject to the Utility Consumer Bill of Rights.

##### 1-3. Definitions

**Aggregation Program:** any system developed by an Aggregator for organizing customers into a single purchasing unit.

**Aggregator:** a person who acts on behalf of customers to purchase electricity. To "act on behalf of customers" means that a person acts with the express authorization of customers to purchase electricity on those customers' behalf, and receives direct or indirect compensation or benefit in any form from any entity.

**Billing Month:** the service period as determined by the Electric Company.

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<sup>1</sup> These Standards are not intended to be exhaustive, particularly in light of the fact that the Working Group has not discussed issues such as aggregation, universal service, etc.

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**Broker:** a person who acts as an agent or intermediary in the sale and purchase of electricity but who does not take title to electricity.

**Commission:** the Public Service Commission of the District of Columbia.

**Competitive Billing:** the right of a customer to receive a single bill from the Electric Company ("Electric Company consolidated bill), a single bill from the Electricity Supplier ("Electricity Supplier consolidated bill) or separate bills from the Electric Company and the Electricity Supplier ("dual bills).

**Confirmation:** (A) Confirmation of a telephone application for enrollment of a residential customer refers to action taken by an Independent Third-Party Verifier wherein the Independent Third-Party Verifier must contact the customer to confirm the residential customer's decision to switch Electricity Suppliers. (B) Confirmation of an electronic application for enrollment occurs when the Electricity Supplier sends an electronic response to the customer confirming that the application for enrollment was intended and received. (C) There is no confirmation process applicable to written applications for enrollment.

**Consolidator:** any owner of or property manager for multi-family residential, commercial office, industrial, and retail facilities who combines more than one property for the primary purpose of contracting with an Aggregator or Electricity Supplier provider for electric energy services for those properties, and who: (A) does not take title to electric energy; (B) does not sell electric energy to buildings not owned or managed by such owner or property manager; (C) does not offer aggregation of electric energy services to other, unrelated end-users; and (D) arranges for the purchase of electric energy services only from duly licensed Electricity Suppliers or Aggregators.

**Consumer:**<sup>2</sup> a user of electricity service in the District of Columbia.

**Cramming:** the unauthorized addition of services or charges to a customer's existing service options.

**Customer:**<sup>3</sup> a purchaser of electricity service for end use in the District of Columbia.

**Customer Choice:** the right of Electricity Suppliers and customers to use and interconnect with the electric distribution system on a nondiscriminatory basis in order to facilitate the distribution of electricity from any Electricity Supplier to any customer. Under this right, customers shall have the opportunity to purchase electricity supply from their choice of

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<sup>2</sup> For the purposes of these standards only.

<sup>3</sup> For the purposes of these standards only.

## ATTACHMENT A

licensed Electricity Suppliers or to purchase Standard Offer Service from the Electric Company.

**Deposit:** any payment made by a customer to an Electricity Supplier to secure the Electricity Supplier against the customer's nonpayment or default.

**Disconnection:** refers to physical disconnection of an electric service by the Electric Company. This is distinguished from termination of a contract by an Electricity Supplier.

**EDI Enrollment Transaction:** Electronic Data Interchange is the electronic exchange of information between entities using standardized, machine-processable, structured data formats. EDI transactions are governed by a standard (ASC X12) developed by the American National Standards Institute (ANSI). The ANSI chartered the Accredited Standards Committee (ASC) X12 to develop uniform standards for inter-industry electronic interchange of business transactions. ASC X12 develops, maintains, interprets, publishes and promotes the proper use of American National Electronic Data Interchange Standards. The X12 standards facilitate transactions between the Electric Company and Electric Suppliers. Thus, each Electric Supplier will communicate with the Electric Company using the same language. The "EDI enrollment transaction" is a term used to describe a business document (a customer enrollment document) which is created by one of the parties. Such business document will be used to communicate the customer enrollment (supplier selection) information between the Electric Company and the Electricity Supplier.

**Electric Company:**<sup>4</sup> the company that provides customers Standard Offer Service and distribution service.

**Electricity Supplier:** a person, including an Aggregator, Broker, or Marketer, who generates electricity, sells electricity, or purchases, brokers, arranges, or markets electricity for sale to customers. The term excludes the following: (A) building owners, lessees, or managers who manage the internal distribution system serving such building and who supply electricity solely to occupants of the building for use by the occupants; (B)(i) any person who purchases electricity for its own use or for the use of its subsidiaries or affiliates; or (ii) any apartment building or office building manager who aggregates electric service requirements for his or her building(s), and who does not: (I) take title to electricity; (II) market electric services to the individually-metered tenants of his or her building; or (III) engage in the resale of electric services to others; (C) property owners who supply small amounts of power, at cost, as an accommodation to lessors or licensees or the property; and (D) a Consolidator.

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<sup>4</sup> For the purposes of these standards only.

## ATTACHMENT A

**Enrollment:** the process in which the Electric Company receives and processes the notification from the Electricity Supplier that a customer has entered into a contract for the supply of electricity.

**Independent Third-Party Verifier:** a person retained by individual Electricity Suppliers to contact the residential customer to confirm the customer's decision to enter into a contract for the supply of electricity.

**License:** the authority granted by the Commission to a person to do business as an Electricity Supplier in the District of Columbia.

**Market Participant:** any Electricity Supplier (including an affiliate of the Electric Company) or any person providing billing services or services declared by the Commission to be Potentially Competitive Services.

**Marketer:** a person who purchases and takes title to electricity as an intermediary for sale to customers.

**Person:** any individual, corporation, company, association, joint stock company, association, firm, partnership, or other entity.

**Potentially Competitive Services:** a component of electric service (other than electricity supply and billing) determined by the Commission to be suitable for purchase by customers from alternative sellers under Section 104(e) of the Retail Electric Competition and Consumer Protection Act of 1999.

**Rescission Notice:** a letter issued by the Electric Company to the customer via U.S. Mail notifying the customer of their right to rescind the contract entered into with the Electricity Supplier within the Rescission Period.

**Rescission Period:** a ten-day period of time within which the customer may choose to rescind its contract for electric service with the Electricity Supplier.

**Residential Customer:** any customer served under Potomac Electric Power Company ("PEPCO") Rate Schedule DC-R, DC-AE, DC-R-TM, or DC-R-TM-EX, as proposed by PEPCO in Formal Case No. 945, subject to any revisions made to those tariff sheets by the Commission.

**Slamming:** the unauthorized switching of a customer's Electricity Supplier.

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**Small commercial customer:** 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. Small commercial customers exclude accounts on the above rate schedules in (1) apartment buildings with four or more units; (2) commercial office buildings or (3) accounts owned or managed by a Consolidator.

**Solicitation:** A communication in any medium that includes an opportunity to contract for receipt of electricity from an Electricity Supplier.

**Standard Offer Service:** electric service made available on or after the initial implementation date to (A) Customers who cannot arrange to purchase electricity from an Electricity Supplier; and (B) Customers who do not choose an Electricity Supplier.

**Termination of Contract:** cessation of the contract for the supply of electricity between an Electricity Supplier and the customer. Upon termination of the contract with the Electricity Supplier, the customer will receive their electricity supply under Standard Offer Service as provided by the Electric Company, subject to the time requirements set by the Electric Company, or from another Electricity Supplier.

**Utility Consumer Bill of Rights:** refers to the Commission's *Consumer Bill of Rights*, adopted as regulations by the PSC in the D.C. Mun. Regs. tit. 15, Chapter 300.

## II. PROHIBITED ACTIVITIES

### 2-1. Discrimination Prohibited

- A. A Market Participant shall not discriminate against any customer based wholly or partly on the race, color, creed, national origin, geographic location, sex, or sexual orientation of the customer, or for any arbitrary, capricious, or unfairly discriminatory reason.
- B. A Market Participant shall not refuse to provide service to a customer except by the application of standards that are reasonably related to the Market Participant's economic and business purposes.
- C. A Market Participant shall not discriminate against or penalize a consumer or customer for exercising any right granted by these rules.

### 2-2. Unlawful Trade Practices Prohibited

Whether or not any customer is in fact misled, deceived or damaged thereby, a Market Participant shall not:

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- A. Represent that the Market Participant has a sponsorship, approval, status, affiliation, certification, or connection that the Market Participant does not have;
- B. Misrepresent as to a material fact, which has a tendency to mislead;
- C. Fail to state a material fact if such failure tends to mislead;
- D. Disparage the goods, services, or business of another Market Participant or the Electric Company by false or misleading representations of material facts;
- E. Make false or misleading representations of fact concerning the reasons for, existence of, or amounts of price reductions, or the price in comparison to the price of competitors or one's own price at a past or future time;
- F. Harass, or threaten a customer with any act other than legal process, either by telephone, cards, or letters;
- G. Knowingly take advantage of the inability of the consumer reasonably to protect his or her interests by reasons of age, physical or mental infirmities, ignorance, illiteracy, or inability to understand the language of the agreement, or similar factors; or
- H. Pass off its services as those of another.

### **2-3. Cramming Prohibited**

- A. Absent the express consent of the customer, a Market Participant may not add services or charges to a customer's existing retail electric service options.

### **2-4. Slamming Prohibited**

- A. An Electricity Supplier may not switch a customer's Electricity Supplier absent the express consent of the customer.
- B. In order to effectuate a binding and enforceable switch, the Electricity Supplier must comply with the rules pertaining to solicitation, contracting and enrollment procedures, as set forth in Sections III and IV, *infra*.

### **2-5. Prohibition of Disclosure of Account Status**

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- A. A Market Participant shall not disclose information which reveals the status of the account of any individual customer without the customer's consent.
- B. A Market Participant may rely upon the representation, oral or written, of the staff of the Commission or the Office of the People's Counsel ("OPC") that consent has been granted for purposes of dispute resolution.

### **2-6. Prohibition of Disclosures and Using Information About A Customer for Unauthorized Purposes**

- A. Unless a customer consents in writing, a Market Participant may not disclose information that: (1) is about the customer and (2) was supplied to the Market Participant by the customer.
- B. Unless a customer consents in writing, a Market Participant may not use information that is (1) about the customer; and (2) was supplied to the Market Participant by the customer for any purpose other than the purpose for which the information was originally acquired.
- C. The restrictions in (A) and (B) do not apply to lawful disclosures for bill collection or credit rating reports.
- D. It shall be the responsibility of the Market Participant to obtain and maintain the written consent referred to in (A) and (B). This information shall be made available to the Commission upon request.

## **III. ADVERTISING AND SOLICITATION**

### **3-1. Prohibition Against False and Misleading Advertising**

All advertising of electric supply must be neither false nor misleading.

### **3-2. Information Contained in Advertisements Must be Clear, Accurate and Supportable**

- A. Any advertisement that contains specific environmental claims must be supportable by competent evidence.
- B. Any advertisement that contains any specific statement, claim, comparison or assertion regarding rates, specific contract provisions, or similar service details that could reasonably be construed as an attempt to persuade consumers that any component of one company's offering is better than the comparable component of another company's offering must include:

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1. The precise rate for service offered, including a disclosure that this rate is for generation and transmission, and that the total rate for electric service will be higher. If the precise rate for service offered is not available because it is part of a bundled package, then the disclosure shall be in accordance with Sec. 3-3 (B) *infra*.
2. Any restrictions on the time of day the advertised rate will be in effect. If the advertised rate is for any period other than 24-hour service, seven (7) days a week, the advertisement must state that period and state that rates different than the advertised rates may be in effect outside the advertised period.
3. Any fees and charges, other than for electric generation and transmission, which will automatically be charged to consumers who contract for the advertised service; and
4. Any minimum contract duration necessary to obtain an advertised rate.

### 3-3. Solicitations Must Contain All Material Terms and Conditions

A. Any solicitation must contain all material terms and conditions, including, but not limited to, the following:

1. Company name, address, telephone number, and web site address (if applicable);
2. Itemization of services provided, including minimum use requirements;
3. Unit price (if not a flat rate, then it must be on a cents per kWh basis);
4. Notice that generation and transmission as opposed to distribution service is being offered;
5. Description of proposed contract terms;
6. Duration of the agreement (including initial time period, rollover provisions with mandatory 60-day notice, and early cancellation penalties);
7. Notice that there may be a deposit required, including the amount of the deposit, return procedures, use of and protection for such deposits;
8. All applicable fees and charges and the circumstances under which the customers will incur them;
9. Notice concerning early termination by the supplier and the options open to the customer if termination occurs;
10. Notice concerning early termination by the customer and the options open to the customer if termination occurs; and
11. Notice of right to rescission and
12. The Electricity Supplier's license number; or a statement that the Electricity Supplier's license application has not yet been approved by the Commission; or a



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statement that the Electricity Supplier has not yet filed a license application with the Commission.

- B. If the Electricity Supplier is providing bundled services and does not break out the individual rates for services in its solicitation, the following disclaimer must accompany the solicitation:

**Disclaimer:** The seller has chosen to offer you several services at a single rate, without breaking out the costs to you of each individual service. You should compare the “bundled” rate for the services offered you to the total of the rates you currently pay for each of the individual services in order to understand precisely whether your actual costs will be higher or lower than you currently pay.

### 3-4. Forms of Solicitations Allowed

An Electricity Supplier may solicit customers for enrollment in several ways, including telephone inquiries, radio advertisements, print advertisements, door-to-door solicitations, electronic advertisements (*i.e.*, Internet), newspaper advertisements, and written solicitations.

### 3-5. Telephone Solicitations of Customers

- A. Telephone solicitations shall be limited to the hours between 9 a.m. and 8:30 p.m.
- B. The soliciting party must, within the first minute of the telephone call, convey the following:
1. The name of the business or organization calling;
  2. The nature of the call, *i.e.*, a solicitation;
  3. A brief description of the subject-matter being solicited; and
  4. Ask the customer if he or she would like to hear the full solicitation.

### 3-6. Do-Not-Call List

- A. Each Electricity Supplier must maintain its own “Do Not Call” List. If an Electricity Supplier receives a request from a customer not to receive calls from that solicitor, the customer’s name must appear on the list and the customer shall no longer be contacted by the solicitor.
- B. A customer will remain on the “Do-Not-Call” list for three (3) years or until the customer affirmatively requests that he or she be removed from the list, whichever occurs sooner.

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- C. Every six (6) months, each Electricity Supplier must provide an updated version of its "Do Not Call" List to the Commission.
- D. If a customer has a complaint about a violation of this section, the complaint procedures in Sections 11 and 12 of these standards apply.
- E. Any Electricity Supplier that violates this section is subject to the sanctions contained in the Interim Supplier Licensing Standards, including license revocation.
- F. Nothing in these regulations will affect, directly or indirectly, the applicability of any Federal or District telephone solicitation and consumer protection laws and regulations, including but not limited to, the fines and penalties there under for violation of such laws and regulations.

### **IV. CONTRACTING**

#### **4-1. Forms of Contracting**

There are three (3) principal forms by which a customer may enter into a contract with an Electricity Supplier: (1) over the telephone, (2) electronically (*i.e.*, Internet, electronic mail), and (3) a written contract.

#### **4-2. "Negative Option Contracts" Prohibited**

Electricity Suppliers may not use "negative option contracts," which, in their simplest form, are contracts which are created if the customer takes no action. Stated differently, a customer may not enter into a contract with an Electricity Supplier by simply refraining from action.

#### **4-3. Telephonic Contract**

- A. If the customer who has been solicited by telephone wishes to enter into a contract with the Electricity Supplier, the Electricity Supplier may request from the customer the following information:
  - 1. the customer's name,
  - 2. billing address,
  - 3. service address,
  - 4. electronic mail address,
  - 5. telephone number,
  - 6. account number,
  - 7. employment information,
  - 8. name of anyone else responsible for the bill, and

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9. usage information.
- B. The Electricity Supplier may ask for additional information only after first informing the customer of his or her right not to provide such information.
- 4-4. Telephonic Contract: Independent Verification Required For Residential Customer Contracts**
- A. An independent third-party verification system shall be implemented to procure independent verification of a residential customer's intent to switch Electricity Suppliers. Independent third-party verification will only be required for telephone contracts. Each Electricity Supplier is responsible for contracting with an Independent Third-Party Verifier to verify contracts received telephonically. Alternatively, Third Party Verification may occur in a separate telephone call.
- B. Once the customer has entered into a contract with the Electricity Supplier, the Electricity Supplier may then transfer the customer to an Independent Third-Party Verifier for verification of the contract.
- C. The Independent Third-Party Verifier is required to ask the customer the following questions: (1) "Did you agree to switch your electric service from Original Supplier to New Supplier?" and (2) "Is \_\_\_\_ your correct address?" or "Is \_\_\_\_ your correct account number?"
- D. Once a positive verification has been assessed, the Electricity Supplier will send an EDI enrollment transaction to the Electric Company.
- E. In the event that the Independent Third-Party Verifier fails to verify the customer's contract choice, the Electricity Supplier shall not send an EDI enrollment transaction to the Electric Company. In this case, the customer will continue to receive electric service from its current Electricity Supplier or the Electric Company providing Standard Offer Service.
- F. If the customer's contract choice is verified by the Independent Third-Party Verifier, the Electricity Supplier must, within five (5) business days from the day the customer agreed telephonically to contract with the Electricity Supplier, provide to the customer a complete written contract and any and all applicable rules and regulations governing the relationship between the customer and the Electricity Supplier, via U.S. mail or electronic mail.
- G. In the event of a dispute over the existence of a contract established via telephone, the Electricity Supplier shall bear the burden of proving its existence.

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### **4-5. Electronic Contract**

If a contract is entered into electronically, the following conditions must be met:

- A. The Electricity Supplier may post on its web site an electronic version of the solicitation for the supply of electricity. The electronic solicitation must include:
  - 1. an electronic application form to enter into a contract for the supply of electricity,
  - 2. an electronic version of the actual contract, and
  - 3. an electronic version of any applicable rules and regulations governing the relationship between the customer and the Electricity Supplier.
- B. The questions contained on the electronic application may include:
  - 1. the customer's name,
  - 2. billing address,
  - 3. service address,
  - 4. electronic mail address,
  - 5. telephone number,
  - 6. account number,
  - 7. employment information,
  - 8. name of anyone else responsible for the bill, and
  - 9. usage information.
- C. The Electricity Supplier may ask for additional information only after first informing the customer of his/her right not to provide such information.
- D. The electronic submission of the application to contract with the Electricity Supplier constitutes a valid and binding "electronic signature."
- E. The Electricity Supplier must acknowledge the customer's submission of the application to contract with a confirmation of receipt of application within twenty-four (24) hours of receipt.
- F. The Electricity Supplier is not required to furnish a hard copy of the contract or of any and all applicable rules and regulations if the same are posted in full and are available for download on the Electricity Supplier's web site.
- G. In the event of a dispute over the existence of an electronic contract, the Electricity Supplier shall bear the burden of proving its existence.

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### **4-6. Written Contract**

If a written contract is entered into, the following conditions must be met:

- A. The questions contained on the contract application form may include:
  - 1. the customer's name,
  - 2. billing address,
  - 3. service address,
  - 4. electronic mail address,
  - 5. telephone number,
  - 6. account number,
  - 7. employment information,
  - 8. name of anyone else responsible for the bill, and
  - 9. usage information.
- B. The Electricity Supplier may ask for additional information only after first informing the customer of his/her right not to provide such information.
- C. A written contract must embody or be accompanied by a paper copy of any and all applicable rules and regulations governing the relationship between the customer and the Electricity Supplier.
- D. A written contract requires a "wet signature," *i.e.*, the actual written signature of the customer. A wet signature is required when customers contract with an Electricity Supplier via a written solicitation, such as a mailing, a newspaper form, or documents received upon personal contact, *i.e.*, a door-to-door solicitation.

### **4-7. Priority in the Event More Than One Electricity Supplier Is Chosen**

Once the Electric Company receives an EDI enrollment transaction from an Electricity Supplier, the Electric Company will not accept enrollments from any other Electric Supplier in that monthly cycle.

### **4-8. Confirmation**

- A. Confirmation of a customer's intent to enroll with an Electricity Supplier, as prescribed in the above regulations, must occur prior to the transmittal of an EDI enrollment transaction by the Electricity Supplier to the Electric Company.
- B. Upon approval of a customer's application to contract for electricity service, the Electricity Supplier must send to the customer, within a reasonable period of time:

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1. A statement of enrollment;
2. A description of the agreed-upon billing option and the billing date if different from the Electric Company's usual billing date;
3. Customer Service Information (including toll-free telephone number, mailing address, and dispute process information);
4. A statement that the Electric Company is required to send a ten-day Rescission Notice, which the customer may or may not have already received.

### **4-9. Contract Rescission**

- A. Within one (1) business day of receiving an EDI enrollment transaction from an Electricity Supplier (by 5 p.m. the previous day), the Electric Company shall notify the customer via U.S. Mail of a ten-day Rescission Period, during which the customer may notify the Electric Company, by telephone, electronic mail, or in writing, of his or her intent to rescind the contract that was entered into with the Electricity Supplier, thereby halting the enrollment process.
- B. The ten-day Rescission Period will begin the date the Electric Company sends the Rescission Notice to the customer, which shall be the same date as the postmark. The date the Rescission Period ends will be indicated in this notice.
- C. If the customer does not respond to the Rescission Notice within the ten-day Rescission Period, the enrollment will be considered effective. The customer must notify the Electric Company, not the Electricity Supplier, of his or her intent to rescind the contract.
- D. After the ten-day Rescission Period expires and the enrollment is processed by the Electric Company, the relationship between the customer and the Electricity Supplier will be governed by the terms and conditions contained in the contract.

### **4-10. Contract Termination**

- A. Electricity Suppliers shall provide customers and the Electric Company at least thirty-five (35) days written notice prior to contract termination.
- B. If an Electricity Supplier's contract provides for automatic renewal of the contract:
  1. The Electricity Supplier shall provide notice of the pending renewal of the contract sixty (60) days before that renewal is scheduled to occur, and another notice thirty (30) days before the customer's automatic renewal date.

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1. A statement of enrollment;
2. A description of the agreed-upon billing option and the billing date if different from the Electric Company's usual billing date;
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4. A statement that the Electric Company is required to send a ten-day Rescission Notice, which the customer may or may not have already received.

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- B. The ten-day Rescission Period will begin the date the Electric Company sends the Rescission Notice to the customer, which shall be the same date as the postmark. The date the Rescission Period ends will be indicated in this notice.
- C. If the customer does not respond to the Rescission Notice within the ten-day Rescission Period, the enrollment will be considered effective. The customer must notify the Electric Company, not the Electricity Supplier, of his or her intent to rescind the contract.
- D. After the ten-day Rescission Period expires and the enrollment is processed by the Electric Company, the relationship between the customer and the Electricity Supplier will be governed by the terms and conditions contained in the contract.

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- B. If an Electricity Supplier's contract provides for automatic renewal of the contract:
  1. The Electricity Supplier shall provide notice of the pending renewal of the contract sixty (60) days before that renewal is scheduled to occur, and another notice thirty (30) days before the customer's automatic renewal date.

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2. If there are any changes in the material terms and conditions of the agreement (including billing options, billing cycle), the Electricity Supplier must provide notice of these changes in the 60-day and 30-day notices. The notification of renewal or of any change must be highlighted and clearly stated.
3. Both the 60-day and 30-day notices must inform the customer how to terminate the contract without penalty. Both notices must inform the customer that terminating the contract without selecting another Electricity Supplier will return the customer to Standard Offer Service. Both notices must also inform the customer that the Commission can provide the customer with an updated list of licensed Electricity Suppliers. The telephone number of the Commission and the OPC shall be included in both notices.

### **4-11. Electricity Supplier to Report Information to the Commission**

An Electricity Supplier shall provide to the Commission readily understandable and current information regarding its rates charged and services provided.

### **4-12. Electricity Supplier to Post Information**

An Electricity Supplier shall post on the Internet information about its services and rates for customers that is current and readily understandable.

## **V. METER READING**

### **5-1. Electricity Suppliers Prohibited From Meter Reading**

- A. An Electricity Supplier shall not conduct meter readings.
- B. To the extent an Electricity Supplier's charges are based on usage, an Electricity Supplier shall rely on the meter readings (actual, estimated, or customer meter readings) provided to it by the Electric Company.
- C. Meter readings by the Electric Company are done in accordance with the Utility Consumer Bill of Rights.

## **VI. BILLING**

### **6-1. Billing Frequency**



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- A. If a customer chooses a dual bill, a Market Participant shall render a bill once during each billing month to that customer.
- B. If a customer chooses a consolidated bill, the Market Participant's bill shall be rendered on a monthly basis consistent with the Electric Company's billing cycle for that customer, unless a different method is separately agreed upon by the Market Participant and the Electric Company.

### **6-2. Rendition of Bills**

The date of rendition of an Electricity Supplier bill is the date the bill is mailed by the Electricity Supplier or its agent. Bills rendered by an Electricity Supplier must be rendered within seven (7) days after the meter reading.

### **6-3. Information to be Included in Residential Electric Bills**

- A. Every bill rendered by a Market Participant for residential electric service, whether a dual bill or a consolidated bill, shall include the following bill components:
  - 1. Meter readings B current, prior month's and the difference between the two; may be presented in the same place
  - 2. Meter reading date B may be presented in a single place on a consolidated bill
  - 3. Number and kind of units measured
  - 4. Applicable rate schedule
  - 5. Taxes and surcharges each appropriate tax and surcharge will be separately displayed
  - 6. Notice of potential late payment charges
  - 7. Total due B for consolidated bills, show subtotals for the Electric Company and the Electricity Supplier portions and a total due
  - 8. Payment due date B if separate bills, then payment dates may differ
  - 9. Estimated bills B distinctive indication if bill is based on estimated meter reading
  - 10. Business address and telephone numbers for billing inquiries
  - 11. Conversion from meter reading units to billing units B show computation
  - 12. Service address- show on first page of bill
  - 13. Mailing address B show on first page of bill
  - 14. Customer name and account number B show on each page if multiple pages
  - 15. Bill payment plans (if applicable)
  - 16. Emergency number for the Electric Company
  - 17. Required notices B e.g. Customer Bill of Rights, legal notices B may be an insert
  - 18. Next meter reading date
  - 19. Prior bill amount and summary of supplier and/or the Electric Company charges
  - 20. Disclosure of previous payment activity

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21. Meter number/identifier
22. Number of days in billing cycle
23. Seasonal rate notice
24. Billing period
25. Commission address and telephone number
26. Address to where payments are sent
27. To whom the check is payable
28. Collection messages
29. Bill step computations
30. Date of bill issuance
31. OPC's phone number

- B. An Electricity Supplier may include other bill components. If an Electric Supplier elects to bill for multiple services, each service should be clearly identified on the bill.

### **VII. PAYMENT OF ELECTRICITY BILLS**

#### **7-1. Due Date**

Electricity bills are due within twenty (20) days after the date they are rendered. The due date shall be stated on the bill. If the due date falls on a non-business day, the due date shall be the next business day.

#### **7-2. Date of Payment**

The date of payment shall be considered as the day the payment is received at the offices of the Market Participant or an authorized collection agent; or the day before payments are removed from the receptacles provided for after-hours collection at the Market Participant's offices; or the third day preceding the day when payments are received by mail.

#### **7-3. Late Payment Charges**

Late payment charges shall be reasonable but not more than currently established in the Utility Consumer Bill of Rights.

#### **7-4. Application of Payments**

Unless the customer designates otherwise, partial customer payments shall be applied as follows: first to the Electric Company for arrears for Commission-regulated charges, oldest item first; next to arrears for non-regulated charges (*i.e.*, Electricity Supplier); next to the Electric Company for current Commission-regulated charges; and finally, to current non-regulated charges.

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### **VIII. SECURITY DEPOSITS AND GUARANTEES**

#### **8-1. Deposits Allowed.**

Market Participants may require a deposit up front of any customer.

#### **8-2. Maximum Deposit Amount for Residential or Small Commercial Electric Service.**

No deposit for residential or Small Commercial electric service shall exceed the lesser of one hundred dollars or twice the estimated maximum monthly bill of the customer over twelve (12) months.

#### **8-3. General Deposit Conditions**

- A. Each Electric Supplier shall be liable for interest on deposits held from the date the deposit is made until the date the deposit has been refunded or until an effort has been made to refund the deposit.
- B. Each Electric Supplier shall pay simple interest on deposits with the rate being established not later than January 15<sup>th</sup> of each year, equal to the average annual yields of one-year Treasury bills for September, October, and November of the preceding year.
- C. A deposit and accrued interest shall be refunded within sixty (60) days by the Electric Supplier upon the sooner of; (1) satisfactory payment by the customer of all proper charges for electric service for twelve (12) successive months or (2) termination of a contract. Upon termination of a contract with a remaining balance due, the deposit with accrued interest shall be applied to the outstanding final bill and any remaining balance returned to the customer.
- D. An Electricity Supplier shall maintain a record of all deposits, showing the customer's name and address or other identifying data, the amount of the deposit, the date it was paid, and the interest earned and paid thereon.
- E. Each customer posting a deposit shall promptly receive a receipt containing at least the following information:
  - 1. customer's name;
  - 2. date of payment;
  - 3. amount of payment; and
  - 4. statement of the terms and conditions applicable to deposits.

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### **IX. INVOLUNTARY DISCONNECTION OF SERVICE**

#### **9-1. Market Participants May Not Terminate Service**

- A. Only the Electric Company has the authority to physically disconnect customers from the distribution system for nonpayment of regulated electric charges.
- B. Disconnection of residential electric service by the Electric Company shall be done in accordance with the Utility Consumer Bill of Rights.

### **X. MARKET PARTICIPANTS' RESPONSES TO CUSTOMER INQUIRIES AND COMPLAINTS**

#### **10-1. Procedures**

A Market Participant shall, in accordance with these rules, establish procedures which will ensure the prompt, efficient, and thorough receipt, investigation and where possible, resolution of all customer inquiries, service requests and complaints regarding Market Participant service to customers and charges therefore.

#### **10-2. Staffing**

- A. Market Participants shall be required to maintain a toll-free or local telephone number for customer service inquiries. Qualified Market Participant personnel (customer service representatives) shall be available and prepared at all times during normal business hours to receive and discuss all customer inquiries, service requests and complaints. The Market Participant shall make reasonable efforts to ensure that non-English speaking customers are assisted.
- B. Supervisory personnel shall be available during normal business hours to discuss customer complaints that are not resolved through contact with customer service representatives.

#### **10-3. Adjustment to Bill**

When a Market Participant concludes that a bona-fide question exists regarding the correctness of an amount billed:

- A. If a customer chooses a dual bill, the Market Participant may adjust the amount due, and shall reflect the adjustment on a corrected bill.

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- B. If a customer chooses a consolidated bill, the Market Participant may only adjust the charges related to the services provided by the Market Participant.

### **10-4. Unresolved Complaints**

When a complaint cannot be resolved between the Market Participant and a customer, the Market Participant shall refer the customer to the Commission or the Office of the People's Counsel for resolution.

## **XI. RESOLUTION OF DISPUTES BETWEEN CUSTOMERS AND MARKET PARTICIPANTS**

### **11-1. Applicability**

This section applies to any disputes or complaints arising under these rules.

### **11-2. Direct Resolution Attempt Required**

In every case of dispute between a customer and a Market Participant, the first attempt at resolution shall be made directly between the parties, except in the case of slamming.

### **11-3. Informal Complaint Resolution by the Public Service Commission's Office of Consumer Services and the Office of the People's Counsel**

- A. If a customer cannot resolve his or her dispute with the Market Participant, he or she may contact the Commission's Office of Consumer Services ("OCS") or the OPC for assistance with the complaint.
- B. Upon receipt of a complaint, OCS or OPC shall notify the Market Participant by telephone, investigate the matter, and attempt through mediation to resolve it informally.

### **11-4. Notice of Right to File Formal Complaint**

- A. If the matter cannot be resolved informally within three (3) business days, the complainant shall be notified in writing of that fact by OCS or OPC.
- B. Additionally, the complainant shall be notified by OCS or OPC that he or she has the right to file a formal complaint before the Commission. Notification shall state that, if a formal complaint is not filed within fourteen (14) days of the date of mailing, the matter shall be dropped.

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- C. If such notice is sent by OCS, the notice shall state the availability of assistance and representation by the OPC at (202) 727-3071.
- D. Notification shall include information about the Commission's formal complaint and hearing procedures.

### **XII. FORMAL COMPLAINTS AND HEARING PROCEDURES**

#### **12-1. Right to Request Formal Complaint Hearing**

- A. Any person (including a person who has submitted an application for electricity supply and a consumer) may complain to the Commission about the service provided by a Market Participant, a Market Participant bill, or other alleged violation of these rules.

#### **12-2. Formal Complaint Requirements**

- A. A formal complaint shall be in writing, signed by the complainant or his representative on a form or in a manner prescribed by the Commission.
- B. The formal complaint shall set forth all facts known to the complainant at the time necessary to state a claim upon which relief may be granted, as well as the specific relief requested.
- C. The OCS shall have the authority to return the complaint to the complainant if review discloses that the complaint should be revised to more clearly set forth the matters at issue.

#### **12-3. Office of Consumer Services and Market Participant Responses**

- A. The OCS shall advise the affected Market Participant by telephone whenever a formal complaint is filed, and mail or fax a copy of the complaint to the Market Participant.
- B. The Market Participant shall have seven (7) days from the date of the notice to file an Answer, setting forth the Market Participant's position with respect to the allegations contained in the complaint.
- C. A copy of the Answer shall be forwarded by the OCS to the consumer.

#### **12-4. Notice to Guarantor**

If applicable, the OCS shall forward a copy of the Complaint and Answer to any guarantor of the account in controversy.

## **ATTACHMENT A**

### **12-5. Scheduling of Formal Hearing**

The matter shall be set for hearing no later than fifteen (15) days following the filing of the Market Participant's Answer. Except in special cases, hearings shall be held during the business hours of the Commission. The Commission shall designate a competent hearing officer who shall not have investigated the complaint.

### **12-6. Notice of Formal Hearing**

- A. Notice of the hearing shall be sent to the consumer, any affected guarantor, the Market Participant, and OPC by certified mail, return receipt or by personal delivery at least ten (10) days prior to the hearing date unless the parties agree on a shorter time. The notice shall state the potential consequences of failure to appear for a hearing.
- B. Service shall be made at least eight (8) days prior to the hearing date unless the parties agree on a shorter time. When service is by mail, the service date is the date of mailing, and the service shall be made at least ten (10) days prior to the hearing date.

### **12-7. Rescheduling**

The hearing officer may reschedule any hearing to a date, time or place agreed upon by the parties, or, upon and for good cause shown, at the request of any party.

### **12-8. Failure to Attend Hearing**

- A. In the event the complainant fails to attend a scheduled hearing without good cause, the hearing officer may dismiss the complaint, hear evidence and render a decision, or reschedule the hearing within ten (10) days.
- B. In the event a Market Participant fails to attend a scheduled hearing without good cause, the hearing officer may hear evidence and render a decision.

### **12-9. Discovery and Preparation for Hearing**

- A. Upon a reasonable request from each other or the OCS, the parties shall timely provide all information they possess relevant to the matters at issue in the complaint, including relevant documents, account data, files and the names of witnesses.
- B. Parties may examine any relevant records of the Commission.

## **ATTACHMENT A**

### **12-10. Representation**

- A. Parties may represent themselves or be represented by counsel or any other person of their choice.
- B. If it appears to the hearing officer that a party appearing without an attorney should be represented by an attorney, the hearing officer shall suggest it and allow a reasonable time to obtain one.
- C. Assistance and representation is available from the OPC.

### **12-11. Hearing Procedure**

- A. Parties shall have the right to present evidence, call witnesses, and present written and oral argument.
- B. Witnesses shall testify under oath, and the parties and the hearing officer shall have the right to examine and cross-examine all witnesses.
- C. The hearing officer shall have the discretion to limit any line of questioning and to limit the time for argument.
- D. Unless otherwise ordered by the hearing officer, the Market Participant's witnesses shall testify first, followed by the complainant's witnesses. A reasonable opportunity will be afforded all parties to present rebuttal evidence.
- E. After the parties have completed their presentations of evidence, the hearing officer may call upon any witness for testimony upon any issue.
- F. The hearing officer has the obligation, especially when the consumer is not represented by counsel, to ensure that all material facts are developed to the fullest extent consistent with his or her responsibility to preside impartially over the hearing.

### **12-12. Formal Rules of Evidence Not to Apply to Hearings**

- A. The formal rules of evidence shall not apply, but the hearing officer shall exclude irrelevant or unduly repetitious evidence.
- B. Parties may stipulate to any facts and such stipulation may be put in evidence.



## **ATTACHMENT A**

### **12-13. Record of the Proceeding**

All proceedings shall be recorded. The transcriptions shall promptly be made available to any party upon request, at the party's expense. Every Commission prepared transcript shall be certified by the hearing officer. Any party may, at its expense, provide for transcription of the proceedings by a certified court reporter in lieu of recording, in which case, that transcription shall be the official record.

### **12-14. Decision**

- A. Within fourteen (14) days after the close of the hearing, the hearing officer shall issue a written decision which states the issues, summarizes the evidence and makes findings of fact, conclusions of law, and a proposed disposition of the matter.
- B. In cases involving billing disputes in which the hearing officer has concluded that all or part of the amount in dispute is owed, the hearing officer may, for good cause stated in the decision, direct that the amount found outstanding be paid in installments.
- C. Copies of the hearing officer's decision shall be served upon the parties either personally or by regular mail on the day the decision is issued, together with instructions on how to appeal the decision to the Commission and indicating the last date the appeal may be filed.
- D. The decision of the hearing officer shall be final if there is no appeal to the Commission within the time specified.

### **12-15. Commission Appeal**

- A. Any party may appeal the hearing officer's decision to the Commission within ten (10) days of personal service and twelve (12) days of service by mail of the decision.
- B. The appeal shall be signed by the party, identify the decision appealed from, and specify the grounds on which it is based.
- C. The Commission Secretary shall serve a copy of any appeal filed upon the opposing party on the day it is filed. Service may be made personally or by first class mail.
- D. The opposing party response or counter-appeal shall be filed within five (5) days of personal service and seven (7) days of service by mail.

## **ATTACHMENT A**

- E. Within six (6) days of the filing of an appeal, the record shall be prepared for review by the members of the Commission.

### **12-16. Commission Review of Decision**

- A. The Commission shall review and rule on the decision within thirty (30) days after the record is prepared.
- B. Upon review of the record, and after giving consideration to the matters raised on appeal, the Commission shall do the following:
  - 1) Adopt the decision of the hearing officer;
  - 2) Issue a Commission decision;
  - 3) Return the matter to the hearing officer for further proceedings, or
  - (4) Schedule the matter for hearing or argument before the Commission.

### **12-17. Review of Commission Decision**

Review of a final Commission decision shall be pursuant to D.C. Code '43-904, 43-905.

## **ATTACHMENT B**

### **Interim Application for License to Supply Electricity or Electric Generation Services to the Public in the District of Columbia**

You may use the attached form to submit your application. **(Please remove this instruction sheet prior to filing.)** If you need more space than is provided on this form or if you are attaching exhibits, all attachments must be labeled or tabbed to identify the application item to which they respond. You are also required to file an electronic version of this document (excluding "confidential" information) using any version of Microsoft Word 7.0 (or higher) or Word Perfect software. One three and one half inch diskette must accompany the paper copies to be filed with the District of Columbia Public Service Commission.

To file an application with the District of Columbia Public Service Commission, **file a signed and verified original and 14 copies**, an electronic version of your application and attachments, and a nonrefundable license fee of \$400.00 (payable to "Public Service Commission") with the Commission's Secretary in Washington, D.C.:

**Mr. Jesse P. Clay, Jr.  
Secretary  
Public Service Commission of the District of Columbia  
1333 H Street, NW  
Second Floor, West Tower  
Washington, D.C. 20005**

Questions pertaining to completion of this application may be directed to the Public Service Commission at the above address or you may call the Commission at the following number: (202) 626-5100. You may reach the Public Service Commission electronically at [www.dcpssc.org](http://www.dcpssc.org).

**If your answer to any of these items changes during the pendency of your application, or if the information relative to any item herein changes while you are operating within the District of Columbia, you are under a duty to so inform the Commission immediately. If you receive a license from the Commission, certain information provided in this application must be updated on different time schedules. Within 30 days of a change, Sections 1-3, 6, 14, 15, 18 and the averment regarding any civil, criminal or regulatory penalties, etc. imposed on Applicant, *et al.* must be updated. A licensee must inform the Commission of a change to the averment regarding bankruptcy proceedings instituted voluntarily or involuntarily immediately. Also, a licensee/supplier must provide annual updates of all items that have changed in the application. The annual update should be provided to the Commission within 120 days of the end of the licensee/supplier's fiscal year. A licensee/supplier also is required to officially notify the Commission if it plans to cease doing business in the District of Columbia 60 days prior to ceasing operations.**

Confidentiality: Sections 4d and 14 of this Application related to ownership of the Applicant's corporation (to the extent such information is not already public) and financial

## **ATTACHMENT B**

information, respectively, will be treated as confidential information by the Commission to the extent permitted by law if the Applicant requests such treatment by stamping or marking the materials in question as "CONFIDENTIAL." Any interested person may request, however, release of this information by filing such a request with the Commission. If such a request is made, Applicant shall have the burden of proving the confidential nature of the information. The Commission will notify the Applicant of any request for release of this information, and will permit the Applicant the opportunity to respond to the request through written motion filed with the Commission prior to the Commission's determination on the request.

If you are applying to provide service as an aggregator (as defined in the "Retail Electric Competition and Consumer Protection Act of 1999" at Section 101(2) and as defined in Commission regulations) who does not take title to electricity as a part of providing that service or if you are providing service as a broker (as defined in the "Retail Competition and Consumer Protection Act of 1999" at Section 101(7) and as defined in Commission regulations), you do not need to fill out certain questions in this Application. The exempted questions are marked.

Applicable law: The provisions set forth in this application related to the licensing of electric suppliers and the provision of electricity supply and electricity supply services are addressed in detail in the "Retail Electric Competition and Consumer Protection Act of 1999," and in the Commission's regulations.

Statements made in this Application are made under penalty of perjury (D.C. Code Section 22-2511), false swearing (D.C. Code Section 22-2513), and false statements (D.C. Code Section 22-2514). Perjury is punishable by a fine of up to \$5,000 or imprisonment for up to 10 years, or both. False swearing is punishable by a fine of up to \$2,500 and imprisonment for up to 3 years, or both. False statements are punishable by a fine of up to \$1,000 or imprisonment for up to 180 days, or both. Further amendments to these Code sections shall apply. If the Commission has reliable information that an Applicant has violated any or all of these sections of the D.C. Code, the Commission will forward the information to the appropriate law enforcement agency. Statements made in this Application are also subject to Commission regulations, which require the Applicant to certify the truthfulness of the contents of the Application. Any Applicant in violation of these regulations is subject to the penalties found in the "Retail Electric Competition and Consumer Protection Act of 1999," Section 108.

**ATTACHMENT B**

**BEFORE THE DISTRICT OF COLUMBIA PUBLIC SERVICE COMMISSION**

Application Docket No. \_\_\_\_\_

Application of \_\_\_\_\_, d/b/a ("doing business as")

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

To the District of Columbia Public Service Commission:

**BUSINESS INFORMATION**

**1. IDENTITY OF THE APPLICANT:**

**a. Legal Name:** \_\_\_\_\_

**Current Mailing Address:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Street Address (if different):** \_\_\_\_\_

**Website URL:** \_\_\_\_\_

**Other States, including District of Columbia, in which the Applicant is now or has been engaged in the retail sale of electricity or natural gas and the names under which the Applicant is engaged or has been engaged in such business(es):**

**Name:** \_\_\_\_\_

**Business Address:** \_\_\_\_\_  
\_\_\_\_\_

**License #/State of Issuance:** \_\_\_\_\_

## **ATTACHMENT B**

**Other States in which the Applicant has applied to provide retail electric or natural gas service but has been rejected. Applicant may limit response to the last**

## ATTACHMENT B

**three (3) years:**

**State(s):** \_\_\_\_\_

**Date of Application:** \_\_\_\_\_

Attach additional sheets to the application if necessary.

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

**Trade Name:** \_\_\_\_\_

**2. a. CONTACT PERSON-REGULATORY CONTACT:**

**Name and Title:** \_\_\_\_\_

**Address:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Telephone:** ( ) \_\_\_\_\_

**Fax:** ( ) \_\_\_\_\_

**e-mail** \_\_\_\_\_

**b. CONTACT PERSON-CUSTOMER SERVICE (not required for aggregators who do not take title and/or brokers):**

**Name and Title:** \_\_\_\_\_

**Address:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Telephone:** ( ) \_\_\_\_\_

**Fax:** ( ) \_\_\_\_\_

**e-mail** \_\_\_\_\_

**3. RESIDENT AGENT:**

**Name and Title:** \_\_\_\_\_

**ATTACHMENT B**

**Address:** \_\_\_\_\_

\_\_\_\_\_

**Telephone:** ( ) \_\_\_\_\_

**Fax:** ( ) \_\_\_\_\_

**e-mail** \_\_\_\_\_

**4. PRIMARY CORPORATE OFFICERS/GENERAL PARTNERS:**

**President/General Partners: Name(s):** \_\_\_\_\_

**Business Address:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**CEO: Name:** \_\_\_\_\_

**Business Address:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Secretary: Name:** \_\_\_\_\_

**Business Address:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



**ATTACHMENT B**

**Treasurer: Name:** \_\_\_\_\_

**Business Address:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## ATTACHMENT B

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

- ☐ Proprietorship
- ☐ Corporation
- ☐ Partnership
- ☐ Limited Partnership
- ☐ Limited Liability Company
- ☐ Limited Liability Partnership
- ☐ Other: \_\_\_\_\_

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

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

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

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

**5. AFFILIATES, OR PREDECESSOR(S), ENGAGED IN THE SALE OR TRANSPORTATION/TRANSMISSION OF ELECTRICITY OR NATURAL GAS AT WHOLESALE OR RETAIL OR THE PROVISION OF RETAIL TELEPHONE OR CABLE SERVICES TO THE PUBLIC:** (select and complete appropriate statement) (Applicant may limit responses to the last five years)

The Applicant has no such Affiliate(s) or Predecessor(s).

Applicant is an Affiliate of a regulated utility in Pennsylvania, Virginia, Delaware, New Jersey or Maryland. Please provide regulated utility's name:

\_\_\_\_\_

Affiliate(s), or Predecessor(s), other than a regulated utility in Pennsylvania, Virginia, Delaware, New Jersey or Maryland that provides, or provided, sale or

## ATTACHMENT B

transportation/transmission of electricity or natural gas at wholesale or retail or of retail telephone or cable services to the public:

**Name:** \_\_\_\_\_

**Business Address:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**License #/State of Issuance:** \_\_\_\_\_

**Location of Operations (Utility Service Territory):** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Business Address:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**License #/State of Issuance:** \_\_\_\_\_

**Location of Operations (Utility Service Territory):** \_\_\_\_\_

Attach additional sheets to the application if necessary.

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

- ☐ Actions such as Suspensions/Revocations/Limitations/Reprimands/Fines or other similar actions have been taken against the Applicant, Predecessor(s), or unregulated affiliate(s), and are described in the attached statement, including docket numbers, offense dates, and case numbers, if applicable. Formal investigations (defined as those investigations formally instituted in a public forum by way of the filing of a complaint, show cause order, or similar

## ATTACHMENT B

pleading) instituted by any regulatory agency or law enforcement agency relating to the Applicant, Predecessor(s), or unregulated affiliate(s) if, as a result of the investigation, Applicant's/ Predecessor's/or affiliate's license to provide service to the public was in jeopardy are also listed. The license number, state of issuance, and name of licensee are identified below:

**State(s):** \_\_\_\_\_

**Name(s):** \_\_\_\_\_

**License Number(s)(or other applicable identification):** \_\_\_\_\_

☐ No such action has been taken.

**7 FERC FILING: Applicant has:**

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

☐ Received approval from FERC to be a Power Marketer at Docket or Case Number: \_\_\_\_\_

☐ Not Applicable.

### OPERATIONAL CAPABILITY

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

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

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

☐ Not applicable. Applicant will not be supplying retail electricity.

☐ Applicant owns generation.

## **ATTACHMENT B**

- ☐ Applicant contracts for generation.
- ☐ Applicant obtains generation on the spot market.
- ☐ Other -- Applicant must attach a statement detailing its source of generation.

## ATTACHMENT B

### SCOPE OF OPERATIONS

(Check all that apply)

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

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

Does Applicant intend to offer competitive billing services?: \_\_\_\_\_

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

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

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

12. **CUSTOMERS:** Applicant proposes to initially provide services to:

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

Also, Applicant proposes:

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

## **ATTACHMENT B**

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

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

- ☐ Upon approval of the Application and license.
- ☐ Other approximate date of commencement

### **FINANCIAL INTEGRITY**

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 sheets, income statements and statements of cash flow for the two most recent 12 month periods for which information is available. Balance sheets, income statements and statements of cash flow 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 should 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, income statements and statements of cash flow 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 sheets, income statements and statements of cash flow, 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 and/or other jurisdictions.
- ☐ Credit reports or ratings prepared by established credit bureaus or agencies regarding the Applicant's payment and credit history.

## ATTACHMENT B

- ☐ 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).
- ☐ Applicant will not accept prepayments or deposits from customers.
- ☐ Applicant intends to accept prepayments and/or deposits from customers.

15. **BONDING REQUIREMENTS:** A bond, parent guarantee, or some other form of financial instrument ("bond") may be required if the Commission determines that such bond is necessary in order to ensure that the Applicant has sufficient financial integrity to be granted a License. The Commission shall determine the Bonding requirement on a case-by-case basis.

A bond, if required, shall be in the amount of \$50,000.00.

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

- a. The Applicant may be required to submit bond(s), as applicable, as described Section 16 herein.
- b. The Applicant must update this application with the Commission immediately if any of the information provided in this Application changes during the pendency of the Application. If the Applicant receives a license from the Commission, licensee/supplier must, within 30 days of a change, update Sections 1-3, 6, 14, 15, 18 and the averment regarding any civil, criminal or regulatory penalties, etc. imposed on Applicant, et al.. Licensee/supplier must immediately update any change to the averment regarding bankruptcy proceedings instituted voluntarily or involuntarily.
- c. If the Applicant receives a license from the Commission, licensee/supplier must provide annual updates of all items that have changed in the application. The annual update should be provided to the Commission within 120 days of the end of the supplier's fiscal year.



## ATTACHMENT B

- d. Supplement this application in the event the Commission modifies the licensing requirements, or requests further information.
  - e. Agree that it will not present itself as a licensed retail supplier of electricity in District of Columbia, accept deposits, prepayments, or contract with any end-use customers without a license from the Commission.
  - f. Pay all fees imposed by the Commission and any applicable taxes.
  - g. Ensure that a copy of each service agreement entered into with Potomac Electric Power Company is provided to the Commission.
  - h. Agree that the license to sell electricity and electricity supply services is not transferable without the prior approval of the District of Columbia Public Service Commission.
17. **AFFIDAVITS REQUIRED:** The Applicant must supply Affidavits of Tax Compliance and General Compliance to the Commission with the completed Application. The affidavits are included with this Application packet and must be executed by the Applicant or representative with authority to bind the Applicant in compliance with District of Columbia law.
18. **FURTHER DEVELOPMENTS:** Applicant is under a continuing obligation to amend its application if substantial changes occur in the information upon which the Commission relied in approving the original filing.
19. **FEE:** The Applicant has enclosed the required initial licensing fee of \$400.00.
20. **NOTICE:** Pursuant to the Commission's licensure regulations, Applicant must serve the following interested persons and must certify that service has been made.

Applicant: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTACHMENT B**

**AFFIDAVIT OF TAX COMPLIANCE**

State of \_\_\_\_\_ :  
County of \_\_\_\_\_ : ss.

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

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

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

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

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

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

Signature of Affiant

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

Signature of official administering oath

My commission expires \_\_\_\_\_.

**ATTACHMENT B**

**AFFIDAVIT OF GENERAL COMPLIANCE**

State of \_\_\_\_\_ :  
County of \_\_\_\_\_ : ss.

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

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

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

That the Applicant herein certifies to the Public Service Commission of the District of Columbia ("Commission") that:

The Applicant agrees to comply with the terms and conditions of Potomac Electric Power Company's tariff and agreements with Potomac Electric Power Company.

The Applicant is in compliance with and agrees to comply with all applicable Federal and District of Columbia consumer protection and environmental laws and regulations, and Commission regulations, fees, assessments, orders and requirements.

Applicant agrees, upon request by the Commission, to provide copies to the Commission, of its consumer forms and/or contracts, its marketing or advertising materials, and its consumer education materials.

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

Applicant agrees to provide proposed notice of the filing of its Application to the Commission so that it may forward the notice to the District of Columbia Register for publication.

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

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

## **ATTACHMENT B**

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

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

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

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

The Applicant further certifies that it:

1. Is not under involuntary bankruptcy/insolvency proceedings including but not limited to, the appointment of a receiver, liquidator, or trustee of the supplier, or a decree by such court adjudging the supplier bankrupt or insolvent or sequestering any substantial part of its property or a petition to declare bankruptcy as to reorganize the supplier; and
2. Has not filed a voluntary petition in bankruptcy under any provision of any Federal or state bankruptcy law, or its consent to the filing of any bankruptcy or reorganization petition against it under any similar law; or without limiting the generality of the foregoing, a supplier admits in writing its inability to pay its debts generally as they become due to consents to the appointment of a receiver, trustee or liquidator of it or of all or any part of its property.

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

## ATTACHMENT B

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

\_\_\_\_\_  
Signature of Affiant

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Signature of official administering oath

My commission expires \_\_\_\_\_.

**ATTACHMENT B**

**VERIFICATION**

State of \_\_\_\_\_ :  
County of \_\_\_\_\_ : SS.

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

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

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

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

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

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

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

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

That the facts above set forth are true and correct to the best of his/her present knowledge, information, and belief after due inquiry and that he/she expects said Applicant

**ATTACHMENT B**

to be able to prove the same at any hearing hereof.

\_\_\_\_\_  
Signature of Affiant

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_.

\_\_\_\_\_  
Signature of official administering oath

My commission expires \_\_\_\_\_.

**ATTACHMENT B**

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

TO WHOM IT MAY CONCERN:

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

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

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

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

**APPLICANT'S AUTHORIZATION TO RELEASE INFORMATION:**

\_\_\_\_\_  
APPLICANT (Please print)

\_\_\_\_\_  
APPLICANT'S SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
TITLE



## ATTACHMENT C

### INTERIM LICENSING STANDARDS OF THE DISTRICT OF COLUMBIA

#### PUBLIC SERVICE COMMISSION

Subtitle \_\_: Licensing Requirements for Electricity Suppliers

#### **.01 General Provisions**

##### **.01 Application of Standards (or Scope of Rule)**

**A. Application.** These standards apply to a person who engages in the business of an Electricity Supplier in the District of Columbia. Electricity Suppliers include Aggregators, Brokers, or Marketers who generate electricity, sell electricity, or purchase, broker, arrange for, or market electricity for sale to customers.

**B. Purpose.** These standards provide uniform requirements for obtaining an Electricity Supplier license in the District of Columbia, describe the administrative procedures available to the Applicants and licensees, and outline the grounds for Commission action regarding a licensee, and the sanctions that may be imposed by the Commission.

**C. Restrictions.** As a condition of filing a license Application, no person shall present itself as a licensed retail Electricity Supplier, accept deposits or prepayments from retail customers, or contract with retail customers, prior to receipt of a license from the Commission.

#### **.02 Definitions**

**A. In these standards the following terms have the meanings indicated.**

##### **B. Terms Defined (non-exhaustive list)**

**(1) Act.** “Act” means the “Retail Competition and Consumer Protection Act of 1999.”

**(2) Affiliate.** For purposes of these standards, “affiliate” means a person that directly or indirectly, or through one or more intermediaries, controls, is controlled by, or is under common control with, or has, directly or indirectly, any economic interest in another person.

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(3) **Aggregator.** “Aggregator” means a person that acts on behalf of customers to purchase electricity.

(4) **Applicant.** “Applicant” means the person or entity that applies for an electricity supply license required by the Act.

(5) **Application.** “Application” means the written request by a person or entity for an electricity supply license in a form specified by the Commission.

(6) **Broker.** “Broker” means a person that acts as an agent or intermediary in the sale and purchase of electricity but who does not take title to electricity.

(7) **Commission.** “Commission” means the Public Service Commission of the District of Columbia.

(8) **Competitive billing.** “Competitive billing” means the right of a customer to receive a single bill from the Electric Company, a single bill from the Electricity Supplier, or separate bills from the Electric Company and the Electricity Supplier.

(9) **Consolidator.** “Consolidator” means any owner of or property manager for multi-family residential, commercial office, industrial, and retail facilities who combines more than one property for the primary purpose of contracting with an aggregator or electric energy service provider for electric energy services for those properties, and who: (A) Does not take title to electric energy; (B) Does not sell electric energy to buildings not owned or managed by such owner or property manager; 8 Does not offer aggregation of electric energy services to other, unrelated end-users; and (D) Arranges for the purchase of electric energy services only from duly licensed electric energy service providers or Aggregators.

(10) **Consumer or customer.** For purposes of these standards, “consumer” or “customer” means a purchaser of electricity for end use in the District of Columbia. The term excludes an occupant of a building where the owner, lessee, or manager manages the internal distribution system serving the building and supplies electricity solely to occupants of the building for use by the occupants.

(11) **Deposit.** “Deposits” include all payments made by a customer to an Electricity Supplier to secure the Electricity Supplier against the customer’s nonpayment or default.

(12) **Electric Company.** For purposes of these standards, “Electric Company” means every corporation, company, association, joint-stock company or association, partnership, or person and doing business in the District of Columbia, their lessees, trustees, or receivers, appointed by any court whatsoever, physically transmitting or distributing electricity in the District of Columbia to retail electric customers. The term

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excludes any building owner, lessee, or manager who, respectively, owns, leases, or manages, the internal distribution system serving the building and who supplies electricity and other electricity related services solely to the occupants of the building for use by the occupants.

**(13) Electricity Supplier.** "Electricity Supplier" means a person, including an Aggregator, Broker, or Marketer, who generates electricity; sells electricity; or purchases, brokers, arranges or, markets electricity for sale to customers. The terms excludes the following: (A) Building owners, lessees, or managers who manage the internal distribution system serving such building and who supply electricity solely to the occupants of the building for use by the occupants; (B)(i) Any person who purchases electricity for its own use or for the use of its subsidiaries or affiliates; or (ii) Any apartment building or office building manager who aggregates electric service requirements for his or her building or buildings, and who does not: (I) Take title to electricity; (II) Market electric services to the individually-metered tenants of his or her building; or (III) Engage in the resale of electric services to others; (C) Property owners who supply small amounts of power, at cost, as an accommodation to lessors or licensees of the property; and (D) A consolidator.

**(14) Independent System Operator or "ISO."** "Independent System Operator" means an entity authorized by the Federal Energy Regulatory Commission to control a regional transmission grid.

**(15) Initiating Service in the District.** "Initiating service in the District," means the earliest calendar date on which the Electricity Supplier is contractually obligated to provide electric service to any District of Columbia residential or small commercial customer.

**(16) License.** "License" means the authority granted by the Commission to a person to do business as an Electricity Supplier in the District of Columbia.

**(17) Marketer.** "Marketer" means a person who purchases and takes title to electricity as an intermediary for sale to customers.

**(18) Person.** "Person" means every individual, corporation, company, association, joint stock company, association, firm, partnership, or other entity.

**(19) Prepayments.** "Prepayments" include all payments made by a residential and/or small commercial consumer to an Electricity Supplier for services that have not been rendered at the time of payment.

(a) 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.

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(b) 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.

(c) 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.

(d) 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.

**(20) Regional Transmission Operator or "RTO."** "Regional Transmission Operator" means a person who performs the same transmission system coordination functions as an Independent System Operator.

**(21) Residential customers.** "Residential customers" are defined as those customers served under Potomac Electric Power Company ("PEPCO") Rate Schedule DC-R, DC-AE, DC-R-TM, or DC-R-TM-EX, as proposed by PEPCO in Formal Case No. 945, subject to any revisions made to those tariff sheets by the District of Columbia Public Service Commission.

**(22) Small commercial customers.** "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 District of Columbia Public Service Commission. Small commercial customers exclude accounts on the above rate schedules in (1) apartment buildings with four or more units; (2) commercial office buildings or (3) accounts owned or managed by a consolidator.

### **.02 Licensing Requirements**

**.01 Persons Subject to Licensing Requirements.** Any person who engages in the business of an Electricity Supplier in the District of Columbia must hold a license issued by the Commission.

**.02 Application Filing Requirements for Electricity Suppliers.** An Application or an electricity supply license shall include the following information, in a manner and form specified by the Commission:

A. Proof of technical and managerial competence;

## **ATTACHMENT C**

**B.** Proof of compliance with all applicable requirements of the Federal Energy Regulatory Commission, and any Independent System Operator or regional or system transmission operator to be used by the Applicant;

**C.** Proof of compliance with applicable federal and District of Columbia environmental laws and regulations. This proof may be provided through a sworn verification that the Applicant is currently in compliance with, and will comply with, applicable federal and District of Columbia environmental laws and regulations;

**D.** Proof of financial integrity;

**E.** Proof that the Applicant has registered with the Department of Consumer and Regulatory Affairs to do business in the District of Columbia;

**F.** An agreement or promise to be subject to all applicable taxes;

**G.** An agreement or promise to comply with all of the requirements of the Act and all orders and regulations of the Commission issued under the Act;

**H.** Applicant's web-site address; and

**I.** Any other information required by the Commission.

### **.03 Licensing Procedures**

**.01 Scope.** These procedures apply to the Application for an Electricity Supplier license before the Commission.

**.02 Form.** An Application for a License must be made to the Commission in writing on the applicable form; be verified by oath or affirmation; be accompanied by an Application fee of \$400.00.

**.03 Number of Copies; Service.** Each Applicant must file an original Application, with the number of copies and in such format as specified by the Commission.

**.04 Change in Application Information.** The Applicant shall inform the Commission of any change in the information provided in the Application during the pendency of the Application process.

**.05 Notice of Application.** The Applicant shall provide to the Commission with its Application a proposed Notice of Application. The Commission shall review this notice and shall forward it within five (5) days of receipt of the Application for publication in the District of Columbia Register.

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**.06 Comments or Complaint Regarding Filed Application.** Any interested person may file comments or a complaint to any Application filed with the Commission within thirty (30) days of the filing of the Application. The Commission may waive this filing deadline at its discretion.

**.07 Notice of Incomplete Application.** The Commission shall review the submitted Application for completeness within ten (10) days of receipt of an Application. The Commission shall make reasonable attempts, at its discretion, to remedy minor omissions in the Application through informal communications with the Applicant. If these attempts are unsuccessful, within fifteen (15) days of receipt of an incomplete Application, the Commission shall notify the Applicant in writing of the deficiencies in the Application and shall return the incomplete Application to the Applicant.

**.08 Review of a Complete Application.** The Commission shall notify the Applicant in writing as soon as practicable, but in no event later than ten (10) days after the receipt of a complete Application, of the Commission's receipt of the complete Application for a Electricity Supplier License. The Commission shall conduct an appropriate investigation of the information provided by the applicant in the complete Application. The Commission (designated staff) shall conclude its investigation, and make a recommendation to the Commission for the approval or denial of the License within twenty (20) days of providing notice to the Applicant of the receipt of the complete Application. In the event that the Commission (designated staff) recommends denial of a License to an applicant, the Commission shall state in writing its reasons for such denial, and provide a copy of its determination to the Commission and the Applicant immediately upon conclusion of the investigation. A copy of the Commission determination shall also be served on the Office of People's Counsel.

**.09 Decision on License Application.** All Applications shall be considered by the Commission, including consideration at a public hearing if deemed necessary by the Commission.

**.10 Licensee's Updated Information.** The licensed Electricity Supplier shall comply with any information update requirements or supplemental information requirements established by the Commission in this part.

**.11 Term of License.** Licenses are valid until revoked by the Commission or surrendered by the licensed Electricity Supplier.

**.12 Transfer of License.** A License is not transferable without the prior approval of the Commission given after due public notice of the transfer application.

**.13 Cessation of Business in the District of Columbia or to a Customer Class.** A licensee is required to provide to the Commission at least sixty (60) days prior written notice of the licensee's intention to cease providing services (a) in the District of Columbia;

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or (b) to all customers within a specified customer class. Upon receipt of such notice, the Commission may order the licensee to provide such further notice to the public that it deems necessary, and/or take other appropriate actions.

**.14 Accuracy of Information.** Any Applicant who knowingly or in reckless disregard submits misleading, incomplete or inaccurate information may be penalized in accordance with applicable law and the provisions of these standards.

**.15 Copies of Electronic Data Interchange Trading Partner Agreement and Supplier Coordination Agreement with the Electric Company.** The Applicant or licensee shall file a copy of the Electronic Data Interchange Trading Partner Agreement and Supplier Coordination Agreement entered into with the Electric Company, with the Commission within ten (10) days of execution of such agreements.

**.16 Proprietary and Confidential Information.** In its Application, the Applicant may designate documentation provided in response to Sections 4d and 14 of the Application related to ownership of the Applicant's corporation (to the extent such information is not already public) and financial information as confidential information. The Commission may, however, order release of this information upon request of an interested party. If such request is made, the Applicant shall have the burden of proving the confidential nature of the information. The Commission will notify the Applicant of any request for release of this information and will permit the Applicant to respond to the request through written motion filed with the Commission prior to the Commission's determination on the request.

**.03 Form Of The Bond.** Any person required to provide a bond under this section shall provide a bond in a form required by the Commission. At a minimum, this form shall:

A. Designate the District of Columbia, or the Commission, as the sole beneficiary of the bond;

B. Be continuous and subject to nonrenewal only upon at least sixty (60) days notice to the Commission;

C. Cover payment of all District of Columbia deposits and prepayments, as identified by the Commission under these standards, of the Electricity Supplier that occurred while the bond was in force; and

D. State that the proceeds of the bond shall be paid or disbursed as directed by the Commission.

**.04 Bond Foreclosure.** The Commission may foreclose upon any bond posted with the Commission when, in the Commission's discretion, foreclosure is necessary to

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insure the fair and lawful treatment of the District of Columbia's residential and/or small commercial customers by an Applicant or licensee or to protect the District of Columbia against unpaid Electricity Supplier monies.

**05. Compliance Investigations.** The Commission may initiate investigations and may utilize all appropriate enforcement tools if it determines an Electricity Supplier is not appropriately bonded.

### **.05 Commission Reporting Requirements**

**.01 Updates to Application.** If the Applicant's answer to any of the sections in the Application itself change during the pendency of the Application, Applicant must inform the Commission immediately. After an Application has been approved, a licensee must inform the Commission of changes to sections 1-3, 6, 14, 15, 18 and the averment regarding any civil, criminal or regulatory penalties, etc. imposed on Applicant, *et al.* within thirty (30) days of the change. A licensee must inform the Commission of changes to the averment regarding bankruptcy proceedings instituted voluntarily or involuntarily within twenty-four (24) hours of the institution of such proceedings. In addition, after an Application has been approved a licensee must inform the Commission of any changes to any section of the Application on an annual basis. Annual updates must be filed with the Commission within 120 days of the end of the licensee's fiscal year.

**.02 Annual Reporting Requirements.** A licensed Electricity Supplier must provide any information required by any other Commission regulation.

### **.06 Commission Action Regarding a Licensee**

**.01 Commission Investigation.** The Commission may initiate an investigation of the licensee upon its own motion or upon the complaint of the Office of the People's Counsel, the Office of Corporation Counsel, or any aggrieved party. The Commission shall provide written notice of the investigation to the licensee, and shall provide the licensee an opportunity for hearing in accordance with Commission law and regulations.

**.02 Grounds for Commission Action.** The Commission may take action regarding a licensee for just cause as determined by the Commission. "Just cause" includes, but is not limited to, the following:

A. Knowingly or with reckless disregard, providing false or misleading information to the Commission;

B. Switching, or causing to be switched, the electricity supply for a customer without first obtaining the customer's permission;



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- C.** Disclosing information about a customer supplied to the Electricity Supplier by the customer, or using information about a customer for any purpose other than the purpose for which the information was originally acquired, without the customer's written consent, unless the disclosure is for bill collection or credit rating reporting purposes;
- D.** Adding services or new charges to a customer's existing retail electric service options without customer consent;
- E.** Failing to provide adequate and accurate information to each customer about the Market Participant's available services and charges;
- F.** Discriminating against any customer based wholly or partly on the race, color, creed, national origin, sex, or sexual orientation of the customer or for any arbitrary, capricious, or unfairly discriminatory reason;
- G.** Refusing to provide service to a customer unless the refusal is based on standards reasonably related to the Market Participant's economic and business purposes;
- H.** Failing to post on the internet information that is readily understandable about its services and rates for small commercial and residential electric customers;
- I.** Failing to provide electricity for its customers;
- J.** Committing fraud or engaging in marketing, advertising, or trade practices that are unfair, false, misleading, or deceptive;
- K.** Failing to maintain financial integrity;
- L.** Violating a Commission regulation or order;
- M.** Failing to pay, collect, remit or calculate accurately applicable taxes;
- N.** Violating an applicable provision of the District of Columbia Code or any other applicable consumer protection law;
- O.** Conviction by the licensee or principal of the licensee (including the general partners, corporate officers or directors, or limited liability managers or officers of

## ATTACHMENT C

the Company) of any fraud-related crimes (including, but not limited to, counterfeiting and forgery, embezzlement and theft, fraud and false statements, perjury, and securities fraud);

**P.** Imposition of a civil, criminal or regulatory sanction(s) or penalties against the licensee or principal of the licensee (including the general partners, corporate officers or directors, or limited liability managers or officers of the Company) pursuant to any state or Federal consumer protection law or regulation;

**Q.** Conviction by the licensee or principal of the licensee (including the general partners, corporate officers or directors, or limited liability managers or officers of the Company) of any felony;

**R.** Filing of involuntary bankruptcy/insolvency proceedings against the licensee or filing of voluntary bankruptcy/insolvency proceedings by the licensee.

**S.** Suspension or revocation of a license by any state or federal authority, including, but not limited to, suspension or revocation of a license to be a power marketer issued by the Federal Energy Regulatory Commission.

**T.** Imposition of any enforcement action by any ISO/RTO used by the licensee.

### **.07 Sanctions and Enforcement**

**.01 Sanctions.** Electricity Suppliers are subject to sanctions for violations of the District of Columbia Code, and applicable Commission regulations and orders. The following sanctions may be imposed by the Commission:

**A. Civil Penalty.** The Commission may impose a civil penalty of not more than \$10,000 for each violation. Each day a violation continues shall be considered a separate violation for purposes of this penalty. The Commission shall determine the amount of a civil penalty after consideration of the following:

- (1) the number of previous violations on the part of the licensee;
- (2) the gravity and duration of the current violation; and

## **ATTACHMENT C**

(3) the good faith of the licensee in attempting to achieve compliance after the Commission provides notice of the violation.

**B. Customer Refund or Credit.** The Commission may order a licensee to issue a refund or credit to a customer.

**C. Cease and Desist Order.** The Commission may order the licensee to (1) cease adding or soliciting additional customers; (2) cease serving customers in the District of Columbia; and (3) cease any action found to be in violation of Commission law, or Commission rules and regulations.

**D. Cancellation of a contract or part of a contract between a customer and a licensee;**

**E. Suspension of License; and**

**F. Revocation of License.**

**.02 Commission Access to Records.** As part of any Commission investigation, the Commission shall have access to any accounts, books, papers, and documents of the licensee that the Commission considers necessary in order to resolve the matter under investigation.

**.03 Emergency Action by the Commission.** The Commission may temporarily suspend a License, issue a temporary cease and desist order, or take any other appropriate temporary remedial action, pending a final determination after notice and hearing, if the Commission determines that there is reasonable cause to believe that customers or the reliability of electric supply in the District of Columbia will be harmed by the actions of a licensee.

### **.08 Commission Assessment and Fees**

**.01** The licensee shall pay any assessment for the costs and expenses of the Commission and the Office of the People's Counsel as required by Title 43 of the District of Columbia Code.

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- .02** The licensee shall pay any additional fees imposed by the Commission.

## ATTACHMENT D

### SUPPLIER COORDINATION AGREEMENT

1.0 This Supplier Coordination Agreement ("Agreement"), dated as of this \_\_\_\_ day of \_\_\_\_\_, 2000 is entered into, by and between Potomac Electric Power Company (the "Company") and \_\_\_\_\_ ("Electricity Supplier"). The Company and Electricity Supplier are sometimes referred to herein as "the Parties."

2.0 The Company agrees to supply, and the Electricity Supplier ("Supplier") hereby requests and agrees to take all "Coordination Services" pursuant to the Company's Electricity Supplier Coordination Tariff ("Tariff"). Both Parties agree that such services are necessary to coordinate the delivery of Competitive Power Supply to Customers located within the Company's service territory.

#### 3.0 Representations and Warranties.

a) The Electricity Supplier hereby represents, warrants and covenants as follows:

(i) The Electricity Supplier is a [corporation/limited liability company/partnership/\_\_\_\_\_] duly organized and validly existing under the laws of the State of \_\_\_\_\_, is duly registered and authorized to do business and is in good standing in the District of Columbia;

(ii) The Electricity Supplier is a member of the Pennsylvania-New Jersey-Maryland Interconnection Association ("PJM"), is a signatory to all applicable PJM Agreements, and is in compliance, and will continue to comply either directly or through its Scheduling Coordinator, with all obligations, rules and regulations, as established and interpreted by the PJM Office of Interconnection, or that will be established during the life of this Agreement, that are applicable to Electricity Companies as defined by the PJM Agreements;

(iii) The Electricity Supplier is licensed by the Public Service Commission of the District of Columbia ("Commission") to provide Competitive Energy Supply to Customers in the District of Columbia and has and will continue to satisfy all other DCPSC requirements applicable to supplier;

(iv) The Electricity Supplier's performance of its obligations hereunder has been duly authorized by all necessary action on the part of the supplier and does not and will not conflict with or result in a breach of the supplier's charter documents or bylaws or any indenture, mortgage, other agreement or instrument, or any statute or rule, regulation, order, judgment, or decree of any judicial or administrative body to which the supplier is a party or by which the supplier or any of its properties is bound or subject;

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(v) There are no actions at law, suits in equity, proceedings or claims pending or, to the Electricity Supplier's knowledge, threatened against the supplier before any federal, state, foreign or local court, tribunal or government agency or authority that might materially delay, prevent or hinder the supplier's performance of its obligations hereunder; and

b) The Electricity Supplier shall provide notice to the Company via facsimile, with the original delivered via overnight mail, at such time that the supplier learns that any of the representations, warranties, or covenants in Paragraph 3 (a) of this Agreement have been violated.

4.0 The Electricity Supplier and the Company will comply with any and all information and data transfer protocols that may be adopted by the DCPSC and set forth in the Electronic Data Interchange standards for electric deregulation in the District of Columbia.

5.0 This Agreement is a valid and binding obligation of the Company and the Electricity Supplier, enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect that affect creditors' rights generally.

6.0 As consideration for Coordination Services provided by the Company, the Electricity Supplier shall pay the Company those Coordination Services Charges billed to the supplier in accordance with the terms and conditions of the Company's Electricity Supplier Coordination Tariff.

7.0 Coordination Services between the Company and the Electricity Supplier will commence pursuant to Section 4.2 of the Company's Electricity Supplier Coordination Tariff.

8.0 Indemnification. Each party (the Indemnitor) shall indemnify and hold harmless the other party (the Indemnatee), and its directors, officers, agents, employees, successors and permitted assigns, from any and all demands, claims, liabilities, expenses and costs, including reasonable attorney's fees, arising from any damage, loss or injury that Indemnatee may suffer as a result of claims, demands, costs or judgments against Indemnatee arising out of: (1) the gross negligence and/or willful act or omission of Indemnitor or its officers, directors, agents, employees, successors and permitted assigns, except to the extent that such damage, loss or injury was caused in whole or in part by the negligent or willful act or omission of indemnatee; (2) the failure of Indemnitor, its officers, employees or agents, to perform any of the obligations arising out of this agreement; or (3) the failure of Indemnitor its officers, employees or agents, to conform to or obey the statutes, regulations or requirements of federal and District of Columbia law. Indemnatee shall provide Indemnitor prompt notice of any such suit, demand or claim and cooperate fully in the defense of such suit. This indemnity shall survive the termination or expiration of this Agreement.

9.0 Assignment. The Supplier Coordination Agreement hereunder may not be assigned by

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either the Company or the Electricity Supplier without first obtaining (a) any and all necessary regulatory approvals and (b) the consent of the other party, which consent shall not be unreasonably withheld. Any assignment occurring in accordance with this provision shall be binding upon, and oblige and inure to the benefit of, the successors and assigns of the Parties to the Agreement.

10.0 Governing Law. To the extent not subject to the exclusive jurisdiction of the Federal Energy Regulatory Commission ("FERC"), the formation, validity, interpretation, execution, amendment and termination of this Supplier Coordination Agreement shall be governed by the laws of the District of Columbia.

11.0 Third Party Beneficiaries. The Supplier Coordination Agreement is intended solely for the benefit of the Parties hereto. Nothing in the Supplier Coordination Agreement shall be construed to create any duty, or standard of care with reference to, or any liability to, any person not a party to the Supplier Coordination Agreement.

12.0 General Miscellaneous Provisions.

12.1 The Supplier Coordination Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties, or to impose any partnership obligation or liability upon either party. Neither party shall have any right, power, or authority to enter into any agreement or undertaking for, or on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other party.

12.2 Cancellation, expiration or earlier termination of the Supplier Coordination Agreement shall not relieve the Parties of obligations that by their nature survive such cancellation, expiration or termination, including without limitation warranties, remedies, promises of indemnity and confidentiality.

12.3 Should any provision of this Tariff or the Supplier Coordination Agreement be held invalid or unenforceable, such provision shall be invalid or unenforceable only to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable any other provision hereof unless it materially changes the Agreement of the Parties.

12.4 This Supplier Coordination Agreement is intended by the Parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. All prior written or oral understandings, offers or other communications or every kind pertaining to this Agreement are hereby abrogated and withdrawn.

## ATTACHMENT D

13.0 Rights Upon Default. Notwithstanding anything stated herein, (1) upon the occurrence of a monetary Default by the Electricity Supplier, the Company may draw upon the supplier's Credit Resources to pay the amount of the monetary Default; and (2) upon the occurrence of any Default, the party not in Default shall be entitled to file a complaint with the Commission to require the party in Default to remedy such default and specifically perform its duties and obligations hereunder in accordance with the terms and conditions hereof. Monetary default includes, but is not limited to, the following:

- (a) Special mailings by the Company to the Electricity Supplier's Customers to inform them of the discontinuance of service and their options;
- (b) Non-standard/manual bill calculation and production performed by the Company
- (c) Company performance of any of the Electricity Supplier's data transfer responsibilities
- (d) Charges or penalties imposed on the Company by third parties resulting from the Electricity Supplier's non-performance;
- (e) Unplanned replacement capacity and/or energy obligations: and
- (f) Other expenses associated with any such failure by the Electricity Supplier.

14.0 Any notice or request made to or by either party regarding this Agreement shall be made to the representative of the other party as indicated below.

To the Company \_\_\_\_\_  
(Address) \_\_\_\_\_  
(City & State) \_\_\_\_\_  
  
Attn: \_\_\_\_\_  
Title: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Internet e-mail: \_\_\_\_\_



## ATTACHMENT D

To the Electricity Supplier: \_\_\_\_\_  
(Address) \_\_\_\_\_  
(City & State) \_\_\_\_\_  
  
Attn: \_\_\_\_\_  
Title: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Internet e-mail: \_\_\_\_\_

15.0 The Company's Electricity Supplier Coordination Tariff and the PJM/AP Transmission Tariff (collectively "Tariffs") are incorporated herein by reference and made a part hereof. By signing below, the Electricity Supplier acknowledges that it has read and understands the Tariffs and will strictly comply with the terms and conditions contained in the Tariffs. All terms used in this Agreement that are not otherwise defined shall have the meaning provided in the Supplier Tariff.

**IN WITNESS WHEREOF**, and intending to be legally bound thereby, Company and the Electricity Supplier identified above have caused this Coordination Agreement to be executed by their respective authorized officials.

**Potomac Electric Power Company**

**Electricity Supplier**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

## ATTACHMENT E

### SCHEDULING COORDINATOR DESIGNATION FORM

1.0 This Scheduling Coordinator Designation Form, dated \_\_\_\_\_, is being submitted to PEPCO by the following Electricity Supplier

2.0 By submitting this form, the Electricity Supplier hereby notifies PEPCO that it has appointed the following entity to act as its Scheduling Coordinator effective the first day of \_\_\_\_\_ in accordance with Rule 3.0 of the Company's Electricity Supplier Coordination Tariff ("Tariff"):

3.0 PEPCO will utilize the Scheduling Coordinator as the sole point of contact with the Electricity Supplier in connection with PEPCO's provision of Coordination Services to the supplier. Likewise, the Scheduling Coordinator appointed by the Electricity Supplier shall be responsible for the performance of all Coordination Obligations of the supplier that are specifically delegated to said Scheduling Coordinator in this Form.

4.0 The Electricity Supplier agrees that PEPCO will bill the Scheduling Coordinator directly for all Coordination Services Charges attributable to the supplier and that the Scheduling Coordinator will pay the Company such charges on behalf of the supplier in accordance with the terms and conditions in the Tariff.

5.0 The Electricity Supplier and its appointed Scheduling Coordinator shall comply all the terms and conditions of the Tariff, including those pertaining to Scheduling Coordinators and to payment and billing.

6.0 All inquiries, communications or notices relating to the Electricity Supplier's use of the Scheduling Coordinator designated above may be directed to the following representatives:

To the Electricity Supplier: \_\_\_\_\_

Attention: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Internet e-mail: \_\_\_\_\_

## ATTACHMENT E

To the Scheduling Coordinator: \_\_\_\_\_

Attention: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Internet e-mail: \_\_\_\_\_

7.0 The Tariff is incorporated herein by reference and made a part hereof. All capitalized terms used, but not defined, in this designation form shall have the meaning stated in the Tariff.

8.0 The Electricity Supplier has executed this designation form below by its duly authorized representative as follows:

Company Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **ATTACHMENT F**

### **ELECTRONIC DATA INTERCHANGE (EDI) TRADING PARTNER AGREEMENT**

THIS ELECTRONIC DATA INTERCHANGE TRADING PARTNER AGREEMENT (the "Agreement") is made as of \_\_\_\_\_, by and between Potomac Electric Power Company ("PEPCO"), a District of Columbia and Virginia corporation with offices at 1900 Pennsylvania Avenue, NW, and \_\_\_\_\_, a \_\_\_\_\_ corporation with offices at \_\_\_\_\_ ("Customer"). PEPCO and Customer are each individually referred to herein as a "Trading Partner" and collectively referred to herein as "Trading Partners."

#### **RECITALS**

**WHEREAS**, PEPCO and the Customer desire to facilitate the exchange of business Electronic Transactions by electronically transmitting and receiving data in agreed upon formats and to ensure that such Electronic Transactions are not legally invalid and unenforceable.

**NOW THEREFORE**, in consideration of mutual promises and covenants contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the Trading Partners, intending to be legally bound hereby, hereto agree as follows:

#### **Section 1. Prerequisites**

1.1 **Electronic Transaction Standards.** Each Trading Partner may electronically transmit to or receive from the other Trading Partner certain Electronic Transactions, as specified herein and in the Appendix, attached hereto and incorporated herein by reference. An Electronic Transaction is the specific message format exchanged between originator and recipient, usually an electronic message sequence, which relates to a specific type of paper business document. Electronic Transactions shall be transmitted in accordance with the standards and/or appropriate industry guidelines set forth in the Appendix and/or as required or approved by the District of Columbia Public Service Commission ("DCPSC"), as the same may be amended from time to time.

1.2 **Scope of the Agreement.** This Agreement shall govern and apply only to Electronic Transactions transmitted from either Trading Partner to the other in connection with PEPCO's provision of coordination service to Customer in accordance with the terms of PEPCO's tariffs, The General Terms and Conditions for Furnishing Electric Service in the District of Columbia, and the terms of the EDI Implementation Guides included in the Appendix.

## ATTACHMENT F

### 1.3 Third-Party Service Providers

1.3.1 Electronic Transactions will be transmitted electronically to each Trading Partner either directly or through any third party service provider ("Provider") with which either Trading Partner may contract on its own behalf. Either Trading Partner may modify its election to use, not use or change its Provider upon thirty (30) days prior written notice.

1.3.2 Each Trading Partner shall be responsible for the costs and performance of any Provider with which it contracts, unless otherwise set forth in the Appendix.

1.3.3 Each Trading Partner shall be liable for the acts or omissions of its Provider while transmitting, receiving, storing or handling Electronic Transactions, or performing related activities, for such Trading Partner; provided, that if both the Trading Partners use the same Provider to effect the transmission and receipt of an Electronic Transaction, the originating Trading Partner shall be liable for the acts or omissions of the Provider as to such Electronic Transaction.

1.4 System Operations. Each Trading Partner, at its own expense, shall be responsible for and/or provide and maintain the equipment, software, services and testing necessary to effectively and reliably transmit and receive Electronic Transactions.

1.5 Security Procedures. Each Trading Partner shall properly use those security procedures which are standard in the industry, including any security procedures specified by the DCPSC, in the Appendix, if any, which are reasonably sufficient to ensure that all transmissions of Electronic Transactions are authorized and to protect its business records and data from improper access.

1.6 Signatures. Each Trading Partner shall adopt as its signature an electronic identification consisting of symbol(s) or code(s), which are affixed to or contained, in each Electronic Transaction transmitted by such Trading Partner ("Signature"). Each Trading Partner agrees that any Signature of such Trading Partner affixed to or contained in any transmitted Electronic Transaction shall be sufficient to verify such Trading Partner originated such Electronic Transaction. Neither Trading Partner shall disclose to any unauthorized person the Signatures of the other Trading Partner.

1.7 Back-Up Data. Trading Partners agree to maintain adequate back-up files to recreate transmissions as required. Back-up files shall be subject to this Agreement to the same extent as original data. Electronic Transactions shall be retained for such periods as required by relevant state and/or federal requirements.

## ATTACHMENT F

### 1.8 Testing

1.8.1 Electronic Transactions will not be authorized by either Trading Partner until subjected to reasonable testing to ensure accuracy and compliance with any orders of the DCPSC.

1.8.2 Following acceptance for production use, additional testing may be required by a Trading Partner in response to a change in the system environments including, but not limited to: installation of a new application system, installation of a new EDI translator or implementation of a new EDI version. Additional Testing shall adhere to any standard testing procedure determined by the DCPSC.

### Section 2. Transmissions

2.1 Proper Receipt. Electronic Transactions shall not be deemed to have been properly received, and no Electronic Transaction shall give rise to any obligation, until accessible to the receiving Trading Partner at such Trading Partner's Receipt Computer to be designated to the other Trading Partner and verification confirmed in accordance with industry standards and/or orders of the DCPSC.

2.2 Verification. Upon proper receipt of any Electronic Transaction, the receiving Trading Partner shall promptly and properly transmit a functional acknowledgment ("FA") in return in standard format, within the time frame specified by the DCPSC. A FA shall constitute conclusive evidence that an Electronic Transaction has been properly received. A FA is not an acceptance or a status report unless otherwise specified in the Appendix.

2.3 Acceptance. If acceptance of an Electronic Transaction is required by the DCPSC, any such Electronic Transaction which has been properly received shall not give rise to any obligation unless and until the Trading Partner initially transmitting such Electronic Transaction has properly received in return an acceptance Electronic Transaction.

2.4 Garbled Transmissions. If any properly transmitted Electronic Transaction is received in an unintelligible or garbled form, the receiving Trading Partner shall promptly notify the originating Trading Partner (if identifiable from the received Electronic Transaction) in a reasonable manner. In the absence of such a notice, the originating Trading Partner's records of the contents of such Electronic Transaction shall control.

### Section 3. Transaction Terms

3.1 Terms and Conditions. Any Electronic Transaction made pursuant to this Agreement (and any related communication) shall also be subject to the terms and conditions included in

## ATTACHMENT F

PEPCO's applicable tariffs that may be approved by the DCPSC from time to time. The Trading Partners acknowledge that the terms and conditions set forth in PEPCO's tariffs may be or may become inconsistent, or in conflict with this Agreement, but agree that any conflict or dispute that arises between the Trading Partners in connection with any such Electronic Transaction will be resolved as if such Electronic Transaction had been effected through application of the tariffs. Any inconsistency between this Agreement and any orders of the DCPSC shall be resolved by giving precedence to the DCPSC orders and then to this Agreement.

3.2 Confidentiality. Electronic Transactions and other communications related to Electronic Transactions under the Agreement shall maintain the same confidential or non-confidential status (whichever is applicable) as they would have in the form of paper records.

### 3.3 Validity and Enforceability

3.3.1 This Agreement has been executed by the Trading Partners to evidence their mutual intent to create binding electronic transactions.

3.3.2 The Parties agree that correspondence and Electronic Transactions electronically transmitted pursuant to this Agreement shall be construed to be in conformance with all requirements set forth in PEPCO's tariffs and standards as approved by the DCPSC for all purposes.

3.3.3 Any Electronic Transaction, properly transmitted pursuant to this Agreement, shall be considered to be a "writing" or "in writing" and any such Electronic Transaction when containing, or to which there is affixed, a Signature ("Signed Electronic Transactions") shall be deemed for all purposes to have been "signed" and to constitute an "original" when printed from electronic files or records established and maintained in the normal course of business.

3.3.4 The conduct of the Trading Partners pursuant to this Agreement, including the use of Signed Electronic Transactions properly transmitted pursuant to this Agreement, shall, for all legal purposes, evidence a course of performance accepted by the Trading Partners in furtherance of this Agreement.

3.3.5 The Trading Partners agree not to contest the validity or enforceability of Signed Electronic Transactions under the provisions of any applicable law relating to whether certain agreements are in writing and signed by the Trading Partner to be bound thereby. Signed Electronic Transactions, if introduced as evidence on paper in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Trading Partners to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Trading Partner shall

## ATTACHMENT F

contest the admissibility of copies of Signed Electronic Transactions on the basis that the Signed Electronic Transactions were not originated or maintained in documentary form.

### Section 4. Miscellaneous

4.1 Headings. Headings or titles of the provisions hereof are for convenience only and shall have no effect on the provisions of this Agreement.

4.2 Termination. This Agreement shall remain in effect until terminated by either Trading Partner with not less than thirty (30) days prior written notice, which notice shall specify the effective date of termination; provided, however, that any termination shall not affect the respective obligations or rights of the Trading Partners arising under any Electronic Transactions or otherwise under this Agreement prior to the effective date of termination. Any attempted termination in conflict with any order of the DCPSC shall be deemed ineffective for purposes herein.

4.3 Severability. Any provision of this Agreement which is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

4.4 Entire Agreement. This Agreement constitutes the complete agreement of the Trading Partners relating to the matters specified in this Agreement and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. This Agreement may not be amended, supplemented, changed or modified in any manner, orally or otherwise, except by an instrument in writing of concurrent or subsequent date, signed by a duly authorized representative of each Trading Partner. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either Trading Partner. No obligation to enter into any Transaction is to be implied from the execution or delivery of this Agreement. This Agreement is for the benefit of, and shall be binding upon, the Trading Partners and their respective successors and assigns.

4.5 Assignment. This Agreement, or any rights or obligations hereunder, shall not be assigned by either Trading Partner without the express written approval of the other Trading Partner; provided, however, that a Trading Partner may assign this agreement, or any of its rights or obligations hereunder, in whole or in part, to any affiliate permitted to perform the respective Trading Partner's responsibilities, by the DCPSC, without the express written approval of the other Trading Partner. Any assignment, which does not comply with the provisions of this section 4.5, shall be null and void.



## ATTACHMENT F

4.6 Non-Waiver. The waiver by either Trading Partner of any breach of any term, covenant or condition contained in this Agreement shall not be deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition or obligation.

4.7 Governing Law and Tariffs. This Agreement shall be governed by and interpreted in accordance with the laws of the District of Columbia and applicable PEPCO tariff. This Agreement shall at all times be subject to any changes or modifications by the DCPSC, as the Commission may, from time to time, direct in the exercise of its jurisdiction.

4.8 Force Majeure. No Trading Partner shall be liable for any failure to perform its obligations in connection with any Transaction or any Electronic Transaction where such failure results from any act of God or other cause beyond such Trading Partner's reasonable control which prevents such Trading Partner from transmitting or receiving any Electronic Transactions.

4.9 Exclusion of Damages. Neither Trading Partner shall be liable to the other Trading Partner for any indirect, special, incidental, exemplary or consequential damages, arising from or as a result of any delay, omission, or error in the electronic transmission or receipt of any Electronic Transactions pursuant to this Agreement, even if such Trading Partner has been advised of the possibility of such damages.

4.10 Resolution of Disputes

4.10.1 In the event of any controversy or claim arising out of or relating to this Agreement, or breach thereof, the Trading Partners shall use commercially reasonable judgment to resolve the claim or dispute, initially, through good faith negotiations or upon the failure of such negotiations, through Alternative Dispute Resolution ("ADR") techniques and proceedings or another DCPSC approved process.

4.10.2 If any controversy, claim, or dispute arising hereunder is not resolved in accordance with Article 4. 10.1 above, either Trading Partner may, upon giving the other Trading Partner at least ten (10) days' prior written notice, initiate litigation to submit such claims or disputes for decision by a court of competent jurisdiction.

4.11 Notices. Unless otherwise provided herein, all notices, demands or other communications hereunder shall be in writing and shall be deemed to have been received when personally delivered, when sent by (i) courier delivery; (ii) Federal Express or similar overnight courier delivery; (iii) U.S. certified mail, return receipt requested to the address and persons specified in this Agreement. Notices or communications shall be deemed given on the date of (a) courier or overnight courier delivery; or (b) in the case of transmittal by U.S. certified mail, return receipt requested, the date the return receipt is signed or delivery is rejected. The following are the primary contacts for all communications related to this Agreement:

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**4.12 PEPCO:**

Attn: \_\_\_\_\_  
Address: \_\_\_\_\_

Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
email: \_\_\_\_\_

**4.13 Customer:**

Company Name: \_\_\_\_\_  
Attn: \_\_\_\_\_  
Address: \_\_\_\_\_

Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
email: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties have executed the agreement as of the day and year first above written.

**POTOMAC ELECTRIC POWER COMPANY:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CUSTOMER'S NAME:** \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_