

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., SUITE 200, WEST TOWER
WASHINGTON, D.C. 20005

ORDER

April 25, 2003

GT 96-3, IN THE MATTER OF THE APPLICATION OF WASHINGTON GAS
LIGHT COMPANY, DISTRICT OF COLUMBIA DIVISION, FOR AUTHORITY
TO ESTABLISH A NEW RATE SCHEDULE NO. 1A, Order No. 12709

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia ("Commission") adopts, on an interim basis, rules and initiatives designed to expand competition in the District's retail natural gas market, license natural gas suppliers, provide for customer protection, and improve customer awareness.

II. BACKGROUND

2. On February 5, 1996, Washington Gas Light Company ("Washington Gas") filed a request with the Commission to offer firm delivery service to large, non-residential and commercial customers pursuant to a new tariff, Rate Schedule No. 2A.¹ Washington Gas also requested the ability to implement a Firm Delivery Service Gas Supplier Agreement between non-residential customers and third-party suppliers that specified supplier obligations to customers under a new Rate Schedule No. 5.² The Commission approved both requests.³

3. Two months later, on April 1, 1996, Washington Gas filed a request with the Commission to offer, under a new Rate Schedule No. 1A, a two-year Residential Firm Delivery Service Pilot Program ("Pilot Program"). Under the Pilot Program, Washington Gas proposed to make firm delivery service available to as many as 13,000 residential customers who elected to aggregate their gas requirements and purchase gas directly from third-party suppliers. Washington Gas proposed that the Pilot Program incorporate Rate Schedule No. 5 to govern tariff transactions between residential firm

¹ See GT 96-2, *In the Matter of the Application of Washington Gas Light Company, District of Columbia Division, for Authority to Establish Rate Schedule 2A and Rate Schedule 5* ("GT 96-2"), Letter to Jesse P. Clay, Commission Secretary from Excetral K. Caldwell, filed February 5, 1996.

² *Id.*

³ GT 96-2, Order No. 11132 at 5, rel. January 20, 1998.

delivery customers and third-party suppliers of natural gas.⁴ The Commission approved Washington Gas's request.⁵ Subsequently, the Commission extended the Pilot Program to all customers.⁶

4. On October 4, 2000, Washington Gas requested authority to implement the Pilot Program on a permanent basis.⁷ The Commission approved that request as well, thereby effectively establishing full-scale competition in the District's gas market.⁸ In addition to approving full-scale competition, the Commission established the Natural Gas Working Group ("Working Group")⁹ and instructed it to "develop licensing and certification procedures for third-party natural gas suppliers, improve consumer education in the Residential Firm Delivery Service Program, address and develop customer protection standards, and address and develop incentives that will lead to increased third-party supplier participation in the program."¹⁰

5. On June 1, 2001, the Working Group filed the following four reports: the Proposed Supplier Licensing Procedures Report and Licensing Regulations, the Incentives for Increased Supplier Participation Report, the Improved Consumer Education Report, and the Proposed Customer Protection Standards Recommendations Report (collectively "the Working Group Reports"). In order to facilitate participation by all interested parties, the Commission invited public comment on the Working Group Reports.¹¹ Comments were received from OPC, PES, Washington Gas, BGE HOME, and WGES. Each Working Group Report is addressed separately below.

⁴ See *GT 96-3, In the Matter of the Application of Washington Gas Light Company, District of Columbia Division, for Authority to Establish a New Rate Schedule No. 1A*, ("GT 96-3") Letter to Jesse P. Clay, Commission Secretary from Excetral K. Caldwell, Washington Gas, filed April 1, 1996.

⁵ *GT 96-3*, Order No. 11153 at 19-20, rel. April 2, 1998.

⁶ *GT 96-3*, Order No. 11375 at 5, rel. April 28, 1998. (In addition to eliminating the 13,000-customer ceiling, the Order allowed customers to enroll with alternative gas suppliers on the Internet.)

⁷ *GT 96-3*, Letter to Jesse P. Clay, Commission Secretary, from Excetral K. Caldwell, Washington Gas, filed October 9, 2000.

⁸ *GT 96-3*, Order No. 11928, rel. February 21, 2001.

⁹ The District Natural Gas Working Group consisted of representatives from the Washington Gas, the Office of the People's Counsel ("OPC"), the Apartment and Office Building Association of Metropolitan Washington ("AOBA"), Washington Gas Energy Services ("WGES"), FirstEnergy Services, BGE HOME, PEPCO Energy Services ("PES"), and Commission Staff.

¹⁰ *GT 96-3*, Order No. 11928, rel. February 21, 2001.

¹¹ Request for Comments on Natural Gas Working Group Reports, 48 DC Reg. 8148-8149 (Aug. 2001).

III. DISCUSSION

A. THE NATURAL GAS WORKING GROUP REPORTS

1. INCENTIVES FOR INCREASED SUPPLIER PARTICIPATION REPORT

6. We directed the Working Group to submit a report discussing incentives that would lead to increased third-party supplier participation in the customer choice program.¹² In response, the Working Group submitted a report essentially explaining that its recommendations in the other three Working Group reports *are* the incentives necessary to encourage suppliers to enter the local market. Rather than discuss the Working Group's recommendations here, we will discuss them in the context of the other three reports.

2. PROPOSED SUPPLIER LICENSING PROCEDURES REPORT

7. The purpose of this report is to present the Working Group's proposed licensing and certification procedures. In developing this report, the Working Group states that it was guided by the electricity supplier regulations and electricity supplier application adopted by the Commission in Formal Case 945.¹³ Additionally, because several natural gas suppliers operate in both Maryland and the District, the Working Group believed that suppliers would have more incentive to participate in the District's gas market if the regulations and application were similar to those used in Maryland. Therefore, where they believed it was appropriate to do so, the Working Group incorporated certain provisions from Maryland's Gas Supplier License Regulations.¹⁴

8. The Working Group's report is essentially divided into two parts: one part proposes regulations, the other proposes an application to obtain a license to supply natural gas or natural gas services. Washington Gas, PES, and WGES have all filed comments in support of the entire report.¹⁵ The Commission has received no comments in opposition to most of the provisions contained in the proposed regulations and

¹² GT 96-3, Order No. 11928 at 8, rel. February 2, 2001.

¹³ *In the Matter of the Investigation into Electric Service Market Competition and Regulatory Practices, Formal Case 945, Phase II ("F.C. 945")*, Order No. 11796, rel. Sept. 18, 2000, Attachments B & C.

¹⁴ GT 96-3, Proposed Licensing Procedures Report filed June 1, 2001, at 4.

¹⁵ GT 96-3, Comments of Washington Gas Light Company on the Natural Gas Working Group Reports filed September 21, 2001; Comments of PEPCO Energy Services, Inc. in response to the Natural Gas Working Group Reports on Proposed Customer Protection Standards, Incentives for Increased Supplier Participation, and Supplier Licensing Procedures ("PES Comments"), filed September 14, 2001; Reply Comments of Washington Gas Energy Services, Inc., ("WGES Reply Comments") filed October 9, 2001.

application.¹⁶ In our view, these uncontested provisions clearly establish a reasonable mechanism for licensing natural gas suppliers in the District of Columbia and we hereby adopt them without further discussion. The contested provisions of the proposed regulations are discussed below.

3. THE REGULATIONS

1. Assessments

a. Parties' Positions

9. The Working Group decided against recommending the inclusion of a provision stating that natural gas suppliers are public utilities subject to the assessment provisions of D.C. Code § 43-612(a)(2).¹⁷ However, OPC does not support this particular view and has filed comments urging us to reflect in the regulations that natural gas suppliers are public utilities subject to assessments.¹⁸ WGES, on the other hand, has filed comments in support of the Working Group's position.¹⁹

b. Commission Decision

10. Essentially, OPC's position is that all gas suppliers are subject to assessments as public utilities simply because they sell natural gas in the District of Columbia. We note that OPC raised a similar argument in the complaint it filed against PowerTrust.com. ("PowerTrust").²⁰ In rejecting OPC's argument, the Commission

¹⁶ The uncontested provisions are .01, .02, .03, .04, .05, .06 (A) and (B)(1-17), .07, 08, and .09.

¹⁷ D.C. Code § 34-912 (a)(2) [formerly codified at D.C. Code § 43-612(a)(2)] authorizes the Commission to assess any public utility operating in the District of Columbia to pay expenses of the Commission and OPC arising from any investigation of such public utility by the Commission.

¹⁸ *GT 96-3, Comments and Recommendations of the Office of the People's Counsel to the Working Group Reports ("OPC Comments")* filed September 21, 2001, at 20-22.

¹⁹ *GT 96-3, Reply Comments of Washington Gas Energy Services, Inc.,* filed October 9, 2001, at 3.

As a subsidiary issue, PES argued that a supplier should only be required to pay an assessment after a complaint has been litigated and the supplier has been found culpable. *GT 96-3, PES Reply Comments* at 12. OPC opposed PES's comments arguing that, by law, gas suppliers are subject to assessments regardless of whether they have been found liable for any violations. *GT 96-3, Reply Comments of the Office of People's Counsel to the Comments of PEPCO Energy Services, Inc. In Response to the Natural Gas Working Group Reports on Proposed Customer Protection Standards, Increased Supplier Participation, and Supplier Licensing Procedures*, filed October 9, 2001, at 6. The purpose of the assessment is to fund the proceeding, not to penalize the supplier. Thus, if the supplier is subject to assessment, we agree with OPC that the culpability of the supplier is irrelevant.

²⁰ *Part I Complaint of the Office of People's Counsel Against PowerTrust.com and Part II Petition for Investigation into the Solicitation Practices of Natural Gas Suppliers in the Washington gas Pilot Programs, Formal Case No. 999, ("F.C. 999")*, filed January 11, 2001.

reasoned that PowerTrust could not be a public utility within the meaning of D.C. Code § 43-612 (a)(2) unless it sells natural gas *and* owns, operates, controls or manages a gas plant in the District.²¹ Nothing in OPC's comments persuades us that our earlier interpretation of the statute was erroneous. Inasmuch as we view OPC's suggested provision as being inconsistent with the statute, we decline to include any language in these regulations that would state or imply that *all* gas suppliers are public utilities subject to assessment.

2. Sanctions

a. Parties' Positions

11. The lack of an assessment provision is not the only aspect of the regulations that OPC finds troubling. Section .06(B)(18) of the proposed regulations states that the Commission may take action against a licensee for "[s]uspension or revocation of a license by any state or federal authority."²² However, this provision's counterpart in the electricity regulations provides that the Commission may take action against a licensee for "[s]uspension 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 ("FERC")*" (emphasis added).²³ In OPC's opinion, the language under the electricity regulations allows the Commission greater authority to impose sanctions than what has been proposed under the gas regulations. Given the fact that the gas and electricity regulations have similar if not identical goals, OPC requests that the Commission include the additional language from the electricity regulations.²⁴

b. Commission Decision

12. The fact that the proposed language for Section .06(B)(18) is not identical to its counterpart in the electricity regulations is, in reality, a distinction without a difference. As proposed, this provision would permit the Commission to take action against a licensee based on a suspension or revocation of a license by *any federal authority*. Inasmuch as FERC is a federal authority, it is clear that the Commission would be able to take action against a licensee based on a FERC decision to revoke or suspend any license, including a license to be a power marketer. Thus, the additional language that OPC urges us to include is actually superfluous. However, in the interest of clarity, we will include it.

²¹ F.C. 999, Order No. 12035, rel. June 20, 2001.

²² GT 96-3, Proposed Supplier Licensing Procedures Report, Attachment 2, Section .06(B)(18).

²³ See F.C. 945, Order No. 11796, rel. September 18, 2000, Attachment C, Section .06(.02)(S).

²⁴ GT 96-3, OPC Comments at 22. OPC states that the distinction between gas and electricity suppliers is in the applications. It is actually in the regulations.

4. THE APPLICATION

13. We turn next to consider the Working Group's proposed gas supplier application. The application contains twenty-four questions. Although generally supportive of the Working Group report, OPC has raised a number of concerns regarding particular provisions of the proposed application, especially where they deviate from those contained in the application for electricity suppliers. The Working Group's proposed application and OPC's concerns are discussed more fully below.

a. **Parties' Positions**

14. **Questions one through four.** These questions solicit basic identifying information from the applicant (e.g. name, address, contact person etc.). Question 4 asks the applicant to provide the name, title, and addresses of the primary corporate officers or general partners but does not state which primary corporate officers the applicant should list. This latter requirement differs from the electricity supplier application, which requires applicants to provide the names of the President/General Partners, CEO, Corporate Secretary, and Treasurer. OPC asserts that there is no reason to allow gas suppliers to choose which corporate officers to list and suggests that the gas supplier application be modified to conform to the electricity supplier application.²⁵

15. **Question five.** This question asks the applicant to submit a certificate from the District of Columbia's Department of Consumer and Regulatory Affairs (DCRA) certifying that the applicant is in good standing to do business in the District of Columbia. Unlike the electricity supplier application, which has no further requirement with regard to the DCRA certificate, the gas supplier application requires the certificate to have been issued within twelve months of the filing date of the application. The Working Group suggested the twelve-month limitation to "provide some assurance to the Commission that the applicant was currently in good standing to do business in the District of Columbia."²⁶ According to the Working Group, this provision will benefit licensed electricity suppliers by allowing them to use the same certificate of good standing that they previously submitted with their electricity supplier application.²⁷

16. OPC, however, asserts that applicants should be required to provide a Certificate of Good Standing issued within thirty days, not twelve months. Essentially, OPC believes that a certificate issued within thirty days is an inherently more reliable gauge of the applicant's business operations than a certificate issued twelve months

²⁵ GT 96-3, OPC Comments at 18.

²⁶ GT 96-3, Proposed Supplier Licensing Report at 9.

²⁷ *Id.*

earlier. OPC further asserts that this shorter period is not onerous because: 1) all corporations seeking to do business in the District are required to either file Articles of Incorporation (for domestic corporations) or an Application for Certificate of Authority (for foreign corporations) to do business in the District; 2) foreign corporations filing an application for a Certificate of Authority must submit a Certificate of Good Standing from their state of incorporation that was issued within thirty days of the filing of the application; and 3) a Certificate of Good Standing issued by DCRA can be obtained immediately after paying a \$10.00 processing fee.²⁸

17. **Questions six and seven.** Among other things, these questions require an applicant to disclose any formal adverse action taken against the license of the applicant, any predecessor, or unregulated affiliate where the foregoing was engaged in the sale of electricity or natural gas at *retail*. Question 7 asks the applicant to provide this information for the *two* years preceding the filing of the application. This differs from the electricity supplier application, which requires applicants to disclose information regarding adverse action taken against the applicant, any predecessor, or unregulated affiliate that engaged in the sale or transmission of electricity at either the *wholesale or retail* level. Additionally, the electricity supplier application requires the applicant to provide this information for the last *five* years preceding the filing of the application. According to the Working Group, most of the members of the group saw no reason to disclose actions against affiliates or predecessors who were operating in wholesale markets nor, with regard to retail sales, did they see a need to disclose adverse actions more than two years old.²⁹ OPC, however, asserts that there is no justification for treating electricity and natural gas suppliers differently and suggests that these provisions be changed to mirror those in the electricity supplier application.³⁰

18. **Questions eight through twenty.** These questions solicit a variety of information ranging from the type and scope of the applicant's business activities to proof of compliance with all applicable laws, regulations, tariffs, and agreements. The Commission has received no comments in opposition to these provisions.

19. **Questions twenty-one through twenty-three.** Among other things, these provisions notify the applicant of its obligation to amend its application if substantial changes occur in the information upon which the Commission relied in approving the application and states that the initial licensing fee is \$400. However, pursuant to Question 22, the \$400 fee is assessed only once if a previous license application was filed with the Commission within the past twelve months. This differs from the electricity supplier application, which has no such limitation on the assessment fee. The Working Group believes that limiting the assessment "could be viewed as a possible Natural Gas Supplier incentive."³¹ OPC objects to any waiver of the \$400 fee. OPC notes that the

²⁸ GT 96-3, OPC Comments at 18-19.

²⁹ GT 96-3, Proposed Supplier Licensing Procedures Report at 10-11.

³⁰ GT 96-3, OPC Comments at 20.

³¹ GT 96-3, Proposed Supplier Licensing Report at 14.

Natural Gas Accounts Act permits the Commission to establish a licensing fee, which, in OPC's view, is for the express purpose of covering the Commission's cost of processing the application. According to OPC, if the Commission were to waive the fee simply to entice more suppliers into the market, it would contravene the spirit and intent of the Act.³²

b. Commission Decision

20. OPC's concerns have merit. As a general proposition, we see no compelling reason to create different licensing standards for natural gas and electricity suppliers.³³ Therefore, we agree with OPC that Questions 4, 7 and 22 in the proposed gas supplier application should be modified to mirror the language used in the electricity supplier application that we approved in F.C. 945. Specifically, we believe an applicant must: (1) provide the names of the company President/General Partners, CEO, Corporate Secretary, and Treasurer, in its application; (2) disclose any adverse actions taken against the applicant, any predecessor, or unregulated affiliate that engaged in the sale or transmission of natural gas at either the *wholesale or retail* level for the last *five* years preceding the filing of the application; and, (3) remit the \$400 licensing fee with every application.

21. We have a different view of Question 5. As noted earlier, the electricity supplier application requires the applicant to submit a certificate from DCRA certifying that the applicant is in good standing to do business in the District of Columbia, but does not specify any limitation on the age of the certificate. The Working Group is unanimous in its view that we should depart from the electricity supplier application and make the certificate time-limited, but they disagree as to the specific amount of time. Most of the members of the Working Group recommend a one-year limitation while OPC advocates thirty days. We agree with the Working Group that the certificate should be time-limited. However, we are not persuaded that the period should be twelve months as the Working Group suggests. Neither the Working Group nor any commenter has taken issue with OPC's assertion that applying for the certificate is a simple and inexpensive procedure. Given the recent spate of corporate collapses, we believe that the public's need for a current certificate outweighs the supplier's relatively small burden of producing it. Therefore, we adopt OPC's recommendation.

c. Additional Concerns of OPC

22. After the Working Group filed the Proposed Supplier Licensing Procedures Report, OPC identified four additional areas of concern. First, OPC notes that Section .01(A)(3) of the proposed regulations currently states:

³² GT 96-3, OPC Comments at 16-17.

³³ We see no reason to assess different licensing fees depending on whether the applicant intends to supply electricity or natural gas.

Restrictions. As a condition of filing a license Application, no person shall present itself as a licensed retail natural gas supplier, accept deposits or prepayments from retail customers, or contract with retail customers, prior to receipt of a license from the Commission.

OPC asserts that this language could be read to allow a supplier to market natural gas service without a license. OPC suggests that, after the words "gas supplier" on the second line, we insert the phrase "sell or offer to sell natural gas service".³⁴

23. Second, OPC objects to those provisions in the proposed regulations that permit competitive billing (i.e. consolidating Washington Gas's distribution charges with the supplier's balancing and purchase gas charges). OPC states that it has received a number of complaints from PowerTrust customers who paid Washington Gas's distribution charges and taxes as part of their consolidated bill but were later disconnected by Washington Gas for nonpayment when PowerTrust allegedly refused to pay Washington Gas its share of the revenue. OPC contends that "any risk of nonpayment should be specified between the biller and the non-billing party."³⁵

24. Third, OPC notes that the definition of "natural gas company" in the proposed regulations is different than the one used in the Natural Gas Accounts Act.³⁶ In the interest of consistency, OPC suggests that we use the Act's definition and define a natural gas company as "every corporation, company, association, partnership, or person doing business in the District of Columbia, their lessees, trustees, or receivers, appointed by any court whatsoever, physically transmitting or distributing natural gas in the District of Columbia to retail gas customers."³⁷

25. Finally, OPC states that the Proposed Supplier Licensing Report does not recommend that current suppliers file their license applications by a date certain. OPC suggests that we direct such suppliers to file their applications within sixty days.³⁸

d. Commission Decision

26. Taking the last issue first, we agree with OPC that current suppliers should be given a date certain to file their applications. No reply comments have been filed in

³⁴ GT 96-3, OPC Comments at 23.

³⁵ *Id.* at 23-24.

³⁶ Section .01(B)(17) of the proposed regulations states that a natural gas company "means a public service company that: (A) is authorized to install or maintain facilities in, over, or under streets for furnishing or distributing natural gas; or (B) owns a natural gas plant and: 1. Transmits, sells, supplies, or distributes artificial or natural gas; or 2. Manufactures natural gas for distribution or sale."

³⁷ GT 96-3, OPC Comments at 24-25.

³⁸ *Id.* at 25.

opposition to OPC's suggested 60-day limit. Moreover, we see no reason why suppliers would be unable to file their applications within that time period. Therefore, we adopt OPC's recommendation.

27. With regard to the problems that OPC did not raise with the Working Group,³⁹ we prefer to withhold judgment on these issues until after the Working Group has had an opportunity to consider them and make a recommendation. Adoption of the rules and application on an interim basis will not be delayed pending the Working Group's review, but the Working Group's recommendation and any comments thereon may be the basis for a future rulemaking.

5. PROPOSED CUSTOMER PROTECTION STANDARDS RECOMMENDATIONS REPORT

28. As was the case with the Proposed Supplier Licensing Procedures Report, the Working Group's recommendations in this report were heavily influenced by the standards applicable to electricity suppliers in the District and to gas suppliers in Maryland. The Working Group has proposed "Natural Gas Consumer Protection Standards" ("GCPS") and attached them to the report. The GCPS is divided into twelve sections and is modeled on the Interim Electric Consumer Protection Standards ("ECPS") that we adopted in F.C. 945.⁴⁰ BGE HOME, WGES, and Washington Gas have filed comments in support of the Working Group report.⁴¹

29. Many of the provisions in the proposed GCPS are uncontested.⁴² We have reviewed these uncontested provisions and find that they strike a reasonable balance between promoting competition and protecting the interests of consumers. Therefore, we hereby adopt them without further discussion. We address below each section of the GCPS as well as any applicable comments.

³⁹ As set forth in paragraphs 22-25 of this Order.

⁴⁰ F.C. 945, Order No. 11796, re: Sept. 18, 2000, Attachment A.

⁴¹ GT 96-3, Comments of BGE HOME to the Incentives for Increased Supplier Participation Report and the Proposed Consumer Protection Standards Recommendation and the Proposed Consumer Protection Standards Recommendations Report, filed October 9, 2001, WGES Reply Comments; Reply Comments of Washington Gas Light on the Natural Gas Working Group Reports ("Washington Gas Reply Comments"), filed October 9, 2001.

⁴² The uncontested provisions are: 1-1, 1-2, 1-3, 2-1, 2-2, 2-3, 2-4, 2-5, 2-6, 3-1, 3-2, 3-3, 3-4, 3-5, 3-6, 3-7, 4-1, 4-2, 4-3, 4-6, 4-11, 4-12, 5-1, 6-2, 6-3, 7-1, 7-2, 7-3, 7-4, 8-1, 8-2, 8-3, 9-1, 10-1, 10-2, 10-3, 10-4, 11-1, 11-2, 11-3, 12-1, 12-2, 12-3, 12-4, 12-5, 12-6, 12-7, 12-8, 12-9, 12-10, 12-11, 12-12, 12-13, 12-14, 12-15, 12-16, 12-17, and 12-18.

1. THE 120-DAY GRACE PERIOD

a. Parties' Positions

30. At the outset, the Working Group recommends that the Commission grant gas suppliers a 120-day grace period following issuance of this order so that suppliers can make the appropriate operational changes and revise their tariffs to conform to the GCPS. The Working Group also states that, during the grace period, gas suppliers should be required to continue to refrain from engaging in activities prohibited by the GCPS (e.g. slamming, cramming, and discriminatory practices).⁴³ OPC agrees that gas suppliers should have a grace period and that they should refrain from engaging in prohibited activities during that time, however, OPC objects to a grace period longer than 45 days.⁴⁴

b. Commission Decision

31. We share OPC's desire to have gas suppliers adhere to the consumer protection standards as quickly as possible, but we are also mindful of the fact that businesses must have sufficient time to adjust their practices and tariffs to conform to the standards we announce today. A 120-day grace period is not inherently unreasonable, especially given the Working Group's representation that, during the grace period, suppliers will continue to refrain from engaging in activities prohibited by the GCPS. Under the circumstances, we believe that a 120-day grace period poses no significant risk to consumers and, therefore, we accept the Working Group's recommendation.

2. Sections I and II – Purpose and Prohibited Activities

a. Parties' Positions and Commission Decision

32. These sections, among other things, set forth the stated purpose of the GCPS,⁴⁵ make the provisions applicable to residential customers,⁴⁶ and prohibit gas suppliers from engaging in a number of activities.⁴⁷ The Commission has received no

⁴³ *GT 96-3*, Proposed Customer Protection Standards Recommendations Report at 3-4.

⁴⁴ *GT 96-3*, OPC comments at 27.

⁴⁵ The purpose of the GCPS, as stated in Section 1.1, is "to establish uniform standards for billing, security deposits, disconnections and reconnections of service, resolution of complaints of residential natural gas customers, enrollment procedures, advertising by Natural Gas Suppliers, termination of contracts with Natural Gas Suppliers, and switching Natural Gas Suppliers."

⁴⁶ The consensus of the Working Group was that the standards need not cover commercial customers "because [they] are already protected under Title 15 D.C.M.R. Chapter 18, Non-Residential Customer Rights, Section 1800 et seq." *GT 96-3*, Proposed Customer Protection Standards Recommendations Report at 4.

⁴⁷ Pursuant to Section II, these activities include discrimination (based on race, color, creed, national origin, geographic location, sex, or sexual orientation), unlawful trade practices (e.g. slamming, cramming, unauthorized disclosure of a customer's account information, and misleading or harassing customers).

comments in opposition to these provisions and, as stated above, has accepted the Working Group's recommendation.

3. Section III - Advertising and Solicitations

a. Parties' Positions

33. The purpose of this section is to ensure that consumers understand the offers being made by natural gas suppliers. The provisions of this section are nearly identical to those in the ECPS for electricity suppliers. However, this section contains three provisions that the ECPS does not: the first provision addresses price comparison guidelines, the second contains guidelines for soliciting customers at home, and the third requires Washington Gas to provide natural gas suppliers with customer lists that include the customer's name, address, and usage information.⁴⁸ See Section 3-8. With regard to the customer lists of the third provision, the Working Group has proposed that inclusion on the lists would operate as a negative option, which means that Washington Gas would disclose the customer's information to the supplier unless the customer contacts Washington Gas and instructed it not to make such a disclosure.⁴⁹ OPC opposes such a provision even though customers can elect to have their name and information withheld from the list. According to OPC, requiring customers to "opt out" in order to avoid disclosure of their information effectively erodes the protections of under Section II of the GCPS, which expressly prohibit the disclosure of a customer's information without the customer's consent.⁵⁰ WGES disagrees with OPC and argues that suppliers actually need customer lists that include historical usage in order to formulate competitive offers tailored to a particular customer's needs. Without these lists, WGES states that suppliers will be at a competitive disadvantage.⁵¹

b. Commission Decision

34. Having price comparison guidelines and guidelines for home solicitation are useful elements of any consumer protection program. However, the disclosure of customer information is another matter. The Working Group makes no mention of requiring these lists in order to level the competitive playing field as WGES suggests. Instead, the Working Group proposed this provision to enable suppliers to focus their marketing efforts solely on "natural gas choice customers" and, thereby, avoid unnecessary production and mailing costs.⁵² The Working Group suggested a negative

⁴⁸ GT 96-3, Proposed Customer Protection Standards Recommendation Report at 8.

⁴⁹ *Id.* at 9-10.

⁵⁰ GT 96-3, OPC Comments at 28-29.

⁵¹ GT 96-3, WGES Reply Comments at 6.

⁵² GT 96-3, Proposed Customer Protection Standards Recommendation Report at 10.

check-off method⁵³ because, in Washington Gas's experience, a positive check-off method produces poor customer response and is, therefore, of little value to gas suppliers.⁵⁴ While all of this may be true, we are not persuaded that creating valuable lists for gas suppliers and reducing their marketing costs is a compelling reason to deviate from the ECPS and create different disclosure procedures for gas and electricity suppliers.⁵⁵ Therefore, we reject the Working Group's recommendation and modify the GCPS accordingly.

4. Section III – Do-Not-Contact Lists

a. Parties' Positions

35. The ECPS requires electricity suppliers to provide the Commission with a "Do Not Call" List every six months. The list consists of customers who have requested that the supplier not contact them by telephone. The Working Group has proposed a similar provision for the GCPS, but has expanded its coverage so that the list includes customers who have requested that a supplier not contact them by telephone, mail, or in person. See Section 3-9. Due to the expanded nature of the document, the Working Group refers to it as "Do-Not-Contact" List rather than a "Do Not Call" List. The Working Group recommends that such lists only be provided upon request rather than every six months. BGE HOME filed comments in support of this provision.⁵⁶ OPC filed comments suggesting that the Commission, rather than the supplier, create and maintain the list.⁵⁷

b. Commission Decision

36. The proposed "Do-Not-Contact" List is a useful tool in protecting consumers from unwanted solicitations and, therefore, we accept the Working Group's recommendation to make the list part of the GCPS. However, like other useful tools, consumer protection has a cost. In this case, it is the cost of compiling information. As a means of minimizing this cost, the Working Group has proposed that suppliers submit the list only upon request rather than every six months. OPC's suggestion, on the other hand,

⁵³ A negative option method is one that includes customers unless they contact Washington Gas and request to "opt out." Conversely, a positive option method is one that excludes customers unless they contact Washington Gas and request to be included.

⁵⁴ *GT 96-3, Proposed Customer Protection Standards Recommendations Report* at 10.

⁵⁵ Inasmuch as the Working Group did not address the question of whether these lists are necessary to level the competitive playing field, we will reserve judgment on this issue. We note that the Working Group will be reconvening to consider a number of concerns raised by OPC. At that time, the Working Group may consider this issue as well.

⁵⁶ *GT 96-3, Comments of BGE HOME to the Incentives for Increased Supplier Participation Report and the Proposed Consumer Protection Standards Recommendations Report ("BGE HOME's comments")*, filed October 9, 2001, at unnumbered page 3.

⁵⁷ *GT 96-3, OPC Comments* at 38.

effectively eliminates the Working Group's cost problem by shifting the entire administrative burden to the Commission.

37. Consumer protection needs to be comprehensive and, where possible, consistent in both the gas and electricity markets. The Working Group's proposal would undermine both objectives by: 1) impeding our ability to regularly monitor the overall effectiveness of these lists; and 2) creating a reporting system that has significantly lower administrative costs for those who supply gas than it does for those who supply electricity. Although OPC's suggestion does not impede our ability to monitor the effectiveness of the lists, it nevertheless shares the shortcoming of the Working Group's proposal in that it creates two distinct reporting mechanisms with significantly different administrative costs for gas and electricity suppliers. For these reasons, we accept the Working Group's proposal with respect to the "Do-Not-Contact" list but modify the GCPS to conform to the ECPS by requiring electricity suppliers to provide the Commission with a Do-Not-Contact List every six months.

5. Section IV – Telephonic Contracts

a. Parties' Positions

38. The GCPS sets forth three principal methods by which a gas supplier may enter into a contract with a customer: 1) written contract, 2) electronically (i.e. Internet or electronic mail), and 3) over the telephone. All three of these options are consistent with the ECPS. However, with regard to telephonic contracts, the ECPS requires independent third party verification, the proposed GCPS does not. See Section 4-4. The Working Group viewed independent third party verification as an expensive and unnecessary burden to impose on gas suppliers, especially for those suppliers with no previous history of unscrupulous telephonic enrollment behavior. As an alternative, the Working Group proposes guidelines and a telemarketing script. Suppliers would be required to record each enrollment and retain the recording for the duration of the customer's contract. A gas supplier would only be subject to independent third party verification requirements if the Commission were to determine that it had engaged in practices harmful to customers.⁵⁸ OPC opposes the Working Group's alternative method noting that, in adopting the ECPS, the Commission decided that independent third party verification was necessary to protect electricity customers. In OPC's view, there is no reason to give gas customers less protection.⁵⁹

b. Commission Decision

39. We agree with OPC on this issue. In F.C. 945, Washington Gas proposed this same alternative method of verification for electricity suppliers and noted that it was the method used by the Maryland Public Service Commission. We rejected the proposal

⁵⁸ *Id.* at 13.

⁵⁹ GT 96-3, OPC Comments at 30-32.

preferring instead to adopt the independent third party verification method used by the Federal Communications Commission in regulating the long distance telephone market.⁶⁰ As we transition from monopoly to competitive markets, we continue to believe that independent third party verification is the best method of deterring unscrupulous suppliers from preying on District consumers. Therefore, we reject the Working Group's recommendation to deviate from the procedure under the ECPS.

6. Section IV – Electronic Contracts

a. Parties' Positions

40. Apparently, during the Working Group meeting, the members disagreed on the procedure that should be used for electronic enrollments. One party believed that gas suppliers should be required to routinely provide Washington Gas with a copy of the customer's consent form and argued that this practice was required by the applicable tariff. However, the rest of the group viewed the practice as unnecessarily burdensome and, in any event, exempt from the tariff because, in their view, Commission Order 11375⁶¹ approved the company's request "not to receive the Customer Consent Form."⁶²

41. The Working Group suggests that we adopt the same electronic contracting provisions that the Commission adopted in the ECPS - which does not require suppliers to routinely transmit copies of the customer consent form. See Section 4-5. In order to protect consumers, the Working Group proposes that we adopt the following eight additional requirements:

- a. All enrollments via the Internet shall be initiated by the customer. Washington Gas shall include, in the deregulation section of its website, a link to each supplier's website; provided, however, that it is the responsibility of the supplier to provide its website address to the Company.
- b. In order to enroll a customer, the Natural Gas Supplier must display on its Website the appropriate Customer Consent Form(s) under which delivery service is being provided to the customer. The consent form must have the identical language as the hard copy version currently in use.
- c. The Natural Gas Supplier's website must be configured to prompt the Customer to print or save the terms and conditions to which the customer agrees, namely, the

⁶⁰ F.C. 945, Order No. 11796, rel. Sept. 18, 2000, at 7-9.

⁶¹ GT 96-3, Order No. 11375, rel. April 28, 1999.

⁶² GT 96-3, Proposed Customer protection Standards Recommendations Report at 15.

Customer Consent Form and the supplier's written agreement.

- d. During the enrollment procedure, each webscreen must clearly display a "cancel" icon enabling the customer to terminate the transaction at any time. In addition, this feature must be explained to the customer at the beginning of the enrollment process.
- e. At the completion of the enrollment process, the Natural Gas Supplier's website must conspicuously display that the customer has been enrolled in a Customer Choice Program, and again remind the customer that the agreement may be cancelled by clicking on the cancel icon.
- f. The customer is also to be reminded that further information, as well as a cost comparison worksheet, can be found on Washington Gas' website. In addition, the address of the Company's website shall be provided for the customer's convenience.
- g. All electronic transactions and communications via the Internet, between the customer and the supplier, shall be encrypted in such a manner as to ensure privacy of the customer's information.
- h. The supplier shall retain a record of the electronic transaction and provide a copy, if requested, to the customer, the Commission, for any purpose, or Washington Gas for dispute resolution purposes.⁶³

42. Additionally, the Working Group included a subsection in the GCPS called Contract Verification. Under this provision, the supplier is required to maintain a copy of the Customer Consent Form regardless of the method in which the customer was enrolled and to provide it upon request by the Commission, for any purposes, or Washington Gas for dispute resolution purposes. If the supplier is unable to produce a copy of the customer consent form, that supplier may be subject to penalties, fines, or other sanctions as determined by the Commission.⁶⁴ BGE HOME filed comments reiterating the Working Group's position that providing the consent form for every customer would be unnecessarily burdensome.⁶⁵

⁶³ *Id.* at 14-15.

⁶⁴ *Id.* at 19.

⁶⁵ GT 96-3, BGE HOME's Comments at unnumbered page 3.

43. OPC, however, objects to Washington Gas's interpretation of Order No. 11375 and contends that the issue underlying that Order was whether the Commission should require suppliers to maintain and, if requested, produce verification of customer enrollment. According to OPC, "there was nothing in the record to suggest that the form of verification of a customer's enrollment in the Pilot Program was the Customer Consent Form."⁶⁶ Moreover, OPC notes that suppliers are already required to submit the consent forms to Washington Gas pursuant to Rate Schedule No. 5, Section D.

b. Commission Decision

44. We begin by clarifying that Order No. 11375 did not relieve gas suppliers of an obligation to provide Customer Consent Forms for electronic enrollments (i.e. via the Internet). In our view, the Order in question could have no such effect because the tariff never imposed this requirement in the first place. Rate Schedule No. 5, Schedule D, states, in pertinent part: "For participation in the Residential Firm Delivery Service Pilot Program the Residential customer must execute and the Company receive a Customer Consent Form *or the supplier receives customer agreement through the Internet for a term of one-year . . .*" (emphasis added).⁶⁷ This sentence is unambiguous. When the language of a provision is plain, simple, and straightforward, as it is here, the words are accorded their normal meanings. Ordinarily, the conjunction "or" is disjunctive, indicating an alternative. *See United States v. King*, 35 F.3d 344 (8th Cir. 1994). Giving "or" its normal, disjunctive meaning, the sentence establishes two distinct alternative processes: one for written contracts, the other for enrollments via the Internet. The reference to Customer Consent Forms precedes the conjunction "or" and, therefore, applies to written contracts, not Internet enrollments.

45. Inasmuch as the issue before us is not governed by either the tariff or our earlier order, we need only decide whether the Working Group's recommendation has merit. We agree that gas suppliers should not have to shoulder the expense of forwarding customer consent forms for every customer, especially when electricity suppliers have no comparable burden under the ECPS. OPC's objection is that this provision will not adequately guard against slamming. We share that concern. However, the proposed GCPS provides for fines and sanctions if the supplier is unable to produce the Consumer Consent Form upon request by the Commission. With this additional provision in place, we think the likelihood of unscrupulous suppliers preying on the unwary is greatly reduced. Therefore, we adopt the Working Group's recommendation.

⁶⁶ GT 96-3, OPC Comments at 33-34.

⁶⁷ Washington Gas Light Company Firm Delivery Service Gas Supplier Agreement, Rate Schedule No. 5, P.S.C. of D.C. No. 3, Eight Revised Page No. 27A, Superseding Seventh revised Page No. 27A, issued June 1, 1999.

7. Section IV – Contract Termination

a. Parties' Position

46. The ECPS states that, if a supplier's contract provides for automatic renewal of the agreement, the supplier must provide the customer with *two* notices of the pending renewal: one at sixty days before the renewal is scheduled to occur, the other at thirty days before the renewal date. The Working Group has proposed a deviation from the ECPS and suggested that gas suppliers only be required to send one notice thirty to sixty days before the renewal date.⁶⁸ OPC objects to this proposal arguing that the notice provisions in the GCPS should be the same as those in the ECPS.⁶⁹

b. Commission Decision

47. We agree with OPC. The Working Group has not provided, nor do we discern, any compelling reason to create completely different notice requirements for electricity and gas customers. Thus, we decline to accept the Working Group's proposal to deviate from the notice provisions of the ECPS.

8. Section IV – Enrollment and Cancellation

a. Parties' Position

48. In an effort to streamline the enrollment process, the Working Group, at the urging of Washington Gas, has proposed to change its current enrollment date from the 14th workday of the month to the 9th calendar day of the month.⁷⁰ See Section 4-7. PES opposes advancing the enrollment date because it could result in actual or perceived delays in the processing of consumer requests to switch suppliers. According to PES, the real reason Washington Gas wants to move the enrollment date is to synchronize it with the dates used in Maryland and Virginia, where the monthly enrollment date is the 9th calendar day of each month. In PES's view, if Washington Gas wants to synchronize the dates in all three jurisdictions, then it should move the enrollment dates in Maryland and Virginia to match the one currently used in the District.⁷¹ In rebuttal, Washington Gas asserts that the main reason it wants to change the enrollment date is so it can make an earlier determination as to how much, if any, pipeline capacity will be "stranded" at the beginning of the following month. Washington Gas maintains that, with the advanced date, it will be able to post its capacity release at a time when potential buyers are

⁶⁸ GT 96-3, Proposed Customer Protection Standards Recommendations Report at 18-19.

⁶⁹ GT 96-3, OPC Comments at 35.

⁷⁰ GT 96-3, Proposed Customer Protection Standards Recommendations Report at 15-16

⁷¹ GT 96-3, PES Comments at 3-4.

planning their capacity arrangements for the next month, thereby maximizing the value of the sale of the capacity on the secondary market.⁷²

49. Additionally, under the proposed GCPS, if a customer elects to switch gas suppliers before the expiration of the current contract, the customer must first contact the current gas supplier directly and then that supplier must contact Washington Gas.⁷³ OPC and PES object to requiring customers to go through their current supplier in order to cancel a contract.⁷⁴ OPC states "[t]he current supplier would have a monetary incentive not to inform [Washington Gas] of the customer's intent to switch natural gas suppliers, and, therefore, impede the customer's ability to effectively shop for the best natural gas deal."⁷⁵ PES echoes OPC's concern and both parties maintain that, in order to switch suppliers, all the customer should have to do is contact Washington Gas.⁷⁶

b. Commission Decision

50. With regard to enrollment, the actual or perceived delays that concern PES are largely unavoidable. The monthly enrollment deadline allows Washington Gas to determine the number of customers who will require gas and then properly determine its capacity needs for the following month. There is always a potential for a processing delay because, no matter what enrollment date is chosen, a customer's request to switch suppliers may not reach Washington Gas in time for the company to actually effectuate a change by the deadline. In that event, the request is rolled over to the next month and service may not actually begin until the next available meter reading date. We do not view these potential delays as detrimental to consumers and, therefore, accept the Working Group's recommendation to change the enrollment date. We note, however, that the current enrollment date is part of Rate Schedule No. 5. Inasmuch as our approval of this recommendation is inconsistent with the provisions of the existing tariff, we direct Washington Gas to make the appropriate compliance filing within 5 days of the issuance of this Order.

51. As for the Working Group's recommendation regarding the process for switching suppliers, we find that OPC's and PES's objections have merit. The Working Group report does not explain why effectuating a switch in suppliers should require the customer to do anything other than contact Washington Gas. In fact, the report's narrative does not even address this issue. One possible explanation for this provision is found in BGE HOME's comments. According to BGE HOME, because a customer's

⁷² GT 96-3, Washington Gas Reply Comments at 13.

⁷³ GT 96-3, Proposed Customer Protection Standards Recommendations Report at 15-16, Attachment A, 4-7 (C).

⁷⁴ GT 96-3, OPC Comments at 39-40; PES comments at 6-7.

⁷⁵ GT 96-3, OPC Comments at 39.

⁷⁶ *Id.*

decision to switch suppliers may be the result of a "misunderstanding of the deregulatory process," the supplier should have an opportunity to explain the process and hopefully "retain the investment made in the customer."⁷⁷ Although we can appreciate the fact that suppliers want to retain their customers, we decline to use the GCPS as a customer retention device. Even if we were inclined to use the GCPS in this manner, we see no justification in establishing different cancellation procedures for gas and electricity customers. For these reasons, we reject the Working Group's recommendation.

9. Section IV – Contract Confirmation

a. Parties' Positions

52. Under the ECPS, once a customer's application for service has been approved, the electricity supplier is required to send confirmation of the enrollment within a reasonable time. The Working Group has adopted the same requirement for the GCPS.⁷⁸ See Section 4-8. However, OPC asserts that the phrase "within a reasonable time" is too vague and suggests that we specify that the time period is 17-24 days.⁷⁹

b. Commission Decision

53. As we have noted elsewhere in this order, there are a number of factors that could lead to an unavoidable delay in a customer's enrollment. Mandating that suppliers confirm enrollment by a date certain is not a reasonable solution when the suppliers are not in control of all the factors that could lead to delay. Additionally, the phrase "within a reasonable time" is the same language used in the existing ECPS. Again, absent some compelling reason for doing so, we decline to create different procedures for electricity and gas customers. Therefore, we accept the Working Group's recommendation.

10. Section IV – Contract Rescission

a. Parties' Positions

54. Customers are enrolled in the electricity choice program by means of an electronic data interchange ("EDI") process that is not employed in the gas industry. The Working Group states:

All participants [i.e. in the Working Group] agreed that because of enrollment timing differences and the significant implementation costs that would be incurred to modify the natural gas enrollment process to

⁷⁷ GT 96-3, BGE HOME comments at unnumbered pages 3-4.

⁷⁸ GT 96-3, Proposed Customer Protection Standards Recommendations Report, Attachment A, 4-8 (B).

⁷⁹ GT 96-3, OPC Comments at 38.

conform to the electric industry, the natural gas Customer Choice Program should not have to conform to the same enrollment process as the electric Customer Choice Program. Instead, the Group recommends that the Commission approve a modified enrollment recession process that will not adversely impact the current natural gas enrollment procedures and will still provide customers with the necessary protections.⁸⁰

55. The modified process referred to by the Working Group has been built into the proposed GCPS. See Section 4-9. Specifically, the GCPS states: "[i]nformation that advises customers of their right to rescind should be included within a Natural Gas Supplier's solicitation and contract materials."⁸¹ OPC objects to this last provision and contends that the Commission should require Washington Gas to send rescission information to the customer rather than require customers to rely on the fine print in their contracts.⁸²

b. Commission Decision

56. For the reasons set forth in the Working Group's report, we accept the Working Group's recommendation to modify the ECPS enrollment process. As for OPC's objection, we find it unwarranted. The ECPS has no provision requiring PEPCO to send out rescission information. Instead, Section 4-9 (D) of the ECPS states, in pertinent part: "[a]fter the ten-day Recession Period expires . . . the relationship between the customer and the Electricity Supplier will be governed by the terms and conditions contained in the contract." Thus, where the ECPS implies that the contract will govern rescission, the GCPS expressly states it. In both cases, the result is the same. Therefore, a modification of the language in the GCPS is unnecessary.

11. Section V and Sections VII through X

a. Parties' Positions/Commission Decision

57. These sections address meter reading, billing, payment of gas bills, security deposits, involuntary disconnection of service, and gas suppliers' response to customer inquiries and complaints. The Commission has received no comments in opposition to these provisions and, as stated above, we have accepted the Working Group's recommendation.

⁸⁰ GT 96-3, Proposed Customer Protection Standards Recommendations Report at 16.

⁸¹ *Id.*, Attachment A, GCPS, Section 4-9 (D).

⁸² GT 96-3, Comments of the Office of People's Counsel to the Incentives for Increased Supplier Participation Report filed September 21, 2001, at 7.

12. Section VI – Alternative Billing Formats**a. Parties' Positions**

58. The ECPS sets forth the information that must be included in every bill for residential electric service. The Working Group agrees that all of these components should be in a bill unless the customer consents to an alternative list of billing components.⁸³ See Section 6-1. OPC objects and asserts that there is no reason to allow this particular deviation from the ECPS.⁸⁴

b. Commission Decision

59. We agree with OPC. In our opinion, the Working Group's proposal would not only increase the potential for misunderstandings and confusion when customers switch suppliers, it would also create unnecessary billing distinctions between gas and electricity customers. Both results are undesirable, especially at a time when the competitive market is in its infancy and customers are still either unaware that the customer choice program exists or unclear as to how it could benefit them. In light of those concerns, we decline to accept the Working Group's recommendation.

13. Section XI – Resolution of Disputes Between Customers and Natural Gas Suppliers**a. Parties' Positions**

60. The ECPS provides that, in every case other than slamming, the gas supplier should be given three business days to attempt to resolve the dispute before the customer can file a formal complaint with the Commission. The Working Group suggests that a gas supplier be given the first opportunity to resolve all disputes, including slamming, and that the period for informal resolution be seven business days.⁸⁵ See Section 11-4. OPC objects to including slamming within the informal process arguing that it is not in the best interest of consumers to allow suppliers to police themselves. Instead of informal resolution, OPC suggests that the Commission immediately and formally investigate all allegations of slamming.⁸⁶

b. Commission Decision

61. We do not view informal dispute resolution as a situation where suppliers are policing themselves as OPC suggests. Instead, it is an opportunity for the parties to

⁸³ GT 96-3, Proposed Customer Protection Standards Recommendations Report at 20-21.

⁸⁴ GT 96-3, Comments of the Office of People's Counsel to the Incentives for Increased Supplier Participation Report filed September 21, 2001, at 7.

⁸⁵ GT 96-3, Proposed Customer Protection Standards Recommendations Report at 22-23.

⁸⁶ GT 96-3, OPC Comments at 36-37.

resolve their dispute without Commission intervention. As such, it clearly promotes administrative economy. The proposed period for informal resolution in the GCPS is only four days longer than the period in the ECPS. Moreover, using the informal process does not impair, in any way, a consumer's right to seek relief from the Commission in the event that the dispute cannot be informally resolved. However, we tend to agree with OPC that an allegation of slamming is serious enough to warrant expedited treatment and should be handled within the same time period as similar allegations under the ECPS. Therefore, with the exception of allegations of slamming, we accept the Working Group's proposal to allow suppliers seven days to resolve disputes. Disputes involving allegations of slamming must be resolved within three days.

14. Additional Concerns of OPC

a. Parties' Positions

62. After the Working Group filed the Proposed Customer Protection Standards Recommendations Report, OPC identified nine additional areas of concern. Specifically, OPC suggests that we:

- a. Prohibit suppliers from offering consolidated billing until there are greater consumer protections than those in the proposed GCPS;
- b. Establish enrollment protocols;
- c. Delete the current definition of "consumer/customer" under the GCPS and replace it with "A purchaser of natural gas in whose name a service account exists with the company";
- d. Require suppliers to produce marketing and contracting documents in English and non-English speaking languages (i.e. Spanish, Korean, and French);
- e. Clarify what is meant by GCPS Section 2-1(B) which allows suppliers to refuse service to a customer based on "standards that are reasonably related to the natural gas supplier's economic and business purpose";
- f. Delete that portion of GCPS Section 2-2(B) which states "which has a tendency to mislead because, in OPC's opinion, misrepresentation of a material fact and failure to state a material fact stand alone as prohibited practices;
- g. Delete that portion of GCPS Section 2-2(H) which states "[p]ass off its services as those of another" and replace it with "[b]y such act of omission or commission, allow the customer

to confuse the identity of the supplier with that of another market participant;

- h. Delete GCPS Section 2-3 which states "[a]bsent the express consent of a customer, a Natural Gas Supplier may not add services or charges to a customer's existing retail natural gas service option" and replace it with:

A natural gas supplier shall obtain the customer's consent prior to adding new charges or services to a customer's bill for natural gas supply service in a manner that conforms to section IV, Contracting. A natural gas supplier shall notify a customer the first time that a new charge or service appears on the customer's bill with the following statement, "This bill contains a new charge or service." The natural gas supplier shall itemize every charge or service on the customer's monthly bill.

- i. Clarify in GCPS section 2-4 that a natural gas customer does not "switch" a customer. Instead, the supplier enrolls a customer and Washington Gas effects the "switch."⁸⁷

b. Commission Decision

63. The GCPS's definition of the words "customer/consumer" is basically a more concise version of the definition that the Commission uses in the Consumer Bill of Rights, 15 DCMR §399.1. The Commission has previously clarified that the words consumer and customer, as used in the Consumer Bill of Rights, both refer to the account holder. *See Manata v. PEPCO Electric Power Company*, CC 9072979-18, Opinion and Order, Order No. 11481, September 8, 1999. In order to avoid similar confusion in the GCPS, we agree with OPC that the terms should be clarified and accept its proposed definition of "customer/consumer," "[a] purchaser of natural gas in whose name a service account exists with the company." With regard to the rest of OPC's concerns, we prefer to withhold judgment until after the Working Group has had an opportunity to consider these issues and make a recommendation. Our adoption of the rules and application on an interim basis will not be delayed pending the Working Group's review, but the Working Group's recommendation and any comments thereon may be the basis for a future rulemaking.

6. IMPROVED CONSUMER EDUCATION REPORT

64. This report provides an overview of previous and current consumer education efforts and sets forth the Working Group's recommendations for future actions.

⁸⁷

Id. at 41-49.

In developing the report, the Working Group examined the education and communication methods implemented by Washington Gas and Commission Staff as well as efforts in the Maryland Electric Customer Choice Program.⁸⁸

65. The Working Group states that, since 1998, Washington Gas has used various methods to educate customers about available opportunities under the Customer Choice Program. Those methods have included company mailings, bill inserts, direct mail brochures, customer newsletters in English and Spanish, carrying information on the Washington Gas website, community presentations, public access cable television programming, public service announcements, press releases, interviews, news articles, and customer handbooks. Washington Gas has also used quantitative and qualitative methods, such as focus groups and surveys, to obtain customer feedback.⁸⁹ To date, Washington Gas has spent approximately \$100,000 educating customers about the Customer Choice Program.⁹⁰

66. The Working Group notes that the Commission has been active as well. Since 1998, the Commission has, among other things, distributed fact sheets and other information to both residential and business consumers, given presentations at numerous town hall meetings, senior centers, and seminars, issued public service announcements, created a publicly available program that allows consumers to compare rates for suppliers, and routinely provided customer choice information on its website.⁹¹

67. In an effort to improve customer awareness at a relatively low-cost, the Working Group proposes that we adopt the following objectives: improve consumer education regarding the existing Customer Choice Program; use the "Washington Gas 1999/2000 Pilot Program Survey Results – District of Columbia" report as a benchmark to increase customers awareness of the Customer Choice Program; provide information that gives customers the ability to make informed choices in the competitive market place; and deliver clear, concise, unbiased information.⁹²

68. The Working Group recommends that Washington Gas expand its customer education efforts by, including bill inserts (at least two annually, plus a message on the billing envelope to peak interest and alert customers that Customer information is inside); issuing customer newsletters (which provide updates on the Customer Choice Program and announce community meetings and forums on gas deregulation issues); hosting community meetings (at least one major, well publicized, annual event); participating with the Commission and OPC in public access cable

⁸⁸ GT 96-3, Improved Consumer Education Report at 2.

⁸⁹ *Id.* at 4-7.

⁹⁰ *Id.* at 7.

⁹¹ *Id.* at 7-11.

⁹² *Id.* at 11-12.

presentations/public service announcements; holding press conferences and issuing press releases as appropriate; updating information on the company website; developing and distributing an information fact sheet that would be available in public places (e.g. libraries); keeping public officials informed regarding Customer Choice Program developments and activities; targeting mailings to low-income customers if appropriate; and conducting annual surveys.⁹³ The Working Group also recommends that the Commission employ a similar low-cost strategy.⁹⁴

69. If the Commission determines that a more aggressive and comprehensive plan is necessary, the Working Group proposes a "Higher Cost Option". Although the Working Group uses the same objectives outlined for the "Low Cost Option," it anticipates that significantly greater expenditures would be needed under this plan and could lead to Washington Gas seeking recovery of its costs in a rate case.⁹⁵

70. Under this higher-cost plan, the Working Group recommends that Washington Gas:

- a. Mail bill inserts quarterly at an annual estimated cost of \$30,000 to \$40,000;⁹⁶
- b. Develop a Customer Choice Consumer Guide and mail it to all natural gas customers at an estimated cost of \$80,000 to \$100,000;⁹⁷
- c. Provide information on the Customer Choice Program in both English and Spanish and then mail it to all natural gas customers at an estimated cost of \$15,000 to \$20,000;⁹⁸
- d. Establish a paid media component which would include network television (a two-week run of 30-second promotions at an estimated cost of \$100,000 to \$160,000 per run), cable television (a three-week run of 30-second promotions on at an estimated cost of \$80,000 to \$100,000 per run); radio (a two-week run of 60-second radio commercials at an estimated cost of \$70,000 to \$85,000 per run); Newspaper ads (6 half-page promotions in the Washington Post and 6 insertions in other local papers at an estimated cost of \$75,000 to \$85,000); Metrobus ads (including rear and side banners, interior cards,

⁹³ *Id.* at 12-14.

⁹⁴ *Id.* at 14-15.

⁹⁵ *Id.* at 16, 22

⁹⁶ *Id.* 16-17.

⁹⁷ *Id.* at 17-18.

⁹⁸ *Id.* at 18.

and bus shelter posters at an estimated cost of \$183,000 a month);⁹⁹

- e. An annual survey at an estimated cost of \$15,000 to \$20,000;¹⁰⁰ and
- f. Annual focus groups at an estimated cost of \$6,000 to \$8,000 per group.¹⁰¹

a. Parties' Positions

71. OPC notes that Washington Gas's 2000 survey results show that 81% of non-participants and 75% of participants did not believe the education materials provided by natural gas suppliers allowed them to make educated decisions regarding their options under the pilot program. According to that same survey, 60% of customers believed that the program will affect natural gas supply and that 59% believed that the program would affect natural gas quality.¹⁰² In OPC's opinion, the Working Group's low-cost option is essentially the same approach that Washington Gas has used in the past and is not likely to produce any better results in the future.¹⁰³ As for the high-cost option, OPC asserts that, "[u]nder no circumstances should Washington Gas be allowed to pass these expenses to consumers without the Commission first reviewing the prudence and reasonableness of the costs."¹⁰⁴ At a minimum, OPC believes that the plan should have the following components: "Goals, Target Audience, Primary Responsibilities, Message Delivery Methods, Common Topics, Funding Mechanism, and Evaluation" and should "contain a focused detailed approach with appropriate performance measures by which the Commission can monitor the progress of the program."¹⁰⁵ OPC suggests that, given the deficiencies in the current proposal, the Commission defer approving the Working Group's Plan and direct the Working Group to reconvene and develop a more structured program.¹⁰⁶ Washington Gas disagrees with OPC's criticism of the Working Group's report and maintains that, although more effort is needed to educate consumers, the recommendations within the report are the best means to accomplish that goal.¹⁰⁷

⁹⁹ *Id.* at 19.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 20.

¹⁰² GT 96-3, OPC Comments at 10.

¹⁰³ *Id.* at 11-12.

¹⁰⁴ *Id.* at 12-13.

¹⁰⁵ *Id.* at 14.

¹⁰⁶ *Id.* at 14-15.

¹⁰⁷ GT 96-3, Washington Gas Reply Comments at 5.

b. Commission Decision

72. We are deeply troubled that so many customers are either unaware of the Customer Choice Program or unable to understand how it could benefit them. Nevertheless, it still may be possible to remedy this problem without the substantial expense of the Working Group's high-cost option or a complete overhaul of the low-cost option as OPC suggests. We believe the answer lies somewhere in between. For the time being, we think the most prudent course of action is to adopt the low-cost option that the Working Group has proposed. However, the Working Group itself recognizes that this plan does not specify the number of outreach efforts and the frequency with which they will occur.¹⁰⁸ The plan is also vague in other respects as well. We do agree with OPC that, at a minimum, the plan should also include goals, target audience, primary responsibilities, method delivery methods, common topics, funding mechanism, and evaluation. To ensure that we have the best low-cost plan possible, we direct Washington Gas to file by May 19, 2003, a more detailed explanation of how it plans to implement the low-cost option including, where possible, proposed language for bill inserts, newsletters, and other written information. OPC and any other interested party shall have 20 days to comment on the plan.

THEREFORE, IT IS ORDERED THAT:

73. The recommendations of the Working Group, except as otherwise indicated in this Order, are hereby approved and adopted;

74. The Working Group's proposed interim GCPS, interim Supplier Application, and interim Licensing Regulations, as modified in this Order and appended thereto as Attachments A, B and C, are hereby approved and adopted, and shall be immediately effective until a final GCPS, a final supplier Application and final Licensing Regulations are approved in a future rulemaking proceeding;

75. Within five (5) days of the issuance of this Order, Washington Gas shall make a compliance filing with the Commission that changes the enrollment date in Rate Schedule No. 5 from the 14th workday of the month to the 9th calendar day of the month;

76. Current suppliers shall have 60 days to file their license applications with the Commission;

77. Suppliers shall have 120 days from the issuance of this Order to adjust their practices and tariffs to conform to the interim GCPS but, during the grace period, suppliers shall refrain from engaging in activities prohibited by the GCPS;

78. By May 19, 2003, Washington Gas file a more detailed explanation of how it plans to implement a low-cost Consumer Education Program including, where

¹⁰⁸ GT 96-3, Improved Consumer Education Report at 12.

possible, proposed language for bill inserts, newsletters, and other written information;
and

79. By June 20, 2003, the Working Group shall file a report with the Commission addressing the issues raised by OPC as set forth in paragraphs 22, 23, 24, and 62 of this Order.

A TRUE COPY:

CHIEF CLERK

BY THE DIRECTION OF THE
COMMISSION:


SANFORD M. SPEIGHT
ACTING COMMISSION SECRETARY

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INTERIM NATURAL GAS CONSUMER PROTECTION STANDARDS

I. PURPOSE AND APPLICABILITY

1.1 Purpose

The purpose of the Natural Gas Consumer Protection Standards ("GCPS") is to establish uniform standards for billing, security deposits, disconnections and reconnections of service, resolution of complaints of residential natural gas customers, enrollment procedures, advertising by Natural Gas Suppliers, termination of contracts with Natural Gas Suppliers, and switching Natural Gas Suppliers.

1-2. Applicability

- A. These standards apply to service provided to residential customers by Natural Gas Suppliers who have entered into a Natural Gas Supplier Application Agreement with Washington Gas Light Company ("Company" or "WG") pursuant to WG's Rate Schedule No. 5 and/or have received a license to provide natural gas in the District of Columbia.
- B. These standards are not applicable to Washington Gas Light Company. The Company continues to be subject to the Utility Consumer Bill of Rights.

1-3. Definitions

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

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

Company: for purpose of these standards, Washington Gas Light Company.

Competitive Billing: means the right of a customer to receive a single bill from the Company, a single bill from the Natural Gas Supplier, or separate bills from the Company and the Natural Gas Supplier.

Competitive Billing Service: is a service that is offered by natural gas suppliers for (1) the production of an invoice or the rendering of an invoice for natural gas supply or natural gas supply services to a retail customer; and (2) the processing of payment for

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those services.

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

Customer Consent Form: means by which a customer can enroll with a Natural Gas Supplier. Pursuant to WG Rate Schedule No. 1A, the Customer Consent Form must be executed by a residential customer, and received by a Natural Gas Supplier, for an enrollment transaction to be valid. Natural Gas Suppliers are required to maintain the customer consent forms for the duration of the contract. Upon request by the Company or the Commission, the Natural Gas Supplier is required to provide a copy of the consent form. If the supplier cannot provide a copy of the consent form, then the customer will be returned to sales service or back to their alternative Natural Gas Supplier. The Commission has the authority to institute, at any time, a requirement that the Natural Gas Supplier continuously provide the Commission with copies of each of its consent forms. The Commission will make such a determination on a case-by-case basis, if it finds just cause¹ and if it determines that such a requirement is in the best interest of consumers.

Consumer/Customer: A purchaser of natural gas in whose name a service account exists with the company.

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

Deposit: any payment made by a residential consumer to a Natural Gas Supplier to secure the Natural Gas Supplier against the consumer's nonpayment or default.

Disconnection: refers to physical disconnection of a natural gas service by the Company. This is distinguished from termination of a contract by a Natural Gas Supplier.

Enrollment: the process in which the Company receives and processes the notification from the Natural Gas Supplier that a customer has entered into a contract for the supply of natural gas with that Natural Gas Supplier.

Independent Third-Party Verifier: a person retained by an individual Natural Gas Supplier, not affiliated with that Natural Gas Supplier, to contact the customer to confirm the customer's decision to enter into a telephonic contract for the supply of natural gas.

¹ Just cause as described in the Natural Gas Supplier Licensing Regulations Section .06 B.

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

Market participant: means any Natural Gas Supplier (including an affiliate of the natural gas company) or any person providing billing services or services declared by the Commission to be potentially competitive services, notwithstanding whether or not the supplier or person has been licensed by the Commission.

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

OPC: The Office of the People's Counsel of the District of Columbia.

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

Rescission Notice: As part of the Natural Gas Supplier's solicitation and contract materials, the customers shall be advised of their right to rescind the contract entered into with the Natural Gas Supplier within the Rescission Period.

Rescission Period: a ten-day period of time within which the customer may choose to rescind a contract for natural gas service with the Natural Gas Supplier.

Residential Customer: any customer served under Washington Gas Light Company Rate Schedule No. 1 or 1A subject to any revisions made to those tariff sheets and ordered by the District of Columbia Public Service Commission.

Slamming: the unauthorized switching of a customer's Natural Gas Supplier account.

Solicitation: a communication in any medium that includes an opportunity to contract for receipt of natural gas from a Natural Gas Supplier.

Sales Service: WG's Rate Schedule No. 1. With Sales Service the customer receives natural gas supply from the Company. Sales Service is available to customers who contract for natural gas with a Natural Gas Supplier, but who fail to receive delivery of natural gas under such contracts and to customers who do not choose a Natural Gas Supplier.

Termination of Contract: cessation of the contract for the supply of natural gas between a Natural Gas Supplier and the customer. Upon termination of the contract with the

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Natural Gas Supplier, the customer will receive their natural gas supply under Sales Service as provided by the Company, or from another Natural Gas Supplier.

“Utility Consumer Bill of Rights”: refers to the Public Service Commission’s *Consumer Bill of Rights*, adopted as regulations by the PSC in the District of Columbia Municipal Regulations Title 15, Chapter 30.

II. PROHIBITED ACTIVITIES

2-1. Discrimination Prohibited

- A. A Natural Gas Supplier may 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 Natural Gas Supplier may not refuse to provide service to a customer except by the application of standards that are reasonably related to the Natural Gas Supplier’s economic and business purposes.
- C. A Natural Gas Supplier 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 Natural Gas Supplier shall not:

- A. Represent that the Natural Gas Supplier has a sponsorship, approval, status, affiliation, certification, or connection that the Natural Gas Supplier 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 Natural Gas Supplier or Washington Gas 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 their price in comparison to the price of competitors or one’s own price at a past or future time;

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- 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 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 Natural Gas Supplier may not add services or charges to a customer's existing retail natural gas service option.

2-4. Slamming Prohibited

- A. A Natural Gas Supplier may not switch a customer's Natural Gas Supplier account absent the express consent of the customer.
- B. In order to effectuate a binding and enforceable switch, the Natural Gas 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

- A. A Natural Gas Supplier shall not disclose information which reveals the status of the account of any individual customer without the customer's consent. Any prohibition on the disclosure of account status should not preclude Natural Gas Suppliers from obtaining or providing account information for an acquisition or sale of a book of business as long as the review of such information during a proposed acquisition or sale is subject to confidentiality agreements.
- B. A Natural Gas Supplier may rely upon the representation, oral or written, of the Staff of the Public Service Commission or the Office of the People's Counsel that consent has been granted for purposes of dispute resolution.
- C. Unless a customer consents in writing, a Natural Gas Supplier may not disclose information that is (1) about the customer's account status; and (2) was supplied to the Natural Gas Supplier by the customer for any purpose other than the purpose for which the account status information was originally acquired.

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

- A. Unless a customer consents in writing, a Natural Gas Supplier may not use or disclose information that (1) is about the customer; and (2) was supplied to the Natural Gas Supplier by the customer.
- B. The restriction in (A) does not apply to lawful disclosures for bill collection or credit rating reports. Any prohibition on the disclosure of customer information should not preclude Natural Gas Suppliers from obtaining or providing customer information for an acquisition or sale of a book of business as long as the review of such customer information during a proposed acquisition or sale is subject to confidentiality agreements. It shall be the responsibility of the Natural Gas Supplier to obtain and maintain the written consent referred to in (A). This information shall be made available to the Commission upon request.

III. ADVERTISING AND SOLICITATIONS

3-1. Prohibition Against False and Misleading Advertising

All advertising of natural gas supply must be neither false nor misleading.

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

- A. 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:
 - 1. The rate for service offered, including a disclosure that the rate does not include charges for delivery service and that the total bill will include commodity and natural gas delivery service charges. If the 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 fees and charges, other than for natural gas supply, which will automatically be charged to consumers who contract for the advertised service; and
 - 3. Any minimum contract duration necessary to obtain an advertised rate.

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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 website address (if applicable);
2. Itemization of services provided, including minimum use requirements;
3. Unit price (must use the current standard pricing unit of Washington Gas);
4. Notice that natural gas commodity as opposed to natural gas delivery service is being offered;
5. Description of proposed contract terms;
6. Duration of the agreement (including initial time period, rollover provisions with mandatory 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 rescind.
12. Any certification or license number provided to the Natural Gas Supplier by the Commission; or a statement that the Natural Gas Supplier has been approved under a Washington Gas service application and a license approval by the Commission is pending.²

B. If the Natural Gas 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.

² The requirement is for a Natural Gas Supplier to include a statement that they have been approved to offer services under a Washington Gas service application and that their license is pending. This statement will only apply to suppliers that were providing service at the time of the Commission Order and are in the process of obtaining a Commission license. Once these Natural Gas Suppliers all become licensed this statement should be deleted from the Standards.

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3-4. Forms of Solicitations Allowed

A Natural Gas Supplier may solicit customers for enrollment in several ways, including telephone inquiries, radio advertisements, print advertisements, home solicitations, electronic advertisements (*i.e.*, Internet), newspaper advertisements, and written solicitations.

3-5. Telephone Solicitations of Customers

- A. Telephone solicitations shall be limited between the hours of 9 a.m. and 8:30 p.m.
- B. The soliciting party must begin the conversation by stating 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 they would like to hear the full solicitation.

3-6. Home Solicitations of Customers

- A. Home solicitations shall be limited between the hours of 9 a.m. and sunset.
- B. The soliciting party must begin the conversation by stating the following:
 - 1. The name of the business or organization;
 - 2. The nature of the visit, *i.e.*, a solicitation;
 - 3. A brief description of the subject-matter being solicited; and
 - 4. Ask the customer if they would like to hear the full solicitation.
- C. The soliciting party must adhere to D.C. Code § 28-3811(g)(2), which would require a Natural Gas Supplier to include a statement under the Conspicuous Caption: "BUYERS'S RIGHT TO CANCEL" which states:

If this agreement was solicited at or near your residence, and you do not want the goods and services, you may cancel this agreement by mailing a notice to the seller. The notice must say that you do not want the goods or services and must be mailed before midnight of the tenth calendar day after you signed this agreement. The notice must be mailed to: (name and address of seller). If you cancel, the seller may not keep any of your cash down payment.

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3-7. Customer Lists

Upon request, the Company shall provide annually to Natural Gas Suppliers, in an electronic format, a list that contains customer names, addresses and usage information, as long as customers are provided, through a negative option³ an opportunity to have their information excluded from such a list. The Company reserves the right to charge suppliers for providing information in addition to that which is discussed above.

3-8. Do-Not-Contact List

- A. Each Natural Gas Supplier must maintain its own "Do-Not-Contact" List. If a Natural Gas Supplier receives a request from a customer not to receive solicitations 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-Contact" list for three (3) years or until the customer affirmatively requests that he or she be removed from the list, whichever occurs sooner.
- C. Every six (6) months, each Natural Gas Supplier must provide an updated version of its "Do Not Contact" List to the Commission.
- D. If a customer has a complaint about a violation of this section, the complaint procedures in Sec. 11 and 12 of these standards apply.
- E. Any Natural Gas Supplier that violates this section is subject to having its license or certification revoked by the Commission.
- 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 thereunder for violation of such laws and regulations.

IV. CONTRACTING

4-1. Forms of Contracting

³ Negative option is an option which requires customers to contact Washington Gas to "opt-out" if they do not want their information released to Natural Gas Suppliers.

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

4-2. "Negative Option Contracts" Prohibited

Natural Gas 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 a Natural Gas 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 Natural Gas Supplier, the Natural Gas 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
 - 9. usage information.
 - A. The Natural Gas Supplier may ask for additional information only after first informing the customer of his/her right not to provide such information.
 - B. The Natural Gas Supplier is to advise the customer that they have the right to rescind the contract agreement within a 10-day period, as described in Section 4-9.
- ### 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 Natural Gas Suppliers. Independent third-party verification will only be required for telephone contracts. Each Natural Gas Supplier is responsible for contracting with an Independent Third-Party Verifier to verify contracts received telephonically. Alternatively, Third-

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Party Verification may occur in a separate telephone call.

- B. Once the customer has entered into a contract with the Natural Gas Supplier, the Natural Gas 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) "Are you the account holder?"; (2) "Did you agree to switch your natural gas service from _____ (Original Supplier) to _____ (New Supplier)?"; and (3) "Is _____ your correct address?" or "Is _____ your correct account number?"
- D. Once a positive verification has been assessed, the Natural Gas Supplier will transmit the enrollment transaction to the Natural Gas Company.
- E. In the event that the Independent Third-Party Verifier fails to verify the customer's contract choice, the Natural Gas Supplier shall not transmit the enrollment transaction to the Natural Gas Company. In this case, the customer will continue to receive natural gas service from its current Natural Gas Supplier or the Natural Gas Company providing the Standard Offer Service.
- F. If the customer's contract choice is verified by the Independent Third-Party Verifier, the Natural Gas Supplier must, within five (5) business days from the day the customer agreed telephonically to contract with the Natural Gas 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 Natural Gas 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 Natural Gas Supplier shall bear the burden of proving its existence.

4-5. Electronic Contract

If a contract is entered into electronically, the following conditions must be met:

- A. The Natural Gas Supplier may post on its web site an electronic version of the solicitation for the supply of natural gas. The electronic solicitation must include:
 - 1. an electronic application form to enter into a contract for the supply of natural gas,
 - 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 Natural Gas Supplier.

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- B. The questions contained on the electronic application form shall be limited to:
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 Natural Gas Supplier may ask for additional information only after first informing the customer of his/her right not to provide such information.
- D. The Natural Gas Supplier is to advise the customer that they have the right to rescind the contract agreement within a 10-day period, as described in Section 4-9. This information is to be prominently displayed on the website.
- E. The electronic submission of the application to contract with the Natural Gas Supplier constitutes a valid and binding "electronic signature" and also serves as a proxy for the Customer Consent Form(s).
- F. The Natural Gas 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.
- G. The Natural Gas 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 from the Natural Gas Supplier's website.
- H. In the event of a dispute over the existence of an electronic contract, the Natural Gas Supplier shall bear the burden of proving its existence.
- I. All enrollments via the Internet shall be initiated by the customer. Washington Gas shall include, in the deregulation section of its website, a link to each Natural Gas Supplier's website provided. However, it is the responsibility of the supplier to provide its website address to the Company.
- J. In order to enroll a customer, the Natural Gas Supplier must display on its website the appropriate Customer Consent Form(s) under which delivery service is being provided to the

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customer. The consent forms must have the identical language as the hard copy versions currently in use by the Natural Gas Supplier.

- K. The Natural Gas Supplier's website must be configured to prompt the customer to print or save the terms and conditions to which the customer agrees, namely, the Customer Consent Form, and the supplier's written agreement.
- L. During the enrollment procedure, each webscreen must clearly display a "cancel" icon enabling the customer to terminate the transaction at any time. In addition, this feature must be explained to the customer at the beginning of the enrollment process.
- M. At the completion of the enrollment process, the Natural Gas Supplier's website must conspicuously display that the customer has been enrolled in a Customer Choice Program, and again remind the customer that the agreement may be canceled by clicking on the cancel icon.
- N. The customer is also to be reminded that further information, as well as a cost comparison worksheet, can be found on Washington Gas' website. In addition, the address of the Company's website shall be provided for the customer's convenience.
- O. All electronic transactions and communications via the Internet, between the customer and the Natural Gas Supplier, shall be encrypted in such a manner as to ensure privacy of the customer's information.
- P. The Natural Gas Supplier shall retain a record of the electronic transaction and provide a copy to the customer, Commission for any purposes, or Washington Gas for dispute resolution purposes, if requested. If the Natural Gas Supplier cannot provide a copy of the electronic enrollment then the enrollment is deemed to not exist.

4-6. Written Contract

- 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.

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- B. The Natural Gas Supplier may ask for additional information only after first informing the customer of his/her right not to provide such information. 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 Natural Gas Supplier, including a reference, on the front of the contract, that advises customers of their right to rescind the contract agreement within a 10 day period, as described in Section 4-9.
- C. A written contract requires a written signature of the customer. A written signature is required when customers contract with a Natural Gas Supplier via a written solicitation, such as a mailing, a newspaper form, or documents received upon personal contact, *i.e.*, a home solicitation.
- D. The Natural Gas Supplier shall retain a record of the enrollment and provide a copy to the customer, Commission for any purposes, or Washington Gas for dispute resolution purposes, if requested. If the Natural Gas Supplier cannot provide a copy or the enrollment then the enrollment is deemed to not exist.

4-7. Priority in the Event of More Than One Natural Gas Supplier Chosen

- A. By the 9th calendar day of the month (next business day if holiday or weekend), each Natural Gas Supplier shall provide to the Company a list of customers to be supplied by that Natural Gas Supplier during the following month.
- B. Once Washington Gas accepts a customer enrollment from a Natural Gas Supplier, the Company will not accept enrollments from any other Natural Gas Supplier for that customer for the duration of that customer's annual contract.
- C. If a customer chooses to cancel their contract, prior to the expiration of the contract, that customer must contact Washington Gas to make such a request.

4-8. Confirmation

- A. Confirmation of a customer's intent to enroll with a Natural Gas Supplier, as prescribed in the above regulations, must occur after confirmation is received by the Natural Gas Supplier from the Company.
- B. Upon approval of a customer's application to contract for natural gas service, the Natural Gas Supplier must send to the customer, within a reasonable period of time:
 - 1. A statement of enrollment;
 - 2. A description of the agreed-upon billing option and the billing date if different

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- from the Company's usual billing date;
3. Customer Service Information (including toll-free telephone number, mailing address, and dispute resolution process information).

4-9. Contract Rescission

- A. Residential natural gas choice customers shall be permitted a 10-calendar-day rescission period that begins on the date the 1) customer signs the contract, or 2) transmits the electronic acceptance via the Internet, or 3) contract is postmarked when a customer's contract is mailed by the supplier.
- B. For the first six days of the rescission period, suppliers will hold all customer enrollments. If a customer contacts the Natural Gas Supplier to rescind within those six days the Natural Gas Supplier will remove the customer from their enrollment list. The end of the six-day hold period must be no later than the Company's monthly enrollment date, in order for the customer to receive service on the first of the next month. Following the hold period, the Natural Gas Supplier will send the enrollments to the Company. If a customer rescinds after the hold period, but before the end of the 10-day rescission period, the customer will notify the supplier and the supplier will notify the Company and that customer will be removed from the list of enrollments. If a customer does not rescind they would begin to receive service from the Natural Gas Supplier on the first day of the next month. This internal process between the companies in no way effects the customer's ten-day rescission period.
- C. If a customer rescinds their contract agreement, the Natural Gas Supplier will notify the Company and the Company will issue a confirmation notice to the customer that the customer has rescinded. In the confirmation notice the customer will be advised that they will remain on sales service or with their current Natural Gas Supplier.
- D. Information that advises customers of their right to rescind should be included within a Natural Gas Supplier's solicitation and contract materials.

4-10. Contract Termination

- A. Natural Gas Suppliers shall provide customers and the Company at least thirty-five (35) days written notice prior to terminating the customers' contract.
- B. If a Natural Gas Supplier's contract provides for automatic renewal of the contract:
 1. The Natural Gas Supplier shall provide notice of the pending renewal of the contract sixty (60) days before the 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 to the material terms and conditions of the agreement (including billing option, billing cycle), the Natural Gas 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 and advise the customer that terminating the evergreen contract⁴ without selecting another Natural Gas Supplier will return the customer to sales service. Both notices must also inform the customer that the Commission can provide the customer with additional information on the Customer Choice Program. The telephone number for the Commission and OPC shall be included in both notices.

4-11. Natural Gas Supplier to Report Information to the Commission

- A. A Natural Gas Supplier shall provide to the Commission readily understandable and current information regarding its publicly available rates charged and services provided.
- B. Upon request, suppliers may be required to provide promotional rate information. Such information may be subject to confidentiality agreements.

4-12. Natural Gas Supplier to Post Information

A Natural Gas Supplier shall post on the Internet information that is current and readily understandable about its services and rates for customers.

4-13. Contract Verification

- A. Upon request by the Commission, for any purposes, or the Company, for dispute resolution purposes, a Natural Gas Supplier may be required to provide a copy of a Customer's Consent Form.
- B. If the Consent Form cannot be provided that Natural Gas Supplier may be subject to penalties, fines or other sanctions as determined by the Commission.

V. METER READING

5-1. Natural Gas Suppliers Prohibited From Meter Reading

⁴ An evergreen contract is an existing contract that is capable of automatic renewal without any action by the customer.

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- A. A Natural Gas Supplier shall not conduct meter readings.
- B. To the extent a Natural Gas Supplier's charges are based on usage, a Natural Gas Supplier shall rely on the meter readings (actual, estimated, or customer meter readings) provided to it by the Company.
- C. Meter readings by the Company are done in accordance with the Utility Consumer Bill of Rights.

VI. BILLING

6-1. Billing Frequency

- A. If a customer chooses separate billing, a Natural Gas Supplier shall render a bill once during each billing month to every customer.
- B. If a customer chooses a supplier consolidated bill, the Natural Gas Supplier's bill shall be rendered on a monthly basis consistent with the Company's billing cycle for that customer, unless a different method is separately agreed upon by the Natural Gas Supplier and the Company and the customer.

6-2. Rendition of Bills

The date of rendition of a Natural Gas Supplier bill is the date the bill is mailed by the Natural Gas Supplier or its agent. Bills rendered by a Natural Gas Supplier must be rendered within seven days after the meter reading.

6-3. Information to be Included in Residential Gas Bills

- A. Every bill rendered by a Natural Gas Supplier for residential natural gas service, whether a separate bill or a consolidated bill, shall include the following bill components:
 - 1. Meter readings – current, prior month's and differences between the two; may be presented in the same place
 - 2. Meter reading date – 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 – For consolidated bills, show subtotals for the Company and the Natural Gas Supplier portions and a total due

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8. Payment due date – if separate bills, then payment dates may differ
 9. Estimated bills – distinctive indication if bill is based on estimated meter reading
 10. Business address and telephone numbers for billing inquiries
 11. Conversion from meter readings units to billing units – show computation
 12. Service address – show on first page of bill
 13. Mailing address – show on first page of bill
 14. Washington Gas account number – show on each page if multiple pages
 15. Supplier account number or customer information number - show on each page if multiple pages
 15. Bill payment plans (if applicable)
 16. Emergency number for Washington Gas
 17. Required notices – e.g., customer bill of rights, legal notices – may be an insert
 18. Next meter reading date
 19. Prior bill amount and summary of Supplier and/or Washington Gas charges
 20. Disclosure of previous payment activity
 21. Number of days in billing cycle
 23. Billing period
 25. PSC address and telephone number
 26. Address to where payments are sent
 27. Whom to make check payable to
 28. Collection messages
 29. Bill step computations
 30. Date of bill issuance
 31. OPC's address and phone number
- B. A Natural Gas Supplier may include other bill components. If a Natural Gas Supplier elects to bill for multiple services, each service should be clearly identified on the bill.

VII. PAYMENT OF GAS BILLS

7-1. Due Date

Natural gas 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 Natural Gas Supplier or an authorized collection agent; or the day before payments are removed from the receptacles provided for after-hours collection at the Natural Gas Supplier's offices; or the third day preceding the day when payments are received by mail.

ATTACHMENT A

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, customer payments shall be applied as follows: first to the Company for arrears for PSC-regulated charges, oldest item first; next to arrears for non-regulated charges (*i.e.*, natural gas supply); next to the Company for current PSC-regulated charges; finally, to current non-regulated charges.

VIII. SECURITY DEPOSITS

8-1. Deposits Allowed.

Natural Gas Suppliers may require a deposit up front of any customer.

8-2. Maximum Deposit Amount for Residential Natural Gas Service.

No deposit for residential natural gas 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 Natural Gas 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 Natural Gas Supplier shall pay simple interest on deposits with the rate being established not later than January 15th 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 60 days by the Natural Gas Supplier upon the sooner of (1) satisfactory payment by the customer of all proper charges for natural gas 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.

ATTACHMENT A

- D. A Natural Gas 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.

IX. INVOLUNTARY DISCONNECTION OF SERVICE

9-1. Natural Gas Suppliers May Not Disconnect Service

- A. Only the Company has the authority to physically disconnect customers from the system for nonpayment of regulated natural gas charges only.
- B. Disconnection of residential natural gas service by the Company shall be done in accordance with the "Utility Consumer Bill of Rights."

X. NATURAL GAS SUPPLIERS' RESPONSE TO CUSTOMER INQUIRIES AND COMPLAINTS

10-1. Procedures

A Natural Gas Supplier 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 Natural Gas Supplier service to customers and associated charges..

10-2. Staffing

- A. Natural Gas Suppliers shall be required to maintain a toll-free or local telephone number for customer service inquiries. Qualified Natural Gas Supplier 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 Natural Gas Supplier shall make reasonable efforts to ensure that non-English speaking customers are assisted.

ATTACHMENT A

- 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 Natural Gas Supplier concludes that a bona-fide question exists regarding the correctness of an amount billed:

- A. If a customer chooses a dual bill, the Natural Gas Supplier may adjust the amount due, and shall reflect the adjustment on a corrected bill.
- B. If a customer chooses a Natural Gas Supplier consolidated bill, the Natural Gas Supplier may only adjust the charges related to the services provided by the Natural Gas Supplier.

10-4. Unresolved Complaints

When a complaint cannot be resolved between the Natural Gas Supplier and a customer, the Natural Gas Supplier shall refer the customer to the Commission or the Office of the People's Counsel for resolution.

XI. RESOLUTION OF DISPUTES BETWEEN CUSTOMERS AND NATURAL GAS SUPPLIERS

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 Natural Gas Supplier, the first attempt at resolution shall be made directly between the parties.

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 Natural Gas Supplier, he or she may contact the Public Service Commission's Office of Consumer Services ("OCS") or the Office of the People's Counsel ("OPC") for assistance with the complaint.
- B. Upon receipt of a complaint, OCS or OPC shall notify the Natural Gas Supplier by telephone, investigate the matter, and attempt through mediation to resolve it informally.

ATTACHMENT A

11-4. Notice of Right to File Formal Complaint

- A. If the matter cannot be resolved informally, between the Natural Gas Supplier, OCS and OPC within seven business days, the complainant and the supplier shall be notified in writing of that fact by OCS or OPC. In the case of slamming allegations, OCS or OPC shall provide such notification after three business days.
- 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 Public Service Commission. Notification shall state if a formal complaint is not filed within fourteen (14) days of the date of mailing, the matter shall be dropped.
- C. If such notice is sent by OCS, the notice shall state the availability of assistance and representation by the Office of the People's Counsel 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 may complain to the Commission about their service provided by a Natural Gas Supplier, a Natural Gas Supplier 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 Commission's Office of Consumer Services 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. Natural Gas Supplier Response

ATTACHMENT A

- A. The Commission's Office of Consumer Services shall advise the affected Natural Gas Supplier by telephone whenever a formal complaint is filed, and mail or fax a copy of the complaint to the Natural Gas Supplier.
- B. The Natural Gas Supplier shall have seven (7) days from the date of the notice to file an Answer, setting forth the Natural Gas Supplier's position with respect to the allegations contained in the complaint.
- C. A copy of the Answer shall be forwarded by the Commission's Office of Consumer Services to the consumer.

12-4. Notice to Guarantor

If applicable, the Commission's Office of Consumer Services shall forward a copy of the Complaint and Answer to any guarantor of the account in controversy.

12-5. Scheduling of Formal Hearing

The matter shall be set for hearing no later than 15 days following the filing of the Natural Gas Supplier'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 Natural Gas Supplier, and the Office of the People's Counsel 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 period. 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 period. 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 Natural Gas Supplier 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 Commission's Office of Consumer Services, 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, however, certain requirements may need to be met if the records are considered confidential.

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 are available from the Office of the People's Counsel.

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 Natural Gas Supplier'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.

12-13. Transcriptions

All proceedings shall be recorded. The transcriptions shall promptly be made available to any party upon request, at that 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 twenty-one (21) 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 Sanctions and Enforcement

- A. Natural Gas 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 ⁵:
 - 1. 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:
 - a. the number of previous violations of any provisions of Commission law or regulations;
 - b. the gravity and duration of the current violations; and
 - c. the good faith efforts of the Natural Gas Supplier or person charged in attempting to achieve compliance after the Commission provides notice of the violation.
 - 2. The Commission may order a licensee to issue a refund or credit to a customer.
 - 3. 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 orders, rules or regulations.

⁵ The Working Group agreed that requirements regarding sanctions and enforcement described in this section address the concerns described in issue nos. 5, 6, and 9 in Attachment C of Commission Order 11957 (April 3, 2001).

4. Cancellation of all or part of a contract between a customer and a licensee.
 5. Suspension Of License.
 6. Revocation Of License.
- B. 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.
- C. 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 natural gas supply in the District of Columbia will be harmed by the actions of a licensee.

12-16. 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.
- E. Within six (6) days of the filing an appeal, the record shall be prepared for review by the members of the Commission.

12-17. 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.

12-18. Review of Commission Decision

Review of a final Commission decision shall be pursuant to D.C. Code §43-904, 43-905.

ATTACHMENT B

Interim Supplier Application for License to Supply Natural Gas or Natural Gas Supply 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 \$400.00¹ payable to "Public Service Commission" with the Commission's Secretary in Washington D.C.

Mrs. Brinda Westbrook-Sedgwick
Commission Secretary
Public Service Commission of the District of Columbia
1325 G Street, N.W., Suite 800
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.dcpSC.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. If you receive a license from the Commission, certain information must be updated on different time schedules. Within 30 days of a change, Sections 1-3, 7, 8, 18, 19, and 22 and the averment regarding any civil, criminal or regulatory penalties, etc. imposed on Applicant, et. al., must be updated. A licensee must immediately inform the Commission of a change to the averment regarding bankruptcy proceedings instituted voluntarily or involuntarily. Also, a licensee/Natural Gas Supplier must provide annual financial updates and updates of all other items that have changed in the application, with the exception of employee biographies. The information in Section 10 is provided for informational purposes only and does not need to be updated. The annual updates should be provided to the Commission within 120 days of the end of the supplier's fiscal year. Applicant is also 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 5d and 18 of this Application related to ownership of the Applicant's corporation (to the extent such information is not already public) and financial information, respectively, will be treated as confidential information by the Commission to the extent permitted by law if the Applicant requests such treatment by stamping or marking the materials in question as "Confidential." Any interested person may request, however, release of this information by filing such a request with the Commission. If such a request is made, Applicant shall have the burden of proving the confidential nature of the information. The Commission will notify the Applicant of any request for release of this information and will permit

¹ The \$400 fee is assessed only once if a supplier license application, for electricity, was filed with the Commission within the past 12 months.

ATTACHMENT B

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. The remainder of the document is considered public information.

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

Applicable law: The provisions set forth in this Application related to the licensing of Natural Gas Suppliers and the provision of natural gas supply and natural gas supply services are addressed in D.C. Act 14-48, "Prevention of Unauthorized Switching of Natural Gas Accounts Temporary Act of 2001," 48 D.C. Reg. 20 (2001) pp. 4355 - 4360, and in Commission orders and 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 Section 6 of the "Prevention of Unauthorized Switch of Customer Natural Gas Accounts Temporary Act of 2001".

ATTACHMENT B

BEFORE THE DISTRICT OF COLUMBIA PUBLIC SERVICE
COMMISSION

Application Docket No. _____

Application of _____, d/b/a ("doing business as") _____
Application Docket No. _____ for approval to offer, render, furnish, or supply natural
gas or natural gas supply services as a(n) _____, [as specified in item 12
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 (if available): _____

Other States including the 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: _____

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 2 years.

State(s): _____

ATTACHMENT B

Date of Application: _____

If additional space is required, please attach additional sheets of paper to the application as necessary.

b. Trade name

Trade Name: _____

Applicant (check all that apply):

- ☐ Is licensed as an electricity supplier/marketer in District of Columbia.
License No. _____.
- ☐ Is licensed as an electricity aggregator or broker in District of Columbia.
License No. _____.
- ☐ Is licensed as a retail vendor with the District of Columbia Department of
Consumer and Regulatory Affairs Registration No. _____.
- ☐ Has completed and filed a combined registration application with the
District of Columbia Department of Consumer and Regulatory Affairs
- ☐ Has simultaneously filed for electricity supplier license.
- ☐ Has a pending electricity license application in District of Columbia as a:
☐ Supplier/Marketer ☐ Aggregator or Broker
- ☐ Currently does business as a natural gas supplier in District of Columbia
as a:
☐ Supplier/Marketer ☐ Aggregator or Broker

If Applicant is a natural gas supplier/marketer, or aggregator/broker, please state in an attachment the length of time you have provided service in District of Columbia, and the customer classes that you provide service to.

2. a. CONTACT PERSON-REGULATORY CONTACT:

Name and Title: _____

Address: _____

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Telephone: () _____
Fax: () _____
E-Mail _____

Contact Person – Customer Service Manager for direct Commission inquiries (this information will not be posted on the Commission web site):

Name and Title: _____

Address: _____

Telephone: () _____
Fax: () _____
E-Mail _____

- b. CONTACT PERSON-CUSTOMER SERVICE (this information will be posted on the Commission web site):

Name and Title: _____

Address: _____

Telephone: () _____
Fax: () _____

- c. CONTACT PERSON—RESIDENTIAL SALES/CONTACT PERSON---: (this information will be posted on the Commission website)

Name and Title: _____

Address: _____

Telephone: () _____ (Please provide toll-free number if available)
Fax: () _____

- d. CONTACT PERSON--NON-RESIDENTIAL SALES/CONTACT PERSON- (this information will be posted on the Commission website)

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Name and Title: _____

Address: _____

Telephone: (____) _____ (Please provide toll-free number if available)

Fax: (____) _____

3. **RESIDENT AGENT**

Name and Title: _____

Address: _____

Telephone: (____) _____

Fax: (____) _____

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: _____

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 a state other than the District of Columbia, provide a certificate issued by the District of Columbia Department of Consumer and Regulatory Affairs certifying that the Applicant is authorized, in good standing, to do business in the District of Columbia. Certificate should have been issued within the past thirty (30) days of the date of filing this Application.

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 response to the last two years.)

- ☐ The Applicant has no such Affiliate(s) or Precessor(s).
- ☐ Applicant is an Affiliate of a regulated utility in Pennsylvania, Virginia, Delaware, New Jersey, or Maryland. Please provide regulated utility's name:

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- ☐ Affiliate(s), or Predecessor(s), other than a regulated utility in Pennsylvania, Virginia, Delaware, New Jersey, or Maryland that provides, or provided, 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:

Name: _____

Business Address: _____

License #/State of Issuance: _____

Location of Operations (Utility(s) Service Territory): _____

Name: _____

Business Address: _____

License #/State of Issuance: _____

Location of Operations (Utility(s) Service Territory): _____

Attach additional sheets to the application if necessary.

6. **ACTIONS AGAINST LICENSES:** Provide the following information for the Applicant, any Predecessors(s) and any unregulated Affiliate that engages in or engaged in the sale 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 complaints (Pursuant to Natural Gas Supplier licensing regulations, a Natural Gas Supplier must report to the District of Columbia Public Service Commission, all Formal Complaints, as defined in the license regulations Section .01 B 2 (13), pending before any Commission and/or State Court with appropriate jurisdiction, involving that supplier, an affiliate, or predecessor, and pending/on-going at any time during the two years prior to the date of that supplier's Application for a license to sell natural gas in the District of Columbia. This reported information shall include: 1) the parties to the complaint; 2) the date the complaint was filed; 3) the venue of the complaint; 4) the nature of the

ATTACHMENT B

complaint, and; 5) the current status of the complaint) 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/Predecessor(s)/or affiliates' 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. **RELIABILITY AND ENVIRONMENTAL OFFICIAL ACTIONS AGAINST APPLICANTS/AFFILIATES:** Provide the following information for Official Actions that have been taken against the Applicant, any Predecessor(s), and any unregulated Affiliate (if available to the Applicant) that engages in the retail or wholesale sale of natural gas for matters relating to environmental or reliability status for the past five years.

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

State(s): _____

Name(s): _____

☐ No such action has been taken.

TECHNICAL FITNESS

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

☐ A general description of Applicant's retail natural gas supply activities in District of Columbia, if any, including other service territories in which Applicant has provided service and the time period.

☐ A copy of each agreement (if applicable) entered into with District of Columbia natural gas distribution companies.

☐ Biographies, including titles, of relevant experienced personnel in key technical positions.

☐ Other.

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

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

SCOPE OF OPERATIONS

(Check all that apply)

10. **APPLICANT'S CURRENT OPERATIONS IN THE DISTRICT OF COLUMBIA (if applicable):** The Applicant operates as a(an):

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

Which natural gas supply related services does the Applicant offer?

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

11. **APPLICANT'S PROPOSED OPERATIONS IN THE DISTRICT OF COLUMBIA:** The Applicant proposes to operate as a:

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

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

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

12. **CURRENT AREA OF OPERATION IN DISTRICT OF COLUMBIA (if applicable):** The Applicant must identify whether it currently offers services throughout the Washington Gas service territory. If the Applicant does not offer services throughout a territory,

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Applicant must describe, in an attached statement, in detail the area within the utility's service territory that Applicant's services are offered.

- ☐ Applicant intends to offer services throughout the Washington Gas service territory in the District of Columbia.
- ☐ Applicant intends to offer services in only a portion of the Washington Gas service territory. Please see attached statement.

13. **PROPOSED AREA OF OPERATION:** The Applicant must identify whether it intends to offer services throughout the Washington Gas service territory. If the Applicant does not intend to offer services throughout the Washington Gas service territory, Applicant must describe, in an attached statement, in detail the area within the utility's service territory that Applicant's services are offered.

- ☐ Applicant intends to offer services throughout the Washington Gas service territory in the District of Columbia.
- ☐ Applicant intends to offer services in only a portion of one or more of Washington Gas' service territory. Please see attached statement.

14. **CURRENT CUSTOMERS IN DISTRICT OF COLUMBIA (if applicable):** Applicant provides 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)
- ☐ Applicant has no restrictions on the number of end use customers.
- ☐ Restrictions upon the size of end use customers. (Describe in attachment)
- ☐ Applicant has no restrictions on the size of end use customers
- ☐ Other restrictions regarding customers. (Describe in attachment)

15. **PROPOSED CUSTOMERS IN DISTRICT OF COLUMBIA:** Applicant intends to provide services to, or proposes to initially provide services to:

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

Also, Applicant proposes:

ATTACHMENT B

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

16. **START DATE:** The Applicant proposes to begin delivering services:

- ☐ Is already providing natural gas services in District of Columbia
- ☐ Upon approval of the Application and license.
- ☐ Other approximate date of commencement _____

{Note: this information will be used on the PSC website to let customers know who is actively marketing.}

FINANCIAL INTEGRITY

17. **REQUIRED DOCUMENTATION OF FINANCIAL INTEGRITY:** To the extent available, Applicant shall provide the most recent versions of the following documents. The Commission may rely on documents previously submitted by the Applicant as an attachment to a prior license application. Check each that is attached or indicate if documents have previously been provided to the Commission (Note: All Applicants must comply with any updating or supplemental information requirements established by the Commission.):

- ☐ Balance sheets and 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 may also provide 10Ks and 10Qs if available.
- ☐ If the Applicant has not been in existence for at least two-12 month periods, it must provide balance sheets, 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 insure 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. To the extent they exist, the Applicant must also submit its own balance sheets and income statements.
- ☐ Evidence that the Applicant is a licensed supplier in good standing or has engaged in the retail supply of natural gas or natural gas supply services, or electricity or electricity supply services, in any other jurisdiction.

ATTACHMENT B

- ☐ Credit reports or ratings prepared by established credit bureaus or agencies regarding the Applicant's payment and credit history.
- ☐ A current long-term bond rating, or other senior debt rating, if available.
- ☐ Organizational structure of Applicant. Include Applicant's parent, affiliate(s), and subsidiary(ies) if applicable.
- ☐ Evidence of general liability insurance.
- ☐ Other evidence of financial integrity (Please attach additional information to application).

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.

If a bond is required of a supplier the amount shall be of \$50,000. If a bond is required of an aggregator or broker the amount shall be \$ 10,000.

18. **DEPOSIT OR PREPAYMENT BOND:** A bond is required to the extent the Applicant requires prepayments and /or deposits from customers. Prepayments and /or deposits from non-residential customers whose metered use during any month of the previous twelve month period was in excess of 625 dekatherms per month are exempt from the calculation of the bond requirement. For new non-residential customers, the exemption will apply if the sales to that customer are expected to be in excess of 625 dth per month.

- ☐ Applicant will not accept payment or deposits from customers.
- ☐ Applicant intends to accept prepayments and/or deposits from customers.

If a bond is required of a supplier the amount shall be of \$50,000. If a bond is required of an aggregator or broker the amount shall be \$10,000.

One party dissents from the above language and proposes that bonds for deposits and prepayments only be required for prepayment and deposits from residential customers.

19. **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 bonds, as applicable, as described in Section 19.
 - b. The Applicant must update this Application with the Commission immediately if any of the information provided in this Application

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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 7, 8, 18, 19, and 22 and the averment regarding any civil, criminal or regulatory penalties, etc. imposed on Applicant, et al. Licensee/Licensee/Natural Gas 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/Licensee/Natural Gas Supplier must provide annual financial updates and updates of all other 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. Updates to this information should be submitted to the District of Columbia Public Service Commission on an annual basis.
 - 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 natural gas in the 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 Washington Gas is provided to the Commission.
 - h. Agree that the license to sell natural gas and natural gas supply services is not transferable without prior approval of the District of Columbia Public Service Commission.
20. **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, on pages 16-19, and must be executed by the Applicant or representative with authority to bind the Applicant in compliance with District of Columbia law.
21. **FURTHER DEVELOPMENTS:** The 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.
22. **FEE:** The Applicant has enclosed the required initial licensing fee of \$400.

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23. 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: _____

Print 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 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 knowledge, information, and belief 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 Washington Gas Light Company's ("Washington Gas") company tariffs and agreements.

The Applicant agrees to comply with all applicable Federal and District of Columbia consumer protection and environmental laws and regulations, and Commission regulations, fees, assessment, 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.

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

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

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

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

The Applicant, including any of its Predecessor(s) and/or affiliates that engage 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,

ATTACHMENT B

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 two years pursuant to any state or federal consumer protection law or regulation; and 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 two 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 the Applicant possesses the requisite managerial and financial fitness to provide service at retail in the District of Columbia.

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

Signature of Affiant

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

ATTACHMENT B

Signature of official administering oath

My commission expires _____.

VERIFICATION

State of _____ :
County of _____ : ss.

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

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

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

The Applicant understands that the making of 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 of District of Columbia Code as may be amended from time to time relating to perjury and falsification in official matters.

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

That the Applicant agrees that it will not present itself as a licensed retail supplier of natural gas in the District of Columbia, 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 Commission approval.

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 and that he/she expects said Applicant to be able to prove the same at any hearing here after due inquiry, and that he/she expects said Applicant to be able to prove the same of any hearing hereof.

Signature of Affiant

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

Signature of official administering oath

My commission expires _____.

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

TO WHOM IT MAY CONCERN:

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

MY/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 STAFF 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

PREPAYMENT AND DEPOSIT BONDING REQUIREMENTS ADDENDUM

1. DEFINITION AND EXCLUSION

- a. Any natural gas supplier or aggregator or broker who charges or collects deposits or prepayments shall maintain a bond in an amount at least equal to the total amount of such deposits and prepayments as specified in this section. Prepayments and/or deposits from non-residential customers whose metered use during any month of the previous twelve month period was in excess of 625 dekatherms per month are exempt from the calculation of the bond requirement. For new non-residential customers, the exemption will apply if the sales to that customer are expected to be in excess of 625 dth per month.
- b. "Deposits" include all payments made by a consumer to a natural gas supplier to secure the natural gas supplier against the consumer's nonpayment or default.
- c. "Prepayments" include all payments made by a consumer to a natural gas supplier for services that have not been rendered at the time of payment.

(1) Where a natural gas supplier charges for services based on a quantity of natural gas, such as a price per therm, then prepayments include any payments for any quantity that has not been delivered to the consumer at the time of payment.

(2) Where a natural gas supplier charges for services based on a period of time, such as charging a membership fee, initiation fee or other fee for services for a time period, then prepayments include the amount of the total charges collected by the natural gas supplier for the period of time less the prorated value of the period of time for which services have been rendered.

(3) Where a natural gas supplier charges for services based on a measure other than quantity of natural gas delivered or a period of time, the PSC shall determine, on a case by case basis, whether the charges involve a prepayment and the appropriate method of calculating the required bond.

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

One party dissents from the above language and proposes that bonds for deposits and prepayments only be required for prepayment and deposits from residential customers.

2. WHO MUST POST BOND

Any natural gas supplier or aggregator or broker who is not exempt pursuant to 1(a) above and who states on its license application or annual renewal that they intend to charge deposits or prepayments, or who do in fact charge a deposit or prepayment, must post the bond. Any natural gas supplier who states on its license Application or renewal that they do not intend to charge deposits or prepayments will not be required to post a bond or provide the audited CPA/or PSC Accounting Division certification described below. Any natural gas supplier who actually charges a deposit or prepayment without notifying the PSC and posting the required bond may be subject to suspension, revocation, or other action against its license, as well as for restitution to any consumers who paid such deposits or prepayments.

3. PROCEDURE FOR DETERMINING AMOUNT OF BOND

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

4. CPA/PSC ACCOUNTING DIVISION AUDIT REPORT. The natural gas supplier shall provide appropriate certification at the intervals discussed in the above paragraphs, on funds collected by a Supplier for prepayments or deposits. The Supplier will have the option of certifying funds through an audit conducted by independent certified public accountant or by the PSC Accounting Division. The audit will verify collections and balances of prepayments and deposits as of a specific date and whether the Supplier has appropriate bond coverage.

5. BOND FORM: BENEFICIARY, CLAIMS, DISTRIBUTION. The natural gas supplier shall provide a bond on the form required by the PSC.

6. COMPLIANCE INVESTIGATIONS. The PSC has the right to initiate appropriate investigations if it determines a Supplier is collecting prepayments and/or deposits from customers without appropriate bond coverage. The PSC will utilize appropriate legal remedies both to investigate and/or enforce actions necessary to ensure suppliers have appropriate bonds.

ATTACHMENT C

INTERIM NATURAL GAS SUPPLIER LICENSING REGULATIONS

TITLE 15

PUBLIC SERVICE COMMISSION

Subtitle___: Licensing Requirements For Natural Gas Suppliers

.01 General Provisions

A. Scope Of Regulations

1. Application. These regulations apply to a person who engages in the business of a Natural Gas Supplier in the District of Columbia. Natural Gas Suppliers include marketers, brokers, aggregators, any entities selling natural gas at retail and any entities selling competitive billing services. Natural Gas Suppliers do not include natural gas companies to the extent that the natural gas company provides natural gas sales or delivery service at rates regulated by the Commission.
2. Purpose. The regulations in this subtitle provide uniform requirements for obtaining a Natural Gas 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.
3. Restrictions. As a condition of filing a license Application, no person shall present itself as a licensed retail natural gas supplier, accept deposits or prepayments from retail customers, or contract with retail customers, prior to receipt of a license from the Commission.

B. Definitions

1. In This Subtitle, The Following Terms Have The Meanings Indicated
2. Terms Defined (Non-Exhaustive List)
 - (1) Affiliate. For purposes of this subtitle, "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.
 - (2) Aggregator. "Aggregator" means an entity or an individual that acts on behalf of a customer to purchase natural gas, but does not take title. It does not include: (a) an entity or individual that purchases natural gas for its own use or for the use of its subsidiaries or affiliates; (b) a municipal gas utility serving only in its distribution territory; (c) a combination of governmental units that purchases natural gas for use by the governmental units or (d) a Consolidator.
 - (3) Applicant. "Applicant" means a Natural Gas Supplier or market participant who is applying for a license to sell or supply natural gas to customers in the District of Columbia as required by D.C. Act 14-48, the Prevention of Unauthorized Switching of Customer Natural Gas Accounts Temporary Act of 2001 ("Act").
 - (4) Application. "Application" means the written request by a person or entity for a natural gas supply license in a form specified by the Commission.

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- (5) Broker. "Broker" means an entity or individual that acts as an agent or intermediary in the sale and purchase of natural gas but does not take title to natural gas.
- (6) Commission. "Commission" means the Public Service Commission of the District of Columbia
- (7) Competitive Billing. "Competitive Billing" means the right of a customer to receive a single bill from the Company, a single bill from the Natural Gas Supplier, or separate bills from the Company and the Natural Gas Supplier.
- (8) Competitive Billing Service. "Competitive Billing Service" is a service that is offered by natural gas suppliers for (1) the production of an invoice or the rendering of an invoice for natural gas supply or natural gas supply services to a retail customer; and (2) the processing of payment for those services.
- (9) Consolidator. "Consolidator" means any owner of or property manager for multifamily residential, commercial office, industrial, and retail facilities who combines more than one property for primary purpose of contracting with an aggregator or natural gas service provider for natural gas services for those properties, and who: (A) Does not take title to natural gas; (B) Does not sell natural gas to buildings not owned or managed by such owner or property manager; (C) Does not offer aggregation of natural gas services to other unrelated end-users; and (D) Arranges for the purchase of natural gas services only from duly licensed natural gas service providers or aggregators.
- (10) Customer. "Customer" means a purchaser of natural gas in whose name a service account exists with the company. The term "customer" excludes an occupant of a building where the owner, lessee, or manager manages the internal distribution system serving the building and supplies natural gas solely to occupants of the building for use by those occupants.
- (11) Deposit. "Deposit" includes all payments made by a customer to a Natural Gas Supplier to secure the Natural Gas Supplier against the customer's non-payment or default. Deposits from non-residential customers whose metered usage during any month of the previous twelve-month period was in excess of 635 Dth are excluded from this definition. The exclusion shall apply to a new non-residential customer if the retail natural gas sales to that customer are expected to be in excess of 625 Dth per month.
- (12) License. "License" means the authority granted by the Commission to a person to do business as a Natural Gas Supplier in the District of Columbia.
- (13) Licensee. "Licensee" shall include a Natural Gas Supplier, aggregator, or market participant who has been licensed by the Commission.
- (14) Formal Complaints – For purposes of the Natural Gas Supplier Licensing Procedure, a Formal Complaint is a complaint made in writing on a form or in a manner prescribed by any Commission¹ and/or judicial courts with appropriate jurisdiction, docketed and set for litigation culminating in a Hearing before a panel of Commissioners, a Commission designate, or before a Judge. A Formal Complaint shall: 1) set forth all facts known to the Complainant at the time of its filing, necessary to state a claim upon which relief may be granted; 2) include a statement

¹ Public Service Commissions, sometimes known by different names in other States, are included in this definition of Commission.

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regarding the specific relief requested, and; 3) include the signature of the Complainant or his representative.

The District of Columbia Public Service Commission's Formal Complaint process is governed by 15 DCMR §§ 104 and 324 *et. seq.*

- (15) Marketer. "Marketer" means a person who purchases and takes title to natural gas as an intermediary for sale to a customer. The term does not include a natural gas company to the extent that the natural gas company provides natural gas sales or delivery service at rates regulated by the Commission.
- (16) Market participant. "Market participant" means any Natural Gas Supplier (including an affiliate of the natural gas company) or any person providing billing services or services declared by the Commission to be potentially competitive services, notwithstanding whether or not the supplier or person has been licensed by the Commission.
- (17) Natural Gas Company. "Natural Gas Company" means a public service company that: (A) is authorized to install or maintain facilities in, over, or under streets for furnishing or distributing natural gas; or (B) owns a natural gas plant and: 1. Transmits, sells, supplies, or distributes artificial or natural gas; or 2. Manufactures natural gas for distribution or sale. "Natural Gas Company" includes a municipal corporation that is in the business of supplying natural gas for other than municipal purposes. The rates and terms and conditions of service are regulated by the Commission. NOTE: OPC objects to this definition to the extent that it is not consistent with the definition of a "gas company" in Section 7(c) of the Act.
- (18) Natural Gas Supplier. "Natural Gas Supplier" means a person, broker, or marketer, who generates natural gas; sells natural gas; or purchases, brokers, arranges or markets natural gas for sale to customers.
- (19) Person. "Person" means an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation or other entity.
- (20) Prepayments. "Prepayments" include all payments made by a customer to a Natural Gas Supplier for service that has not been rendered at the time of payment. Prepayments from non-residential customers whose metered usage during any month of the previous twelve month period was in excess of 625 Dth are excluded from this definition. The exclusion shall apply to a new non-residential customer if the retail natural gas sales to that customer are expected to be in excess of 625 Dth per month.
 - (a) Where a Natural Gas Supplier charges for services based on a quantity of natural gas, such as price per therm, then prepayments include any payments for quantity that has not been delivered to the consumer at the time of payment.
 - (b) Where a Natural Gas Supplier charges for services based on a period of time, such as charging a membership fee, initiation fee or other fee for services for a time period, then prepayments include the amount of the total charges collected by the Natural Gas Supplier for the period of time less the prorated value of the period of time for which services have been rendered.

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- (c) Where a Natural Gas Supplier charges for services based on a measure other than quantity of natural gas delivered or a period of time, the Commission shall determine, on a case-by-case basis, whether the charges involve a prepayment and the appropriate method of calculating the required bond.
- (d) Prepayments do not include any funds received in advance of the services being rendered as a result of the customer's voluntary participation in a budget billing or level billing plan by which the customer's anticipated natural gas cost are averaged over a period of time.

.02 Licensing Requirements

A. Persons Subject To Licensing Requirements - Any Person who engages in the business of a Natural Gas Supplier in the District of Columbia must hold a license issued by the Commission.

B. Application Filing Requirements For Natural Gas Suppliers - An Application for a Natural Gas Supplier license shall include the following information, in a manner and form specified by the Commission.

1. Proof of technical and managerial competence.
2. Proof of financial integrity.
3. Proof that any Applicant selling, or intending to sell natural gas, is in good standing and qualified to do business in its state of formation, and if formed under the laws of a state other than the District of Columbia, proof that the Applicant is authorized by the Department of Consumer and Regulatory Affairs to do business in the District of Columbia and is in good standing, to do business in the District of Columbia.
4. Agreement to be subject to all applicable taxes.
5. 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.
6. Any other information that the Commission requires.
7. An agreement or promise to comply with all of the requirements of the Act and all other orders and regulations of the Commission issued under the Act.

C. Bonds

A. Bond To Insure Financial Integrity. The Commission may require a licensee to post a bond or other similar instrument, if, in the Commission's judgment, the bond or similar instrument is necessary to insure the financial integrity of a Natural Gas Supplier. If the Commission requires a licensee to post a bond, the amount of the bond will be \$50,000.00. If the licensee is an aggregator or broker, the amount of the bond is \$10,000.00.

B. Bond For Deposits And Prepayments. The licensee shall post a bond or other similar instrument, as ordered by the Commission, if the licensee collects deposits or prepayments from its customers.

D. Competitive Billing

Any service agreement between a Natural Gas Supplier and the Natural Gas Company shall set forth their reciprocal responsibilities for collection and ownership of receivables. In the event that competitive billing services are being provided to a customer, the non-biller of the service charges shall not take collection or service termination action against a customer for failure to receive payment for those charges, if a biller has billed a customer for non-biller charges and the customer has paid the biller for

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those non-biller charges, as long as the customer provides the non-biller with evidence of such payment to the biller.

.03 Licensing Procedures

A. Scope. These procedures apply to the Application for a Natural Gas Supplier license before the Commission.

B. Form. An Application for a license must be made on the applicable form provided by the Commission, verified by oath or affirmation, and signed by an Applicant owner or partner, or an officer of the Applicant. License Applications may be obtained from the Commission website or from the Commission offices during normal business hours.

C. Number Of Copies: Service. Each Applicant must file verified original application and 14 copies and in such format as specified by the Commission.

D. Material Change In Application Information. The Applicant shall inform the Commission of any material change in the information provided in the application during the pendency of the Application process.

E. Fees. At the time of the initial application, each license Applicant shall pay a non-refundable filing fee of \$400, unless the license Applicant filed a license Application for electricity with the Commission within the past 12 months, and already paid a non-refundable filing fee to the Commission.

F. Notice Of Application. The Applicant shall provide a proposed Notice of Application to the Commission to accompany its Application. The Commission shall review this notice and shall forward it within five (5) days of receipt of Application for publication in the District of Columbia Register.

G. 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.

H. Notice Of Incomplete Application. The Commission Staff shall review the submitted Application for completeness within ten (10) business days of receipt of an Application. The Commission Staff 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) business days of receipt of an incomplete Application, the Commission Staff shall notify the Applicant in writing of the deficiencies in the Application and shall return the incomplete Application to the Applicant.

I. Review Of A Complete Application. The Commission Staff shall notify the Applicant in writing as soon as practicable, but in no event later than ten (10) business days after the receipt of a complete Application for a Natural Gas Supplier license. The Commission Staff shall conduct an appropriate investigation of the information provided by the Applicant in the complete Application. The Commission Staff shall conclude its investigation, and make a recommendation to the Commission for the approval or denial of the license within twenty (20) business days of providing notice to the Applicant of the receipt of the complete Application. In the event that the Commission Staff recommends denial of a license to an Applicant, the Commission Staff 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 Staff determination shall also be served on the Office of People's Counsel.

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J. Decision On License Application. All applications shall be considered by the Commission, including consideration at a public hearing if deemed necessary by the Commission.

K. Licensee's Updated Information. The licensee shall comply with any information update requirements or supplemental information requirements established by the Commission. The licensee shall provide annual updates of all information specified by the Commission within 120 days of the end of the licensee's fiscal year.

L. Term Of License. Licenses are valid until revoked by the Commission or surrendered by the licensed natural gas supplier.

M. Transfer Of License. A license is not transferable without prior Commission approval.

N. 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; or (b) to all customers within a specified customer class, that the licensee no longer intends to serve. 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.

O. Accuracy Of Information. Any Applicant who knowingly submits misleading, incomplete or inaccurate information may be penalized in accordance with applicable law and the provisions of these regulations.

P. Copies Of Service Agreement With Washington Gas. The Applicant or licensee shall file a copy of service agreement entered into with Washington Gas with the Commission within ten (10) business days of execution of such agreement.

Q. Proprietary And Confidential Information - In its Application, the Applicant may designate documentation provided in response to Section 5d and 18 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 the interested party. If such request is made, the Applicant shall have the burden of proving the confidential nature of the information and will be permitted to respond to the request through written motion filed with the Commission prior to the Commission's determination on the request.

.04 Bond Requirements

A. Bond Foreclosure. The Commission may foreclose upon any bond posted with the Commission when, in the Commission's discretion, foreclosure is necessary to 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 natural gas monies.

B. Compliance Investigations The Commission may initiate investigations and may utilize all appropriate enforcement tools if it determines a licensee is not appropriately bonded.

C. Persons Responsible For Posting And Maintenance Of A Bond.

- (1) Any licensee that charges or collects deposits or prepayments shall maintain a bond in an amount at least equal to the total amount of such deposits and prepayments as specified in this section.

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- (2) Any licensee that states on its license Application or annual license renewal that it intends to charge deposits or prepayments, or that does in fact charge a deposit or prepayment, must post a bond, unless otherwise exempted by the Commission.
- (3) Any licensee that states on its license Application or annual license renewal that it does not intend to charge deposits or prepayments will not be required to post a bond or comply with the bond procedures and audit requirements established by the Commission.
- (4) Unless otherwise exempted by the Commission, any licensee who actually charges a deposit or prepayment without providing the required notice to the Commission; and posting the required bond may be subject to Commission action.

D. Form Of The Bond. The licensee shall provide a bond in a form required by the Commission. At a minimum, this form shall:

- (1) designate the District of Columbia or the District of Columbia Public Service Commission, as the sole beneficiary of the bond;
- (2) be continuous and subject to nonrenewal only upon at least 60 days notice to the Commission;
- (3) cover payment of all present and future obligations of the licensee that occurred while the bond was in force, as identified by the Commission under these regulations.,
- (4) state that the proceeds of the bond shall be paid or disbursed as directed by the District of Columbia Public Service Commission.

.05 Commission Reporting Requirements

A. Updates to Application. If the Applicant's answer to any of the sections in the Application itself change during the pendency of the Application or if the information relative to any item herein changes while the Applicant is operating within the District of Columbia, the Applicant is under a duty to so inform the Commission. If Applicant receives a license from the Commission, certain information must be updated on different time schedules. Within 30 days of a change, Sections 1-3, 7, 8, 18, 19, and 22 and the averment regarding any civil, criminal or regulatory penalties, etc. imposed on Applicant, et. al., must be updated. A licensee must immediately inform the Commission of a change to the averment regarding bankruptcy proceedings instituted voluntarily or involuntarily. Also, a licensee must provide annual financial updates and updates of all other items that have changed in the application, with the exception of employee biographies. The information in Section 10 is provided for informational purposes only and does not need to be updated. The annual updates should be provided to the Commission within 120 days of the end of the licensee's fiscal year.

B. Annual Reporting Requirements. A licensed Natural Gas Supplier must provide any information required by any other Commission regulation.

.06 Commission Action Regarding A Licensee

A. Commission Investigation. The Commission may initiate an investigation of the licensee upon its own motion or upon the complaint of the Office of People's Counsel, the Office of the 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 orders and regulations.

B. Grounds For Commission Action. The Commission may take action regarding a licensee for just causes as determined by the Commission. "Just cause" includes, but is not limited to the following:

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1. Providing false or misleading information to the Commission, knowingly or with reckless disregard.
2. Switching, or causing to be switched, the natural gas supply for a customer without first obtaining the customer's permission.
3. Disclosing information about a customer supplied to the natural gas 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.
4. Adding services or new charges to a customer's existing retail natural gas service options without customer consent.
5. Failing to provide adequate and accurate information to each customer about the Market Participant's available services and charges.
6. 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.
7. Refusing to provide service to a customer unless the refusal is based on standards reasonably related to the Natural Gas Supplier's economics and business purposes.
8. Failing to provide natural gas for its customers.
9. Committing fraud or engaging in marketing advertising, or trade practices that are unfair, false, misleading, or deceptive.
10. Failing to maintain financial integrity.
11. Violating a Commission regulation or order.
12. Failing to pay, collect, remit or accurately calculate applicable taxes.
13. Violating an applicable provision of the District of Columbia Code or any other applicable consumer protection law.
14. 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 fraud-related crimes (including, but not limited to, counterfeiting and forgery, embezzlement and theft, fraud and false statements, perjury, and securities fraud).
15. Imposition of a civil, criminal or regulatory sanction(s) or penalties against the licensee or principal of the license (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.
16. Conviction by the licensee or principal of the license (including the general partners, corporate officers or directors, or limited liability managers or officers of the Company) of any felony.
17. Filing of involuntary bankruptcy/insolvency proceedings against the license or filing of voluntary bankruptcy/insolvency proceedings by the license.
18. 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 ("FERC").

.07 Sanctions And Enforcement

A. Sanctions. Natural Gas 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:²

² The requirements regarding sanctions and enforcement described in this section of the interim license regulations address the concerns described in issue nos. 5, 6, and 9 in Attachment C of Commission Order 11957 (April 3, 2001).

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1. 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:
 - a. the number of previous violations of any provisions of Commission law or regulations;
 - b. the gravity and duration of the current violations; and
 - c. the good faith efforts of the natural gas supplier or person charged in attempting to achieve compliance after the Commission provides notice of the violation.
2. Customer Refund Or Credit. The Commission may order a license to issue a refund or credit to a customer.
3. Cease And Desist Order. The Commission may order the license 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 orders, rules and/or regulations.
4. Cancellation of a contract or part of a contract between a customer and a licensee.
5. Suspension Of License.
6. Revocation Of License.

B. 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.

C. 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 natural gas supply in the District of Columbia will be harmed by the actions of a licensee.

.08 Assessment And Fees

A. Assessment. All but one Group member seeks Commission clarification on whether the licensee can be required to pay any assessment fee, as required under Title 43 of the District of Columbia Code, that would be incurred during an investigation or complaint.

OPC dissents from this position because Section 7 of D.C. Act 14- 48, "Prevention of Unauthorized Switching of Customer Natural Gas Account Temporary Act of 2001" deems a "gas company" (every corporation, company, association, joint-stock company or association, partnership, or person doing business in the District of Columbia . . . physically transmitting or distributing natural gas in the District of Columbia to retail natural gas customers) to be a "public utility" and, thereby, subject to assessments under D.C. Code § 43-612(a)(2). OPC's position is that because a Natural Gas Supplier transmits and distributes natural gas in the District of Columbia it is a "gas company" as defined in the Act.

.09 Natural Gas Supplier's Registration with the Natural Gas Company

A. Natural Gas Supplier Registration with Washington Gas. The Natural Gas Supplier shall be required to enter into a Natural Gas Supplier Application Agreement with Washington Gas pursuant to the

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Company's Rate Schedule No. 5. A copy of such an agreement should also be filed with the Commission.

B. Creditworthiness. Washington Gas may require reasonable financial security from the Natural Gas Supplier to safeguard Washington Gas and its customers from the reasonably expected net financial impact due to the non-performance of the Natural Gas Supplier. The amount of such financial security shall be commensurate with the level of risk assumed by Washington Gas, as determined by the Company's applicable tariff approved by the Commission. Such financial security may include a letter of credit, a deposit in an escrow account, a prepayment arrangement, a surety bond, or other arrangements that may be mutually agreed upon by the Company and the Natural Gas Supplier.