

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKINGRM46-2015-01-E, IN THE MATTER OF THE INVESTIGATION INTO THE PUBLIC SERVICE COMMISSION'S RULES GOVERNING THE LICENSURE AND BONDING OF ELECTRIC SUPPLIERS IN THE DISTRICT OF COLUMBIA;

AND

FORMAL CASE NO. 1130, IN THE MATTER OF THE INVESTIGATION INTO MODERNIZING THE ENERGY DELIVERY SYSTEM FOR INCREASED SUSTAINABILITY

1. The Public Service Commission of the District of Columbia ("Commission"), pursuant to Sections 2-505 and 34-802 of the D.C. Official Code¹ hereby gives notice of its final rulemaking action adopting Chapter 46 (Licensure of Electricity Suppliers) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations (DCMR), effective upon publication of this Notice of Final Rulemaking (NOFR) in the *D.C. Register*.

2. Chapter 46 establishes the rules governing the licensure and bonding of Electricity Suppliers in the District of Columbia, pursuant to the Retail Electric Competition and Consumer Protection Act of 1999, D.C. Official Code §§ 34-1501 *et seq.* Currently, the requirements for licensing Electricity Suppliers are set forth in *Formal Case No. 945*, Order No. 11796. Bonding requirements for Electricity Suppliers are set forth in *Formal Case No. 945*, Order No. 11862. Standardized forms referenced throughout the final rules below, such as the Supplier Application Form, the Customer Payment Bond Form, the Integrity Bond Form for Electricity Suppliers and Marketers, and the Integrity Bond Form for Aggregators and Brokers, shall all be made available on the Commission's website following the final publication of these rules in this NOFR.

3. On February 6, 2015, the Commission issued its initial Notice of Proposed Rulemaking ("NOPR") giving notice of the proposed adoption of Chapter 46.² This NOPR also included the following attachments: (A) Supplier Application; (B) Form of Customer Payments Bond-Surety Bond; (C) Form of Integrity Bond for Electricity Suppliers other than Aggregators and Brokers-Surety Bond; and (D) Form of Integrity Bond for Aggregators and Brokers-Surety Bond. After receiving comments, the Commission published a Second NOPR containing revisions to certain provisions in the First NOPR.³ The Second NOPR included the same attachments as the First NOPR. In the Second NOPR, the following sections were revised to reflect consistency with the Natural Gas Supplier Rules, where appropriate, comments and reply comments, Commission internal review and concerns raised at the August 4, 2015, Technical

¹ D.C. Official Code §§ 34-802 and 2-505 (2012 Repl.).

² 62 DCR 001712-001764 (February 6, 2015).

³ 64 DCR 001818-001871 (February 17, 2017).

Conference: 1) 4602.9; 2) 4602.11; 3) 4602.12; 4) 4602.13; 5) 4602.16; 6) 4603.1; 7) 4606.1; 8) 4607.1(a); and 9) 4699.1 (g) and (h).

4. On August 11, 2017, the Commission published a Third NOPR superseding the prior NOPRs.⁴ In the Third NOPR, the following sections were revised to reflect consistency with the Natural Gas Supplier Rules, where appropriate, comments and reply comments, and Commission internal review: 1) 4601.2 (h) (1), (2), (3); 2) 4603.5; 3) 4603.9; 4) 4603.10; 5) 4603.11; 6) 4603.12; 7) 4603.16; 8) 4604.1; 9) 4608.1(a); and 10) 4609.2 (x).

5. After receiving and considering comments on the Third NOPR, the Commission published a Fourth NOPR on November 3, 2017.⁵ The Fourth NOPR superseded the Third NOPR. In the Fourth NOPR, the following sections were revised in response to parties' comments and Commission internal review: 1) 4603.11; 2) 4603.13; and 3) 4608.1(a). Also, the forms attached to these rules, Attachments A – D, were also revised for accuracy and made to be applicable specifically to Electricity Suppliers.

6. Following receipt of additional comments, the Commission issued a Fifth NOPR on February 2, 2018, superseding the Fourth NOPR.⁶ In the Fifth NOPR, the following sections were revised in response to parties' comments and Commission internal review: 1) 4603.11; 2) 4608.1; 3) 4609.2(v); 4) 4699.1, the definitions for Residential Customers and Small Commercial Customers were revised; and 5) Attachment A (Supplier Application), Question 5 Affiliates or Predecessor(s), engaged in the Sale or Transmission of electricity at Wholesale or Retail to the Public, the names of the individual states were removed. Also, in the Fifth NOPR, the following sections had non-substantive changes: 1) 4607.1; 2) Attachment A, Question 1 a. and c; 3) Attachment A, Question 6; 4) Attachment A Question 15; 5) Attachment A, Question 16 j., k. and l; 6) Attachment A, Affidavit of General Compliance; 7) Attachment B, Form of Customer Payments Bond-Surety Bond; 8) Attachment C Form of Integrity Bond for Electricity Suppliers and Marketers Integrity Bond-Surety Bond; and 9) Attachment D Form of Integrity Bond for Aggregators and Brokers Integrity Bond-Surety Bond.

7. After receiving and considering comments, on May 4, 2018, the Commission published a Sixth NOPR superseding the Fifth NOPR.⁷ The Sixth NOPR included numerous and extensive revisions, the renumbering of multiple sections, revisions and deletion of certain definitions, and the deletion of attachments and forms that were previously included in the prior five NOPRs. On August 10, 2018, the Commission issued a final NOPR revising Section 4699.1 to delete the term "Nontraditional Marketers" as an exclusion from the definition "Electricity Supplier" and its Definition from Chapter 46.⁸

⁴ 64 D.C. Reg. 007984-008037 (August 11, 2017).

⁵ 64 D.C. Reg. 011527-011581 (November 3, 2017).

⁶ 65 D.C. Reg. 000976-001028 (February 2, 2018).

⁷ 65 D.C. Reg. 004880-004898 (May 4, 2018).

⁸ 65 D.C. Reg. 008453-008455 (August 10, 2018).

8. After fully considering the comments and reply comments, the Commission, by Order No. 19678 issued on September 19, 2018, adopted the Chapter 46 (Licensure of Electricity Suppliers) rules as final and directed that the rules will become effective upon publication of this Notice in the *D.C. Register*.

Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended to add a new Chapter 46 as follows:

CHAPTER 46 LICENSURE OF ELECTRICITY SUPPLIERS

- 4600 APPLICABILITY
 - 4601 LICENSING REQUIREMENTS
 - 4602 LICENSING PROCEDURES
 - 4603 ELECTRICITY SUPPLIER EDUCATION WORKSHOP
 - 4604 BOND REQUIREMENTS FOR ELECTRICITY SUPPLIERS COLLECTING DEPOSITS OR PREPAYMENTS ("CUSTOMER PAYMENTS BOND")
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- 4600 APPLICABILITY
 - 4600.1 **Application.** These rules apply to a Person who engages in the business of an Electricity Supplier in the District of Columbia.
 - 4600.2 **Purpose.** These rules provide uniform requirements for obtaining any form of an Electricity Supplier License in the District of Columbia, describe the administrative procedures available to the Applicants and Licensees, outline the grounds for Commission action regarding a Licensee, and describe the sanctions that may be imposed by the Commission.
 - 4600.3 **Restrictions.** No Person shall present itself as an Electricity Supplier, perform the duties of an Electricity Supplier, accept Deposits or prepayments from retail Customers, contract with retail Customers or arrange for contracts for retail Customers, prior to receipt of a license from the Commission.
 - 4601 LICENSING REQUIREMENTS
 - 4601.1 **Persons Subject to Licensing Requirements.** Any Person who engages in the business of an Electricity Supplier in the District of Columbia shall hold an Electricity Supplier License.

4601.2 **Application Information Requirements for Electricity Suppliers.** An Application for an Electricity Supplier License and an Application for renewal of an Electricity Supplier License shall include the following information, in a manner and form specified by the Commission:

- (a) Proof of technical and managerial competence;
- (b) Proof of compliance with all applicable requirements of the Federal Energy Regulatory Commission, and any Independent System Operator, or Regional Transmission Operator to be used by the Applicant;
- (c) A sworn verification that the Applicant is currently in compliance with, and will comply with all, applicable federal and District of Columbia environmental laws and regulations;
- (d) Proof of compliance with the Bonding Requirements set forth in §§ 4604 and 4605;
- (e) Proof that the Applicant has registered with the District of Columbia Department of Consumer and Regulatory Affairs and the District of Columbia Department of Tax and Revenue to do business in the District of Columbia;
- (f) A sworn verification that the Applicant is currently in compliance with, and will comply with, all applicable taxes;
- (g) A sworn verification that the Applicant is currently in compliance with, and will comply with all of the requirements of the Retail Electric Competition and Consumer Protection Act of 1999 (Act) and all orders and regulations of the Commission issued under the Act;
- (h) Applicant's website address;
- (i) The name and contact information for the Electricity Supplier's designated contact Person for Customer Complaints;
- (j) The Trade name(s) or d/b/a (doing business as name(s)) if the Applicant will be using either while doing business as an Electricity Supplier in the District of Columbia;
- (k) If the Applicant was a previously licensed Electricity Supplier in the District of Columbia but has surrendered that license under a former name or in this current Applicant's name, the Applicant must submit a sworn verification that it has paid all previously outstanding Commission and the Office of the People's Counsel (OPC) imposed assessments and penalties.

If prior assessments and penalties remain unpaid, submit a date certain when those assessments and any penalties will be paid;

(l) A sample copy of each of the Electricity Supplier's electricity supply Customer contracts (e.g., fixed, variable) and a sample bill; and

(m) Any other information required by the Commission.

4601.3 **Proprietary and Confidential Information.** Pursuant to 15 DCMR § 150, the Applicant may request certain information be treated as confidential.

4602 LICENSING PROCEDURES

4602.1 **Scope.** These procedures apply to an Application for an Electricity Supplier License or the renewal of an Electricity Supplier License before the Commission. Renewal Applications may not be approved if the Licensee owes any outstanding assessment to the Commission, OPC, or both.

4602.2 **Form.** An Application for a Electricity Supplier License shall be made to the Commission in writing on the applicable form(s) provided by the Commission; be verified by oath or affirmation; and be accompanied by an Application fee of Four Hundred dollars (\$400.00).

4602.3 **Number of copies.** Each Applicant shall file a signed and verified original and an electronic version of the Application and forms specified by the Commission.

4602.4 **Change in Application Information.** The Applicant shall immediately inform the Commission of any change in the information provided in the Application during the pendency of the Application and changes to approved Application pursuant to § 4607.1.

4602.5 **Notice of Incomplete Application (Deficiency Letter).** The Commission shall review the submitted Application for completeness within fifteen (15) days of receipt of the Application. If the Application is incomplete, the Commission shall notify the Applicant in writing of the deficiency in the Application. The Applicant shall have ten (10) days, or such additional time as the Commission may designate if it extends the time period for good cause shown, to provide the information requested in the deficiency letter. If the Applicant does not provide the information to the Commission within ten (10) days or within the alternative time period set by the Commission, the Application shall be deemed dismissed without prejudice. An Applicant may submit a new Application with the requisite Four Hundred dollars (\$400.00) fee at any time.

4602.6 **Review of Complete Application.** Upon determining that an Application is complete, the Commission shall review the information provided by the Applicant

in the Application and within fifteen (15) days issue an order approving or denying the Application.

- 4602.7 **Term of Electricity Supplier License.** An Electricity Supplier License is valid until revoked by the Commission or surrendered by the Licensed Electricity Supplier. A Licensee is subject to review every five (5) years after the date on which the license was issued or was last reviewed. An Electricity Supplier that has been licensed for more than five (5) years from the effective date of this Chapter shall submit an Application for review by the Commission pursuant to the licensing requirements and procedures set forth in §§ 4601 and 4602 within ninety (90) days from the effective date of this Chapter. The Commission shall review the Application within thirty (30) days after its filing. If the Application is incomplete or deficient in any manner, the Commission may request additional information to cure the incompleteness or deficiency. If the Application is deemed complete, the Commission shall take no further action and the Electricity Supplier License shall remain in effect.
- 4602.8 **Solicitation of Customers.** A Licensee, both new and existing, who has not initially started serving Customers shall file a notice with the Commission within three (3) business days before the Licensee begins soliciting or marketing to Customers directly or through an authorized representative in the District of Columbia. This is a one-time initial notice prior to the Licensee beginning its marketing to or soliciting of District of Columbia Customers. The notice shall include the name of the Licensee's designated contact person for pricing information if the Licensee is serving Customers and the URL address of the Licensee's website. All door-to-door sales representatives and agents of the Licensee shall be required to present photo identification to Customers as part of the solicitation process. In addition, the Licensee is required to maintain a record of the identity of each sales representative and marketing agent or representative active in the District of Columbia, including the company photo identification, and make it available upon request to the Commission.
- 4602.9 **Serving Customers.** A Licensee shall do the following before it begins to serve Customers in the District of Columbia:
- (a) File a notice with the Commission of the estimated start date when it will begin to serve Customers in the District of Columbia; and
 - (b) File an affidavit attesting that all sales and marketing and regulatory personnel, including independent contractors and vendors performing marketing or sales activities on the Licensee's behalf have been trained on the relevant provisions of Chapters 3 and 46 of Title 15 DCMR before they begin soliciting Customers in the District of Columbia.
- 4602.10 **Cessation of Business in the District of Columbia or Cessation of Business to a Customer Class.**

- (a) A Licensee shall provide to the Commission at least sixty (60) days prior written notice of the Licensee's intention to cease providing electricity service to its Customers and inform its Customers of the choice to revert to the default service provider or to another electricity supplier; and
- (b) Upon receipt of such notice, the Commission may order the Licensee to provide such further notice to its Customers or to the public as the Commission deems necessary, and/or take such other action that the Commission deems appropriate.

4602.11 **Electric Company and Licensee Responsibilities in the Event of Default.** In the event of a default, the Licensee and the Electric Company shall abide by the Electric Company's Electricity Supplier Coordination Tariff. Also, a Defaulted Licensee using consolidated billing services remains obligated to provide the Electric Company with information necessary to allow the Electric Company to continue consolidated billing through the conclusion of the billing cycle in which the default occurred.

4602.12 **Required Notices Upon Default.** Upon default, a Licensee shall immediately notify its Customers of its default by the preferred method that each Customer has selected to receive notifications and send written notice by electronic mail to the Electric Company and to file notice with the Commission notifying them of its default. Upon receipt of notice of a Licensee's default from the Defaulted Licensee or from the Regional Transmission Organization, the Electric Company shall immediately provide the Defaulted Licensee's Customers Standard Offer Service (SOS) in accordance with the SOS Administrator's Retail Electric Service Tariff, unless or until a Customer notifies the SOS Provider that the Customer has selected a new Electricity Supplier.

4603 **ELECTRICITY SUPPLIER EDUCATION WORKSHOP**

4603.1 **Electricity Supplier Education Workshop.** All Current and New Licensees shall complete the Electricity Supplier Education Workshop (Workshop) sponsored by the Commission. Successful completion of the Workshop by the Licensee shall be evidenced by a certificate issued by the Commission.

- (a) **Current Licensee.** A Licensee granted an Electricity Supplier License prior to the effective date of these rules is considered a Current Licensee for the purposes of this section. A Current Licensee's Regulatory Contact or Representative responsible for the Licensee's compliance with the Commission's rules shall have ninety (90) days following the effective date of these rules to take and complete the Workshop. Thereafter, the Current Licensee's Regulatory Contact or Representative must take and complete the Workshop annually on or around the anniversary date of its initial participation in the Workshop.

(b) **New License.** An Applicant granted an Electricity Supplier License following the effective date of these rules is considered a New Licensee for the purposes of this section. A New Licensee's Regulatory Contact or Representative responsible for the New Licensee's compliance with the Commission's rules shall have ninety (90) days following the award of its license to take and complete the Workshop. Thereafter, the New Licensee's Regulatory Contact or Representative must take and complete the Workshop annually on or around the anniversary date of its initial participation in the Workshop.

4604 BOND REQUIREMENTS FOR ELECTRICITY SUPPLIERS COLLECTING DEPOSITS OR PREPAYMENTS ("CUSTOMER PAYMENTS BOND")

4604.1 Applicability. Any Applicant that states on its Application that it intends to charge Deposits or collect Prepayments or that does in fact require a Deposit or collects a Prepayment, shall post a Customer Payments Bond with the Commission, in addition to any Integrity Bond that may be required or submitted and shall submit the certification described in this section. Any Applicant that states on its Application that it does not intend to charge Deposits or collect Prepayments and that does not in fact require a Deposit or collect any Prepayment will not be required to post a Customer Payments Bond or provide the certification described below. Any Licensee that charges a Deposit or collects a Prepayment without posting the required Customer Payments Bond may be subject to suspension, revocation, or other action against its license, as well as be held liable for restitution to any Customers who paid such Deposits or Prepayments. Any Licensee requiring, charging, collecting or holding Deposits, or Prepayments may not request a return of a current Customer Payments Bond or waiver of the requirements for a future Customer Payments Bond, unless and until the Licensee returns the Deposits or Prepayments to its Customers.

4604.2 Procedure for Determining Amount of a Customer Payments Bond.

- (a) **Initial Bond:** Before accepting any Deposits or Prepayments, a Licensee shall post an initial Customer Payments Bond of fifty thousand dollars (\$50,000).
- (b) **Six Month Certification:** Within six (6) months after the initial Customer Payments Bond is posted, the Licensee shall provide the Commission with any appropriate confidentiality designations: (1) a certification, subject to review by the Commission, of the amount of the Deposits and Prepayments held by the Licensee; and (2) a Customer Payment Bond in an amount that is at least equal to the amount reflected in that certification.

- (c) **Annual Certification:** By December 31st of each year, the Licensee shall provide to the Commission with any appropriate confidentiality designations: (1) certification of the amount of the Deposits and Prepayments held by the Licensee; and (2) a Customer Payments Bond in an amount that is at least equal to the amount reflected in that certification.

4604.3 **Form of the Bond.** Any Applicant or Licensee required to provide a bond under this section shall provide a bond issued by a company authorized to do business in the District of Columbia in a form required by the Commission. At a minimum, the bond form shall:

- (a) Designate the Commission as the sole beneficiary of the bond;
- (b) Be continuous in nature. If a Licensee seeks to cease providing the bond it shall seek approval from the Commission at least sixty (60) days prior to the time it wants to discontinue maintaining the bond;
- (c) Cover payment of all the Licensee's District of Columbia Deposits and Prepayments of the Licensee that occurred while the bond was in force as identified by the Commission under these regulations; and
- (d) State that the proceeds of the bond shall be paid or disbursed as directed by the Commission.

4604.4 **Commission Verification.** Each Licensee shall provide appropriate certification, at the intervals discussed in §4604.2, of funds collected by the Licensee for Prepayments and/or Deposits. Each Licensee shall certify the amount of funds held for Deposits and Prepayments through a notarized statement, subject to verification by the Commission. The certification and any audit by the Commission will verify the year to date collections and balances of Prepayments and Deposits as of a specific date and will be used to verify whether the Licensee has the appropriate amount of Customer Payments Bond coverage. The Commission reserves the right, in its sole discretion, to order the Licensee to have a Certified Public Accountant review such balances, should conditions warrant such a review.

4604.5 **Bond Foreclosure.** The Commission may foreclose upon any bond posted with the Commission when, in the Commission's discretion, foreclosure is necessary to ensure the fair and lawful treatment of the Licensee's Customers to ensure that Deposits and Prepayments collected by a Licensee from a Customer will be repaid to the Customer. In order to draw funds on this Bond, the Commission shall issue an order stating that the Licensee is financially insolvent or unable to meet its obligations as for restitution to any Licensee's Customer who paid such Deposit or Prepayment.

4605 BOND REQUIREMENTS FOR FINANCIAL INTEGRITY (“INTEGRITY BOND”)

4605.1 Applicability. Any Applicant or Licensee that can provide credible evidence that it meets one of the following standards is not required to post an Integrity Bond in the District of Columbia:

- (a) A current credit rating of BBB- or higher from a nationally recognized credit rating service;
- (b) A current commercial paper rating of A2 or higher by Standard & Poor’s and/or P2 or higher by Moody’s or similar rating by another nationally recognized rating service; or
- (c) An unused line of bank credit or parent guarantees deemed adequate by the Commission.

4605.2

- (a) **Exclusion.** An Applicant or Licensee that cannot provide evidence to the satisfaction of the Commission that it meets the standards listed in § 4605.1 will be required to submit an initial Integrity Bond of fifty thousand dollars (\$50,000), unless that Applicant or Licensee is applying to provide service as an Aggregator (as defined in D.C. Official Code § 34-1501(2) and § 4699.1 who does not take title to electricity or as a Broker (as defined in D.C. Official Code § 34-1501(7) and §4699.1), in which case a ten thousand dollar (\$10,000) Integrity Bond will be required. However, an Applicant or Licensee that meets the standards listed in § 4605.1 may still be required to provide a bond to demonstrate financial integrity for the Application on a case-by-case basis.
- (b) **Updates.** The Commission in its sole discretion may determine whether or not to reevaluate the amount of the Integrity Bond in light of any changing conditions in the electricity market at the time that a Licensee submits updated information, taking into consideration the Licensee’s previous and ongoing relationship with its Customers and its historical compliance with Commission rules and requirements. The Commission may request such information from the Licensee as may be necessary to make its evaluation. Aggregators who do not take title and Brokers will not be required to update the initial \$10,000 Integrity Bond.
- (c) After continuously providing service in the District for two (2) years, any Licensee that has submitted an Integrity Bond to the Commission in compliance with these requirements may request that the Commission return the previously posted Integrity Bond and waive the requirement for a future bond based upon the Licensee’s demonstrated record of continuous and uninterrupted service in the District of Columbia, without

meaningful substantiated consumer complaints, as determined by and in the opinion of the Commission, and such other information as the Licensee may choose to present to the Commission. The Commission may accept or reject this request based on a review of information provided by the Licensee and such other information as the Commission may deem appropriate. The Commission retains the discretion to require an Integrity Bond of the Licensee at a later date if circumstances change, or if the Commission otherwise deems the requirement of an Integrity Bond to be necessary and appropriate. A Licensee that is not currently providing service and cancels its bond shall have its license suspended immediately, and is subject to revocation of its license in thirty (30) days following the bond cancellation.

4605.3 **Form of the Bond.** Any Applicant or Licensee required to provide a bond under this section shall provide a bond issued by a company authorized to do business in the District of Columbia in a form required by the Commission. At a minimum, this form shall:

- (a) Designate the Commission, as the sole beneficiary of the bond;
- (b) Be continuous in nature. If any Licensee seeks to cease providing the bond it shall seek approval from the Commission at least sixty (60) days prior to the time it wants to discontinue maintaining the bond;
- (c) Cover payment of the Licensee's District of Columbia Deposits and Prepayments that occurred while the bond was in force as identified by the Commission under these regulations; and
- (d) State that the proceeds of the bond shall be paid or disbursed as directed by the Commission.

4605.4 **Commission Verification.** Each Licensee shall provide appropriate certification as prescribed by §§ 4604.2 (b) and (c). The Commission may request such information from the Licensee as is necessary to verify the accuracy of the certification at any time.

4605.5 **Bond Foreclosure.** The Commission's foreclosure of an Integrity Bond shall be limited to those instances where damages to the Customer(s) by the Licensee are actual. In order to draw funds on this Bond, the Commission shall determine that the Licensee is financially insolvent or unable to meet its obligations as a Licensee to a Customer(s) who has suffered actual damages by means of failure, or by reason of the Licensee's breach of contract or violation of the Act and any orders, regulations, rules or standards promulgated thereto.

4606 PRIVACY PROTECTION POLICY

4606.1 All Applicants and current Licensees shall institute a Privacy Protection Policy to protect against the unauthorized disclosure or use of information about a Customer or a Customer's use of service. A copy of that Policy shall be made available once a year, including any updates or changes, through electronic means or a hardcopy to the Customer and posted in a prominent place on each company's website.

4607 COMMISSION REPORTING REQUIREMENTS

4607.1 **Updates to an Approved Application.** After an Application has been approved, a Licensee shall inform the Commission of new information that changes or updates any part of the Application, including but not limited to, the averment regarding any civil, criminal, or regulatory penalties imposed on the Licensee, within thirty (30) days of the change or the new information. A Licensee shall also inform the Commission of changes to the averment regarding bankruptcy proceedings instituted voluntarily or involuntarily within one business day of the institution of such proceedings. Also, if a Licensee changes its trade name or the d/b/a name that it is using in the District of Columbia, the Licensee shall notify the Commission within ten (10) days of the effective date of the change and prior to soliciting Customers under that new name.

4608 COMMISSION ACTION REGARDING A LICENSEE

4608.1 **Commission Investigation.** The Commission may open an investigation of a Licensee on its own initiative, or upon the complaint of OPC, the D.C. Office of the Attorney General, or any aggrieved party. The Commission shall provide written notice of the investigation to the Licensee and shall provide the Licensee an opportunity for a hearing in accordance with District of Columbia law and Commission regulations.

4608.2 **Grounds for Commission Action.** The Commission may take action against a Licensee as determined by the Commission, including, but not limited to, the following violations:

- (a) Knowingly or with reckless disregard, providing false or misleading information to the Commission;
- (b) Slamming or cramming;
- (c) Disclosing information about a Customer supplied to the Licensee 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 or is required by law or an order of the Commission;

- (d) Failure to provide adequate and accurate information to each Customer about the Licensee's available services and charges;
- (e) 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;
- (f) Refusing to provide electricity or related service to a Customer unless the refusal is based on standards reasonably related to the Licensee's economic and business purposes;
- (g) Failure to post on the Internet or on the Licensee's website adequate and accurate information about its services and rates for its Customers;
- (h) Failure to provide electricity for its Customers when the failure is attributable to the actions of the Licensee;
- (i) Committing fraud or engaging in sales, marketing, advertising, or trade practices that are unfair, false, misleading, or deceptive such as engaging in any solicitation that leads the Customer to believe that the Licensee is soliciting on behalf of, or is an agent of, the Electric Company when no such relationship exists;
- (j) Failure to maintain financial integrity;
- (k) Failure to pay, collect, remit, or accurately calculate applicable taxes;
- (l) Violating an applicable provision of the D.C. Official Code or any other applicable consumer protection law;
- (m) Conviction of the Licensee or any principal of the Licensee (including the general partners, corporate officers or directors, or limited liability managers of offices of the Licensee) for any fraud-related crimes (including, but not limited to, counterfeiting and forgery, embezzlement and theft, fraud and false statements, perjury, and securities fraud);
- (n) Imposition of a civil, criminal, or regulatory sanction(s) or penalties against the Licensee or any principal of the Licensee (including the general partners, corporate officers or directors, or limited liability managers or officers of the Company) pursuant to any state or Federal consumer protection law or regulation;

- (o) Conviction by the Licensee or principal of the Licensee (including the general partners, corporate officers or directors, or limited liability managers or officers of the Licensee) of any felony that has some nexus with the Licensee's business;
- (p) Filing of involuntary bankruptcy/insolvency proceedings against the Licensee or filing of voluntary bankruptcy/insolvency proceedings by the Licensee;
- (q) 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;
- (r) Imposition of any enforcement action by any Independent System Operators or Regional Transmission Organization used by the Licensee;
- (s) Failure of a Licensee to provide annually copies of its Privacy Protection Policy to its Customers;
- (t) Failure of a Licensee, who has not initially started serving Customers in the District to notify the Commission within three (3) business days before the Licensee begins soliciting or marketing to Customers directly or through an authorized representative in compliance with the solicitation rules in this Chapter;
- (u) Failure of the Licensee to pay its assessment for the costs and expenses of the Commission and OPC as required by D.C. Official Code § 34-912(b) and any penalties prescribed by D.C. Official Code § 34-1508; or
- (v) Failure to comply with any Commission regulation or order.

4609 SANCTIONS AND ENFORCEMENT

4609.1 **Sanctions.** Licensees are subject to sanctions for violations of federal and District of Columbia law and applicable Commission regulations and orders. The following sanctions may be imposed by the Commission:

- (a) **Civil Penalty.** Pursuant to D.C. Official Code § 34-1508 (b)(1), the Commission may impose a civil penalty of not more than ten thousand dollars (\$10,000) for each violation. Each day a violation continues shall be considered a separate violation for purposes of this penalty. The Commission shall determine the amount of a civil penalty after consideration of the following:

- (1) The number of previous violations on the part of the Licensee;

- (2) The gravity and duration of the current violation; and
 - (3) The good faith effort of the Licensee in attempting to achieve compliance after the Commission provides notice of the violation.
- (b) **Customer Refund or Credit.** The Commission may order a Licensee to either issue a full refund for all charges billed or collected by the Licensee or direct the Licensee to issue a credit to the Customer's account in any billing or service dispute between the Licensee and Customer. In specific instances where slamming has occurred, the Licensee shall refund to the Customer all monies paid to the Licensee; and where cramming has occurred, the Licensee shall refund to the Customer the amount of the unauthorized charges paid to the Licensee.
- (c) **Cease and Desist Order.** The Commission may order the Licensee to:
 - (1) Cease adding or soliciting additional Customers;
 - (2) Cease serving Customers in the District of Columbia; or
 - (3) Cease any action found to be in violation of District of Columbia law, or Commission rules and regulations.
- (d) **Cancellation of a contract or part of a contract between a Customer and a Licensee;**
- (e) **Suspension of a Licensee's License; or**
- (f) **Revocation of a Licensee's License.**
- 4609.2 **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.
- 4609.3 **Emergency Action by the Commission.** The Commission may temporarily suspend a License, issue a temporary cease and desist order, or take any other appropriate temporary remedial action, pending a final determination after notice and hearing, if the Commission determines that there is reasonable cause to believe that Customers or the reliability of electric supply in the District of Columbia is or will be harmed by the actions of a Licensee.

4610 COMMISSION ASSESSMENT AND FEES

4610.1 The Licensee shall pay an assessment for the costs and expenses of the Commission and OPC as required by D.C. Official Code § 34-912 (b) and any penalties assessed pursuant to D.C. Official Code § 34-1508.

4610.2 The Licensee shall pay any additional fees imposed by the Commission pursuant to the Commission's rules, regulations, or orders.

4699 DEFINITIONS

4699.1 For the Purposes of these rules, the following terms shall have the meaning ascribed:

Act: The Retail Competition and Consumer Protection Act of 1999, effective May 9, 2000 (D.C. Law 13-107; D.C. Official Code §§ 34-1501 *et seq.* (2001)).

Affiliate: A Person who 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.

Aggregator: A Person who acts on behalf of Customers to purchase electricity.

Applicant: A Person who applies for an Electricity Supplier License required by the Act.

Application: The written request by a Person for an Electricity Supplier License in a form specified by the Commission.

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

Business Day: A Day in which normal business is transacted, excluding Saturdays, Sundays, and Federal and District of Columbia holidays.

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

Cramming: The practice of adding services or Charges to a Customer's existing electricity supplier service options absent the express consent of the Customer.

Customer: A purchaser of electricity for end use in the District of Columbia. The term excludes an occupant of a building where the owner, lessee, or manager manages the internal distribution system serving the building and

supplies electricity solely to occupants of the building for use by the occupants.

Customer Payments Bond: A bond or other form of acceptable financial instrument such as a line of credit, sworn letter of guarantee, bank loan approval documents, recent bank statements, vendor financing agreements or underwriting agreements in an amount at least equal to the total amount of Deposits or Prepayments.

Day: A Calendar day, unless otherwise specified.

Deposit: Any payment made by a Customer to an Electricity Supplier to secure the Electricity Supplier against potential Customer nonpayment or default.

Default: The omission or failure to perform a legal or contractual duty.

Defaulted Licensee: A Licensee is in default and is unable to deliver electricity because: (1) the Commission revokes or suspends the Electricity Supplier's retail Electricity Supplier License; or (2) the Licensee is unable to transact sales of electricity through the Regional Transmission Organization designated for the District of Columbia by the Federal Energy Regulatory Commission.

Electric Company: Includes every corporation, company, association, joint-stock company or 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 electricity in the District of Columbia to retail electric Customers, excluding any Person distributing electricity from a behind-the-meter generator to a single retail customer behind the same meter and located on the same premise as the customer's meter. In addition, the term excludes any building owner, lessee, or manager who, respectively, owns, leases, or manages, the internal distribution system serving the building and who supplies electricity and other electricity related services solely to the occupants of the building for use by the occupants. The term also excludes a Person that does not sell or distribute electricity and that owns or operates equipment used exclusively for the charging of electric vehicles.

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

- (a) Building owners, lessees, or managers who manage the internal distribution system serving such building and who supply

electricity solely to the occupants of the building for use by the occupants;

- (b) Any Person who purchases electricity for its own use or for the use of its subsidiaries or affiliates;
- (c) Any apartment building or office building manager who aggregates electric service requirements for his or her building or buildings, and who does not: (1) Take title to electricity; (2) Market electric services to the individually-metered tenants of his or her building; or (3) Engage in the resale of electric services to others;
- (d) Property owners who supply small amounts of power, at cost, as an accommodation to lessors or licensees of the property;
- (e) Consolidators;
- (f) A Community Renewable Energy Facilities (“CREFs”) as defined in 15 DCMR § 4199.1 and as described in 15 DCMR §§ 4109.1-4109.3 pursuant to the Community Renewable Energy Amendment Act of 2013 (D.C. Law 20-47; D.C. Official Code §§34-1518 *et seq.*);
- (g) An Electric Company; and
- (h) Any Person or entity that owns a behind-the-meter generator and sells or supplies the electricity from that generator to a single retail customer or customers behind the same meter located on the same premise.

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

Independent System Operator or “ISO”: An entity authorized by the Federal Energy Regulatory Commission to manage and control the electric transmission grid in a state or region.

Integrity Bond: A bond that is required of an Electricity Supplier who cannot provide credible evidence that it meets the standards listed in § 4605.1 of this Chapter.

Licensee: An Electricity Supplier who has been granted a valid Electricity Supplier License by the Commission.

Marketer: A Person who purchases and takes title to electricity as an intermediary for sale to customers.

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

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

Prepayments: All payments other than a Deposit made by a Customer to an Electricity Supplier for services that have not been rendered at the time of payment, subject to the following:

- (a) Where an Electricity Supplier charges for services based on a quantity of electricity, such as a price per kilowatt/hour, then Prepayments include any payments for any quantity that has not been delivered to the Customer or Consumer at the time of payment;
- (b) Where an Electricity Supplier charges for services based on a period of time, such as charging a membership fee, initiation fee or other fee for services for a time period, then Prepayments include the amount of the total charges collected by the Electricity Supplier for the period of time less the prorated value of the period of time for which services have been rendered;
- (c) Where an Electricity Supplier charges for services based on a measure other than quantity of electricity delivered or a period of time, the Commission shall determine, on a case-by-case basis, whether the charges involve a prepayment; and
- (d) Prepayments do not include any funds received in advance of the services being rendered as a result of the Consumer's voluntary participation in a budget billing or level billing plan by which the consumer's anticipated electrical costs are averaged over a period of time.

Regional Transmission Organization or "RTO": An entity designated by the Federal Energy Regulatory Commission to direct operations of the regional electric transmission grid in its area to ensure electric grid reliability.

Regulatory Contact: The staff contact for the Licensed Electricity Supplier that handles regulatory matters for that company or entity.

Slamming: The practice of switching, or causing to be switched, a Customer's electricity supplier Account without the express authorization of the Customer.

Solicitation: A communication in any medium that urges a customer to Contract for receipt of specific electricity services from an Electricity Supplier. Types of Solicitation may include, but are not limited to, telephone Solicitation, radio advertisements, print advertisements, home Solicitations, electronic advertisements (i.e. Internet), newspaper advertisements, and written Solicitations.

Standard Offer Service or SOS: Electricity supply made available on and after the initial implementation date to: (1) Customers who contract for electricity with an Electricity Supplier, but who fail to receive delivery of electricity under such contracts; (2) Customers who cannot arrange to purchase electricity from an Electricity Supplier; and (3) Customers who do not choose an Electricity Supplier.

SOS Administrator: The provider of Standard Offer Service mandated by D.C. Official Code § 34-1509.

Supplier Coordination Agreement: The agreement between the Electric Company and the Electricity Supplier whereby the Electric Company agrees to supply, and the Electricity Supplier requests and agrees to take, all "Coordination Services" pursuant to the Electric Company's Electricity Supplier Tariff.