

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING

GT96-3, IN THE MATTER OF THE APPLICATION OF WASHINGTON GAS LIGHT COMPANY, DISTRICT OF COLUMBIA DIVISION, FOR THE AUTHORITY TO ESTABLISH A NEW RATE SCHEDULE NO. 1A;

RM47-2017-01-G, IN THE MATTER OF THE INVESTIGATION INTO THE PUBLIC SERVICE COMMISSION'S RULES GOVERNING THE LICENSURE AND BONDING OF NATURAL GAS SUPPLIERS AND NATURAL GAS CONSUMER PROTECTION STANDARDS 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 Code (2016 Repl.) hereby gives notice of its final rulemaking action adopting Chapter 47 (Licensure of Natural Gas 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 47 establishes the rules governing the licensure and bonding of Natural Gas Suppliers and implementation of consumer protection standards relating to consumers transactions with Natural Gas Suppliers in the District of Columbia, pursuant to the Retail Natural Gas Licensing and Consumer Protection Act of 2004, D.C. Official Code §§ 34-1671.01 *et seq.* (2012 Repl.). Currently, the requirements for licensing and bonding of Natural Gas Suppliers are set forth in Orders Nos. 12709 and 12903 in Gas Tariff 96-3. Standardized forms referenced throughout the final rules below, such as the Supplier Application Form, the Customer Payment Bond Form, the Integrity Bond Form for Natural Gas 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 May 26, 2017, the Commission issued its initial Notice of Proposed Rulemaking (NOPR), giving notice of the proposed adoption of Chapter 47 at 64 *D.C. Register* 004997-005055. This NOPR also included the following attachments: (A) Supplier Application; (B) Form of Customer Payments Bond-Surety Bond; (C) Form of Integrity Bond for Natural Gas Suppliers other than Aggregators and Brokers-Surety Bond; and (D) Form of Integrity Bond for Aggregators and Brokers-Surety Bond. After

receiving comments on August 18, 2017, the Commission published a Second NOPR (64 *D.C. Register* 0082191-008349) containing revisions to certain provisions in the first NOPR. The Second NOPR superseded the First NOPR. In the Second NOPR, the following sections were revised to reflect consistency with the Retail Electric Supplier Rules, where appropriate, and comments and reply comments filed by interested persons in response to the NOPR publication regarding Sections: (1) 4703.10; (2) 4703.11; (3) 4705.6; (4) 4706.1(b); and (5) 4708.1.

4. On November 3, 2017, the Commission published a Third NOPR (64 *D.C. Register* 011582-011639), that superseded the Second NOPR. In the third NOPR, the following sections were revised following filed comments and, where appropriate, to reflect consistency with the Retail Electricity Supplier Licensing Rules: (1) 4700.1; (2) 4703.8; (3) 4703.9; (4) 4703.10; (5) 4703.11; (6) 4705.2 (c); (7) 4706.5; (8) 4708.1 (b); (9) 4709.2 (u); and (10) 4799. The forms attached to these rules, Attachments A – D, were also revised for accuracy and made to be applicable specifically to Natural Gas Suppliers.

5. After receiving and considering comments on the Third NOPR, the Commission published a Fourth NOPR on February 2, 2018, (65 *D.C. Register* 001029-001084), superseding the Third NOPR. The Fourth NOPR included a number of substantive and non-substantive revisions reflected in a multitude of sections from 4701.2 through 4710.1 (f). Section 4799.1, included new and revised definitions. Forms in the Attachment sections were also revised.

6. Following receipt of additional comments, the Commission issued a Fifth NOPR (65 *D.C. Register* 004862 – 004879) on May 4, 2018, superseding the Fourth NOPR. The Fifth 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 four NOPRs.

7. After fully considering the comments and reply comments filed, the Commission, by Order No. 19677 issued on September 19, 2018, adopted the rules in Chapter 47 (Licensure of Natural Gas Suppliers) 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 47 as follows:

CHAPTER 47 LICENSURE OF NATURAL GAS SUPPLIERS

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4700 APPLICABILITY

4700.1 **Application.** These rules apply to a Person who engages in the business of a Natural Gas Supplier in the District of Columbia.

4700.2 **Purpose.** These rules provide uniform requirements for obtaining any form of a Natural Gas 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.

4700.3 **Restrictions.** No Person shall present itself as a Natural Gas Supplier, perform the duties of a Natural Gas 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.

4701 LICENSING REQUIREMENTS

4701.1 **Persons Subject to Licensing Requirements.** Any Person who engages in the business of a Natural Gas Supplier in the District of Columbia shall hold a Natural Gas Supplier License.

4701.2 **Application Information Requirements for Natural Gas Suppliers.** An Application for a Natural Gas Supplier License and an Application for renewal of a Natural Gas 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 Natural Gas Transmission or Pipeline Company 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 §§ 4704 and 4705;
- (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 Natural Gas Licensing and Consumer Protection Act of 2004 (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 Natural Gas 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 a Natural Gas Supplier in the District of Columbia;
- (k) If the Applicant was a previously licensed Natural Gas 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 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 each of the Natural Gas Supplier's natural gas supply Customer contracts (*e.g.*, fixed, variable) and a sample bill; and
- (m) Any other information required by the Commission.

4701.3 **Proprietary and Confidential Information.** Pursuant to 15 DCMR § 150, the Applicant may request certain information be treated as confidential.

4702 LICENSING PROCEDURES

4702.1 **Scope.** These procedures apply to an Application for a Natural Gas Supplier License or the renewal of a Natural Gas Supplier License before the Commission. Renewal Applications may not be approved if the Licensee owes any outstanding assessment to the Commission, OPC, or both.

4702.2 **Form.** An Application for a Natural Gas 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).

4702.3 **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.

4702.4 **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 an approved Application pursuant to § 4707.1.

4702.5 **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.

- 4702.6 **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.
- 4702.7 **Term of Natural Gas Supplier License.** A Natural Gas Supplier License is valid until revoked by the Commission or surrendered by the Licensed Natural Gas Supplier. A Licensee is subject to review every five (5) years after the date on which the license was issued or was last reviewed. A Natural Gas 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 §§ 4701 and 4702 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 Natural Gas Supplier License shall remain in effect.
- 4702.8 **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.
- 4702.9 **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 47 of Title 15 DCMR before they begin soliciting Customers in the District of Columbia.

4702.10 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 natural gas service to its Customers and inform its Customers of the choice to revert to the default service provider or to another natural gas 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.

4702.11 Natural Gas Company and Licensee Responsibilities in the Event of Default. In the event of a default, the Licensee and the Natural Gas Company shall abide by the Natural Gas Company's Firm Delivery Service Gas Supplier Agreement Tariff. Also, a Defaulted Licensee using consolidated billing services remains obligated to provide the Natural Gas Company with information necessary to allow the Natural Gas Company to continue consolidated billing through the conclusion of the billing cycle in which the default occurred.

4702.12 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 Natural Gas 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, the Natural Gas Company shall immediately provide the Defaulted Licensee's Customers Default Service in accordance with the Natural Gas Company's tariff, unless or until a Customer notifies the Natural Gas Company that the Customer has selected a new Natural Gas Supplier.

4703 NATURAL GAS SUPPLIER EDUCATION WORKSHOP

4703.1 Natural Gas Supplier Education Workshop. All Current and New Licensees shall complete the Natural Gas 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 a Natural Gas 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 Licensee.** An Applicant granted a Natural Gas 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.

4704 BOND REQUIREMENTS FOR NATURAL GAS SUPPLIERS COLLECTING DEPOSITS OR PREPAYMENTS (“CUSTOMER PAYMENTS BOND”)

4704.1 **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 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.

4704.2 **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 Payments 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 Payment Bond in an amount that is at least equal to the amount reflected in that certification.

4704.3 **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.

4704.4 **Commission Verification.** Each Licensee shall provide appropriate certification, at the intervals discussed in § 4704.2, 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.

4704.5 **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.

4705 BOND REQUIREMENTS FOR FINANCIAL INTEGRITY (“INTEGRITY BOND”)

4705.1 **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.

4705.2 (a) **Exclusion.** An Applicant or Licensee that cannot provide evidence to the satisfaction of the Commission that it meets the standards listed in § 4705.1 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 § 4799.1) who does not take title to natural gas or as a Broker (as

defined in § 4799.1), 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 § 4705.1 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 natural gas 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 the 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.

4705.3

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.

4705.4 **Commission Verification.** Each Licensee shall provide appropriate certification as prescribed by §§ 4704.2 (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.

4705.5 **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.

4706 PRIVACY PROTECTION POLICY

4706.1 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.

4707 COMMISSION REPORTING REQUIREMENTS

4707.1 **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.

4708 COMMISSION ACTION REGARDING A LICENSEE

4708.1 **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.

4708.2 **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 in part 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 natural gas 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 natural gas 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 Natural Gas 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) Failure of a Licensee to provide annually copies of its Privacy Protection Policy to its Customers;
- (s) Failure of a Licensee, who has not initially started serving Customers in the District to notify the Commission within (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;
- (t) 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 imposed by § 34-1671.11; or
- (u) Failure to comply with any Commission regulation or order.

4709 SANCTIONS AND ENFORCEMENT

4709.1 **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 § 34-1671.11(d)(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) Any history of prior violations;
 - (2) The gravity and duration of the current violation;
 - (3) The degree of the violator's culpability;
 - (4) The prospective effect of the penalty on the ability of the violator to conduct business;
 - (5) Any good faith effort on the part of the violator in attempting to achieve compliance; and
 - (6) Other factors the Commission may consider appropriate.
- (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.**

4709.2 **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.

4709.3 **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 natural gas supply in the District of Columbia is or will be harmed by the actions of a Licensee.

4710 COMMISSION ASSESSMENT AND FEES

4710.1 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 § 34-1671.11.

4710.2 The Licensee shall pay any additional fees imposed by the Commission pursuant to the Commission's rules, regulations, or orders.

4799 DEFINITIONS

4799.1 For the Purposes of these rules, the following terms shall have the meaning ascribed:

Act: The Retail Natural Gas Supplier Licensing and Consumer Protection of Act of 2004, effective March 16, 2005 (D.C. Law 15-227; D.C. Official Code §§ 34-1671.01 *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 that acts on behalf of Customers to purchase natural gas.

Applicant: A Person who applies for a Natural Gas Supplier License required by the Act.

Application: The written request by a Person for a Natural Gas 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 natural gas but who does not take title to natural gas.

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 natural gas service options absent the express consent of the Customer.

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

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 a Natural Gas Supplier to secure the Natural Gas 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 natural gas because: (1) the Commission revokes or suspends the Natural Gas Supplier's retail Natural Gas Supplier License; or (2) the Licensee is unable to transact sales of natural gas through the Natural Gas Transmission or Pipeline Company designated for the District of Columbia by the Federal Energy Regulatory Commission.

Default Service: A Customer who receives natural gas supply from the Natural Gas Company. Default 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 as prescribed by D.C. Official Code §34-1671.06 (b)(2).

Integrity Bond: A bond that is required of a Natural Gas Supplier who cannot provide credible evidence that it meets the standards listed in § 4705.1 of this Chapter.

Licensee: A Natural Gas Supplier who has been granted a valid Natural Gas Supplier License by the Commission.

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

Natural Gas Company: 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 natural gas in the District of Columbia to retail natural gas customers as defined by D.C. Official Code § 34-209 and § 34-1671.02 (11).

Natural Gas Company's Tariff: The tariff that sets forth the basic requirements for interaction and coordination between the Natural Gas Company and each Natural Gas Supplier necessary for ensuring the delivery of competitive natural gas supply from Natural Gas Suppliers to their Customers via the Natural Gas Company's delivery system.

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

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

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 a Natural Gas Supplier for services that have not been rendered at the time of payment, subject to the following:

- (a) Where a Natural Gas Supplier charges for services based on a quantity of natural gas, 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 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;
- (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
- (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 consumer's anticipated natural gas costs are averaged over a period of time.

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

Slamming: The practice of switching, or causing to be switched, a Customer's natural gas 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 natural gas services from a Natural Gas 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.