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January 29, 2018

By Electronic Filing

Ms. Brinda Westbrook
Commission Secretary
Public Service Commission of the District of Columbia
1333 H Street, NW, 2nd Floor, West Tower
Washington, DC 20005

Re: Rulemaking 3

Dear Ms. Westbrook:

Attached for electronic filing in the referenced matter please find the Comments of the Retail Energy Supply Association.

Should you have any questions, please contact me.

Sincerely,

A handwritten signature in blue ink that reads 'Brian R. Greene'.

Brian R. Greene

Enclosure

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF THE DISTRICT OF COLUMBIA**

))
Consumer Bill of Rights) Rulemaking 3-2014-01
)

**COMMENTS OF
THE RETAIL ENERGY SUPPLY ASSOCIATION**

I. Introduction

The Retail Energy Supply Association (“RESA”),¹ by counsel, submits the following comments on the Public Service Commission of the District of Columbia’s (the “Commission’s”) Notice of Second Proposed Rulemaking (“December 2017 NOPR”), published in the D.C. Register on December 22, 2017, regarding amendments to Chapter 3 (Consumer Rights and Responsibilities) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations, known as the Consumer Bill of Rights (the “CBORs”).²

The December 2017 NOPR follows the Commission’s Notice of Proposed Rulemaking (“June 2017 NOPR”) published in the D. C. Register on June 30, 2017 and on which the parties, including RESA, submitted initial comments on July 31, 2017 and reply comments on August 14, 2017. Prior to that, the Commission issued a Notice of Proposed Rulemaking initiating this rulemaking, which was published in the D.C.

¹ The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

² Although the Commission has titled this as the “Second” NOPR in this proceeding, it is actually the third NOPR, as explained below.

Register on October 17, 2014 (“October 2014 NOPR”). RESA submitted comments in response to the October 2014 NOPR on November 17, 2014 and reply comments on December 1, 2014.

RESA continues to be pleased with the direction that the CBOR revisions are going. The December 2017 NOPR, like the June 2017 NOPR, accepts many of RESA’s proposals, for which RESA is very appreciative. RESA does, however, have two concerns about the December 2017 NOPR. The first concern is proposed Rule 327.15 which sets forth trigger-points for when the 3-business-day Rescission Period begins. In the June 2017 NOPR, the Commission added paragraph (b) to 327.15. In response, RESA advocated either deleting (b) or (d) because the two paragraphs create confusion as to when the Rescission Period begins for telephone contracts. In the December 2017 NOPR, the Commission kept both (b) and (d) and added language to (d). The additional language in (d), as explained below, does not address RESA’s concern and, in fact, the new language creates additional confusion regarding the Rescission Period.

RESA’s second concern is the re-emergence of Rule 327.31, which directs Energy Suppliers to include links on their websites to the websites of the utilities and the Commission. This requirement was included in the October 2014 NOPR but, at RESA’s (and perhaps others’) request, the Commission did not include it in the June 2017 NOPR. Now, however, the requirement has reappeared even though RESA is not aware that anyone advocated for it.³ As explained below, suppliers should not be required to provide a link to a utility website.

³ In its comments filed on July 31, 2017, Pepco recommended revising the proposed rule such that the Commission use its existing supplier choice website to host the information about suppliers, and that suppliers include a link on their websites to the Commission website. No one argued that suppliers should link to the utilities’ websites.

II. Rule 327.15 – Rescission Period

In the December 2017 NOPR, the Rescission Period (Rule 327.15) would begin on one of the following dates, with (b) in italics being the language added in the June 2017 NOPR, and the underlined language being added in the December 2017 NOPR:

- a) When the Customer signs the Contract;
- b) *When a positive Third-party Verification or electronic recording has been made;*
- c) When the Customer transmits the electronic acceptance of the contract electronically; or
- d) If the Contract is mailed by the Energy Supplier to the Customer, when the Contract is received by the Customer. There shall be a rebuttable presumption that a Contract correctly addressed to a Customer with sufficient first class postage attached shall be received by the Customer three (3) days after it has been properly deposited in the United States mail. with the instruction that if the Customer accepts the contract by signing and returning the contract, the Customer has three business days to rescind the contract from the date of acceptance. Date of acceptance is the date that the Customer deposits a signed contract in the United States mail.

The additional language added to (b) and to (d) in Rule 327.15 over-complicates what should be easy-to-understand trigger points for the Rescission Period for various enrollment channels. As a general rule, the Rescission Period should begin after the customer agrees to and receives the contract. As RESA pointed out in its response to the June 2017 NOPR, paragraphs (b) and (d) could both apply to the same telephone sale. Also, the new language in (d) is confusing because it appears to be inarticulately worded and it is not clear to which enrollment channel it would apply.

A. Rule 327.15(b) and (d) could both apply to the same telephone sale.

As RESA pointed out in response to the June 2017 NOPR, in a telephone contract situation, proposed Rule 327.16(c) requires the supplier to “independently

verify” the customer’s intent to enter into a contract. Under proposed Rule 327.18, the supplier must send the contract to the customer within five business days from the day the customer agreed telephonically to contract with the supplier. Thus, under proposed Rule 327.15(b), the 3-business-day Rescission Period would begin to run on the same day as the actual phone call or verification. However, under 327.15(d), the Rescission Period would begin to run when the customer receives the contract, which would be five business days plus three days for mailing.

If the Commission is not inclined to delete (b) or (d) entirely as RESA had advocated previously, then the Commission should consider deleting the additional language in (d) that was added in the December 2017 NOPR, and adding language to Rule 327.19 to say that, “*The Rescission Period for telephone sales shall begin when the Customer receives the Contract as provided under § 327.15(d).*” This would directly address the issue of when the Rescission Period begins for telephone sales, making it clear that the correct beginning point is the date that the supplier mails the contract to the customer and not the date of the verification.

B. The new language in Rule 325.15(d) should be deleted.

Even if the change explained above is incorporated into Rule 327.19, the new language in (d) adds confusion and should be deleted.

First, the new language in (d) could be read to require a supplier, following a valid telephone enrollment, to obtain a written signature from the customer even though the supplier completed a successful verification of the sale under Rule 327.16(c). From the outset of this proceeding, RESA has strongly opposed requirements that suppliers obtain “double-consents” from customer to effectuate a contract. RESA continues to

oppose them because they are market-killers that will thwart retail energy competition in the District.

Second, it is not clear to which enrollments the new language in (d) will apply. The only way RESA can make sense of the new language is to interpret it as addressing a situation where a customer signs a contract and mails it to the supplier. This scenario does not happen often in the market but conceivably could occur. If it is the Commission's view that the Rescission Period in these instances should not begin when the customer signs the contract (see Rule 327.15(a)), then perhaps a new paragraph (e) is needed that would say: "***(e) If the signed Contract is mailed by the Customer to the Energy Supplier, the later of three (3) business days after the Customer deposits the signed Contract in the mail or the date the Energy Supplier receives the signed Contract.***" This modification would ensure that a customer who mails a signed contract to a supplier is afforded a Rescission Period that is at least three business days, and possibly longer if the mail is slow and the supplier has yet to receive the contract. Assuming RESA has properly identified the Commission's concern that gave rise to the new language in (d), RESA's proposed modification renders the new language in (d) unnecessary.

In sum, there was already tension between the proposed Rule 327(b) and (d); the new language in (d) only adds to that tension and creates more confusion. RESA's two proposed modifications, above, might be useful assuming they address the Commission's concerns that gave rise to the additional language.

III. Rule 327.31 – Energy Supplier Links to Utility Websites

As explained above, proposed Rule 327.31 reappeared in the December 2017 NOPR after being removed in the June 2017 NOPR, even though RESA is not aware that any party asked for it to be included in the Rules. In a December 31, 2015 filing in this proceeding that identified consensus and non-consensus items for the Commission’s consideration, RESA, on behalf of several parties, explained why suppliers should not be required to provide links on their websites to the utilities’ websites:

. . . [The Rule] would require energy suppliers to place on their websites a link to their biggest competitor’s website. As a comparison, customers of Verizon Wireless would not expect to visit the Verizon Wireless website and find a link to AT&T. Customers that visit the Costco website would not expect to find a link to Sam’s Place or another competitor. Here, Pepco and Washington Gas are the largest market participants with the largest number of residential customers for both electricity and natural gas. They do not need to advertise for their products, yet the proposed rule would have energy suppliers promote their products for them. In the Suppliers’ view, that is unfair, anti-competitive, and should not be required.⁴

Nothing has changed since December 31, 2015 or since the June 2017 NOPR that would support including this requirement in the CBORs. Therefore, RESA requests that it be removed.⁵

II. Conclusion

RESA respectfully requests that the Commission to make the changes explained above and move towards finalizing the revised CBORs.

⁴ RM-3, Letter from RESA at 6 (Dec. 31, 2015).

⁵ As explained, the language requiring website links in 327.31 reappeared in the December 2017 NOPR. The prior 327.31, from the June 2017 NOPR, required suppliers’ websites to allow a customer to print and save a copy of the contract. So while the “website link” requirement returned to the NOPR, the “print and save” language that had been addressed in that subsection (327.31) was removed. RESA questions whether this was a scrivener’s error.

Respectfully submitted,

RETAIL ENERGY SUPPLY ASSOCIATION

By Counsel



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Dated: January 29, 2018

Certificate of Service

I certify that true copies of the foregoing Comments of the Retail Energy Supply Association were mailed on January 29, 2018, to all those identified on the service list for RM-3.



Brian R. Greene