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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 46-2015, Rulemaking 47-2017, GT96-3, and
Formal Case No. 1130**

Dear Ms. Westbrook:

Attached for electronic filing in the referenced matters 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**

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)))))	RM-46-2015
In the Matter of The Investigation into the Public Service Commission’s Rules Governing the Licensure and Bonding of Natural Gas Suppliers in the District of Columbia))))))	RM-47-2017
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))))))	GT96-3
and)))	
In the Matter of the Investigation into Modernizing the Energy Delivery System for Increased Sustainability)))	Formal Case No. 1130

**COMMENTS OF
THE RETAIL ENERGY SUPPLY ASSOCIATION**

I. INTRODUCTION

The Retail Energy Supply Association (“RESA”),¹ by counsel, submits these comments in response to: (1) the Notice of Fourth Proposed Rulemaking issued by the Public Service Commission of the District of Columbia (“Commission”) in RM-46-2015 and Formal Case 1130

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.

regarding promulgation of new regulations to be codified in Chapter 46 (Licensure of Electricity Suppliers) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations (the “Electricity Licensing Rules”);² and (2) the Notice of Third Proposed Rulemaking issued by Commission in RM-47-2017, GT96-3, and Formal Case 1130 regarding promulgation of new regulations to be codified in Chapter 47 (Licensure of Natural Gas Suppliers) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations (the “Natural Gas Licensing Rules”).³

Members of RESA actively participate in virtually every competitive retail electricity and natural gas market in the country, including in the District, and RESA has participated in numerous proceedings relating to the development of competitive markets. RESA brings to this proceeding a wealth of experience as to what works and what does not with respect to the impact that market rules can have on retail energy competition. RESA views the revisions of these Electricity and Natural Gas Licensing Rules as a critical component to the development and improvement of sustainable competitive retail energy markets in the District.

II. DISCUSSION

a. RESA supports the Commission’s adoption of recommendations in RESA’s prior comments.

i. Electricity Licensing Rules

On February 6, 2015, the Commission issued a Notice of Proposed Rulemaking (“NOPR”) with proposed Electricity Licensing Rules.⁴ On March 9, 2015, stakeholders filed initial comments on the NOPR. RESA, along with other stakeholders, filed reply comments on

² See Notice of Fourth Proposed Rulemaking, Rulemaking 46-2015-01-E and Formal Case No. 1130 (published in the D.C. Register on November 3, 2017) (“Fourth NOPR”).

³ See Notice of Third Proposed Rulemaking, Rulemaking 47-2017-01-G, GT96-3, and Formal Case No. 1130 (published in the D.C. Register on Nov. 3, 2017).

⁴ Notice of Proposed Rulemaking, Formal Case No. 1130 and Rulemaking 46-2015-01-E (published in the D.C. Register on Feb. 6, 2015).

March 23, 2015. In its 2015 reply comments, RESA recommended modifications to several provisions of the proposed Licensing Rules. Certain of RESA's proposals included in its reply comments were adopted in the Notice of Second Proposed Rulemaking issued by the Commission on February 17, 2017.⁵ Nevertheless, RESA identified several issues in initial and reply comments responding to the Second NOPR.⁶ RESA also filed comments in response to the Notice of Third Proposed Rulemaking issued by the Commission on August 11, 2017.⁷

While some issues remain, the draft Electricity Licensing Rules in the Fourth NOPR adopt several of RESA's recommendations, including changes to Section 4603.13 (Serving Customers) offered in response to the third Electricity Licensing Rules NOPR. RESA appreciates the Commission's continued consideration of RESA's recommendations and associated modifications to the Electricity Licensing Rules.

ii. Natural Gas Licensing Rules

RESA also submitted comments in response to the Commission's initial NOPR⁸ and Notice of Second Proposed Rulemaking⁹ for the Natural Gas Licensing Rules.¹⁰ RESA appreciates the Commission's revisions to the draft Natural Gas Licensing rules in the third Natural Gas Licensing Rules NOPR, which generally match the corresponding rules in the

⁵ See Notice of Second Proposed Rulemaking, Rulemaking 46-2015-01-E and Formal Case No. 1130 (published in the D.C. Register on Feb. 17, 2017).

⁶ Rulemaking 46-2014-01-E and Formal Case No. 1130, *Comments of the Retail Energy Supply Association* (Mar. 20, 2017); Rulemaking 46-2014-01-E and Formal Case No. 1130, *Reply Comments of the Retail Energy Supply Association* (Apr. 3, 2017).

⁷ Rulemaking 46-2014-01-E and Formal Case No. 1130, *Comments of the Retail Energy Supply Association* (Sept. 11, 2017); Rulemaking 46-2014-01-E and Formal Case No. 1130, *Reply Comments of the Retail Energy Supply Association* (Sept. 25, 2017).

⁸ Notice of Proposed Rulemaking, Rulemaking 47-2017-01-G, GT96-3, and Formal Case No. 1130 (published in the D.C. Register on May 26, 2017).

⁹ Second Notice of Proposed Rulemaking, Rulemaking 47-2017-01-G, GT96-3, and Formal Case No. 1130 (published in the D.C. Register on Aug. 18, 2017).

¹⁰ Rulemaking 47-2017-01-G, GT96-3, and Formal Case No. 1130, *Reply Comments of the Retail Energy Supply Association* (July 10, 2017); Rulemaking 47-2017-01-G, GT96-3, and Formal Case No. 1130, *Comments of the Retail Energy Supply Association* (Oct. 2, 2017).

Electricity Licensing Rules. Specifically, RESA appreciates the revisions to Section 4703.13 (Serving Customers), which is consistent with Section 4603.13 in the Electricity Licensing Rules.

As discussed below, there are two sections in both the Electricity Licensing Rules and Natural Gas Licensing Rules that warrant revision.

b. RESA recommends the following modifications to the proposed Electricity and Natural Gas Licensing Rules.

While RESA generally appreciates the Commission’s modifications to the proposed Electricity and Natural Gas Licensing Rules, some sections in the current versions are problematic and require further revision, as discussed below.

- **Solicitation of Customers – Electricity Licensing Rules Section 4603.11 and Natural Gas Licensing Rules Section 4703.11**

In recent comments, RESA recommended that the Commission: (1) retain the timing (day-of notice) for the notice requirement before a supplier commences solicitation or marketing in the District; (2) clarify that the Solicitation of Customers section only applies to residential customers; and (3) clarify that portions of this section only apply to door-to-door solicitations.¹¹ RESA continues to recommend that the Commission modify Sections 4603.11 and 4703.11 accordingly.

Additionally, the updated version of Section 4603.11 in the Fourth Electricity Supplier Rules NOPR includes some typographical errors regarding the notice period. The first sentence of the section states that suppliers must provide notice “within seven (3) [sic] business days” before soliciting District consumers. The corresponding section in the proposed Natural Gas Licensing Rules, 4703.11, specifies “three (3) business days” for the notice. RESA continues to

¹¹ Rulemaking 46-2014-01-E and Formal Case No. 1130, *Reply Comments of the Retail Energy Supply Association* at 2-5 (Apr. 3, 2017).

recommend that the Commission adopt a day-of notice requirement for both the Electricity and Natural Gas Licensing Rules.

Moreover, the way the notice period is phrased in this section could be confusing to suppliers. Does “within three (3) business days before” mean *at least* three business days before? Or does it mean *not more than* three business days before? If the latter, then the rule could be interpreted to allow the day-of notice that RESA continues to recommend. To clarify, RESA recommends that the Commission adopt the recommended language below.

Therefore, RESA recommends that the Commission modify Section 4603.11 of the Electricity Licensing Rules to read as follows:

4603.11 **Solicitation of Customers.** A Licensee (either new or existing that has not initially started serving residential customers) shall notify the Commission as soon as the Licensee begins soliciting or marketing to residential 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 consumers. The notice shall include the name of the licensed Electricity Supplier’s designated contact person for pricing information and the URL address of the Electricity Supplier’s website. The Licensee shall provide the Commission with a copy of its flyers, consumer pamphlets, scripts and other proposed marketing materials, as applicable, at the time of notification. Also, all door-to-door sales representatives and agents shall be required to present a company 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 door-to-door sales representative and marketing agent or representative active in the District, including the company photo identification, and make the record available upon request to the Commission. Also, the Electricity Supplier shall maintain the photo identification record for a period of six months after the door-to-door sales representative or agent has been employed or marketing on the Electricity Supplier’s behalf.

Likewise, RESA recommends that the Commission modify Section 4703.11 of the Natural Gas Licensing Rules to read as follows:

4703.11 **Solicitation of Customers.** A Licensee (either new or existing that has not initially started serving residential customers) shall notify the Commission

as soon as the Licensee begins soliciting or marketing to residential 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 consumers. The notice shall include the name of the licensed Natural Gas Supplier's designated contact person for pricing information and the URL address of the Natural Gas Supplier's website. The Licensee shall provide the Commission with a copy of its flyers, consumer pamphlets, scripts and other proposed marketing materials, as applicable, at the time of notification. Also, all door-to-door sales representatives and agents shall be required to present a company 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 door-to-door sales representative and marketing agent or representative active in the District, including the company photo identification, and make the record available upon request to the Commission. Also, the Natural Gas Supplier shall maintain the photo identification record for a period of six months after the door-to-door sales representative or agent has been employed or marketing on the Natural Gas Supplier's behalf.

- **Updates to an Approved Application – Electricity Licensing Rules Section 4608.1(a) and Natural Gas Licensing Rules Section 4708.1(a)**

The proposed Electricity and Natural Gas Licensing Rules, in Section 4608.1(a) and 4708.1(a), respectively, require both electricity and natural gas suppliers to provide a copy of any modified marketing materials to the Commission and OPC “within three (3) business days before” the supplier starts to use the materials in the District. As written, this provision would require suppliers to provide copies of each piece of marketing material to both the Commission and OPC every time even the most minor change is made. Something as simple as change in logo, formatting, color scheme, price, term, or effective date (only naming a few examples) would trigger this requirement for each and every piece of marketing collateral. Suppliers offering a wide variety of different products could have many different marketing materials that change every month or that change multiple times per month. Moreover, electronic marketing materials change daily with market conditions (or even changes in the date). The Commission

and OPC could foreseeably receive hundreds or thousands of pieces of marketing collateral each month, between all electricity and natural gas suppliers in the District.

RESA cannot understate how critical it is that the Commission revise Sections 4608.1(a) and 4708.1(a). These provisions are unduly burdensome and fail to strike a reasonable balance between consumer protection and protecting the many benefits available to consumers through the continued efficacy of the competitive markets for retail electricity and natural gas in the District.

Moreover, the proposed Electricity and Natural Gas Licensing Rules already require suppliers to provide marketing materials to the Commission and OPC. Sections 4603.11 (electricity) and 4703.11 (natural gas) require suppliers to provide “flyers, consumer pamphlets, scripts and other proposed marketing material” to both the Commission and OPC when a supplier begins soliciting customers in the District. Adding an additional ongoing requirement is unnecessary, failing to strike a balance between reasonable regulatory oversight and undue burden on both suppliers and the Commission. This is a critical problem with the draft Electricity and Natural Gas Licensing Rules that RESA implores the Commission to correct.

RESA recommends that suppliers be required to retain copies of all marketing materials used in the District, which would be made available to the Commission upon request. By adopting this modification to Sections 4608.1(a) and 4708.1(a), the Commission will be able to obtain any marketing materials at any time from any supplier, without getting inundated with voluminous marketing materials from other suppliers.

If there is a supplier the Commission is concerned about, the Commission could issue an ongoing request that the supplier provide ongoing updates for any marketing materials used in the District. This type of approach would be more effective than the blanket market-wide

requirement because (1) the Commission would receive all of the relevant marketing materials, without having to sift through reams of extraneous marketing collateral from other suppliers, and (2) such a request would put the subject supplier on notice that the Commission may have concerns about the supplier's marketing activity, prompting the supplier to double its regulatory compliance efforts.

Adopting the current version of Section 4608.1(a) with the ongoing market-wide marketing materials requirement will flood the Commission with marketing collateral. However, modifying the requirement as proposed by RESA will help the Commission and its staff more efficiently manage compliance and enforcement resources.

Therefore, RESA recommends that the Commission modify Section 4608.1(a) of the Electricity Licensing Rules and Section 4708.1(a) of the Natural Gas Licensing Rules to read as follows:

(a) Licensees shall provide copies of marketing materials to the Commission upon request; and

- **Annual Reporting Requirements – Section 4708.2**

This section includes a requirement that a licensee “shall recertify annually that it has complied with Subsection 4704.2(c) of this chapter.” In the current version of the Natural Gas Licensing Rules, there is no section 4704.2(c). There is an annual certification requirement in Subsection 4705.2(c), so if that is the intended section to reference, RESA recommends that the Commission revise Section 4708.2 accordingly.

III. CONCLUSION

RESA appreciates the opportunity to offer these comments and respectfully requests that the Commission modify (1) Sections 4603.11 and 4608.1(a) of the proposed Electricity

Licensing Rules and (2) Sections 4703.11, 4708.1(a) and 4708.2 of the Natural Gas Licensing Rules as discussed herein.

Respectfully submitted,

RETAIL ENERGY SUPPLY ASSOCIATION

By Counsel



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Dated: December 4, 2017

Certificate of Service

I certify that true copies of the foregoing Comments of the Retail Energy Supply Association were sent this 4th day of December, 2017, to all those identified on the service list for Formal Case No. 1130.



Brian R. Greene