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February 5, 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: RM41-2017-01
RM03-2014-01**

Dear Ms. Westbrook:

Attached for electronic filing in the referenced matters please find the Reply 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 District of Columbia Standard Offer Service Rules |) | RM41-2017-01 |
| |) | |
| and |) | |
| |) | |
| Consumer Bill of Rights |) | RM03-2014-01 |

REPLY COMMENTS OF THE RETAIL ENERGY SUPPLY ASSOCIATION

Introduction

The Retail Energy Supply Association (“RESA”),¹ by counsel, submits the following reply comments regarding the Commission’s: (1) Notice of Proposed Rulemaking, published in the D.C. Register on December 15, 2017, inviting comments on proposed amendments to Chapter 41 of Title 15 of the District of Columbia Municipal Regulations (“DCMR”) (the “Chapter 41 NOPR”); and (2) Notice of Second Proposed Rulemaking, published in the D.C. Register on December 22, 2017, regarding amendments to Chapter 3 of Title 15 of the District of Columbia Municipal Regulations, known as the Consumer Bill of Rights (the “Chapter 3 NOPR”).

RESA submitted comments in response to the Chapter 41 NOPR on January 22, 2018, and submitted comments in response to the Chapter 3 NOPR on January 29, 2018. On January 22, 2018, the Potomac Electric Power Company (“Pepco”) submitted

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.

comments in response to both NOPRs, and Verizon Washington, DC Inc. (“Verizon”) submitted comments in response to the Chapter 3 NOPR. Pepco also filed a letter regarding the Chapter 41 NOPR on January 29, 2018. The purpose of these reply comments is to respond to Pepco’s and Verizon’s comments.

Chapter 41 NOPR

Pepco acknowledges in its January 29, 2018 letter that its comments in response to the Chapter 41 NOPR are similar to those suggested by RESA, but Pepco believes that its approach is “simpler and invites less opportunity for confusion.” RESA does not object to Pepco’s proposed language to synchronize Rule 4105.9 with proposed Rule 327.35 in the Chapter 3 NOPR. Pepco’s language allows customers to execute a switch within three business days and will not jeopardize the 3-business-day rescission period under consideration in the Chapter 3 NOPR for residential customers.

Chapter 3 NOPR

1. RESA’s Response to Verizon’s Comments Regarding Proposed Rules 308.3, 308.4, and 309.1, and Pepco’s Comments Regarding Rule 309.1

RESA does not object to Verizon’s comments regarding the use of customer information in Rules 308.3 and 308.4. Verizon’s main concern is that the proposed Rule 308.3 could limit Verizon’s use of its customers’ information, impairing its ability to serve its customers. Verizon Comments at 2. Verizon is also concerned that the exceptions to disclosing data, as proposed Rule 308.4, are too narrow and need to be broadened to include disclosures pursuant to valid legal process, discovery requests in complaint proceedings, and so forth.

As an aside, Verizon is concerned that proposed Rule 308.3 speaks to “written” consent from the customer – and not oral or electronic consent – to use the customers’

information relating to the customer's "use of service." In RESA's view, under D.C. Code § 28-4906, an electronic record satisfies a requirement for the record to be "in writing," and an electronic signature satisfies a requirement for a "signature." Therefore, D.C. law already allows for electronic signatures in lieu of a written signature. This distinction is important with respect to retail electricity and natural gas contracts, many of which are consummated via electronic means and all of which generally include a provision relating to the retail supplier's use (or non-use) of customer information.

RESA believes that Verizon's proposed language for Rules 308.3 and 308.4 is reasonable, provides appropriate clarity on the use of customer information, and properly protects customers' information consistent with how Energy Suppliers typically operate in today's energy markets.

RESA also supports Verizon's proposed modification to Rule 309.1. Like Verizon, RESA supports the proposed requirement that Energy Suppliers maintain a Privacy Protection Policy and post it in a prominent place on their respective websites. *Id.* at 4. RESA agrees with Verizon that "it is counterproductive to require a company to provide a copy annually (as well as updates and changes) to the Commission and customers," and doing so is "unnecessary and will only cause confusion." *Id.* RESA agrees that the second sentence of proposed Rule 309.1 should be replaced with Verizon's recommended language: "A copy of that policy shall be posted in a prominent place on each company's website."

Pepco intends to provide the required notice to customers under Rule 309.1 "in a yearly bill insert or through an online notice depending on the customer's preferred means of communication...." Pepco Comments at 2. For Energy Suppliers, this raises

anti-competitive and fairness questions because Pepco recovers its costs through base rates, whereas suppliers must recover costs incurred to provide the annual policy, whether by electronic or hardcopy means, through the prices they charge their customers. This is further complicated by the fact that most, if not all, suppliers serving residential customers in the District utilize Pepco's utility consolidated bill ("UCB"), and suppliers cannot include a bill insert in the UCB. Allowing for the posting of the policy in a prominent place on a company's website helps to level the playing field between Energy Suppliers and utilities, and reduces customer confusion as Verizon explains.

2. RESA's Response to Pepco's Comments Regarding Proposed Rule 325.3

Pepco proposes to "strengthen" proposed Rule 325.3 to allow for dismissal of a Formal Complaint that alleges "matters or legal grounds otherwise not within the Commission's jurisdiction." Pepco Comments at 3. RESA supports this proposed change to make it clear that such complaints should be dismissed.

3. RESA's Response to Pepco's Comments Regarding Proposed Rule 327.30

Pepco once again proposes modifying Rule 327.30 to remove the requirement that utilities include on their websites a link to the suppliers' websites. Pepco says it should only be required to provide a link to the Commission's shopping website, where the customer can find links to all licensed suppliers in the District. Pepco also contends that it might not know when a supplier becomes licensed or if their status changes.

RESA does not oppose a requirement that Pepco link directly to each licensed supplier's website, as it provides additional customer education and information about choice. That said, RESA suggests that, as a compromise, rather than linking to each individual supplier, Pepco could be required to provide prominent links on its home page

to the Commission’s webpage regarding retail electric choice² *and also* to the Commission’s shopping website of active offers.³ If the Commission is inclined to adopt this suggestion, the same should be required of Washington Gas Light Company for natural gas retail choice.⁴

More and more, residential customers are engaging in online analysis and selection of retail energy offers. The more the Commission can do to encourage customer education and to assist with providing easily accessible energy-related information in a user-friendly manner, the better. On that note, RESA recommends that the Commission, apart from these rulemakings, undertake a review of its shopping websites for electricity and natural gas – which currently include PDF documents for each commodity. Other states such as Pennsylvania have websites that provide more information and are significantly more user-friendly than the District’s.

4. RESA’s Response to Pepco’s Comments Regarding Proposed Rule 327.35

Pepco proposes modifying proposed Rule 327.35 to clarify that the Pepco will accept the last enrollment received at the relevant days end. Pepco Comments at 5. Pepco’s language provides a better explanation of the “last-in” rule than does the first sentence in proposed Rule 327.29. RESA recommends that either: (1) the first sentence in proposed Rule 327.29 be modified to duplicate Pepco’s proposed language in 327.35; or (2) Pepco’s proposed language be added to Rule 327.35 and the first sentence in 327.29 be deleted. Either of these modifications would clarify the “last-in” switching rule and avoid duplicity by not having it included in two separate rules.

² See <https://dcpsec.org/Retail-Choice/How-to-Choose/How-to-Choose-an-Electric-Supplier.aspx>.

³ See https://dcpsec.org/PSCDC/media/PDFFiles/Electric/Compare_ElectricSuppliers_Offers.pdf.

⁴ See <https://dcpsec.org/Retail-Choice/How-to-Choose/Natural-Gas.aspx> and https://dcpsec.org/PSCDC/media/PDFFiles/NaturalGas/Compare_NGSuppliers_Offers.pdf.

Conclusion

RESA appreciate the opportunity to present these reply comments and requests that the Commission make the changes explained in its prior comments on Chapter 41 and Chapter 3, and the changes above, and move towards finalizing the revised CBORs.

Respectfully submitted,

RETAIL ENERGY SUPPLY ASSOCIATION

By Counsel



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Dated: February 5, 2018

Certificate of Service

I certify that true copies of the foregoing Reply Comments of the RESA were served on February 5, 2018 to all those on the service list for RM-3 and RM-41.



Brian R. Greene