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April 23, 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 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

COMMENTS OF THE RETAIL ENERGY SUPPLY ASSOCIATION

Introduction

The Retail Energy Supply Association (“RESA”),¹ by counsel, submits the following comments regarding the Commission’s: (1) Notice of Second Proposed Rulemaking, published in the D.C. Register on March 23, 2018, 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 Third Proposed Rulemaking, also published in the D.C. Register on March 23, 2018, 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 initial comments and reply comments in response to the Commission’s initial Notice of Proposed Rulemaking regarding Chapter 41 of Title 15 of the DCMR on January 22, 2018, and February 5, 2018, respectively. RESA also

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.

submitted initial comments and reply comments in response to the Commission’s first and second Notices of Proposed Rulemaking regarding Chapter 3 of Title 15 of the DCMR.

There remains one issue of concern to RESA with respect to the Chapter 3 NOPR. As discussed below, the new defined term “Completed Written Contract,” which appears in the Chapter 3 NOPR for the first time – in Rule 327.15(d) and Rule 327.18 – introduces unnecessary ambiguity and complexity into the CBORs that will likely result in confusion if the new defined term is included in the final rules. RESA recommends that the Commission use the existing defined term “Contract,” rather than the proposed new term “Completed Written Contract.” RESA also continues to recommend that the Commission delete subpart (b) from Rule 327 to avoid confusion regarding the start of the rescission period for telephone contracts.² RESA’s recommended changes to Rules 327.15 and 327.18 in the Chapter 3 NOPR are detailed below.

Chapter 41 NOPR

The Chapter 41 NOPR “amends Subsection 4105.9 to require a three-business day transfer period from the electric utility to the competitive electricity supplier when a customer switches electricity providers.”³ The proposed 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. RESA has no objection to the proposed language in the Chapter 41 NOPR.

Chapter 3 NOPR

² See RM 3-2014-01, Comments of the Retail Energy Supply Association (Jan. 29, 2018).

³ Chapter 41 NOPR.

RESA previously commented on the proposed revisions to Rule 327.15, which specifies the starting points for the three-business-day rescission period. The newest iteration of Rule 327.15 in the Chapter 3 NOPR includes four different starting points for the rescission period:

- (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 electronic acceptance of the Contract electronically; or
- (d) When the Completed Written Contract is deposited in the U.S. Mail.

The unfortunate introduction of the new defined term “Completed Written Contract,” which appears in subsection (d) above and in Rule 327.18, overcomplicates Rule 327.15 and 327.18, rather than simplifying them. The term “Completed Written Contract” is defined in the Chapter 3 NOPR as:

Completed Written Contract: An agreement between a Customer and an Energy Supplier that specifies the terms, conditions and charges for the provision of electric or natural gas services to the Customer and the agreement is signed or acknowledged through Third Party Verification, an electronic signature, or an electronic recording.

The new term “Completed Written Contract” is potentially confusing because the term “Contract” is already defined in Section 399.1 of Chapter 3:

Contract: an agreement between a Customer and an Energy Supplier or Telecommunications Service Provider that specifies the terms, conditions, and Charges for the provision of electric, natural gas or Telecommunications to the Customer.

Under these definitions, a “Completed Written Contract” is a “Contract” that is “signed or acknowledged through Third Party Verification, an electronic signature, or an electronic recording.” However, a “Contract” under Chapter 3 can be signed or acknowledged through a Third-Party Verification, an electronic signature, or an electronic recording. The introduction of the duplicative “Completed Written Contract” term into Chapter 3 is confusing. Either there is a Contract (which can be executed by the customer over the phone, electronically, or in writing pursuant to Rule 327.11) or there is not.

To add to the confusion, the presence of the term “Completed Written Contract” suggests that there are other forms of contracts that are not written. However, Chapter 3 requires the “Contract” to be written and contain the material terms and conditions specified in Rule 327.8. The Contract may be entered into electronically or over the phone, rather than in a hand-signed hard copy, but the Contract is the written document that contains the agreement between the Customer and the Energy Supplier. Whether the Contract is mailed or transmitted electronically to a Customer that enrolls via the telephone, there is no question that the Contract is in writing.

The term “Completed Written Contract” appears in only two sections of Chapter 3.⁴ First, under Rule 327.15, the Rescission Period would begin “[w]hen the Completed Written Contract is deposited in the U.S. Mail.” Second, under Rule 327.18, when a customer enters into a Contract with an Energy Supplier via telephone, the Energy Supplier must mail or email a copy of the “Completed Written Contract” to the customer within five business days after the Customer consents to the Contract (as verified by an

⁴ This begs the question of whether it is necessary or reasonable to introduce a new and potentially confusing defined term that will only appear twice in the entire CBORs.

independent third-party verifier). Looking at these sections together, Rule 327.18 allows the Energy Supplier to mail or email the contract to the customer enrolling via telephone. However, Rule 327.15(d) states that the Rescission Period begins when the “Completed Written Contract” is deposited in the U.S. Mail. As proposed, the Rescission Period would begin when the Energy Supplier *mails* the Contract, rather than when the Customer *receives* it. As a result, the Rescission Period could run while the Customer is waiting for the Contract to arrive in the mail, defeating the purposes of the Rescission Period.

Notably, Rule 327.15(d) does not address the situation where an Energy Supplier transmits the “Completed Written Contract” electronically to the customer as allowed under Rule 327.18. RESA believes that the Rescission Period should start when the Customer *receives* the Contract, whether the Energy Supplier mails or transmits it electronically to the Customer.

Moreover, Rule 327.15 still contains four different trigger points for the start of the Rescission Period. As RESA explained in its prior comments, subsections (b) and (d) would both apply to a telephone enrollment, so there is ambiguity about when the Rescission Period would start for a telephone solicitation. Would the Rescission Period begin when the Customer verifies the Contract with a positive Third-Party Verification or electronic recording under subsection (b)? Or would the Rescission Period begin when the Energy Supplier mails the Contract under subsection (d), even if the Customer does not receive it in the mail until two days later? What if the Energy Supplier emails the Contract to the customer as permitted under Rule 327.18?

RESA recommends that the Commission eliminate these questions and the ambiguity in Rules 327.15 and 327.18 by: (1) removing the duplicative defined term “Completed Written Contract” and replacing it with the term “Contract;” (2) deleting Rule 327.15(b) entirely; and (3) adding language to 327.15(d) to include a Rescission Period in circumstances where the Energy Supplier transmits the Contract electronically to the customer, for consistency with Rule 327.18. The result would address all three methods of enrollment under Rule 327.11 and avoid a mismatch between the three enrollment methods in Rule 327.11 and the four potential rescission period triggers under draft Rule 327.15.

To capture all this, RESA recommends that the Commission modify Rules 327.15 and 327.18 to read as follows:

- 327.15 An Energy Supplier shall advise the Customer that he/she has the right to rescind the Contract within a three (3) business day period and that the Rescission Period begins when the Customer receives a copy of the Contract. The Contract may be provided by the Energy Supplier to the Customer (1) in-person, (2) by U.S. Mail, or (3) electronically if the Customer consents to electronic delivery.
- (a) If delivered in-person, the Contract will be considered received by the Customer on the date of delivery.
 - (b) If provided by U.S. Mail, 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 U.S. Mail.
 - (b) If delivered electronically, the Contract will be considered received by the Customer on the date it was transmitted electronically.
- 327.18 Once the Customer’s choice of Energy Supplier is verified by an Independent Third-Party Verifier or an electronic recording is made, the Energy Supplier shall, within five (5) business days from the date the Customer agreed telephonically to Contract with the Energy Supplier, provide to the Customer via U.S. Mail or electronic mail a copy of the Contract.

Finally, RESA recommends that the Commission eliminate the defined term “Completed Written Contract” from Rule 399.1 and instead use the existing term “Contract” to refer to the agreement between a Customer and an Energy Supplier under Chapter 3.

Conclusion

RESA appreciate the opportunity to present these comments and requests that the Commission make the changes above regarding Chapter 3 to move towards finalizing the revised CBORs.

Respectfully submitted,

RETAIL ENERGY SUPPLY ASSOCIATION

By Counsel



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Dated: April 23, 2018

Certificate of Service

I certify that true copies of the foregoing Comments of the Retail Energy Supply Association were served on April 23, 2018 to all those on the service list for RM-3 and RM-41.



Brian R. Greene