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October 2, 2017

**By Electronic Filing**

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

**Re: GT96-3, Formal Case No. 1130, and Rulemaking 47-2017-01-G**

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**

In the Matter of the Application of	)	
Washington Gas Light Company, District of	)	GT96-3
Columbia Division, for the Authority to	)	
Establish a New Rate Schedule No. 1A	)	
	)	
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	)	RM47-2017-01-G
Columbia	)	
	)	
and	)	
	)	
In the Matter of the Investigation into	)	
Modernizing the Energy Delivery System for	)	FC 1130
Increased Sustainability	)	

**MOTION TO FILE COMMENTS OUT-OF-TIME AND  
COMMENTS OF  
THE RETAIL ENERGY SUPPLY ASSOCIATION**

**I. INTRODUCTION**

The Retail Energy Supply Association (“RESA”),<sup>1</sup> by counsel, submits these comments in response to the Notice of Second Proposed Rulemaking issued by the Public Service Commission of the District of Columbia (“Commission”) in the above proceedings regarding promulgation of regulations to be codified in a new Chapter 47 (Licensure of Natural Gas Suppliers) of Title 15 (Public Utilities and Cable Television) of the District of Columbia

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<sup>1</sup> 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](http://www.resausa.org).

Municipal Regulations.<sup>2</sup> This new provision addresses the licensing and bonding requirements for retail natural gas suppliers (the “Licensing Rules”). RESA previously filed reply comments addressing the initial Notice of Proposed Rulemaking in this docket.<sup>3</sup> The Second NOPR called for interested persons to “submit written comments and reply comments no later than thirty (30) and forty-five (45) days, respectively after publication of [the Second NOPR].”<sup>4</sup> No party filed comments on the Second NOPR, so these comments are initial rather than reply comments. RESA notes that pursuant to the Commission’s schedule in the Second NOPR, initial comments were due within 30 days after the Second NOPR was published. Therefore, RESA respectfully moves for permission to file these comments out-of-time. Granting RESA’s request will not harm or prejudice the interests of any other stakeholder. Finally, RESA would not oppose the Commission affording other interested stakeholders an opportunity to respond to these comments, should any stakeholders desire to do so.

## II. COMMENTS

- 4703.9 – Term of Natural Gas Supplier License

RESA continues to recommend that a natural gas supplier’s license *not* be limited to five years. RESA is encouraged that the Commission modified Section 4603.9 of the Electric Supplier Rules from a license renewal to a license review process every five years. However, Section 4703.9 of the Natural Gas Licensing Rules has not yet been revised to match the updated language in Section 4603.9 of the Electric Supplier Licensing Rules.

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<sup>2</sup> Notice of Second Proposed Rulemaking, GT96-3, Rulemaking 47-2017-01-G, and FC 1130 (published in the D.C. Register on August 18, 2017) (the “Second NOPR”).

<sup>3</sup> GT96-3, RM 47-2017-01-G, and F.C. 1130, *Reply Comments of the Retail Energy Supply Association* (July 10, 2017) (the “RESA Reply Comments”).

<sup>4</sup> Second NOPR at 24.

As proposed, Section 4703.9 would limit the term of a natural gas supplier license to five years, requiring licensed suppliers to incur the significant costs and risk their license lapsing during a renewal proceeding after each five-year term. This license renewal requirement is unduly burdensome on natural gas suppliers serving District consumers, and will require the Commission and its staff to dedicate additional resources to undertake ongoing license renewal proceedings for all current and future District natural gas suppliers.

The proposed renewal requirement would discourage new suppliers from entering the competitive natural gas market in the District and may encourage currently licensed suppliers to exit the market, resulting in a less competitive market for retail natural gas, to the detriment of District consumers. Moreover, costs relating to license renewal would need to be recovered through the prices suppliers charge their customers, driving up natural gas costs for District consumers. Importantly, natural gas suppliers are already required – in Section 4708 – to provide ongoing updates to the Commission regarding the information contained in the license application. The Commission already receives on an annual, or more frequent, basis updated information about each licensed supplier, so any updated information about a licensee will already be provided via existing reporting requirements.

The proposed license renewal requirement is duplicative of existing reporting requirements, unduly burdening both the Commission’s staff and natural gas suppliers. RESA is deeply concerned about the negative effect the proposed license renewal requirement will have on competition in the District. Therefore, RESA recommends that the Commission update Section 4703.9 of the Licensing Rules to be consistent with Section 4603.9 of the pending Electric Supplier Licensing Rules. Here is the revised version:

4703.9     **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 Natural Gas Supplier is subject to review every five (5) years after the date on which the license was issued or was last reviewed. Not less than forty-five days before the five-year anniversary of the date on which the license was issued or was last reviewed, a Natural Gas Supplier shall file with the Commission a review application pursuant to the licensing requirements and procedures set forth in Sections 4701 and 4702. The Commission shall complete its review of the application within thirty (30) days after its filing. Currently licensed Natural Gas Suppliers shall submit a review application not less than forty-five days before five years after the effective date of this chapter.

- 4703.11 – Solicitation of Customers.

This provision requires a new Licensee or one that has not started serving customers to notify the Commission within seven days before the Licensee begins soliciting or marketing to District customers. RESA continues to recommend that the seven-day notice should be removed and replaced with a day-of notice requirement. RESA also recommends that the Commission remove the last sentence of Section 4703.11, which is duplicative of the training requirement in Section 4703.13 (Serving Customers). Therefore, RESA recommends that Section 4703.11 of the Licensing Rules remove the advance notice requirement altogether (and that the same change be reflected in the pending Electric Supplier Licensing Rules). To do so, Section 4703.11 should be revised 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 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 representative or agent has been employed or marketing on the Natural Gas Supplier's behalf.

Section 4708.1(a) – Updates to an Approved Application.

RESA continues to recommend essential revisions to Section 4708.1(a). As proposed in the Second NOPR, this section would require natural gas suppliers to provide copies of any new marketing materials to the Commission and OPC “within thirty (30) days prior to when the Licensee starts using the new material to solicit Customers.”<sup>5</sup> This provision is unduly burdensome and fails to strike a reasonable balance between consumer protection and protecting the many benefits available to consumers through the continued efficacy of the competitive market for retail natural gas in the District. As written, this provision would require Natural Gas 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 a 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.

Generally, it would be operationally untenable to comply with this provision as proposed, and would interfere with natural gas suppliers' efforts to expeditiously respond to consumer interests and demands. RESA is not aware of any other industry that mandates a “hold time” before beginning a marketing campaign. Restaurants, department stores, telecommunications providers, big box stores, fast-food establishments, insurance and financial institutions can, to RESA's knowledge, respond to market opportunities and shifting consumer demands to

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<sup>5</sup> Second NOPR at 15.

implement day-of marketing campaigns. There is no reason for energy suppliers to be treated differently.

Therefore, RESA recommends that the Commission modify Section 4708.1(a) to require that retail suppliers provide the Commission with marketing materials at the time of licensing or, for active suppliers, within a certain time following promulgation of the Licensing Rules. This will allow the Commission to monitor the current marketing materials used by natural gas suppliers operating within the District. However, there should be no requirement to provide marketing materials at any point in advance of their use in the market, certainly not thirty days in advance.

RESA also recommends that natural gas suppliers be required to provide marketing materials to the Commission upon request. By adopting this provision, the Commission will be able to obtain any marketing materials at any time from any natural gas supplier the Commission is concerned about, without getting inundated with voluminous marketing materials from others. Adopting the current version of the proposed 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 4708.1(a) to read as follows:

- (a) If a Licensee changes any of its marketing materials, it shall maintain a record of the new marketing materials and make such materials available to the Commission upon request; and
- Section 4703.13 – Serving Customers.

RESA continues to recommend that reasonable training on the District's regulatory requirements be mandated for natural gas suppliers' sales, marketing, and regulatory personnel.

Therefore, RESA recommends that the Commission change the affidavit requirement in Section 4703.13 to require natural gas suppliers to affirm that their sales, marketing and regulatory personnel have reasonable training regarding the District's regulatory requirements.

RESA commented on this issue both in its prior comments in this proceeding, and in response to the Commission's Notice of Third Proposed Rulemaking regarding the electricity licensing rules.<sup>6</sup> Currently, the proposed section requires natural gas suppliers to attest that sales and marketing and regulatory personnel, including independent contractors and vendors, "*have read the relevant provisions of Chapters 3 and 47 of Title 15 of the DCMR.*"<sup>7</sup> Retail suppliers often operate in many jurisdictions and, accordingly, tailor their regulatory compliance training to address multiple jurisdictions. Generally, a retail supplier's training would include the District's requirements, including those in Chapters 3 and 47 of Title 15 of the DCMR.

This type of information is typically presented as part of an overall training program, rather than simply instructing staff to read the regulations. Generally, suppliers employ professional regulatory training and compliance staff to interpret the array of applicable federal, state, and local statutes and regulations, interpreting the legal requirements and incorporating them into a comprehensive training program. This type of training generally highlights examples of acceptable behaviors and contrasts them with non-compliant behaviors to help sales and marketing agents understand what they can and cannot do. Simply requiring agents to read regulations is not a comprehensive training solution and can lead to confusion for sales and marketing agents not accustomed to reading and interpreting legal language. Instead, professional regulatory compliance and training staff should continue to interpret the District's

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<sup>6</sup> RESA Reply Comments at 9-10; RM 46-2015-01-E and F.C. 1130, Comments of the Retail Energy Supply Association at 4-5 (Sept. 11, 2017).

<sup>7</sup> NOPR at 7 (emphasis added).



regulatory requirements and train sales and marketing agents on all of the applicable rules and requirements, providing the context and insight that will enable agents to understand and apply the important consumer protections in Chapters 3 and 47 of Title 15 of the DCMR.

RESA is concerned that proposed Section 4703.13 may be problematic and therefore recommends that it be amended to require “reasonable training on the District’s regulatory requirements.”

Here is RESA’s proposed language:

**Serving Customers.** A Licensee is required to do the following before it begins to serve customers in the District of Columbia: (a) notify the Commission of the estimated 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 have received reasonable training on the District’s regulatory requirements before they begin soliciting customers in the District of Columbia.

- Section 4799.1 – Definition of “Customer Consent Form”

RESA continues to recommend that the “Customer Consent Form” term and definition be removed from Section 4799.1. The term “Customer Consent Form” is not used elsewhere in the proposed Licensing Rules, so the definition could cause confusion among Licensees and other stakeholders. Notably, Section 4699 of the Electric Licensing Rules, the definitions section, does not include a definition for “Customer Consent Form,” so it would be inconsistent to add a new placeholder in the natural gas Licensing Rules. Therefore, RESA recommends that the Commission delete the definition for Customer Consent Form from Section 4799.1.

### **III. CONCLUSION**

RESA appreciates the opportunity to offer these comments and respectfully requests that the Commission: (1) allow RESA to file these comments out of time; and (2) modify the proposed Licensing Rules as discussed herein.

Respectfully submitted,

RETAIL ENERGY SUPPLY ASSOCIATION

By Counsel



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Dated: October 2, 2017

**Certificate of Service**

I certify that true copies of the foregoing motion and comments of the Retail Energy Supply Association were sent this 2<sup>nd</sup> day of October, 2017, to all those identified on the service list for Formal Case No. 1130.



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Brian R. Greene