



# Office of the People's Counsel District of Columbia

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People's Counsel

February 21, 2017

Ms. Brinda Westbrook-Sedgwick  
Commission Secretary  
Public Service Commission of the  
District of Columbia  
1325 G Street, N.W., Suite 800  
Washington, DC 20005

**Re: Formal Case No. 712, In the Matter of the Investigation into the  
Public Service Commission's Rules of Practice and Procedure**

Dear Ms. Westbrook-Sedgwick:

Please find enclosed for filing an original and fifteen (15) copies of the *Petition of the Office of the People's Counsel for the District of Columbia to Initiate a Rulemaking Proceeding to Amend the Utility Consumer Bill of Rights* in the above-referenced proceeding.

If there are any questions regarding this matter, please contact me at (202) 727-3071.

Sincerely,

Barbara L. Burton  
Assistant People's Counsel

Cc: All parties of record

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

<b>In the Matter of the</b>	§	
<b>Investigation into the Public Service</b>	§	
<b>Commission's Rules of Practice and</b>	§	<b>Formal Case No. 712</b>
<b>Procedure</b>	§	
	§	

**PETITION OF THE OFFICE OF THE PEOPLE'S COUNSEL  
FOR THE DISTRICT OF COLUMBIA  
TO INITIATE A RULEMAKING PROCEEDING TO AMEND THE UTILITY  
CONSUMER BILL OF RIGHTS**

**I. INTRODUCTION**

Pursuant to Rule 101.1, Rule 101.2, and Rule 101.4 of the Public Service Commission's ("Commission" or "PSC") Rules of Practice and Procedure,<sup>1</sup> the Office of the People's Counsel ("OPC" or "Office"), the statutory representative of District of Columbia ratepayers in utility proceedings,<sup>2</sup> respectfully petitions the Commission to amend Chapter 3 of Title 15 of the District of Columbia Municipal Regulations, also known as the Utility Consumer Bill of Rights ("UCBOR" or "CBOR"),<sup>3</sup> to enhance important consumer protections and reflect key changes to the provisioning of utility services in the District.

**II. SUMMARY AND BACKGROUND**

The Office recognizes important changes have occurred in the District's utility landscape since the Commission's last significant amendments to the CBOR in 2008.<sup>4</sup> For example, utility stakeholders' greater emphasis on renewable energy spurred by local and federal policy

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<sup>1</sup> 15 D.C.M.R. §§ 101.1, 101.2, and 101.4 (Lexis 2017).

<sup>2</sup> D.C. Official Code § 34-804 (Lexis 2017).

<sup>3</sup> 15 D.C.M.R. § 300 et seq. (Lexis 2017).

<sup>4</sup> See *Formal Case No. 712, In the Matter of The Office of the People's Counsel for an Investigation into the Public Service Commission's Rules of Practice and Procedure ("Formal Case No. 712")*, Order No. 15075, rel. Sept 26, 2008 ("Order No. 15075").

enactments, the proliferation of new energy service providers, and advancements in technology, have each drastically changed the provisioning of utility services for District residents. As the District's statutory advocate charged with protecting and promoting the interests of District utility consumers, the Office believes the following CBOR amendments and recommendations, described in greater detail *infra* will ensure District consumers have essential safeguards and protections in the changing utility environment:

- **A New Subsection Should be Added to Section 302 Requiring Periodic Utility Meter Maintenance and Replacement Meters**
- **A New Subsection Should be Added to Section 304 Requiring Energy Utilities to Include Deposit Information on Customers' Bills**
- **Section 306.1 Should be Amended to Require Utilities to Offer Deferred Payments Arrangements**
- **Subsections 305.3 and 311.2 and Section 323 Should be Amended to Acknowledge the Role of the Office of the People's Counsel in Resolving Consumer Disputes**
- **Subsection 310.3 (a) Should be Amended to Account for National Weather Service Extreme Heat Index and Winter Chill Forecasts**
- **Section 311 Disconnection Rules Should be Amended**
- **Subsection 312.3 Should be Amended to Apply to All Utility Disconnections**
- **Sections 327 and 328 Should be Amended to Enhance Certain Customer Protection Standards**
- **The Commission Should Define Distributed Generation and Amend the Definition of Energy Supplier in Section 399**
- **The Commission Should Exercise Its Discretion and Impose Sanctions on Entities that Violate CBOR Provisions**
- **The Office Recommends the Commission Adopt a Consensus-Based Process**

## to Amend CBOR Provisions

### III. DISCUSSION

The Commission's last comprehensive update to the CBOR was adopted September 26, 2008, and made effective January 1, 2009.<sup>5</sup> Since that time, pivotal changes have drastically altered the District's utility landscape creating the need for stronger, more incisive, CBOR protections. For example, the D.C. Clean and Affordable Energy Act of 2008 mandated the establishment of the District's Sustainable Energy Utility ("SEU") to administer sustainable energy programs and encourage regulated utilities to shift their focus from the provision of services rendered from traditional energy sources.<sup>6</sup> The Commission has promulgated rules and regulations for the implementation of the Community Renewable Energy Amendment Act of 2013 ("CREA") to facilitate broad participation in renewable energy among more District residents.<sup>7</sup> Furthermore, advanced metering infrastructure ("AMI") systems or "smart" meters have been deployed throughout the city, and several aspects of District utility companies' customer service and payment functions are becoming increasingly digitized.<sup>8</sup> In addition to these changes, the CBOR needs to be revised to respond decisively to bad actors among third party energy suppliers who have entered the District energy market through the District

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<sup>5</sup> Order No. 15075.

<sup>6</sup> See, e.g., D.C. Clean and Affordable Energy Act of 2008, 55 D.C. REG. 9225, 9226 (Lexis 2017).

<sup>7</sup> The CREA expands access to renewable energy to more District consumers such as renters, low-income residents, homeowners with shaded roofs and tenants of apartment buildings. See, e.g., *Formal Case No. 945*, Order No. 17862, rel. April 24, 2015.

<sup>8</sup> See, e.g., *Formal Case No. 1130, Modernizing the Energy Delivery System for Increased Sustainability*, MESDIS Staff Report, p.12, January 25, 2017 (stating "PEPCO DC also has the highest AMI penetration in the country with nearly 100% of Pepco's meters being AMI, which presents unique opportunities for data gathering and DER interconnection.")

government's promotion of customer choice for consumers. These bad actors have engaged in overly aggressive marketing and other business practices that are unlawful, misleading, and deceptive.<sup>9</sup> Some of their actions have been decidedly predatory, targeting vulnerable District populations like senior citizens and low income populations, who enter into service contracts that ultimately increase their energy costs instead of lowering them as promised. Since 2011, OPC has twice petitioned the Commission to investigate the practices of third party suppliers. In October 2011, OPC requested an investigation into the practices of Horizon Power and Light ("Horizon") authorized by the PSC to conduct business in the District.<sup>10</sup> Additionally, in April 2013, OPC sought an investigation into the business practices of all alternative energy suppliers in the District and cited Starion Energy ("Starion") as one of the companies consumers identified as engaging in potentially unlawful business practices.<sup>11</sup> The Commission responded by opening formal dockets to investigate consumers' complaints and ultimately ordered Starion to comply with several PSC directives<sup>12</sup> and approved a settlement agreement between Starion and OPC that set forth compliance requirements for Starion.<sup>13</sup> OPC's experience with third party suppliers clearly indicates the CBOR needs to be revised to include additional protections against third

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<sup>9</sup> D.C. Code §§ 34-1507, 34-1671.08 and 28-3904 (Lexis 2017).

<sup>10</sup> *General Docket No. 100, Office of the People's Counsel, Notice of Consumer Complaints Regarding Solicitation Calls from Alternative Energy Supplier-Horizon Power and Light*, filed October 6, 2011.

<sup>11</sup> *General Docket No. 117, In the Matter of the Petition of the Office of the People's Counsel for an Investigation into the Business Practices of Alternative Energy Suppliers in the District of Columbia*, filed April 1, 2013.

<sup>12</sup> *Formal Case No. 1092, In the Matter of the Investigation into the Customer Solicitation Practices of Horizon Power and Light, LLC*, Order No. 17235, ¶ 1, rel. September 6, 2013.

<sup>13</sup> *Formal Case No. 1105, In the Matter of the Investigation into the Business and Solicitation Practices of Starion Energy in the District of Columbia*, Order No. 17369, rel. February 6, 2014.

party suppliers' unlawful actions.

Below, the Office provides its recommendations for amendments or revisions to existing CBOR provisions, and brief justifications for each recommendation.<sup>14</sup> The recommendations are informed by the significant aforementioned changes to the District's utility landscape, along with the Office's first-hand experience assisting thousands of District utility consumers as they navigate the new service landscape.<sup>15</sup>

**A. A New Subsection Should be Added to Section 302 Requiring Periodic Utility Meter Maintenance and Replacement Meters.**

The Office believes several amendments are needed to Section 302 of the CBOR concerning meter maintenance and referee testing to reduce the probability or occurrence of malfunctioning meters given the pervasive use, and reliance of District utilities and consumers, on smart meters and the data they produce.<sup>16</sup> Current CBOR provisions require the District's natural gas and electric utilities to read residential meters at periodic intervals.<sup>17</sup> However, such provisions do nothing to ensure that residential meters work properly or provide accurate readings. The Office, therefore, suggests revising the CBOR to include the following subsection:

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<sup>14</sup> Revisions and amendments are indicated in strikeouts and underlines.

<sup>15</sup> The Office believes the recommendations are also consistent with the policy objectives that have guided the Commission's previous revisions to CBOR amendments; these objectives include the desire to promote "administrative efficiency, uniformity of requirements and responsibilities of companies regulated by the Commission, and ensure District utility consumers are fully informed of their rights and responsibilities." *See, e.g., Formal Case No. 712, Amended Notice of Proposed Rulemaking, Sept. 22, 2006.*

<sup>16</sup> *See supra* n.8.

<sup>17</sup> *See* CBOR Section 302.1 (stating "Natural Gas and Electric Utilities, if applicable, shall schedule residential Meters for readings at regular monthly intervals and read within three (3) Business Days of the scheduled date unless the Meter is inaccessible, extreme weather exists, or in the event of other extraordinary conditions.")

**302.2** Natural Gas and Electric Utilities shall schedule periodic, actual readings, Meter maintenance, and check for accuracy and need for recalibration of Meter at least once in a 36 month period.

Furthermore, referee tests provide consumers with an opportunity to test utility meter accuracy with Commission and Office staff. However, the Office submits the CBOR should be amended to memorialize stronger consumer protections for meter referee tests indicating faulty or unreliable meters. Therefore, OPC recommends adding the additional following provisions to Section 302:

**302.3** Whenever a Meter referee test is conducted on the premises and the technician cannot make an actual reading, the Meter shall be deemed as failed and replaced with a new Meter.

**302.4** Where the Meter has performed less than 100% accuracy, the Natural Gas or Electric Utilities shall provide the Customer with a new Meter or Meter Exchange upon the Customer's request.

**B. A New Subsection Should be Added to Section 304 Requiring Energy Utilities to Include Deposit Information on Customers' Bills.**

Section 304 of the CBOR requires energy bills to include specific information including meter reading data and recent payment and credit information.<sup>18</sup> The Office believes a subsection should be added to Section 304 requiring energy bills to display customer deposit information, including the amount of interest earned on a required deposit. This information would apprise consumers of deposit and interest amounts due to them (or that will be credited to their account) at the end of a prescribed period. The Office thus recommends the following subsection be added to Section 304:

**304.7(u)** The energy utility shall include date of deposit, amount, and interest earned.

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<sup>18</sup> CBOR Section 304.

**C. Section 306.1 Should Be Amended to Require Utilities to Offer Deferred Payment Arrangements.**

The Office believes that utility service disconnection can pose grave health and safety issues to District consumers. To avert the numerous problems caused by service disconnection and ensure consumers are fully apprised of options for service restoration, OPC recommends the Commission revise CBOR Section 306.1 as follows:

**306.1** Every residential customer who cannot pay a delinquent account balance of over 30 days, shall have the right to receive a Deferred Payment Agreement (DPA), to enable a residential customer to make payment by installments, to avoid disconnection subject to §311, and to reduce the total account balance to zero. Each Utility, Energy Supplier or Telecommunications Service Provider shall inform the customer of all deferred payment plans, alternative payment and payment assistance programs available from the utility, as applicable, and of the eligibility requirements and procedures for applying for each. The Utility shall include the Utility, Energy Supplier or Telecommunications Service Provider past due balances as part of its DPA. No charges, other than those accrued as of the date of settlement, and no interest, shall be charged as part of the DPA.

**D. Subsections 305.3, 311.2, and Section 323 Should be Amended to Acknowledge the Role of the Office of the People’s Counsel in Resolving Consumer Disputes.**

The Office plays an integral role in helping to resolve complaints between District consumers and utilities. Utilities frequently initiate moratoria on consumer account collection, including late payment charges, once the Office disputes an account matter on a consumer’s behalf. To acknowledge the Office’s authority in the consumer complaint resolution process, the Office believes the Commission should amend subsections 305.3 or 311.2 in accordance with the suggested revisions below:

**305.3** No late payment charge shall be levied on any amounts, including deferred payment installments, paid by the due date, or on amounts in dispute before the Commission or the Office of the People's Counsel. Utilities may levy a late payment charge on amounts that are not paid by the due date. Such late payment charges shall be established by tariffs in accordance with the procedure required by the Commission.

**311.2** A Utility shall not disconnect service when a dispute involving the Account in question has been initiated by the Office of the People's Counsel or filed with the Commission's Office of Consumer Services and the dispute is still pending at the Public Service Commission, provided, that payments are made for amounts not in dispute.

Furthermore, the Office believes Section 323 should be revised to accurately reflect OPC's role in the informal dispute process and memorialize informal dispute resolution procedures, per the amendments below:

**323** ~~OFFICE OF CONSUMER SERVICES~~ INFORMAL COMPLAINTS

**323.1** There is established within the Public Service Commission is an Office of Consumer Services.

a. The Office of the People's Counsel is the statutory representative for residential customers of natural gas, electric and local telephone services.

**323.4** If a Complaint addresses a matter that has failed to be resolved under the Utility's, Energy Supplier's or Telecommunications Service Provider's procedures, the Office of Consumer Services shall handle the matter as an Informal Complaint for resolution. If the Complaint has not been referred to the Utility, Energy Supplier or Telecommunications Service Provider of the service in question, the matter shall be referred to the Utility, Energy Supplier or Telecommunications Service Provider for an attempt at direct resolution. In every case of a dispute between a Customer and a Utility, Energy Supplier or Telecommunications Service Provider, the first attempt at resolution shall be made directly between the parties.

a. If after contacting the Office of the People's Counsel for assistance the Customer concludes the Complaint addresses a matter the Office of People's Counsel has failed to resolve with the Utility,

Energy Supplier or Telecommunications Service Provider, the Office of the People’s Counsel shall refer the Matter to the Commission for an Informal Hearing.

**323.5** The Utility, Energy Supplier or Telecommunications Service Provider shall respond to Informal Complaints, or similar Customer related referrals made by the Office of the People’s Counsel and/or the Office of Consumer Services within fourteen (14) Business Days or within such time as shall be specified by any extension of time that may be granted by these offices. If the Complaint or matter is not resolved within that time, the Utility, Energy Supplier or Telecommunications Service Provider shall refer the matter to the Office of Consumer Services.

**E. Subsection 310.3 (a) Should be Amended to Account for National Weather Service Extreme Heat Index and Winter Chill Forecasts.**

Section 310.3 (a), which delimits utility disconnections during extreme cold weather, should be revised to include moratoria on disconnections for extremely hot days as well to be consistent with District law. Several jurisdictions, including Maryland, Arkansas, Georgia and Illinois, prohibit disconnections during extremely cold *and hot* days.<sup>19</sup> On March 9, 2016, the “Extreme Temperature Safety Amendment Act of 2015” became effective as D.C. Law 21-82. This Act permanently prohibits an electric or gas company from disconnecting residential electric or gas service when there is a forecast of extreme temperature. Extreme temperature means a National Weather Service forecast for the District of 95 degrees Fahrenheit or above during any time of a day or of 32 degrees Fahrenheit or below during any time of the day.<sup>20</sup> The CBOR should be amended to memorialize this important consumer protection. Furthermore, to ensure the disconnection is based on felt-air, or apparent, temperatures, the Office believes

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<sup>19</sup> LIHEAP Clearinghouse, State Disconnection Policies, available at <https://liheapch.acf.hhs.gov/Disconnect/disconnect.htm>.

<sup>20</sup> D.C. Act 21-264, dated January 12, 2016.

subsection 310.3 (a) temperature moratoria should be based on National Weather Service (NWS) wind chill factor and heat index temperature forecasts. The Office's recommendations for subsection 310.3 (a) revisions are set forth below:

**310.3 (a)** Disconnection of natural gas or electric utility service for non-payment of bills, failure to post a cash Security Deposit, or failure to comply with the terms of a DPA where natural gas or electricity is used as the primary source of heating the residence is prohibited:

- (a) During the day preceding and the day of a forecast when the National Weather Service forecast for the District of Columbia is ninety five (95°) degrees Fahrenheit or above or of (32°) degrees Fahrenheit or below during any time of a day as based on National Weather Service (NWS) actual temperature forecasts and National Weather Service (NWS) wind chill factor and heat index temperature forecasts; or
- (b) During the day preceding and the day of a forecast when the National Weather Service forecast for the District of Columbia is ninety five (95°) degrees Fahrenheit or above or of (32°) degrees Fahrenheit or below during any time of a day as based on National Weather Service (NWS) actual temperature forecasts and National Weather Service (NWS) wind chill factor and heat index temperature forecasts.

**F. Section 311 Disconnection Rules Should be Amended.**

The Office believes that two disconnection rules in Section 311 should be amended to better protect and promote the public interest. The language in subsection 311.1, which postpones disconnections for consumers with a medical certificate, should be revised to provide specific protection for seniors as well as vulnerable customers, in the following manner:

**311.1** A Utility shall postpone the Disconnection of service for a reasonable time not to exceed twenty-one (21) days if there is a household member age 62 or older, seriously ill, disabled or dependent on a life support system and the Utility is provided with a physician's certificate or notice from a public health official which states that disconnection would be detrimental to the health and safety of a bona fide occupant of the household, provided that

the customer enters into a DPA. The postponement may be extended for one (1) additional period of not more than twenty-one (21) days by renewal of the certificate or notice.

Furthermore, subsection 311.8 enables a utility to disconnect service on Friday or Saturday, subject to specific terms.<sup>21</sup> The Office submits the Commission should remove subsection 311.8 from the CBOR. The Office believes Friday or Saturday disconnections do not provide District consumers with adequate time to make alternative service arrangements or sufficient accommodations to avoid any challenges borne by disconnection. By prohibiting Friday or Saturday disconnections, the Commission would be in-line with several jurisdictions currently barring disconnections on weekends.<sup>22</sup>

**G. Subsection 312.3 Should be Amended to Apply to All Utility Disconnections.**

The deployment of “smart” meters has enabled remote disconnection and reconnection of service.<sup>23</sup> However, subsection 312.3 of the CBOR, which concerns the personal contact utilities must provide to consumers before service disconnection, only applies to physical disconnection.

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<sup>21</sup> See CBOR Section 311.8 (stating “A Utility may disconnect service on Friday or Saturday if the following applies: (a) The Meter is located on the inside of the premises or is otherwise not readily accessible; and (b) The Utility has previously and unsuccessfully attempted to gain access to the premise as stated in subsection 310.1 (e), on at least two (2) week days.”)

<sup>22</sup> State of New Jersey Board of Public Utilities, <http://www.bpu.state.nj.us/bpu/assistance/rights/> (stating “a utility may not shut-off residential service on Friday, Saturday, Sunday or a holiday or the day before a holiday or if a valid medical emergency exists in your household.”); North Carolina Department of Justice, <http://www.ncdoj.gov/Consumer/Energy-and-Utilities/Termination-of-Utility-Service.aspx> (stating “Your power cannot be disconnected on Fridays, weekends, state or federal holidays, or the day before a state or federal holiday.”); Maine Equal Justice Partners, <http://www.mejp.org/content/what-are-my-rights-my-electric-company> (stating “Your power can generally not be shut off before 8:00 a.m. or after 3:00 p.m. It can also not be shut off on a Friday, during the weekend, on a legal holiday or the day before a legal holiday, or any day the office is closed.”)

<sup>23</sup> See, e.g., Chartwell, Remote Connect/Disconnect Technology Emerging as Key Feature of AMI, <https://www.chartwellinc.com/remote-connectdisconnect-technology-emerging-as-key-feature-of-ami/>.

To account for the multiple disconnection methods available to utilities, OPC suggests the Commission revise subsection 312.3 in accordance with the recommendation below:

**312.3** Immediately preceding the ~~physical~~ Disconnection of natural gas or electric service, the representative of the Utility designated to perform that function shall make a reasonable effort to identify himself or herself to the Customer or other responsible person then on the premises and announce the purpose of his or her presence; a telephone utility shall make a second attempt to contact the customer.

**H. Sections 327 and 328 Should be Amended to Enhance Certain Customer Protection Standards.**

CBOR Sections 327 and 328 set forth important protections to ensure consumers are shielded from potential abuses by the District's energy suppliers, including third party suppliers, and telecommunications service providers (TSPs). The Office, however, believes the amendments below are necessary to (1) protect District consumers from potential misleading marketing by energy suppliers; (2) ensure District consumers have sufficient time to rescind any agreements entered into with energy suppliers and TSPs; and (3) allow District consumers to be fully apprised of service terms and conditions before and at point of sale and contract renewal:

**327.2** An Energy Supplier may not engage in a marketing, advertising, Solicitation or trade practice that is unlawful, misleading, or deceptive as set forth in D.C. Code §28-3904. Any Energy Supplier that claims its offerings possess unusual or special attributes shall maintain documentation to substantiate any such claims. Such documentation may be made available through electronic means and a written explanation shall be provided promptly upon request of any customer, prospective customer, competitive service provider, local distribution company, the Public Service Commission or the Office of the People's Counsel.

**327.7** Any Solicitation of an energy supply that contains any specific offering to a residential Customer must at a minimum include the following in writing:

- (c) The price offered for natural gas supply or electricity supply including all fixed rate and variable rate components, any renewal provisions, all applicable fees and any restrictions on the time period the advertised price will be in effect;
- (h) A statement that enrollment could impact eligibility for certain low income assistance programs.

**327.11**

Home Solicitations shall be limited to the hours between 9 a.m. and sunset. The soliciting party must produce a picture identification badge and begin the conversation by stating the following:

The name of the business or organization (the Energy Supplier shall clearly state it is not a representative of any District Utility Company);

- (a) The nature of the visit, i.e., a Solicitation;
- (b) A brief description of the subject matter being solicited;
- (c) Ask the Customer if he/she would like to hear the full Solicitation; and
- (d) The soliciting Energy Supplier must include a statement under the conspicuous Caption: "BUYER'S RIGHT TO CANCEL" which states: "If this agreement was solicited at or near your residence, and you do not want the goods and services, you may cancel this agreement by mailing a notice to the seller. The notice must say that you do not want the goods or services and must be mailed before midnight on the ~~third~~ seventh business Day after you signed this agreement. This notice must be mailed to: (name and address of seller). If you cancel, the seller may not keep any of your cash down payment."

**327.18**

An Energy Supplier must advise a Customer that he/she has the right to rescind the Contract agreement within a ~~3-day period~~ a fourteen (14) day period and that the Rescission Period begins when the Customer signs the contract.

**327.41**

Upon an Energy Supplier's Enrollment of a Customer with the Utility, the Energy Supplier and the Utility must provide to the Customer, within a reasonable period of time the following:

(a) A written notice of enrollment, which includes:

(1) Customer name;

(2) Customer service information (including toll-free telephone number, mailing address, dispute resolution process information and the contact information of the Office of the People's Counsel);

(3) Billing name;

(4) Billing address;

(5) Utility name;

(6) Utility account number;

(7) Supplier name;

(8) Supplier account number;

(9) Commodity provided; and

(10) Effective date of the enrollment.

Additionally the Energy Supplier must provide to the Customer within a reasonable period of time:

(b) A statement of enrollment, which includes:

(b) A description of the agreed-upon billing option and the billing date if different from the Company's usual billing date; and

(c) Customer service information (including toll-free telephone number, mailing address, dispute resolution process information, and the contact information of the Office of the People's Counsel).

- (d) At the time of completion of the contracting process, an Energy Supplier must provide the customer a written copy of the executed contract;
- (e) If the contract is completed through telephone solicitation, the supplier shall mail a complete written contract to the consumer within three (3) business days of the contracting conversation;
- (f) A contract made pursuant to a telephone solicitation:
  - (1) Shall be reduced to writing and signed by the consumer;
  - (2) Shall comply with all other applicable laws and regulations;
  - (3) Shall match the description of goods or services as that principally used in the telephone solicitation;
  - (4) Shall contain the name, address, and telephone number of the seller, the total price of the contract, and a detailed description of the goods or services being sold;
  - (5) Shall contain, in at least 12 point type, immediately preceding the signature, the following statement: "You are not obligated to pay any money unless you sign this contract and return it to the seller"; and
  - (6) May not exclude from its terms any oral or written representations made by the merchant to the consumer in connection with the transaction.
- (g) If the contract is completed in person, the contract must be reviewed with and provided to the consumer by the supplier in hard copy.
- (h) If the contract is completed through the internet, the contract shall be made available online and made available for download by the consumer at the time of contracting and shall be transmitted to the consumer by the supplier by mail within three (3) business days of the contracting engagement.

327.46

If an Energy Supplier's contract provides for automatic renewal of the contract:

- (a) The Energy Supplier shall provide notice of the pending renewal of the Contract at least forty-five (45) Days before the renewal is scheduled to occur;
- (b) Notice of all contract terms, including any changes to the material terms and conditions (including billing option, Billing Cycle), must be provided within the forty-five (45) Day notice. The notification of renewal or of any change must be highlighted and clearly stated;

**328.15** In any Contract solicited at a Customer's home, the soliciting Telecommunications Service Provider must include a statement under the Conspicuous Caption: "BUYER'S RIGHT TO CANCEL" which states: If this agreement was solicited at or near your residence, and you do not want the goods and services, you may cancel this agreement by mailing a notice to the seller. The notice must say that you do not want the goods or services and must be mailed before midnight on the ~~third~~ seventh Business Day.

**I. The Commission Should Define Distributed Generation and Amend the Definition of Energy Supplier in Section 399.**

The recent proliferation of new renewable or distributed generation ("DG"), energy providers and services has spurred a variety of consumer protection issues.<sup>24</sup> To ensure the CBOR reflects these significant developments in the utility industry, and existing customer protection standards found in Section 327, along with privacy protections found in Section 308, the Office recommends Section 399 be amended in the manner set forth below:

**399.1** **Distributed Generation:** power generation from sources near the point of consumer consumption.

**Energy Supplier:** a person, including an Aggregator, Broker, or Marketer, who generates or produces natural gas or electricity, sells natural gas or electricity, or purchases, brokers, arranges, or markets natural gas or electricity for sale to customers. The term applies to persons engaged in distributed generation. The term excludes the

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<sup>24</sup> See, e.g., American Public Power Association, Federal Trade Commission Can Help Protect Solar Rooftop Consumers, <http://www.publicpower.org/media/daily/ArticleDetail.cfm?ItemNumber=46528>.

following: (A) building owners, lessees, or managers who manage the internal distribution system serving such building and who supply natural gas or electricity solely to occupants of the building for use by the occupants; (B)(i) any person who purchases natural gas or electricity for its own use or for the use of its subsidiaries or affiliates; or (ii) any apartment building or office building manager who aggregates natural gas or electric service requirements for his or her building(s), and who does not: (I) take title to natural gas or electricity; (II) market natural gas or electric services to the individually-metered tenants of his or her building; or (III) engage in the resale of natural gas or electric services to others; (C) property owners who supply small amounts of power, at cost as an accommodation to lessors or licensees or the property; and (D) a Consolidator.

**J. The Commission Should Exercise Its Discretion and Impose Sanctions on Entities that Violate CBOR Provisions.**

Currently, the Commission has the discretion—but no obligation—to impose sanctions on entities covered by the CBOR that violate provisions of the CBOR. The CBOR provisions that set forth the range of sanctions clearly state “the following Sanction may be imposed by the Commission,”<sup>25</sup> but does not require the PSC to impose them. OPC recommends that the Commission, if not already doing so, should use the array of sanctions currently available to it (*e.g.*, civil penalties, customer refund or credit, cease and desist order) to enforce full compliance with the CBOR provisions by those utilities that violate them. OPC further recommends the PSC establish a procedure for maintaining a record of CBOR violations, notify utilities of the sanctions to be imposed and the deadlines by which the penalties must be paid, and establish a collection mechanism for the receipt of payments. The Office believes that by employing sanctions currently available to the Commission, the agency’s actions will help minimize the number of infractions committed by covered entities and signal to them, as well as consumers,

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<sup>25</sup> 15 D.C.M.R. § 399.1 (Lexis 2017).

that the PSC not only takes consumer protection seriously but will act to ensure full compliance with the CBOR.

**K. The Office Recommends the Commission Adopt a Consensus-Based Process to Amend CBOR Provisions.**

The Office further realizes changes to Chapter 3 must be promulgated through rulemaking. However, the Commission, before enacting previous large-scale amendments to the CBOR, launched a CBOR working group to assist in devising new CBOR provisions.<sup>26</sup> For instance, when considering a 2004 petition by the Office to amend the CBOR, the Commission established a working group to discuss and propose possible revisions to the CBOR,<sup>27</sup> holding that it desired to “afford all interested parties an opportunity to meaningfully participate in the development of the revised Consumer Bill of Rights.”<sup>28</sup> The agency also stated, “In that many of [sic] parties have different constituencies and interests, the Commission believes that a collaborative process in which the parties can discuss their concerns, ideas and differences would be beneficial and appropriate.”<sup>29</sup> The Office also believes all proposed recommendations to the CBOR would benefit from the input of interested parties. Thus, if the Commission grants the Office’s petition, OPC supports the creation of a new CBOR Working Group to discuss the Office’s, and other stakeholders’, proposed recommendations or another ad-hoc collaborative process that will help facilitate consensus on as many CBOR recommendations as feasible.

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<sup>26</sup> Order No. 15075, ¶ 2; *See also* Formal Case No. 712, Order No. 13424, rel. Nov. 15, 2004 (“Order No. 13424”).

<sup>27</sup> Order No. 13424, ¶ 1

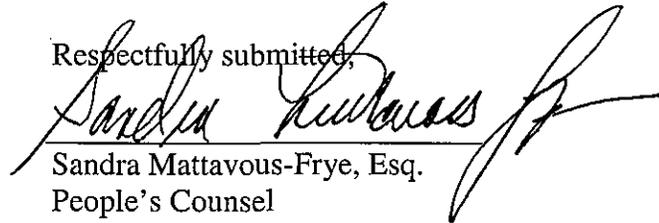
<sup>28</sup> *Id.*, ¶ 6.

<sup>29</sup> *Id.*

IV. CONCLUSION

WHEREFORE, for the reasons stated above, OPC respectfully requests the Commission grant this petition to initiate a rulemaking to amend Chapter 3 of Title 15 of the District of Columbia Municipal Regulations, also known as the Utility Consumer Bill of Rights, consistent with the recommendations made herein.

Respectfully submitted,



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Dated: February 21, 2017

## CERTIFICATE OF SERVICE

### Formal Case No. 712, In the Matter of the Investigation into the Public Service Commission's Rules of Practice and Procedure

I hereby certify that on this 21st day of February, 2017, a copy of the foregoing "Petition of the Office of the People's Counsel for the District of Columbia to Initiate a Rulemaking Proceeding to Amend the Utility Consumer Bill of Rights" was served on the following parties of record by hand delivery, electronic mail, or first class mail, postage prepaid:

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