

**METROPOLITAN POLICE DEPARTMENT
NOTICE OF PROPOSED RULEMAKING**

The Chief of Police, pursuant to section 106(e)(1) of the First Amendment Assemblies Act of 2004 (Act), effective April 13, 2005 (D.C. Law 15-352, D.C. Official Code § 5-331.06(e)(1)), and Mayor's Order 2006-37, dated March 17, 2006, hereby gives notice of the adoption of the following rules governing the approval of plans to persons or groups seeking to conduct a First Amendment assembly on District streets, sidewalks or other public ways, or in District parks. The Chief of Police also gives notice of intent to take final rulemaking action to adopt these rules in not less than forty-five (45) days.

This Rulemaking amends Title 24 DCMR, "Public Space and Safety", Chapter 7, "Parades and Public Events", sections 705 through 709, and adds sections 710 through 712 to read as follows:

705 FIRST AMENDMENT ASSEMBLIES: GENERAL PROVISIONS

705.1 It is the declared public policy of the District of Columbia that persons and groups have a right to organize and participate in peaceful First Amendment assemblies on the streets, sidewalks, and other public ways, and in the parks of the District of Columbia, and to engage in First Amendment assembly near the object of their protest so they may be seen and heard, subject to reasonable restrictions designed to protect public safety, persons, and property, and to accommodate the interest of persons not participating in the assemblies to use the streets, sidewalks, and other public ways to travel to their intended destinations, and use the parks for recreational purposes.

705.2 A "First Amendment assembly" means a demonstration, rally, parade, march, picket line, race, walk-a-thon, or other similar gathering conducted for the purpose of persons expressing their political, social, or religious views.

705.3 The Metropolitan Police Department may impose reasonable time, place and manner restrictions on First Amendment assemblies held on District streets, sidewalks, or other public ways, or in District parks. The imposition of restrictions may occur:

(a) Through the approval of a plan, where organizers give advance notice of the intent to engage in a First Amendment assembly;

(b) During the occurrence of a First Amendment assembly for which a plan has been approved where restrictions in addition to those set forth in the approved plan are:

(1) Necessary to implement the substance and intent in the approval of the plan;

approval of the plan and that were not caused by the plan-holder, counter-demonstrators, or the police; or

(3) Necessary due to a determination by the Metropolitan Police Department during the assembly that there exists an imminent likelihood of violence endangering persons or threatening to cause significant property damage; or

(c) During a First Amendment assembly where a plan was not approved for the assembly.

705.4 No time, place, or manner restriction regarding a First Amendment assembly shall be based on the content of the beliefs expressed or anticipated to be expressed during the assembly, or on factors such as the attire or appearance of persons participating or expected to participate in an assembly, nor may such restrictions favor non-First Amendment activities over First Amendment activities.

705.5 For purposes of this chapter, the following definitions may apply either to a First-Amendment assembly, or a non-First Amendment assembly (depending upon whether the event meets the elements of a First Amendment assembly as set forth in section 705.2):

(a) Parade. A "parade" is a formation or procession consisting of persons, animals, vehicles, or a combination of persons, animals, and vehicles, traveling in unison with a common celebratory, historical, or cultural purpose, upon any public street, highway, alley, sidewalk or other public way, within the territorial jurisdiction of the Metropolitan Police Department, in a manner that would normally be in violation of any provision of DCMR Title 18 "Vehicles and Traffic," or any other applicable law or regulation.

(b) March. A "march" is any formation or procession of persons or vehicles, or a combination of persons or vehicles, traveling in unison with a common purpose, upon any public street, highway, alley, sidewalk or other public way, or in District parks, within the territorial jurisdiction of the Metropolitan Police Department, in a manner that would normally be in violation of any provision of DCMR Title 18 "Vehicles and Traffic," or any other applicable law or regulation.

(c) Race. A "race" is defined as any formation or procession of persons traveling along the same established route, with the common purpose of competing in an athletic contest. A race has a starting line and a finish line, and is often organized for charitable purposes.

(d) Walk-a-thon. A "walk-a-thon" is defined as any formation or procession of persons, walking along the same established route, with a common purpose, but without the purpose of competing against one another. A walk-a-thon has a starting line and a finish line, and is generally organized for charitable purposes.

- 705.6 It is not an offense under these regulations for persons to conduct a First Amendment assembly on a District street, sidewalk, or other public way, or in a District park, without having provided notice or obtained an approved assembly plan.
- 705.7 Providing notice and seeking plan approval under these regulations is designed to avoid situations where more than one group seeks to use the same space at the same time and to provide the Metropolitan Police Department and other District agencies the ability to provide appropriate police protection, traffic control, and other support for participants and other individuals.
- 705.8 Except as provided in Section 705.9, a person or group who wishes to conduct a First Amendment assembly on a District street, sidewalk, or other public way, or in a District park, shall give notice and apply for approval of an assembly plan before conducting the assembly, or in the case of a non-First Amendment assembly, shall apply for a permit under applicable provisions of these regulations for non-First Amendment assembly events.
- 705.9 A person or group who wishes to conduct a First Amendment assembly on a District street, sidewalk, or other public way, or in a District park, is not required to give notice or apply for approval of an assembly plan before conducting the assembly where:
- (a) The assembly will take place on public sidewalks and crosswalks and will not prevent other pedestrians from using the sidewalks and crosswalks;
 - (b) The person or group reasonably anticipates that fewer than 50 persons will participate in the assembly, and the assembly will not occur on a District street; or
 - (c) The assembly is for the purpose of an immediate and spontaneous expression of views in response to a public event.
- 705.10 The Mayor shall not enforce any user fees on persons or groups that organize or conduct First Amendment assemblies.
- 705.11 The Mayor shall not require, separate from or in addition to the requirements for giving notice of or applying for approval of an assembly plan for a First Amendment assembly, that persons give notice to, or obtain a permit or plan from, the Chief of Police, or other District officials or agencies, as a prerequisite for making or delivering an address, speech, or sermon regarding any political, social, or religious subject in any District street, sidewalk, other public way, or park.
- 705.12 The Mayor shall not require, separate from or in addition to the requirements for giving notice of or applying for approval of an assembly plan for a First

Amendment assembly, that persons give notice to, or obtain a permit or plan from the Chief of Police, the Department of Consumer and Regulatory Affairs, or any other District official or agency as a prerequisite for using a stand or structure in connection with such an assembly; provided, that a First Amendment assembly plan may contain limits on the nature, size, or number of stands or structures to be used as required to maintain public safety. Individuals conducting a First Amendment assembly under section 705.9 may use a stand or structure so long as it does not prevent others from using the sidewalk, roadway, or ingress/egress to existing buildings/businesses.

- 705.13 The Mayor shall not require, separate from or in addition to the requirements for giving notice of or applying for approval of an assembly plan for a First Amendment assembly, that persons give notice to, or obtain a permit or plan from, the Chief of Police, the Director of the Department of Consumer and Regulatory Affairs, or any other District official or agency as a prerequisite for selling demonstration-related merchandise within an area covered by an approved plan or within an assembly covered by section 705.9; provided, that nothing in this subsection shall be construed to authorize any person to sell merchandise in a plan-approved area contrary to the wishes of the plan-holder.

706 NOTICE AND PLAN APPROVAL PROCESS FOR FIRST AMENDMENT ASSEMBLIES: PROCESSING APPLICATIONS

- 706.1 Subject to the appeal process set forth in section 712, the authority to receive and review a notice of and an application for approval of a plan for a First Amendment assembly on District streets, sidewalks, and other public ways, and in District parks, and to grant, deny, or revoke an assembly plan, is vested exclusively with the Chief of Police or his or her designee.
- 706.2 Persons or groups providing notice to and applying for approval of a plan from the District government to conduct a First Amendment assembly on a District street, sidewalk, or other public way, or in a District park, shall not be required to obtain approval for the assembly from any other official, agency, or entity in the District government, including the District of Columbia Emergency Management Agency, the Mayor's Special Events Task Group, or the Department of Parks and Recreation.
- 706.3 Applications for plan approval shall be filed not more than fifteen (15) days prior to the proposed date of the event.
- 706.4 The Chief of Police shall take final action on a notice of and an application for approval of a plan for a First Amendment assembly within a reasonably prompt period of time following receipt of the completed application, considering such factors as the anticipated size of the assembly, the proposed date and location, and the number of days between the application date and the proposed assembly date.

- 706.5 Where a complete application for approval of a First Amendment assembly plan is filed sixty (60) days or more prior to the proposed assembly date, the application shall receive final action no later than thirty (30) days prior to the proposed assembly. This provision shall not apply where the applicant has voluntarily agreed to waive the thirty (30) day time limit.
- 706.6 Following the approval of an assembly plan under this Chapter, the Chief of Police may, after consultations with the person or group giving notice of the assembly, amend the plan to make reasonable modifications to the assembly location or route up until ten (10) days prior to the assembly date based on considerations of public safety.
- 706.7 Where modifications to the assembly location or route are requested by the applicant, the approved plan may be amended at anytime by the Chief of Police prior to the date of the event.
- 706.8 Where applications to approve a First Amendment assembly plan are not submitted in a timely manner, the Chief of Police may deny an application in the interest of public safety based on the criteria set forth in section 706.9. Applications filed less than ten (10) days prior to the proposed date of the event shall receive favorable action only if there is sufficient time to review the application and to coordinate with the event organizers to resolve questions or problems concerning the application.
- 706.9 Approval of a First Amendment assembly plan shall be granted if, after consideration of the application and other information that may otherwise be obtained, it appears that the event will meet the following criteria:
- (a) The conduct of the event will not substantially interrupt the safe and orderly movement of other vehicular and pedestrian traffic contiguous to its route;
 - (b) The conduct of the event will not divert such numbers of police officers from their normal police duties that the city would be deprived of reasonable police protection;
 - (c) The concentration of persons, animals, and vehicles in the assembly and disbanding areas and along the event route will not substantially interfere with the movement of police, fire, ambulance, and other emergency vehicles on the streets;
 - (d) The conduct of the event route will not substantially interfere with any of the designated Emergency Evacuation Routes outlined in the District Response Plan;
 - (e) The event is scheduled to move from its assembly location to its disbanding location expeditiously and without unreasonable delays enroute;
 - (f) The event will not substantially interfere with any other event for which a

permit has already been granted;

(g) The applicant has not materially misrepresented any facts or information set forth in the application for the permit;

(h) The applicant has furnished proof that, if the assembly or disbanding locations or the route of event, encroach upon, occupy, or traverse any area within the jurisdiction of the federal or non-District local governments, permits or permission have been obtained from the appropriate authorities; and

(i) The proposed event does not create a substantial possibility of violent, disorderly conduct likely to endanger public safety or to result in significant property damage.

706.10 Unless exempt pursuant to section 705.9, any person seeking approval of a First Amendment assembly shall file an application with the Chief of Police on a form issued by the Chief of Police in person or by mail at the Metropolitan Police Department, Special Operations Division Headquarters, currently located at 2301 L Street, N.W., Washington, D.C. 20037. Application forms can be obtained online at mpdc.dc.gov.

706.11 The person or group requesting approval of a First Amendment assembly plan shall make representations concerning the nature of the event, sufficient for the Chief of Police to classify the activity as a First Amendment assembly within the meaning of section 705.2, and, in addition, shall provide the following information:

(a) The name, address, and telephone number of the sponsoring organization (if any) and its chief officer;

(b) The name, address, and telephone number of the applicant and the person or persons chiefly responsible for the conduct of the event, if other than the applicant;

(c) The purpose of the event;

(d) The date when the event is to be conducted;

(e) The approximate times when the event is to begin and end, and the approximate times when assembly for, and disbanding of, the event are to take place;

(f) The specific proposed route of the event if it is a parade, march, race, or walk-a-thon;

(g) The locations of the assembly area, any related stands or other structures, and

the disbanding area for the event;

(h) The approximate number of persons, animals, and vehicles that will constitute the event;

(i) A description of the types of animals; the types of vehicles to be used; the number of bands and other musical units and sound trucks to be used; and the number, type, and size of banners, placards, and signs to be used; and

(j) The number of persons who will be designated to monitor the event and, if a parade, the name of the parade marshal in charge.

706.12 The Chief of Police shall, in writing, either approve the application for the proposed First Amendment assembly plan, as submitted, if consistent with these regulations, or, if not, inform the person or group giving notice of an assembly of the reasons for any decision to:

(a) Deny an application for approval of a First Amendment assembly plan;

(b) Revoke an assembly plan pursuant to section 711; or

(c) Approve an assembly plan subject to time, place, or manner restrictions that the applicant has advised the Chief of Police are objectionable to the applicant.

706.13 If a timely-filed application is denied or modified, the applicant shall be served with a written notice of denial or modification at least ten (10) days prior to the proposed date of the proposed event.

706.14 Service of the notice of denial or modification shall be made personally or by certified mail.

706.15 If the late filing of an application or ongoing negotiations concerning the terms of plan approval make it impractical to issue a written notice of denial or modification at least ten (10) days prior to the proposed date of the event, every effort shall be made to promptly notify the organizers of the event once a decision to deny or modify the application has been made; and a written notice of denial or modification shall be served as soon as reasonably possible.

707 NON-FIRST AMENDMENT ASSEMBLY EVENTS: PERMIT REQUIREMENT

707.1 A permit shall be issued under this section for a non-First Amendment assembly event including a non-First Amendment related parade, march, race, walk-a-thon or other event if, after consideration of the application and other information that may otherwise be obtained, it appears that the event will otherwise meet the

criteria for a First Amendment assembly as set forth in section 706.9.

707.2 A permit shall not be issued unless the applicant has provided for the services of the number of event monitors that the Chief of Police considers reasonably necessary to ensure that the event will be conducted in conformity with the event permit.

707.3 A permit shall not be issued unless the applicant complies with any special event user fee requirements pursuant to section 720.

708 APPLICATION FOR PERMIT FOR NON-FIRST AMENDMENT ASSEMBLY EVENTS: PROCESSING

708.1 Any person seeking issuance of a non-First Amendment assembly permit, including a permit for a non-First Amendment parade, march, race, or walk-a-thon shall file an application with the Chief of Police on a form issued by the Chief of Police in person or by mail at the Metropolitan Police Department, Special Operations Division Headquarters, currently located at 2301 L Street, N.W., Washington, D.C. 20037. Application forms can be obtained on line at mpdc.dc.gov.

708.2 Where an application for a permit is filed sixty (60) days or more prior to the date of the proposed non-First Amendment event, the application shall receive final action no later than thirty (30) days prior to the proposed date of the event. This provision shall not apply where the applicant has voluntarily agreed to waive the thirty (30) day time limit.

708.3 Subject to section 708.4, an application for a non-First Amendment assembly permit shall be filed not less than fifteen (15) days before the date on which the event is proposed to be conducted.

708.4 Applications filed less than fifteen (15) days prior to the proposed date of the event shall receive favorable action only if there is sufficient time to review the application and to coordinate with the event organizers to resolve questions or problems concerning the application for or the conduct of the event.

708.5 Where applications for a permit for a non-First Amendment assembly plan are not submitted in a timely manner, the Chief of Police may deny a permit application in the interest of public safety based on the criteria set forth in section 706.9.

708.6 The application for a non-First Amendment event permit shall contain all information required for approval of a First Amendment assembly as set forth in section 706.11 (a)-(j).

708.7 If none of the persons listed in §§ 706.11(a) and (b) of this chapter are located within the Washington Metropolitan Area, the name, address, and telephone number of a local representative shall be included.

709 APPLICATION FOR PERMIT FOR A NON-FIRST AMENDMENT ASSEMBLY: ISSUANCE OF PERMIT

709.1 Final action shall be taken on an application for a non-First Amendment assembly permit within a reasonably prompt period of time after receipt of the completed application.

709.2 Final action on an application shall consist of the following:

(a) Issuance of a permit in accordance with the terms of the application;

(b) Issuance of a permit in accordance with terms other than those set forth in the application; or

(c) Denial of the application by the Chief of Police.

709.3 If a timely-filed application is denied or modified, the applicant shall be served with a written notice of denial or modification at least ten (10) days prior to the proposed date of the proposed event.

709.4 The notice of denial or modification shall include specific reasons for the denial or modification.

709.5 Service of the notice of denial or modification shall be made personally or by certified mail.

709.6 If the late filing of an application or ongoing negotiations concerning the terms of a permit make it impractical to issue a written notice of denial or modification at least ten (10) days prior to the proposed date of the event, every effort shall be made to promptly notify the organizers of the event once a decision to deny or modify the application has been made; and a written notice of denial or modification shall be served as soon as reasonably possible.

710 CONTENTS OF A PERMIT FOR A NON-FIRST AMENDMENT ASSEMBLY EVENT

710.1 A permit for a non-First Amendment assembly such as a non-First Amendment related parade, march, race, or walk-a-thon shall contain the following information as relevant:

(a) The date, assembly area, time for assembly, and starting time of the event;

- (b) The specific route plan of the event;
- (c) The number of monitors to be furnished by the event organizer;
- (d) The number and types of animals and vehicles, and the number of bands, other musical units, and sound trucks, if any;
- (e) The portion of the street, sidewalk, or other public way that is to be occupied by the event participants, including the organizer; and the location of reviewing stands, if any;
- (f) The number and size of banners, placards, or other devices, consistent with the information filed on the application, and any restrictions concerning the number and size of banners, placards, or other devices;
- (g) The disbanding area and time for disbanding; and
- (h) Other information that is reasonably necessary for the conduct of the event and the enforcement of this chapter.

711 REVOCATION OF PLAN APPROVAL FOR A FIRST AMENDMENT ASSEMBLY OR A PERMIT FOR A NON-FIRST AMENDMENT EVENT

- 711.1 Plan approval for a First Amendment assembly or a permit issued for a non-First Amendment event shall be revoked if it is determined that the event is being conducted in violation of the standards for approval or issuance, under these regulations.
- 711.2 Notices of revocation shall be in writing, with the reasons for revocation specifically set forth.
- 711.3 A copy of the notice of revocation shall be served personally, or delivered by certified mail, return receipt requested.
- 711.4 If, due to exigent circumstances, it is necessary to revoke approval of a First Amendment assembly plan or a permit for a non-First Amendment assembly immediately prior to or during the event, notice of the revocation shall be made in writing by the Metropolitan Police Department official responsible for monitoring the event.

712 APPEALS

- 712.1 Any applicant whose proposed assembly plan or permit has been denied or revoked prior to the date of the planned assembly, or granted subject to time, place, or manner restrictions deemed objectionable by the applicant, may appeal

such decision to the Mayor or the Mayor's designee, who shall concur with, modify, or overrule the decision of the Chief of Police.

- 712.2 An appeal to the Mayor or the Mayor's designee shall be in writing, and shall include a statement of the basis for the objection to the denial, revocation prior to the date of the planned assembly, or time, place or manner restrictions deemed objectionable by the applicant, and a copy of any written decision issued by the Chief of Police.
- 712.3 The Mayor or the Mayor's designee shall make a decision on appeal expeditiously and prior to the date and time the assembly is planned to commence, and shall explain in writing the reasons for the decision.

Comments on these proposed rules should be submitted, in writing, to Terrence D. Ryan, General Counsel, Metropolitan Police Department, Room 4125, 300 Indiana Avenue NW, Washington, D.C. 20001, within forty-five (45) days of the date of the publication of this notice in the D.C. Register. Additional copies of these proposed rules are available from the above address.

METROPOLITAN POLICE DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

The Chief of Police, pursuant to section 114 of the First Amendment Assemblies Act of 2004 (Act), effective April 13, 2005 (D.C. Law 15-352, D.C. Official Code § 5-331.14 (2006 Repl.)), hereby gives notice of the adoption of the following rules governing the issuance of police passes for media personnel. These proposed rules are being republished after revision in response to comments received following the first publication of the proposed rules. (53 D.C. Reg. 1568) (March 3, 2006). The Chief of Police also gives notice of intent to take final rulemaking action to adopt these rules in not less than forty-five (45) days from the publishing of this notice in the D.C. Register.

Title 24 DCMR, Chapter 21 (Police Press Passes) is amended as follows:

2102 POLICE PRESS PASSES: APPLICATION PROCEDURES

- 2102.1 The Chief of the Metropolitan Police Department is authorized to issue press passes to bona fide media representatives of print, electronic, university or college, television, radio, and newsreel media who gather information or pictures for distribution or broadcast to the public as news. Media representatives include self-employed or freelance writers / journalists who regularly gather news for online media.
- 2102.2 Press passes shall be issued in a form approved by the Chief of Police or his or her designee and shall be valid for two years. The Chief of Police or his or her designee may withhold the issuance of a press pass to any person convicted of a felony, a crime of violence as defined in D.C. Official Code § 23-1331 (4), or a crime of moral turpitude. The Chief of Police or his or her designee shall inform the applicant in writing the basis for any denial of a press pass. An applicant may appeal the denial of the issuance of a press pass to the Chief of Police.
- 2102.3 An application for a police press pass shall include a statement that the holder of a press pass:
- (a) assumes all risks incident to the use of the pass;
 - (b) will obey all orders and directions of any member of the Metropolitan Police Department; and
 - (c) will comport himself or herself in a manner that does not interfere with, hinder, or obstruct any authorized person engaged in preserving the peace, maintaining order, and protecting life and property.
- Nothing in this section shall constitute a waiver or release of any claim the holder of a press pass may have for harm or injury intentionally or negligently caused to such person. Any conflicts or disagreements with

such orders or directions shall be resolved through consultation with the Metropolitan Police Department's Director of the Office of Public Information or his or her designee.

2102.4 A press pass issued pursuant to this section automatically expires upon the holder's termination of employment or occupation as a media representative. Upon such expiration, the holder shall immediately surrender the pass to the Metropolitan Police Department Office of Public Information or to his or her employer, who shall forward the press pass to the Office of Public Information.

2102.5 Press passes shall expire two years from the date of issuance and may be renewed on the condition that the expired passes shall be surrendered with the request for renewal.

2102.6 Press passes shall not be transferable.

2102.7 Pursuant to this section, the Chief of Police, upon a showing of good cause, shall have the authority to limit the total number of press passes issued to media representatives and organizations for an event.

2103 GENERAL PROVISIONS

2103.1 A media representative displaying a press pass is authorized to enter designated areas, set aside by members of the Metropolitan Police Department, for the purpose of gathering, photographing or reporting news events. The holder of a press pass is not required to remain in any such designated area and may not be restricted from any area open to the general public or any area open to participants in a First Amendment assembly.

2103.2 The holder of a press pass is authorized to cross a police or fire line, unless, in the judgment of a Metropolitan Police Department officer or official, to do so would interfere with the management of a police or fire scene or would endanger the public safety.

2103.3 Possession of a press pass does not authorize the holder to enter a building or private property that may be located within a police or fire line.

2103.4 MPD officers shall allow media representatives reasonable access to all areas where a First Amendment assembly is occurring. At a minimum, officers shall allow media representatives no less access than that enjoyed by members of the general public. Unless inconsistent with public safety considerations, officers shall allow media representatives access to areas closed to the general public in order to assist their ability to report on such

an event. Officers shall also make reasonable accommodations to allow media representatives effectively to use photographic, video, or other equipment relating to their reporting of a First Amendment assembly.

- 2103.5 The Chief of Police or his or her designee may accept or honor a press pass issued to a media representative by a local, state or federal governmental body within or outside the District of Columbia. The holder of such a press pass shall enjoy the same rights and privileges as if the pass were issued directly by the Chief of Police.
- 2103.6 It is the policy of the Metropolitan Police Department that media representatives shall have maximum access to First Amendment assemblies, fires, crime scenes, weather-related events, accidents and other news events, consistent with maintaining public safety and the management of a police or fire scene.
- 2103.7 The commanding officer at the scene of a First Amendment assembly or other news event, in consultation with the Director of the Office of Public Information, shall ensure that the policy set forth in subsection 2102.13 and the applicable provisions of these regulations are carried out.
- 2103.8 Press passes and credentials shall be plainly exposed to view whenever the persons to whom they are issued are using them.
- 2103.9 The Chief of Police shall appoint an advisory committee composed of representatives of the media, universities and colleges, which may make recommendations concerning the implementation of these rules.

Comments on these proposed rules should be submitted in writing to Terrence D. Ryan, General Counsel, Metropolitan Police Department, Room 4125, 300 Indiana Avenue N.W., Washington, D.C. 20001, within thirty (30) days of the date of the publication of this notice in the D.C. Register. Additional copies of these proposed rules are available from the above address.

METROPOLITAN POLICE DEPARTMENT**NOTICE OF PROPOSED RULEMAKING**

The Chief of Police, pursuant to section 208(a) of the Police Investigations Concerning First Amendment Activities Act of 2004 (Act) (2006 Supp.), effective April 13, 2005 (D.C. Law 15-352, D.C. Official Code § 5-333.01 *et seq.*), hereby gives notice of the adoption of the following rules governing investigations and preliminary inquiries involving First Amendment activities, including the authorization, conduct, monitoring, and termination of investigations and preliminary inquiries, and the maintenance, dissemination, and purging of records, files, and information from such investigations and preliminary inquiries. This second proposed rulemaking is necessary in light of comments received by the Metropolitan Police Department in response to the initial proposed rulemaking that was published in the D.C. Register on March 3, 2006 (Vol. 53 – No. 9, pp. 1571-1581). The Chief of Police also gives notice of intent to take final rulemaking action to adopt these rules in not less than forty-five (45) days from publication of this notice in the *D.C. Register*.

Title 24 DCMR, “Public Space and Safety” is amended by adding the following new chapter 26.

CHAPTER 26 Metropolitan Police Department Investigations of Criminal Activity Conducted Under the Guise of First Amendment Activities**2600 Authority and Purpose**

2600.1 The purpose of this chapter is to provide rules within the Metropolitan Police Department (MPD) pursuant to section 208(a) of the Police Investigations Concerning First Amendment Act of 2004 (Act) (2006 Supp.), effective April 13, 2005 (D.C. Law 15-352, D.C. Official Code § 5-333.01 *et seq.*) to govern investigations and preliminary inquiries involving First Amendment activities, including the authorization, conduct, monitoring, and termination of investigations and preliminary inquiries, and the maintenance, dissemination, and purging of records, files, and information from such investigations and preliminary inquiries. These rules do not apply to criminal investigations or inquiries that do not involve criminal activity conducted under the guise of First Amendment activities.

2601 Statement of Policy

2601.1 The District of Columbia is often the site of demonstrations and MPD must be prepared to deal with those groups and individuals that come not to exercise their Constitutional rights, but rather to engage in criminal acts under the guise of First Amendment activities.

2601.2 The rules of this chapter are intended to assure that MPD officers will protect the guarantees of the Constitution while at the same time perform their duties with certainty, confidence and effectiveness. These rules are binding on all MPD

members who are engaged in the investigation of criminal activity as they pertain to First Amendment activities.

- 2601.3 It is MPD policy that investigations involving any criminal activity conform to the guarantees of the Constitution and that care is exercised in the conduct of those investigations so as to protect constitutional rights, and that matters investigated are confined to those supported by a legitimate law enforcement purpose.

2602 General Principles

- 2602.1 To prevent criminal activity conducted under the guise of First Amendment activities and criminal acts of civil disobedience threatening public safety or the security of the city, MPD must, at times, initiate investigations in advance of unlawful conduct. It is important that such investigations not be based on activities protected by the First Amendment. MPD members may not investigate, prosecute, disrupt, interfere with, harass, or discriminate against any person engaged in First Amendment activity for the purpose of punishing, retaliating, preventing, or hindering the person from exercising his or her First Amendment rights. However, when statements advocate criminal activity threatening public safety or the security of the city, or indicate an apparent intent to engage in such criminal conduct, an investigation under these rules may be warranted.
- 2602.2 Investigative action may be required under exigent circumstances before authorization otherwise necessary under these rules can reasonably be obtained, in order to protect life or substantial property interests; to apprehend or identify a fleeing offender; to prevent the hiding, destruction or alteration of evidence; or to avoid other serious impairment or hindrance of an investigation.
- 2602.3 When any investigative action, taken under exigent circumstances, would require an approval under ordinary conditions, such approval shall be obtained as soon as practicable in accordance with the provisions of these rules, and ordinarily will be accomplished within twenty-four (24) hours.
- 2602.4 Where a regular approval or request is required to be in writing, the approval or request following exigent circumstances shall also be in writing.
- 2602.5 Investigations shall be terminated when all logical leads have been exhausted and no legitimate law enforcement purpose justifies their continuance.
- 2602.6 Investigation of any criminal activity, committed by any person or group or member of such group, shall be initiated by, and conducted under the supervision of the commanding officer, Office of the Superintendent of Detectives; commanding officer, Special Investigations Branch, and the commanding officer, Intelligence Section. Nothing in this subsection, however, is intended to prevent any MPD member from reporting his or her observations of suspicious conduct that involves any criminal activity by any person or group or group member, or any other criminal

activity, to his or her commanding officer or to the Office of the Superintendent of Detectives, Special Investigations Branch, Intelligence Section.

- 2602.7 At least once every 90 days, the commanding officer of the Intelligence Section shall inform and advise the commanding officer, Office of the Superintendent of Detectives, concerning the status of all open investigations being conducted pursuant to these rules. This does not preclude the immediate notification to the commanding officer, Office of the Superintendent of Detectives of any investigation of an exigent nature.

2603 Levels of Investigation

- 2603.1 There are two levels of investigative activity: Preliminary Inquiry and Full Investigation.
- 2603.2 The levels are intended to provide MPD with the necessary flexibility to act in advance of the commission of any criminal activity threatening public safety or security of the city.
- 2603.3 If available information shows that the threshold standard for a preliminary inquiry or full investigation is satisfied, then the appropriate investigative activity may be initiated immediately, without progressing through more limited investigative stages.

2604 Preliminary Inquiries

- 2604.1 Preliminary inquiries occur where MPD receives information or an allegation not warranting an investigation because there is not yet "reasonable suspicion" of any criminal activity.
- 2604.2 MPD may initiate preliminary inquiries in response to information indicating the possibility of any criminal activity threatening public safety or the security of the city.
- 2604.3 Preliminary inquiries may be opened immediately, depending on the circumstances presented.
- 2604.4 Preliminary inquiries permit MPD to respond in a measured way to ambiguous or incomplete information, with as little intrusion as the needs of the situation permit.
- 2604.5 Preliminary inquiries are used when there is no complainant involved or when an allegation or information is received from a source of unknown reliability.
- 2604.6 Preliminary inquiries are subject to the limitations on duration under Section 2604.9 and are carried out to obtain the information necessary to make an informed judgment as to whether a full investigation is warranted.
- 2604.7 Preliminary inquiries are not required when facts or circumstances reasonably indicate any criminal activity that would threaten public safety or the security of the

city. In such cases, a full investigation can be opened immediately pursuant to Section 2605.

- 2604.8 Preliminary inquiries may be authorized by the commanding officer, Office of the Superintendent of Detectives, or the appropriate supervisor of similar rank, including the Watch Commander for the Office of Superintendent of Detectives (who possesses the same authority as the Commander). The official authorizing the preliminary inquiry must ensure that the allegation or other information which warranted the inquiry is documented and preserved.
- 2604.9 Preliminary inquiries shall be completed within 60 days after initiation of the first investigative step. The date of the first investigative step is not necessarily the same date on which the first incoming information or allegation was received.
- 2604.10 The commanding officer, Office of the Superintendent of Detectives, or designee of similar rank, including the Watch Commander for the Office of Superintendent of Detectives (who possesses the same authority as the Commander), may grant an extension of time in an inquiry for one subsequent 60-day period. All extension requests shall be in writing, and shall include a statement describing the information already collected and demonstrating why additional time is required to pursue the inquiry. The action taken on any such request for extension shall also be recorded in writing.
- 2604.11 The Chief of Police may grant an extension of time for inquiries requiring more than 120 days. All extension requests shall be in writing, and shall include a statement describing the information already collected and demonstrating why additional time is required to pursue the inquiry. The Chief of Police shall approve a preliminary inquiry under this section that is to remain open for more than 120 days, and shall do so in writing, stating the justification for the preliminary inquiry.
- 2604.12 All lawful investigative techniques may be used in preliminary inquiries, but reasonable precautions should be taken to minimize interference with First Amendment activities without impairing the success of preliminary inquiries. Undercover officers, informants, and mail covers may be used in an authorized preliminary inquiry after written approval and authorization is obtained from the Chief of Police or his designee. Mail openings and wire interception and interception of oral communications, as defined in D.C. Official Code §23-541 (2001), shall not be used in a preliminary inquiry.
- 2604.13 Investigative techniques that may be used without prior authorization from a supervisor in the course of an authorized preliminary inquiry include, but are not limited to:
- (a) examination of MPD indices and files, public sources of information, including available federal, state and local government records;

- (b) interviews of complainant(s), potential subject(s), previously established informants, and other sources of information;
 - (c) interviews of persons who should readily be able to corroborate or deny the truth of the allegation, except this does not include pretext interviews or interviews of a potential subject's employer or coworkers (unless the interviewee was the complainant); and
 - (d) physical, photographic or video surveillance provided that such surveillance does not require a warrant.
- 2604.14 If there is an immediate threat of criminal activity, verbal authority by the designated MPD commanding officer to use the investigative techniques described in 2604.12 is sufficient until a written authorization can be obtained; provided, that other legal requirements have been met. The required written authorization shall be obtained within 5 days of the occurrence of the emergency.
- 2604.15 Preliminary inquiries failing to disclose sufficient information to justify a full investigation shall be terminated.
- 2604.16 MPD shall record terminations of preliminary inquiries and destroy all information that would identify individuals associated with such inquiries.
- 2604.17 MPD shall maintain summaries of terminated preliminary inquiries, omitting information that would identify individuals. Such records shall be maintained in the Intelligence Section consistent with MPD's records retention schedule.
- 2604.18 All requirements regarding preliminary inquiries shall apply to preliminary inquiries that have been extended pursuant to section 2604.10 or 2604.11.
- 2604.19 A MPD member may initiate a preliminary inquiry relating to a First Amendment assembly, for public safety reasons, without authorization, as follows:
- (a) Members may gather public information regarding future First Amendment assemblies and review notices and approved assembly plans;
 - (b) Members may communicate overtly with the organizers of a First Amendment assembly concerning the number of persons expected to participate, the activities anticipated, and other similar information regarding the time, place, and manner of the assembly;
 - (c) Members may communicate overtly with persons other than the organizers of a First Amendment assembly to obtain information relating to the number of persons expected to participate in the assembly; and

- (d) Members may collect information on prior First Amendment assemblies to determine what police resources may be necessary to adequately protect participants, bystanders, and the general public, and to enforce all applicable laws.
- 2604.20 Filming and photographing First Amendment assemblies may be conducted by MPD members for the purpose of documenting violations of law and police actions, as an aid to future coordination and deployment of police units, and for training purposes. Filming and photographing of First Amendment assemblies may not be conducted for the purpose of identifying and recording the presence of individual participants who are not engaged in unlawful conduct.
- 2605 Full Investigations**
- 2605.1 A full investigation may be initiated when there is reasonable suspicion to believe that the persons, groups, or organizations to be investigated are planning or engaged in criminal activity that would threaten public safety or the security of the city. A full investigation may be conducted to prevent, solve or prosecute such criminal activity.
- 2605.2 Reasonable suspicion is a belief based on articulable facts and circumstances indicating a past, current, or impending violation of law. The reasonable suspicion standard is lower than the standard of probable cause; however, a mere hunch is insufficient as a basis for reasonable suspicion. A suspicion that is based upon the race, ethnicity, religion, national origin, lawful political affiliation or activity, or lawful news-gathering activity of an individual or group is not a reasonable suspicion. In determining whether there is reasonable suspicion of a criminal act an investigator may take into account any facts or circumstances that a prudent investigator would consider.
- 2605.3 The standard for opening a full investigation is satisfied where there is not yet a current substantive or preparatory criminal act, but there is reasonable suspicion to believe that the persons, groups, or organizations to be investigated are planning or engaged in criminal activity that would threaten public safety or the security of the city.
- 2605.4 Any lawful investigative technique may be used in a full investigation, subject to the requirements and limitations of sections 2604 and 2606, but reasonable precautions should be taken to minimize interference with First Amendment activities without impairing the success of the investigation; except that the following techniques may be used in an authorized investigation after written approval and authorization is obtained from the Chief of Police or his designee:
- (a) Wire Interception and Interception of Oral Communications, as defined in D.C. Official Code § 23-541;

- (b) Undercover officers and informants; and
 - (c) Mail covers, mail openings, pen registers, and trap and trace devices.
- 2605.5 A full investigation must be authorized in writing by the commanding officer, Office of the Superintendent of Detectives, or the appropriate supervisor of similar rank, including the Watch Commander for the Office of Superintendent of Detectives (who possesses the same authority as the Commander), upon a written recommendation setting forth the facts or circumstances that create a reasonable suspicion that a criminal act has been, is being or will be committed; and describing the relevance of the First Amendment activities to the recommended investigation.
- 2605.6 A full investigation may be initially authorized for a period of 120 days. An investigation may be continued upon renewed authorization every 120 days, up to one year. Renewal authorization shall be obtained from the commanding officer, Office of the Superintendent of Detectives. All requests for renewal authorization and action thereon, shall be in writing, shall describe the information already collected, and shall demonstrate that an extension is reasonably necessary to pursue the investigation. The Chief of Police shall approve investigations open for more than one year in writing, and shall state the justification for the investigation.
- 2605.7 Authorizations shall be reviewed, every 2 months, by a panel consisting of the Assistant Chief, Special Services Command, commanding officer of Office of the Superintendent of Detectives, commanding officer of the Special Investigations Branch, commanding officer of the Intelligence Section and the General Counsel, before the expiration of the period for which the investigation or any renewal thereof, has been authorized.
- 2605.8 An investigation that has been terminated may be reopened upon a showing of the same standard, and pursuant to the same procedures, as required for initiation of an investigation. All requirements regarding investigations shall apply to reopened investigations. Any information pertaining to people found to be not associated with the criminal activity will be destroyed.
- 2606 INVESTIGATIVE TECHNIQUES**
- 2606.1 Nothing in these rules shall be interpreted as prohibiting any MPD member from, in the course of his or her duties, visiting any place, and attending any event that is open to the public, or reviewing information that is in the public domain, on the same terms and conditions as members of the public, so long as members have a legitimate law enforcement objective; provided, that any undercover activities shall be authorized as required by sections 2604 and 2605. When conducting investigations under these rules, MPD may use any lawful investigative technique. All requirements for the use of such methods under the Constitution, applicable statutes, and MPD regulations or policies must be observed.

- 2606.2 Where the conduct of an investigation presents a choice between uses of more or less intrusive methods, MPD investigators shall consider whether the information could be obtained in a timely and effective way by the less intrusive means.
- 2606.3 Undercover officers and informants shall refrain from:
- (a) participating in unlawful acts or threats of violence; using unlawful techniques to obtain information;
 - (b) initiating, proposing, approving, directing, or suggesting unlawful acts or plan to commit unlawful acts;
 - (c) being present during criminal activity or remaining present during unanticipated criminal activity, unless it has been determined to be necessary for the investigation; engaging in any conduct the purpose of which is to disrupt, prevent, or hinder the lawful exercise of First Amendment activities; and
 - (d) attending meetings or engaging in other activities for the purpose of obtaining legally privileged information, such as attorney-client communications or physician-patient communications; and recording or maintaining a record concerning persons or organizations who are not a target of the investigation or preliminary inquiry, unless the information is material to the investigation or preliminary inquiry, or the information would itself justify an investigation or preliminary inquiry under these rules.

2607 FILES AND RECORDS

- 2607.1 The Chief of Police or his designee shall evaluate information to be retained in an Intelligence Section file for the reliability of the source of the information and the validity and accuracy of the content of the information prior to filing. The file shall state whether the reliability, validity, and accuracy of the information have been corroborated. The Chief of Police or his designee shall purge records that are not accurate, reliable, relevant, and timely.
- 2607.2 MPD shall not collect or maintain information about the political, religious, social, or personal views, associations, or activities of any individual, group, or organization unless such information is material to an authorized investigation or preliminary inquiry involving First Amendment activities.
- 2607.3 No information shall be knowingly included in an Intelligence Section file that has been obtained in violation of any applicable federal, state, or local law, ordinance, or regulation. The Chief of Police, or his designee, shall be responsible for establishing that no information is entered in Intelligence Section files in violation of this subsection.

- 2607.4 MPD may disseminate information obtained during preliminary inquiries and investigations conducted pursuant to these rules to federal, state or local law enforcement agencies, or local criminal justice agencies when such information:
- (a) falls within the investigative or protective jurisdiction or litigation-related responsibility of the receiving agency;
 - (b) may assist in preventing an any criminal act or the use of violence, or any other conduct dangerous to human life; or
 - (c) is required to be disseminated by interagency agreement, statute, or other law.
- 2607.5 All requests for dissemination of information from an Intelligence Section file shall be evaluated and approved by the Chief of Police or his designee. All dissemination of information shall be done by written transmittal or recorded on a form that describes the documents or information transmitted, and a record of the dissemination shall be maintained for a minimum of one year.
- 2607.6 Intelligence Section file information shall not be disseminated to any non-law enforcement agency, department, group, organization or individual, except as authorized by law.
- 2607.7 All documentation required under these rules shall be maintained by the Intelligence Section, Special Investigations Branch, and the Office of the Superintendent of Detectives in accordance with general police department practice and applicable record retention and destruction rules, regulations and procedures.
- 2607.8 Any information pertaining to people found to be not associated with the criminal activity will be destroyed.
- 2608 PROTECTION OF PRIVACY AND OTHER LIMITATIONS**
- 2608.1 The law enforcement activities authorized by these rules do not include maintaining files on individuals solely for the purpose of monitoring activities protected by the First Amendment or the lawful exercise of any other rights secured by the Constitution or laws of the United States. Such law enforcement activities must have a valid law enforcement purpose and must be carried out in conformity with all applicable statutes and Department regulations and policies.
- 2608.2 Section 2608.1 does not limit any activities authorized by or carried out under other sections of these rules. The specification of authorized law enforcement activities under this section is not exhaustive, and does not limit other authorized law enforcement activities of the MPD.
- 2608.3 Nothing in these rules shall limit the general reviews or audits of papers, files, contracts, or other records in the possession of the MPD or the District of Columbia,

or the performance of similar services at the specific request of another government agency. Such reviews, audits, or similar services must be for the purpose of detecting or preventing violations of law that are within the investigative responsibility of MPD.

2608.4 Nothing in these rules is intended to limit the Metropolitan Police Department's responsibilities to investigate certain applicants and employees, or to pursue efforts to satisfy any other of its legal rights, privileges, or obligations.

2608.5 These rules are solely for the purpose of internal MPD, Intelligence Section guidance. These rules are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal, nor do they place any limitation on otherwise lawful investigative and litigative prerogatives of MPD.

2609 Training

2609.1 MPD shall require all members assigned to the Intelligence Section, Special Investigations Branch, to attend training on the Police Investigations Concerning First Amendment Act of 2004 and the rules promulgated to implement the Act.

2609.2 MPD shall require all members assigned to the Intelligence Section, Special Investigations Branch, to sign an acknowledgement that they have received, read, understood, will abide by, and will maintain a copy of this Act and the rules promulgated to implement it.

2610 Monitoring of Investigations and Preliminary Inquiries

2610.1 The commanding officer, Office of the Superintendent of Detectives, or a commanding officer of similar rank designated in the MPD regulations, including the Watch Commander for the Office of Superintendent of Detectives (who possesses the same authority as the Commander), shall monitor the compliance of undercover officers and informants with the requirements of these rules.

2610.2 The Chief of Police shall annually prepare a report on the MPD's investigations and preliminary inquiries involving First Amendment activities. The report shall be transmitted to the Mayor and Council and a notice of its publication shall be published in the District of Columbia Register. The report shall include, at a minimum:

- (a) The number of investigations authorized;
- (b) The number of authorizations for investigation sought but denied;
- (c) The number of requests from outside agencies, as documented by forms requesting access to records of investigations conducted pursuant to this title;

- (d) The number of arrests, prosecutions, or other law enforcement actions taken as a result of such investigations; and
- (e) A description of any violations of the Police Investigations Concerning First Amendment Activities Act of 2004 or of the rules issued pursuant to that Act, and the actions taken as a result of the violations, including whether any officer was disciplined as a result of the violation.

2699 Definitions

2699.1 When used in this chapter, the following words and phrases shall have the meanings ascribed:

“First Amendment activities” means constitutionally protected speech or association, or conduct related to freedom of speech, free exercise of religion, freedom of the press, the right to assemble, and the right to petition the government.

“First Amendment assembly” means a demonstration, rally, parade, march, picket line, or other similar gathering conducted for the purpose of persons expressing their political, social, or religious views.

“Informant” means a person who provides information to the police department motivated by the expectation of receiving compensation or benefit, or otherwise is acting under the direction of the MPD.

“Intelligence Section” means the Intelligence Section of the Special Investigations Division of MPD, or its successor section or unit.

“Intelligence Section file” means the investigative intelligence information gathered, received, developed, analyzed, and maintained by the Intelligence Section of the Metropolitan Police Department, pursuant to an investigation or preliminary inquiry involving First Amendment activity.

“Investigation” means an examination of information that occurs when there is reasonable suspicion to believe that criminal activity or activities are being planned or conducted under the guise of First Amendment activities.

“Legitimate law enforcement objective” means the detection, investigation, deterrence, or prevention of crime, or the apprehension and prosecution of a suspected criminal; provided, that a person shall not be considered to be pursuing a legitimate law enforcement objective if the person is acting based upon the race, ethnicity, religion, national origin, lawful political affiliation or activity, or lawful news-gathering activity of an individual or group.

“Mail cover” means the inspection and review of the outside of envelopes of posted mail and other delivered items.

“Mail opening” means the opening and inspection and review of the contents of posted mail and other delivered items.

“Minimization procedures” means reasonable precautions taken to minimize the interference with First Amendment activities, without impairing the success of the investigation or preliminary inquiry.

“MPD” means the Metropolitan Police Department.

“Preliminary Inquiry” means a basic examination of information arising from an allegation of criminal activity under the guise of First Amendment activities.

“Reasonable suspicion” means a belief based on articulable facts and circumstances indicating a past, current, or impending violation of law. The reasonable suspicion standard is lower than the standard of probable cause; however, a mere hunch is insufficient as a basis for reasonable suspicion. A suspicion that is based upon the race, ethnicity, religion, national origin, lawful political affiliation or activity, or lawful news-gathering activity of an individual or group is not a reasonable suspicion.

Comments on these proposed rules should be submitted, in writing, to Terrence D. Ryan, General Counsel, Metropolitan Police Department, Room 4125, 300 Indiana Avenue NW, Washington, D.C. 20001, within forty-five (45) days of the date of the publication of this notice in the D.C. Register. Additional copies of these proposed rules are available from the above address.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., SUITE 200, WEST TOWER
WASHINGTON, D.C. 20005

NOTICE OF PROPOSED RULEMAKING

**FORMAL CASE NO. 945, IN THE MATTER OF THE INVESTIGATION INTO
ELECTRIC SERVICES MARKET COMPETITION AND REGULATORY
PRACTICES,**

AND

**FORMAL CASE NO. 1017, IN THE MATTER OF THE DEVELOPMENT AND
DESIGNATION OF STANDARD OFFER SERVICE IN THE DISTRICT OF
COLUMBIA**

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to Section 2-505 of the District of Columbia Code, of its intent to act upon the proposed tariff of the Potomac Electric Power Company, ("PEPCO" or "Company")¹ in not less than 30 days from the date of publication of this Notice of Proposed Rulemaking ("NOPR") in the *D.C. Register*.

2. In its filing, PEPCO states that the Commission issued Order No. 14171 approving the Company's Reliable Energy Trust Fund ("RETF") surcharge rider with an effective date of February 8, 2007. PEPCO asserts that the Commission also left open the possibility that the RETF surcharge might be revised to reflect the Program Year 2 RETF budget.² Accordingly, PEPCO avers that it has modified the RETF surcharge to reflect actual RETF costs established in the most recent RETF budget. Specifically, PEPCO proposes to amend the following tariff pages:

**ELECTRICITY TARIFF, P.S.C.-D.C. No. 1
Thirty-Fourth Revised Page No. R-1
Thirty-Fourth Revised Page No. R-2
Twenty-Seventh Revised Page No. R-2.1**

¹ *Formal Case No. 945, In the Matter of the Investigation Into Electric Services Market Competition and Regulatory Practices ("Formal Case No. 945"), and Formal Case No. 1017, In the Matter of the Development and Designation of Standard Offer Service in the District of Columbia ("Formal Case No. 1017")*, Letter from Paul H. Harrington, Associate General Counsel, for PEPCO Holdings, Inc. to Ms. Dorothy Wideman, Secretary, Public Service Commission of the District of Columbia, filed March 7, 2007 ("PEPCO Tariff").

² Although PEPCO has styled its tariff as a motion by referring to the Commission's statement in paragraph no. 8 of Order 14171 that "if any party believes that this level should be adjusted to reflect the Program Year 2 RETF budget, such party should file a motion with the Commission by March 12, 2007." This language in the Commission's order allows parties to challenge the amount of the RETF surcharge via motion. This language does not allow parties to alter the normal rulemaking process for a tariff amendment by filing a motion. Therefore, the Commission has determined to treat PEPCO's filing as a normal tariff amendment, which requires notice and comment in the *D.C. Register*.

Third Revised Page No. R-2.2
Seventh Revised Page No. R-26.

3. PEPCO states that the above modifications are necessary because the RETF's Program Year 2 budget is \$10.52 million or approximately \$1 million more than Program Year 1's \$9.52 million budget.³ PEPCO also asserts that this change will require an increase in the surcharge by \$0.00007 per kwh to \$0.00097 per kwh. Finally, PEPCO contends that the Company used its latest 3-year average kwh, from 2004 through 2006, to calculate the surcharge.⁴

4. This filing may be reviewed at the Office of the Commission Secretary, 1333 H Street, N.W., Second Floor, West Tower, Washington, D.C. 20005, between the hours of 9:00 a.m. and 5:30 p.m., Monday through Friday. A copy of the proposed tariff amendment is available upon request, at a per-page reproduction cost.

5. Comments on PEPCO's proposed tariff must be made in writing to Dorothy Wideman, Commission Secretary, at the above address. All comments must be received within 30 days of the date of publication of this NOPR in the *D.C. Register*. Persons wishing to file reply comments may do so no later than 45 days of the date of publication of this NOPR in the *D.C. Register*. Once the comment and reply comment periods have expired, the Commission will take final rulemaking action on PEPCO's filing.

³ See Formal Case Nos. 945 and 1017, PEPCO Tariff at 1; See also Formal Case Nos. 945 and 1017, Order 14171 at 5.

⁴ See Formal Case Nos. 945 and 1017, PEPCO Tariff at 1.