

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Health, pursuant to the authority set forth in Section 7 of the AIDS Health-Care Response Act of 1986 (“Act”), effective June 10, 1986 (D.C. Law 6-121, D.C. Official Code § 7-1606), and Mayor’s Order 2000-55 dated April 12, 2000, hereby gives notice of his intent to adopt the following amendments to Chapter 2 of Title 22 of the District of Columbia Municipal Regulations (DCMR) (Public Health and Medicine) (August 1986).

The rules amend Chapter 2 of Title 22 by aligning the confidential names-based systems in which new cases of both AIDS and HIV are reported to the Director of the Department of Health or a designated agent.

The Director also gives notice of his intent to take final rulemaking action to adopt the proposed rules in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

Chapter 2 of Title 22 (Public Health and Medicine)(August 1986) is amended as follows:

Section 206.2 is amended to read as follows:

206.2. Physicians licensed to practice in the District under the District of Columbia Health Occupations Revision Act of 1985 (D.C. Official Code 3-1201.1 *et seq.*) shall report all diagnosed cases of HIV and AIDS to the Director within forty-eight (48) hours of diagnosis and furnish information the Director deems necessary to complete a confidential case report. Additionally, any provider, laboratory, blood bank, or other entity or facility that provides HIV testing shall report all cases of HIV infection to the Director or his or her designee.

Section 206.3 is amended to read as follows:

206.3. The reports required by section 206.2 shall include the patient’s name, address of residence, including city, state, and zip code, gender, race or ethnicity, mode of exposure, place or country of birth, date of birth, date of diagnosis of HIV or AIDS and opportunistic infections, the name and telephone number of the person making the report, and the name of the entity providing health or medical services.

Section 206.5 is amended to read as follows:

206.5 Information reported under this section shall be used for statistical, public health, epidemiological, and surveillance purposes only. The Director, or

his or her designee, shall not disclose the identity of any person with an HIV infection or reported AIDS case without the person's written permission.

Section 206.6 is added as follows:

206.6 The Department of Health shall ensure continued reasonable access to anonymous HIV testing through alternative testing sites in consultation with HIV planning groups and affected stakeholders, including representatives of persons living with HIV and HIV/AIDS service providers.

Section 211.4 is amended to read as follows:

211.4 Whenever a test made in a public or private laboratory is positive for HIV or is indicative of an HIV diagnosis, including CD4 and viral load tests, the person responsible for the operation of the laboratory shall report the positive test to the Director or an agent of the Director or his or her designee, in writing, within forty-eight (48) hours, giving the following information:

- (a) The name of the subject of the test;
- (b) The name and address of the physician or provider requesting the test;
- (c) The patient's medical record number; and
- (d) All other information required under this section.

Persons desiring to comment on these proposed rules should submit comments in writing to the Department of Health, Office of the General Counsel, 825 North Capitol Street, N.E., 4th Floor, Washington, D.C. 20002, no later than thirty (30) days after the date of publication of this notice in the D.C. Register. Copies of these proposed rules may be obtained between 8:30 A.M. and 5:00 P.M. Monday through Friday, excluding holidays, at the address stated above.

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

**NOTICE OF PROPOSED
REIMBURSEMENT FOR PUBLIC UTILITIES**

**FORMAL CASE NO. 712, IN THE MATTER OF THE INVESTIGATION INTO THE
PUBLIC SERVICE COMMISSION'S RULES OF PRACTICE AND PROCEDURE**

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to D.C. Code § 34-912(b)(3) and Chapter 13, Title 15 of the District of Columbia Municipal Regulations ("15 DCMR"), Rules Implementing the Public Utilities Reimbursement Fee Act of 1980, of its intent to assess the Potomac Electric Power Company ("PEPCO") for the Fiscal Year 2006 appropriated budget of the Commission in not less than thirty (30) days from the date of publication of this Notice of Proposed Reimbursement ("NOPR" or "Notice") in the *D.C. Register*.¹

2. Specifically, D.C. Code § 34-912(b)(3) states, in pertinent part:

[t]he amount of the reimbursement fee to be paid by each public utility other than a local exchange carrier subject to paragraph (2) of this subsection shall be equal to the product of the amounts appropriated, less the amount to be reimbursed by the [alternative electric, gas, and telecommunications] providers subject to paragraph (2) of this subsection, multiplied by the fraction, as determined by the Mayor, represented by the revenues of such public utility derived from utility operations in the District of Columbia that are regulated by the Public Service Commission during such period.

In addition, § 1301.1 of 15 DCMR states:

[e]ach public utility shall be assessed a fraction of the reimbursable budgets of the Commission and of [the] People's Counsel equal to the ratio of that utility's calendar year gross revenues to the sum of the calendar year gross revenues of all public utilities. Calendar year gross revenues are those revenues earned during the preceding calendar year by each public utility from utility operations in the District that are regulated by the Commission.²

3. The Commission determines that \$1,146,954,245.00 were the total 2005 calendar year revenues of all public utilities from utility operations in the District of Columbia that are regulated by the Commission. The Commission further determines that PEPCO's total calendar

¹ D.C. Code § 34-912 (b) (2005 Supp.); *See also*, 15 DCMR § 1300 *et. seq.* (1998).

² 15 DCMR § 1301.1 (1998).

year revenues for calendar year 2005 were \$[PROPRIETARY]. For Fiscal Year 2006, the Mayor proposed and the Council of the District of Columbia approved an appropriated budget of \$7,976,308.00 for the Commission.³ Of this amount, the Commission receives a grant from the federal government for \$124,000 to administer natural gas pipeline safety in the District. The Commission must assess for the remaining portion of our FY 2006 budget, which is \$7,852,308.00. Accordingly, based on the formulas in D.C. Code § 34-912(b)(3) and 15 DCMR § 1301.1, the Commission determines that PEPCO's portion of the Commission's appropriated budget for FY 2006 is [PROPRIETARY] percent, for a total assessment of \$[PROPRIETARY].

4. The Commission's normal practice has been to include the revenues of alternative providers in our total calendar year revenue calculations and to use these numbers as a basis for assessing alternative providers in accordance with D.C. Code § 34-912(b)(1) and (b)(2). However, on March 9, 2006, the Court of Appeals of the District of Columbia ruled in *Washington Gas Energy Services, Inc v. District of Columbia Public Service Commission* that the Commission had "committed fatal procedural errors in promulgating the formula through which the assessments for alternative providers were made," that violated the prohibition against engaging in retroactive rulemaking without express legislative authority.⁴ Thus, the Court concluded that the Commission could not assess alternative providers for the operating budget of the Commission and OPC without having valid rules in place to do so. The Court also left open the question of whether the Commission could establish rules in a fiscal year and assess companies that same fiscal year without violating the prohibition against retroactive rulemaking.⁵

5. The Commission published a Notice of Emergency and Proposed Rulemaking on January 21, 2005, soliciting comments on a proposed assessment formula for alternative providers.⁶ Numerous comments and replies were received from interested persons suggesting alternative methods for assessments. The Commission considered the feasibility of these methods in light of our statutory and regulatory functions and the ability of our agency to administer the assessment methods. Subsequently, the Commission issued a Notice of Final Rulemaking ("NOFR") on May 9, 2006, taking final action that became effective upon the date of publication in the *D.C. Register*.⁷ In light of the Court's ruling and comments on retroactive

³ See the "Fiscal Year 2006 Budget Request Act of 2005," P.L. 109-115, approved June 2, 2005.

⁴ *Washington Gas Energy Services, Inc., v. District of Columbia Public Service Commission, Nos. 05-AA-155 and 05-AA-315*, March 6, 2006.

⁵ Due to the slippage of some of the dates in the rules, the Commission's assessment rules for competitive suppliers are forward-looking and will become effective in FY 2007.

⁶ See Rulemaking at 52 *D.C. Register* 584, rel. January 21, 2005. By Order No. 12505, dated February 10, 2005, the Commission extended the comment period on the NOEPR. On February 18, 2005, the Commission issued a Notice of Extension of Comment Period on the NOPR, which reflected the extension previously granted in Order No. 12505. 52 *D.C. Register* 1674, rel. February 18, 2005. In addition, the Commission amended the NOPR on May 13, 2005, to reflect the changes in the law which requires us to assess alternative gas suppliers for our operating budget. 52 *D.C. Register* 4618, rel May 13, 2005.

⁷ 53 *D.C. Register* 4141-4144 (May 19, 2006). On June 9, 2006 and June 12, 2006 respectively, PEPCO Energy Services and Washington Gas Energy Services filed requests for reconsideration of the Commission's rulemaking and Order. On July 10, 2006, the Commission tolled the time for issuing a decision an additional 30 days.

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rulemaking, the Commission has decided to give notice of our intent to assess only the three public utilities for the Commission's operating budget for FY 2006 to ensure that a budget shortfall does not prevent the Commission from serving the District's ratepayers, businesses, and citizens.

6. This NOPR is on file with the Commission and may be reviewed at the Office of the Commission Secretary, 1333 H Street, N.W., Seventh Floor, East Tower, Washington, D.C. 20005, between the hours of 9:00 a.m. and 5:30 p.m., Monday through Friday. Copies of the NOPR are available upon request, at a per-page reproduction cost. Comments on the NOPR must be made in writing to Ms. Dorothy Wideman, Commission Secretary, at the above address. All comments must be received within thirty (30) days of the date of publication of this NOPR in the *D.C. Register*. Once the comment period expires, the Commission will take final action.⁸

⁸ Once the comment period expires, the Commission intends to assess the three public utilities on before the end of Fiscal Year 2006.

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PUBLIC SERVICE COMMISSION'S RULES OF PRACTICE AND PROCEDURE**

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to D.C. Code § 34-912(b)(3) and Chapter 13, Title 15 of the District of Columbia Municipal Regulations ("15 DCMR"), Rules Implementing the Public Utilities Reimbursement Fee Act of 1980, of its intent to assess Verizon Washington, DC Inc. ("Verizon") for the Fiscal Year 2006 appropriated budget of the Commission in not less than thirty (30) days from the date of publication of this Notice of Proposed Reimbursement ("NOPR" or "Notice") in the *D.C. Register*.¹

2. Specifically, D.C. Code § 34-912(b)(3) states, in pertinent part:

[t]he amount of the reimbursement fee to be paid by each public utility other than a local exchange carrier subject to paragraph (2) of this subsection shall be equal to the product of the amounts appropriated, less the amount to be reimbursed by the [alternative electric, gas, and telecommunications] providers subject to paragraph (2) of this subsection, multiplied by the fraction, as determined by the Mayor, represented by the revenues of such public utility derived from utility operations in the District of Columbia that are regulated by the Public Service Commission during such period.

In addition, § 1301.1 of 15 DCMR states:

[e]ach public utility shall be assessed a fraction of the reimbursable budgets of the Commission and of [the] People's Counsel equal to the ratio of that utility's calendar year gross revenues to the sum of the calendar year gross revenues of all public utilities. Calendar year gross revenues are those revenues earned during the preceding calendar year by each public utility from utility operations in the District that are regulated by the Commission.²

3. The Commission determines that \$1,146,954,245.00 were the total 2005 calendar year revenues of all public utilities from utility operations in the District of Columbia that are regulated by the Commission. The Commission further determines that Verizon's total calendar

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year revenues for calendar year 2005 were \$[PROPRIETARY]. For Fiscal Year 2006, the Mayor proposed and the Council of the District of Columbia approved an appropriated budget of \$7,976,308.00 for the Commission.³ Of this amount, the Commission receives a grant from the federal government for \$124,000 to administer natural gas pipeline safety in the District. The Commission must assess for the remaining portion of our FY 2006 budget, which is \$7,852,308.00. Accordingly, based on the formulas in D.C. Code § 34-912(b)(3) and 15 DCMR § 1301.1, the Commission determines that Verizon's portion of the Commission's appropriated budget for FY 2006 is [PROPRIETARY] percent, for a total assessment of \$[PROPRIETARY].

4. The Commission's normal practice has been to include the revenues of alternative providers in our total calendar year revenue calculations and to use these numbers as a basis for assessing alternative providers in accordance with D.C. Code § 34-912(b)(1) and (b)(2). However, on March 9, 2006, the Court of Appeals of the District of Columbia ruled in *Washington Gas Energy Services, Inc v. District of Columbia Public Service Commission* that the Commission had "committed fatal procedural errors in promulgating the formula through which the assessments for alternative providers were made," that violated the prohibition against engaging in retroactive rulemaking without express legislative authority.⁴ Thus, the Court concluded that the Commission could not assess alternative providers for the operating budget of the Commission and OPC without having valid rules in place to do so. The Court also left open the question of whether the Commission could establish rules in a fiscal year and assess companies that same fiscal year without violating the prohibition against retroactive rulemaking.⁵

5. The Commission published a Notice of Emergency and Proposed Rulemaking on January 21, 2005, soliciting comments on a proposed assessment formula for alternative providers.⁶ Numerous comments and replies were received from interested persons suggesting alternative methods for assessments. The Commission considered the feasibility of these methods in light of our statutory and regulatory functions and the ability of our agency to administer the assessment methods. Subsequently, the Commission issued a Notice of Final Rulemaking ("NOFR") on May 9, 2006, taking final action that became effective upon the date of publication in the *D.C. Register*.⁷ In light of the Court's ruling and comments on retroactive

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year revenues for calendar year 2005 were \$[PROPRIETARY]. For Fiscal Year 2006, the Mayor proposed and the Council of the District of Columbia approved an appropriated budget of \$7,976,308.00 for the Commission.³ Of this amount, the Commission receives a grant from the federal government for \$124,000 to administer natural gas pipeline safety in the District. The Commission must assess for the remaining portion of our FY 2006 budget, which is \$7,852,308.00. Accordingly, based on the formulas in D.C. Code § 34-912(b)(3) and 15 DCMR § 1301.1, the Commission determines that WGL's portion of the Commission's appropriated budget for FY 2006 is [PROPRIETARY] percent, for a total assessment of \$[PROPRIETARY].

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**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

**NOTICE OF PROPOSED RULEMAKING
APPLICATION NO. 17543**

The Board of Zoning Adjustment of the District of Columbia, pursuant to the authority set forth in the Foreign Missions Act, (96 Stat. 283, Pub. L. 97-241, codified at D.C. Official Code § 6-1301, *et seq.*), and the Zoning Regulations of the District of Columbia, hereby gives notice of its intention to approve, or in the alternative, disapprove, Application No. 17543, of Embassy of the Kyrgyz Republic, to permit the use of a chancery in a D/R-3 District at premises 2360 Massachusetts Avenue, N.W. (Square 2507, Lot 50). Final action on this application will be taken in not less than thirty days from the date of publication of this notice.

Written comments may be submitted to the Board of Zoning Adjustment through Jerrily R. Kress, FAIA, Director of the Office of Zoning, at 441 4th Street, N.W., Suite 210, Washington, D.C. 20001. Copies of this notice are available from the Office of Zoning. For further information, call the Office of Zoning at (202) 727-6311.