DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption of an amendment of section 934 (Physical Therapy Services) of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR). These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for physical therapy services provided to participants with mental retardation and developmental disabilities in the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver), which was approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, with an effective date of November 20, 2007.

A notice of emergency and proposed rulemaking was published on December 14, 2007 (54 DCR 12068). No comments were received. The December 14th rulemaking changed the previously published rules at 53 DCR 97 (January 6, 2006), by providing for more effective planning and follow-up reporting. This rulemaking further changes the December 14th rulemaking by modifying the definition of private practice so that qualified social services agencies employing licensed physical therapists can provide physical therapy services.

A notice of emergency and proposed rulemaking was published in the *DC Register* on April 4, 2008 (55 DCR 003514). No comments were received. No substantive changes have been made. These rules shall become effective on the date of publication of this notice in the *DC Register*.

Section 934 of Chapter 9 of Title 29 DCMR is deleted in its entirety and amended to read as follows:

934 PHYSICAL THERAPY SERVICES

934.1 Physical therapy services shall be reimbursed by the District of Columbia Medicaid Program for each participant with mental retardation and developmental disabilities in the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements set forth in this section.

934.2 To be eligible for reimbursement, physical therapy services shall be:

(a) Ordered by the person's physician;

(b) Reasonable and necessary to the treatment of the person's illness, injury, or long term disability, or to the restoration or maintenance of function affected by the injury, illness, or long term disability; and

(c) Included in the person's individual habilitation plan or individual support plan and Plan of Care.

934.3 Each individual providing physical therapy services shall be an employee of a home health agency or a physical therapist in private practice with a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for physical therapy services under the Waiver.

934.4 In addition to the other requirements of this section, a physical therapist in private practice shall meet all of the following conditions:

(a) Maintain a private office, even if services are always furnished in the person's home;

(b) Meet all state and local licensure laws and rules;

(c) Maintain a minimum of one million dollars in professional liability insurance;

(d) If services are provided in a private practice office space, the space shall be owned, leased, or rented by the private practice and be used exclusively for the purpose of operating the private practice; and

(e) Physical therapy assistants and physical therapy aides shall be personally supervised by the physical therapist. Assistants and aids shall also be employed by the physical therapist or the partnership group to which the physical therapist belongs or the same private practice that employs the physical therapist. Personal supervision requires the physical therapist to be in the room during the performance of the service.

934.5 Each individual providing physical therapy services shall:

(a) Be a licensed physical therapist;

(b) Have a minimum of two (2) years of experience as a physical therapist;

(c) Be acceptable to the person to whom services are provided;

(d) Demonstrate annually that he or she is free from communicable disease as confirmed by an annual PPD Skin Test or documentation thereof from a physician;

(e) Have the ability to communicate with the person to whom services are provided;

(f) Be able to read, write, and speak the English language; and

(g) Comply with the requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238; D.C. Official Code § 44-551 *et seq.*).

934.6 Each physical therapist, at least annually, shall provide the Department on Disability Services (DSS) and the Department of Health, Medical Assistance Administration, with a brochure, in printed or electronic form, listing his or her academic background, licensure information, experience, and the nature of his or her practice to assist Waiver enrollees in making provider selection decisions.

934.7 Physical therapists, without regard to their employer of record, shall be selected by the person to receive services, or that person's guardian or legal representative**,** and shall be answerable to the person receiving services. Any organization substituting practitioners for more than a two (2) week period or four (4) visits due to emergency or availability events shall request a case conference with the DDS Case Manager so that the person receiving services may select a new practitioner.

934.8 The duties of each provider shall include, at a minimum, the following:

(a) Preparing a report that summarizes the physician's order, measures the person's strength, range of motion, balance and coordination, posture, muscle performance, respiration, and motor functions. Additionally, developing and describing treatment plans that provide treatment strategies, including direct therapy, training caregivers, monitoring requirements, monitoring instruments, monitoring instructions, and anticipated outcomes;

(b) Maintaining ongoing involvement and consultation with other service providers and caretakers;

(c) Ensuring that the person's needs are met in accordance with the physician's order;

(d) Providing consultation and instruction to the person, family, or other caregivers;

(e) Recording progress notes on each visit; and

(f) Conducting periodic examinations and modifying treatments for the person receiving services, when necessary.

934.9 The physical therapist shall be responsible for providing written documentation in the form of reports, assessments for physical therapy services, physician's orders, progress notes, and other pertinent documentation of the person's progress or lack of progress, medical conditions, functional losses, and treatment goals that demonstrate that the services are and continue to be reasonable and necessary. The documentation shall include evidence that services did not exceed the authorized frequency and duration as authorized for physical therapy services in the physician's order. The home health agency or physical therapist in private practice shall maintain a copy of the documentation for at least six (6) years after concluding services to the person.

934.10 The reimbursement rate for physical therapy services shall be sixty-five dollars ($65.00) an hour for a full assessment of the individual, preparation of summary documentation, and delivery of that documentation. The billable unit of service for physical therapy services shall be fifteen (15) minutes. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes in order to bill a unit of service. Billable services shall include updating medical records and verifying that the summary documentation was delivered to the person, or his or her guardian or legal representative, to the physician, and to DDS.

934.11 The reimbursement rate for ongoing physical therapy services shall be sixty-five dollars ($65.00) per hour for the period specified in the physical therapy report and approved by the physician. The billable unit of service for physical therapy services shall be fifteen (15) minutes. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes in order to bill a unit of service.

934.12 For persons between the ages of 18 and 21 years, EPSDT under the District of Columbia State Plan for Medical Assistance shall be fully utilized before accessing physical therapy services under the Waiver.

934.99 DEFINITIONS

When used in this section, the following terms and phrases shall have the meanings ascribed:

EPSDT – Early and Periodic Screening, Diagnostic and Treatment Services are designed for Medicaid-eligible children under the age of twenty-one (21) that include

periodic screenings to identify physical and mental conditions, vision, hearing and dental, as well as diagnostic and treatment services to correct conditions identified during screenings.

Individual Habilitation Plan (IHP) – That plan as set forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1304.03).

Individual Support Plan – The successor to the IHP as defined in the 2001 Plan for Compliance and Conclusion of *Evans v. Williams*.

Physical Therapist – An individual who is licensed to practice physical therapy pursuant to section 501 of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1205.01) or licensed as a physical therapist in the jurisdiction where services are provided.

Physical Therapy Services – The practice of physical therapy, as defined by section 102(12)(A) of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201.02(12)(A)).

Physical Therapy Aide – An individual who works only under the direct supervision of a physical therapist, and whose activities do not require advanced training in, or complex application of, therapeutic procedures or other standard procedures involved in the practice of physical therapy.

Physical Therapy Assistant – An individual who is licensed to practice as a physical therapy assistant pursuant to section 501 of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1205.01) or licensed to practice as a physical therapy assistant in the jurisdiction where services are provided.

Physician – An individual who is licensed to practice medicine pursuant to section 501 of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 D.C. Law 6-99; D.C. Official Code § 3-1205.01) or licensed to practice medicine in the jurisdiction where services are provided.

Person – An individual with intellectual and developmental disabilities who has been determined eligible to receive services under the Waiver.

Plan of Care – A written service plan that meets the requirements set forth in section 1904.4 of Title 29 DCMR, is signed by the person receiving services, and is used to pre-authorize Waiver services.

Private Practice – An individual whose practice is a partnership or an unincorporated solo practice. Private practice also includes an individual who is practicing physical therapy as an employee of an unincorporated practice, a

professional corporation, or other incorporated therapy practice. For the purposes of this rule, an individual who is licensed to practice physical therapy and is employed by a social services agency providing physical therapy service under this rule shall be considered in private practice. Private practice does not include individuals working as employees of a hospital, nursing facility, clinic, home health agency, rehabilitation facility, or any other entity that has a Medicaid provider agreement which includes physical therapy in the provider's reimbursement rate.

Progress Note – A dated, written notation by a member of the physical therapy services team that summarizes facts about a person's care and response to treatment during a given period of time.

Provider – An individual or business entity that provides physical therapy services pursuant to this chapter.

Waiver – The Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities as approved by the Council of the District of Columbia (Council) and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), as may be further amended and approved by the Council and CMS.

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in an Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption of an amendment to section 935 of Chapter 9 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), entitled "Occupational Therapy Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for occupational therapy services provided by a licensed occupational therapist to participants with mental retardation and developmental disabilities in the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver), which was approved the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, with an effective date of November 20, 2007.

A notice of emergency and proposed rulemaking was published on December 7, 2007 (54 DCR 11747). No comments were received. The December 7th rulemaking changed the previously published rules at 53 DCR 102 (January 6, 2006), by adding more effective planning and follow-up reporting and setting the reimbursement rate at sixty-five dollars ($65) per hour. This rulemaking further changes the December 7th rulemaking by modifying the definition of private practice so that qualified social services agencies employing licensed occupational therapists can provide occupational therapy services.

A notice of emergency and proposed rulemaking was published in the *DC Register* on April 4, 2008 (55 DCR 003520). No comments on the proposed rules were received. No substantive changes have been made. These rules shall be come effective on the date of publication of this notice in the *DC Register*.

Section 935 (Occupational Therapy Services) of Chapter 9 of Title 29 DCMR is deleted in its entirety and amended to read as follows:

935 OCCUPATIONAL THERAPY SERVICES

935.1 Occupational therapy services shall be reimbursed by the Medicaid Program for each participant in the Home and Community-Based Services Waiver for Persons with Mental Retardation and Developmental Disabilities subject to the requirements set forth in this section.

935.2 To be eligible for reimbursement, occupational therapy services shall be:

(a) Ordered by a physician;

(b) Reasonable and necessary to the treatment of the person's illness, injury, or long term disability or to the restoration or maintenance of function affected by the injury, illness or long term disability; and

(c) Included in the person's individual habilitation plan (IHP) or individual support plan (ISP) and Plan of Care.

935.3 Each person providing occupational therapy services shall be an employee of a home health agency or an occupational therapist in private practice with a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for occupational therapy services under the Waiver.

935.4 In addition to the other requirements of this section, the occupational therapist in private practice shall meet all of the following conditions:

(a) Maintain a private office, even if services are always furnished in the person's home;

(b) Meet all state and local licensure laws and rules;

(c) Maintain a minimum of one (1) million dollars in liability insurance;

(d) Ensure that occupational therapy services are provided consistent with the person's IHP or ISP and Plan of Care;

(e) If services are provided in a private practice office space, the space shall be owned, leased or rented by the private practice and be used exclusively for the purpose of operating the private practice; and

(f) An occupational therapy assistant, licensed in the District of Columbia (D.C. Laws 16-220 and 16-221) or in the state where services are provided, shall be personally supervised by the occupational therapist. Occupational therapy assistants shall also be employed by the occupational therapist or the partnership group to which the occupational therapist belongs or the same private practice that employs the occupational therapist. Personal supervision requires the occupational therapist to be in the room during the performance of the service.

935.5 Each person providing occupational therapy services shall:

(a) Be a licensed occupational therapist or be an occupational therapy assistant working under the direct supervision of a licensed occupational therapist;

(b) Have a minimum of two (2) years of experience as an occupational therapist or occupational therapy assistant;

(c) Be acceptable to the person to whom services are provided;

(d) Demonstrate annually that he or she is free from communicable disease as confirmed by an annual PPD Skin Test or documentation from a physician;

(e) Have at least one (1) year of experience working with persons with mental retardation and developmental disabilities;

(f) Agree to carry out the responsibilities to provide services consistent with the person's IHP or ISP and Plan of Care;

(g) Complete pre-service and in-service training approved by DDS;

(h) Have the ability to communicate with the person to whom services are provided;

(i) Be able to read, write, and speak the English language; and

(j) Comply with the requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238), as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code § 44-551 *et seq.*).

935.6 Each occupational therapist shall provide the Department on Disability Services (DDS) and the Medical Assistance Administration with a brochure listing their academic background, licensure information, experience and the nature of their practice to assist those who may receive services in making their provider selection.

935.7 An occupational therapist, without regard to their employer of record, shall be selected by the person receiving services or their guardian or legal representative to provide services to the person receiving services and shall be answerable to the person receiving services. Any organization substituting practitioners for more than a two week period or four visits due to emergency or availability events shall request a case conference with the DDS Case Manager so that the person receiving services can select a new practitioner.

935.8 The duties of each person providing occupational therapy services shall include, at a minimum, the following:

(a) Preparing a report that summarizes the physician's order, measures the person's strength, range of motion, balance and coordination, posture,

muscle performance, respiration, and motor functions and developing and describing treatment plans that describe treatment strategies including direct therapy, training caregivers, monitoring requirements, monitoring instruments, monitoring instructions, and anticipated outcomes;

(b) Maintaining ongoing involvement and consultation with other service providers and caretakers;

(c) Ensuring that the person's needs are met in accordance with the physician's order;

(d) Providing consultation and instruction to the person, family, or other caregivers;

(e) Recording progress notes on each visit; and

(f) Conducting periodic examinations and modifying treatments for the person receiving services, when necessary.

935.9 The occupational therapist shall be responsible for providing written documentation in the form of reports, assessments for occupational therapy services, physician's orders, visit notes, progress notes, and other pertinent documentation of the person's progress or lack of progress, medical conditions, functional losses, and treatment goals that demonstrate that the services are and continue to be reasonable and necessary. The documentation shall include evidence that services did not exceed the authorized frequency and duration as authorized for occupational therapy services in the physician's order. The agency or occupational therapist in private practice shall maintain a copy of the documentation for at least six (6) years after the person's date of service.

935.10 The reimbursement rate for occupational therapy services shall be sixty-five dollars ($65.00) per hour for a full assessment of the individual, preparation of summary documentation, and delivery of that documentation. The billable unit of service for occupational therapy services shall be fifteen (15) minutes. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to bill a unit of service. The tasks shall include updating medical records and verification that the documentation was delivered to the primary care physician, DDS Case Manager and the place of residence of the person receiving services.

935.11 The reimbursement rate for ongoing occupational therapy services shall be sixty-five dollars ($65.00) per hour for the period specified in the occupational therapy report and approved by the physician. The billable unit of service for occupational therapy services shall be fifteen (15) minutes. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to bill a unit of service.

935.12 Each provider shall offer the Hepatitis B vaccination to each person providing services pursuant to these rules and maintain a copy of the acceptance or declination of the vaccine.

935.99 DEFINITIONS

When used in this section, the following terms and phrases shall have the meanings ascribed:

Clinical Record – A comprehensive compilation of medical and other data that identifies the person and justifies and describes the diagnosis and treatment of the person.

Individual Habilitation Plan (IHP) – That plan as set forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1304.03).

Individual Support Plan (ISP) – The successor to the individual habilitation plan (IHP) as defined in the 2001 Plan for Compliance and Conclusion of *Evans v. Williams*.

Occupational Therapist – A person who is licensed or authorized to practice occupational therapy pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201 *et seq.*) or licensed as an occupational therapist in the jurisdiction where services are provided.

Occupational Therapy Assistant – A person who is authorized to practice as an occupational therapy assistant under the direct supervision of a licensed occupational therapist pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25; 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201 *et seq.*) or licensed or authorized to practice as an occupational therapy assistant in the jurisdiction where services are provided.

Physician – A person who is authorized to practice medicine pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 D.C. Law 6-99; D.C. Official Code § 3-1201 *et seq.*) or licensed as a physician in the jurisdiction where services are provided.

Person – An individual with intellectual and developmental disabilities who has been determined eligible to receive services under the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

Plan of Care – A written service plan that meets the requirements set forth in section 1904.4 of Title 29 DCMR, is signed by the person receiving services, and is used to prior authorize Waiver services.

Private Practice – An individual whose practice is an unincorporated solo practice or unincorporated partnership. Private practice also includes an individual who is practicing therapy as an employee of an unincorporated practice, a professional corporation, or other incorporated therapy practice. For the purposes of this rule, an individual who is licensed to practice occupational therapy and is employed by a social services agency providing occupational therapy service under this rule shall be considered in private practice. Private practice does not include individuals when they are working as employees of a hospital, nursing facility, clinic, home health agency, rehabilitation facility or any other entity that has a Medicaid provider agreement which includes physical therapy in the provider's reimbursement rate.

Progress Note – A dated, written notation by a member of the health care team that summarizes facts about a person's care and response to treatment during a given period of time.

Provider – Any non-profit, home health agency, social service agency or other business entity that provides services pursuant to these rules.

Waiver – Shall mean the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities as approved by the Council of the District of Columbia (Council) and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), as may be further amended and approved by the Council and CMS.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., 2nd FLOOR, WEST TOWER
WASHINGTON, D.C. 20005

NOTICE OF FINAL RULEMAKING

ET08-1, IN THE MATTER OF THE POTOMAC ELECTRIC POWER COMPANY'S SCHEDULES "SSL-OH" AND "SSL-UG", P.S.C.-D.C. No.1

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to Section 2-505 of the District of Columbia Official Code,[1] of its final rulemaking action, taken in the above-captioned proceeding.

2. The Potomac Electric Power Company ("PEPCO") filed with the Commission a revised rate schedule "SSL-OH", servicing street lights served from overhead lines, and a revised rate schedule "SSL-UG", servicing street lights served from underground lines.[2] As indicated by PEPCO, these changes reflect "the close out of Mercury Vapor Lights" in "compliance with the Energy Policy Act of 2005, 42 U.S.C.A. § 6295(ee)."[3] In addition, for street lights served from underground lines, PEPCO proposes to replace the Mercury Vapor Lights with High Pressure Sodium Lights.[4] Specifically, PEPCO proposes to amend the following eight (8) tariff pages:

ELECTRICITY TARIFF, P.S.C.-D.C. No. 1
Thirty-Eighth Revised Page No. R-1
Thirty-Eighth Revised Page No. R-2
Thirty-First Revised Page No. R-2.1
Seventh Revised Page No. R-2.2
Third Revised Page No. R-12
Third Revised Page No. R-12.1
Fifth Revised Page No. R-13
Fifth Revised Page No. R-13.1

3. The Commission issued a Notice of Proposed Rulemaking ("NOPR"), which was published in the D.C. Register on March 28, 2008.[5] No comments were filed in response to the NOPR. Subsequently, the Commission approved PEPCO's revised rate schedules "SSL-OH" and "SSL-UG" by Order No. 14841. These rate schedules shall become effective upon the date of publication of this Notice of Final Rulemaking in the *D.C. Register*. A copy of PEPCO's

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1 D.C. Code § 2-505 (2001 Ed.).

2 *ET08-1, In the Matter of the Potomac Electric Power Company's Schedules "SSL-OH" and "SSL-UG", P.S.C.-D.C. No.1* ("*ET08-1*"), Letter from Keith Townsend, Assistant General Counsel, PEPCO., to Dorothy Wideman, Secretary, Public Service Commission of the District of Columbia (Feb. 26, 2008).

3 *Id.*

4 *Id.*

5 55 D.C. Reg. 3325-6 (March 28, 2008).

final rate schedules "SSL-OH" and "SSL-UG" may be obtained by contacting Dorothy Wideman, Commission Secretary, Office of the Commission Secretary at 1333 H Street, N.W, 2nd Floor, West Tower, Washington, D.C. 20005 or from the Commission's website at www.dcpsc.org.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., 2ND Floor West Tower
WASHINGTON, D.C. 20005

NOTICE OF FINAL RULEMAKING

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

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to Sections 2-505 (a), 34-302, and 34-1518 of the District of Columbia Official Code,[1] of its final rulemaking action taken on June 25, 2008, in Order No. 14840. The Commission repeals the present Chapter 9 in its entirety and adopts the following provisions for Chapter 9 of Title 15 DCMR governing Net Energy Metering in the District of Columbia.

2. The Commission published a NOPR on February 8, 2008, at 55 *D.C. Reg*. 1327-1331 (2008). Comments were filed by the Office of the People's Counsel and the Potomac Electric Power Company ("Pepco") and reply comments from Pepco on the NOPR.[2] On June 25, 2008, Order No. 14840 was issued addressing the comments and adopting the final regulations. The Commission made clarifying revisions to the regulations that did not change the intent, meaning, application, or exceed the scope of the rules published in the NOPR. The final rules will become effective upon the publication of this Notice of Final Rulemaking ("NOFR") in the *D.C. Register*.

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[1] D.C. Official Code §§ 2-505 (a), 34-302, and 34-1518 (2001).

[2] *Formal Case No. 945, In the Matter of the Investigation into Electric Services Market Competition and Regulatory Practices,* Comments of the Office of the People's Counsel on January 25 Corrected Proposed Amendment Changes to Rule 902.3, Chapter 9 Net Energy Metering Rules ("OPC Comments"), filed Feb. 12, 2008; Comments of the Potomac Electric Power Company, filed Feb. 11, 2008; Reply Comments of Potomac Electric Power Company, filed March 6, 2008.

CHAPTER 9 NET ENERGY METERING

900 GENERAL PROVISIONS

900.1 The purpose of this chapter is to set forth the policies and procedures for implementation of the net energy metering provisions of the "Retail Electric Competition and Consumer Protection Act of 1999," as amended.

900.2 This chapter establishes the Public Service Commission of the District of Columbia Rules and Regulations Governing Net Energy Metering, including eligibility for participating in net energy metering, a bill crediting mechanism, net energy billing requirements for participants, net metering-related equipment requirements, a standard contract requirement, and safety and performance standards. This chapter shall be cited as the "District of Columbia Net Energy Metering Rules."

900.3 The provisions of this chapter are promulgated pursuant to the authority set forth in Section 34-1518 of the D.C. Official Code.

901 ELIGIBLE CUSTOMER-GENERATORS

901.1 Eligible customer-generators utilizing renewable resources, cogeneration, fuel cells, or microturbines may elect and shall be afforded the opportunity to participate in net energy metering. An eligible customer-generator's facility shall meet all applicable safety and performance standards established by the National Electrical Code ("NEC"), National Electrical Safety Code ("NESC"), the Institute of Electrical and Electronics Engineers ("IEEE"), Underwriters Laboratories ("UL") and any other relevant standards specified by the Commission.

901.2 A customer that has elected net energy billing may obtain generation service from any Competitive Electricity Supplier that agrees to provide service on a net energy basis. If the customer obtains generation service from the Standard Offer Service ("SOS") Provider, the SOS Provider shall provide such service on a net energy basis.

902 NET ENERGY BILLING AND CREDITING

902.1 This section governs the billing practices applicable to participating net energy billing customers during a billing period.

902.2 If the customer's kWh usage exceeds the electricity generated by the customer's net metering facility during the billing period, the customer-generator will be billed for the net energy supplied at the Full Retail Rate for electricity service. In no event shall transmission- or distribution-

related usage charges be applied to the kilowatt-hours generated by the customer's net metering facility.

902.3 If the electricity generated during the billing period by the customer's facility exceeds the customer's kWh usage during the billing period, (excess generation), the customer-generator's next bill will be credited for the excess generation at the Full Retail Rate applicable during the billing period in which the excess generation occurred. If the full credit for excess generation is not exhausted during the next billing period, the remaining credit shall be carried over until such time as the full credit has been exhausted.

902.4 Net energy billing only applies to kilowatt-hour usage charges. Net energy billing customers are responsible for all other charges applicable to the customer's rate class and recovered through fixed amounts or over units other than kilowatt-hours, including customer, demand and/or minimum charges, as applicable.

903 NET METERING-RELATED EQUIPMENT

903.1 The metering equipment installed for net energy metering shall be capable of measuring the flow of electricity in two directions.

903.2 Nothing in this section shall prohibit the Electric Company from installing additional meters to separately record electricity supplied to an eligible customer-generator from the electric grid and the electricity generated and supplied to the electric grid by the eligible customer-generator, provided, however, that no customer-generator that elects to be billed on a net energy basis shall be charged directly for the cost of the additional meters or other necessary equipment.

904 STANDARD CONTRACT

904.1 The Electric Company shall develop a standard contract, which shall be subject to the review and approval of the Commission. Such standard contract shall be consistent with the provisions of this chapter as well as with the Energy Policy Act of 2005.[3]

905 WAIVER

905.1 Upon request of any person subject to this chapter or upon its own motion, the Commission may, for good cause, waive any requirement of this chapter that is not required by statue or inconsistent with the purposes of this chapter.

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[3] Energy Policy Act of 2005, Pub.L. 109-58, 119 Stat. 594 (2005).

999 DEFINITIONS

When used in this chapter, the following terms and phrases shall have the following meaning:

"Commission" means the Public Service Commission of the District of Columbia.

"Competitive Electricity Supplier" means a person, including an aggregator, broker, or marketer, who generates electricity; sells electricity; or purchases, brokers, arranges or markets electricity for sale or retail customers. The term excludes the following: (A) Building owners, lessees, or managers who manage the internal distribution system serving such building and who supply electricity solely to occupants of the building for use by the occupants; (B)(1) Any person who purchases electricity for its own use or for the use of its subsidiaries or affiliates; or (2) Any apartment building or office building manager who aggregates electric service requirements for his or her building or buildings, or who does not: (a) Take title to the electricity; (b) Market electric services to the individually-metered tenants of his or her building; or (c) Engage in the resale of electric service to others; (C) Property owners who supply small amounts of power, at cost, as accommodation to lessors or licensees of the property; and (D) A consolidator.

"Customer-generator" means a residential or commercial customer that owns and operates an electric generating facility that: (a) has a capacity or not more than 100 kilowatts; (b) uses renewable resources, cogeneration, fuel cells, or microturbines; (c) is located on the customer's premises; (d) is interconnected with the Electric Company's transmission and distribution facilities; and (e) is intended primarily to offset all or part of the customer's own electricity requirements.

"Electric Company" means the company that provides distribution service.

"Eligible customer-generator" means a customer-generator whose net energy metering system for renewable resources, cogeneration, fuel cells, and microturbines meets all applicable safety and performance standards.

"Full Retail Rate" means the generation, transmission and distribution charges applicable to the net energy billing customer during the billing period.

"Net energy" means the difference between the kilowatt-hours consumed by a customer-generator and the kilowatt-hours generated by the customer-generator's facility over any time period determined as if

measured by a single meter capable of registering the flow of electricity in two directions.

"Net energy billing" means a billing and metering practice under which a customer-generator is billed on the basis of net energy over the billing period.

"Standard Offer Service Provider" means a provider of standard offer service chosen pursuant to Chapter 29 of the Commission's rules.

3. Additional copies of the Final rules may be obtained by writing Dorothy Wideman, Commission Secretary, Public Service Commission of the District of Columbia, 1333 H Street, N.W., 2nd Floor West Tower, Washington, D.C. 20005.

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

NOTICE OF FINAL RULEMAKING

TELEPHONE TARIFF 08-04, IN THE MATTER OF THE APPLICATION OF VERIZON WASHINGTON, DC INC. FOR AUTHORITY TO AMEND THE GENERAL SERVICES TARIFF, P.S.C.-D.C. No. 203

1. The Public Service Commission of the District of Columbia ("Commission") pursuant to its authority under D.C. Official Code § 2-505,[1] hereby gives notice of its final rulemaking action in Order No. 14839 (June 25, 2008), approving the tariff application of Verizon Washington, DC Inc. ("Verizon DC")[2] to amend the following tariff pages:

GENERAL SERVICES TARIFF, P.S.C.-D.C. No. 203
Section 31, 4th Revised Page 6
Original Page 6a

2. In its Application, Verizon DC seeks to amend the terms and provide additional options to the Bundled Discounts service offerings for Regional Essential Customers.[3] Although the tariff revisions are not classified under the Price Cap Plan 2004, Verizon DC states that the Application is filed pursuant to, and fulfills the requirements of, the Plan.[4]

3. The Commission issued a Notice of Proposed Rulemaking ("NOPR"), which was published in the *D.C. Register* on April 18, 2008, inviting public comment on the proposed tariff amendment.[5] No comments were filed. Subsequently, the Commission approved Verizon DC's Application in Order No. 14839, finding that the tariff revisions were consistent with the requirements of Section 3(a) of Price Cap Plan 2004. The tariff revisions will become effective upon the date of publication of this Notice of Final Rulemaking in the *D.C. Register*. A copy of Verizon DC's final tariff amendment may be obtained by contacting Dorothy Wideman, Commission Secretary,

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1 D.C. Official Code § 2-505 (2001 Ed.).

2 *TT08-04, In the Matter of the Application of Verizon Washington, DC Inc. For Authority to Amend the General Services Tariff, P.S.C.-D.C. No. 203 ("TT 08-04"),* Letter from J. Henry Ambrose of Verizon Washington, DC Inc. to Dorothy Wideman, Commission Secretary, filed March 28, 2008 ("Application").

3 *TT08-4,* Tariff Application at 1.

4 *See id. See also Formal Case No. 1005, In the Matter of Verizon Washington, DC Inc.'s Price Cap Plan 2004 for the Provision of Local Telecommunications Services in the District of Columbia,* Order No. 13370, rel. September 9, 2004, ("Price Cap Plan" or "Plan").

5 55 D.C. Reg. 4390-4391 (April 18, 2008).

Office of the Commission Secretary at 1333 H Street, N.W., West Tower, Suite 200, Washington, D.C. 20005 or on the Commission's website at www.dcpsc.org.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 07-08A-2
Z.C. Case No. 07-08A
(Text Amendment – Additional Temporary Ballpark Accessory Surface Parking Lots)
May 12, 2008

The Zoning Commission for the District of Columbia (the "Commission"), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01); having held a public hearing referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to § 492 of the District Charter; hereby gives notice of the adoption of the following amendments to Chapters 6, 9, and 21 of the Zoning Regulations (Title 11 DCMR).

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* ("*DCR*") on December 21, 2007 at 54 *DCR* 12388. The Commission took final action to adopt the amendments at a public meeting on May 12, 2008. This final rulemaking is effective upon publication in the *D.C. Register*.

Description of the Text Amendment

This rulemaking expands the number of potential lots from those already approved by the Commission in Order No. 07-08 to meet short-term parking needs associated with the new Washington Nationals Ballpark. All lots allowed through this text amendment must meet the standards established in that earlier case, are subject to the same cap on the overall number of spaces, and are permitted for the same five-year temporary term.

Relationship to the Comprehensive Plan

The amendments are not inconsistent with the Comprehensive Plan for the National Capital: District Elements ("Comprehensive Plan"), adopted through the Comprehensive Plan Amendment Act of 2006, effective March 8, 2007 (D.C. Law 16-300), and are fully consistent with the following provisions of the Comprehensive Plan:

> Policy T-1.1.3: Context-Sensitive Transportation:
> Design transportation infrastructure to support current land uses as well as land use goals for compact, accessible neighborhoods. Make the design and scale of transportation facilities compatible with planned land uses. (10 DCMR § 403.9.)

Policy T-2.5.4: Traffic Management:
Establish traffic management strategies that separate local traffic from commuter or through-traffic and reduce the intrusion of trucks, commuter traffic, and "cut-through" traffic on residential streets. (10 DCMR § 411.15.)

Set Down Proceeding and Emergency Action

The Office of Planning (OP) initiated this rulemaking by filing a report with the Commission. The OP report recommended that the Commission take emergency action to adopt the amendment, so that it could immediately take effect.

At its October 15, 2007 public meeting, the Commission set down the case for a public hearing, took emergency action, and authorized the immediate publication of a notice of proposed rulemaking. The Commission took a second emergency action at its February 11, 2008 public meeting.

Public Hearing and Proposed Action

The Commission opened a public hearing on this case on February 21, 2008. At the public hearing, OP testified that the proposed text amendments would:

- Expand the potential locations of temporary Ballpark parking lots to include eight new sites in the CG/CR District – Squares 603, 605, 657, 658 Lot 7, 661, 662, 662E, and 664; and to one additional square in the CG/W-2 District – Square 664E; and

- Subject the Ballpark parking lot locations to all of the restrictions and requirements currently contained in Order No. 07-08, including the overall limit of 3,775 spaces in total, the termination date of April 1, 2013, the requirement that a portion of the parking spaces be restricted to use by a car/ride-share program, and the obligation to promote and publicize the use of this program on the Nationals' website and promotional materials.

Advisory Neighborhood Commission ("ANC") 6D testified in opposition to the text amendments, stating that its principal concerns were: the proposal to locate parking sites east of South Capitol Street, the potential for traffic through existing residential neighborhoods, and potential impacts on neighborhood parking; potential safety issues for pedestrians walking from the proposed new parking sites to the ballpark; and the configuration of the South Capitol and Potomac Avenue intersection.

Three residents also testified in opposition to the proposal. Their concerns were similar to those of the ANC. In addition, the residents expressed concerns regarding impacts of the additional automobile traffic on transit operations in the neighborhood, concerns that the parking sites will become permanent, potential environmental and flood plain issues, and whether the sites are actually needed for parking in the current year. Residents noted particular concerns with

proposed parking sites located north of Potomac Avenue, S.E. and adjacent to the Anacostia River.

The Commission continued the public hearing to March 24, 2008, to provide an opportunity for discussion with representatives of the Nationals Baseball team and the District Department of Transportation ("DDOT") regarding broader traffic and parking management plans. At the reconvened public hearing, a representative from the Nationals addressed questions regarding immediate and longer term parking needs, and described efforts to allocate parking spaces to minimize traffic impacts and to encourage ballpark patrons to use other means to get to the ballpark, such as Metro. DDOT staff provided a presentation of the Transportation Operations and Parking Plan ("TOPP"), which was developed to organize and manage traffic; to ensure pedestrian and traffic safety in the ballpark area; to make sure that the transportation system operates efficiently; to minimize impacts to the residents and commuters by providing additional roadway and transit access capacity; to segregate the ballpark traffic and parking from the local access; and overall to maximize the usage of public transportation including walking and bicycling. DDOT described parking and vehicular access restrictions intended to alleviate neighborhood impacts of ballpark related traffic.

Great Weight Given to ANC Issues and Concerns

The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) to give great weight to the written recommendation of the affected ANC. By letter dated February 19, 2008, ANC 6D stated that it was opposed to the text amendments because it had the following issues and concerns:

- the text approved in Z.C. Case No. 07-08, "specifically prohibited either the Washington Nationals or the District Department of Transportation from directing baseball patrons to approved temporary surface parking lots over I, 4th or P Streets, S.W." The squares approved through this case are located just south of that area, and the ANC is concerned that traffic would be directed through the area;

- "the ANC received no documentation that the use of these squares for parking is supported by the recently adopted DC Comprehensive Plan, which in fact, specifically ensures that the established communities adjacent to the South Capitol Street corridor including James Creek and Greenleaf Gardens housing projects and adjacent residential areas are buffered from adverse impacts associated with increased density and traffic relating to stadium area development." (internal citations and quotations omitted);

- "[ANC 6D's] primary concern is the potential impact of a maximum of 2,950 cars on the health and safety of our children and others … [w]hile we believe the Nationals are acting in good faith when they say they will use their best marketing and promotional materials to direct traffic away from residential streets, they cannot guarantee the behavior of game goers or prevent them from ignoring any prohibitions that will be established – hopefully in time for opening day"; and

- "the squares under consideration are currently primarily industrial in use, and lack sidewalks and curbs. The ANC believes that there are far better uses for DDOT's limited funds than upgrading a streetscape that baseball patrons will use only a few months out of the year."

The Commission has considered each of these issues and concerns in its deliberations.

In response to the first issue, the Commission shares ANC 6D's concern about traffic in the area surrounding the Ballpark generally, and specifically traffic on I, 4th, and P Streets, S.W. The Commission has taken several steps to ensure that the effects of the temporary lots are minimized and that traffic is not directed through those streets. It has paid careful attention to the locations chosen for potential lots to ensure they are well distributed and have effective access to arterial streets. It has capped the maximum number of spaces that can be created as a matter-of-right, and ensured any additional spaces must obtain special exception approval of the Board of Zoning Adjustment ("BZA") that includes an examination of a traffic study assessing the impacts of the additional spaces on local traffic patterns and a referral to DDOT. And perhaps most importantly, the Commission has prohibited issuance of a certificate of occupancy until DDOT has approved a traffic routing plan for the lot, which shall include the impact of other proposed lots if required by DDOT. While ANC 6C is correct that some of the potential lots are located just south of the area containing I, 4th, and P Streets, S.W., the Commission is convinced these measures are sufficient to protect the area.

In response to the second issue, the Commission is unaware of any affirmative obligation to provide the ANC with affirmative evidence that the use of these squares for parking is supported by the recently adopted DC Comprehensive Plan. Nonetheless this Order contains references to other portions of the Comprehensive Plan that support the amendments. In addition, the Commission carefully tailored the text amendment to shelter adjacent neighborhoods from the impacts of the increase in density and influx of traffic associated with the Ballpark and related development. The Commission must balance the interests of Ballpark patrons against those of residents from adjacent neighborhoods.

In response to the third issue, because of the importance of involving the Nationals in the planning process, the Commission held an additional hearing on March 24th in order to have a Nationals' representative and a DDOT representative address the concerns expressed by the ANC.

Regarding the fourth issue, the Commission has no authority to decide issues related to the streetscape, such as whether to build sidewalks and curbs.

At its regular public meeting of April 14, 2008, the Commission took proposed action to adopt the text amendment as advertised.

The proposed rulemaking was also referred to the National Capital Planning Commission ("NCPC") under the terms of § 492 of the District of Columbia Charter. NCPC, by report dated May 1, 2008, commented that the proposed text amendment would not adversely affect the identified federal interests subject to:

- Section 1603.3 of the Zoning Regulations is amended to include temporary surface parking lots as to maintain the 75 foot setback along the Anacostia Waterfront;

- The final order for the text amendment clarifies that the existence of the parking lots beyond the April 1, 2013 time limit is not subject to Board of Zoning Adjustment Special Exception review; and

- The Zoning Regulations require that the BZA assess any request for exception to the 3,775 parking space cap be accompanied by documentation from the relevant District of Columbia permitting agencies that the project design conforms to the environmental design standards adopted by the Anacostia Waterfront Corporation as required by the National Capital Revitalization Corporation and Anacostia Waterfront corporation Reorganization Act of 2008.

The Office of the Attorney General has determined that this rulemaking meets its standards of legal sufficiency.

Final Action

At its properly noticed May 12, 2008 public meeting, the Commission took final action to adopt the proposed text amendments.

Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purpose of the Zoning Regulations and the Zoning Act.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to Chapters 1, 3, 7, 9, and 21 of the Zoning Regulations, Title 11 DCMR:

Title 11 (DCMR) is amended as follows:

A. Chapter 6, MIXED USE (CR) DISTRICTS, § 601 Uses As A Matter of Right, is amended by adding the following new text (additions to the existing text are shown in **bold** and underlined):

601.1 (dd) Notwithstanding § 602.1, temporary surface parking lot accessory to the Ballpark shall be permitted on Squares **603, 605, 657**, 660, **661, 662, 662E, 664,** 665, 700, 701, 882; and on **Square 658, Lot 7;** Square 767, Lots 44-47; Square 768, Lots 19-22; and Square 769, Lot 19 and those

portions of Lots 18 and 20 within the CR District; in accordance with § 2110. In the event that the cumulative parking limit established in § 2110.1 (a) is met, additional temporary surface parking spaces accessory to the Ballpark on Squares **603, 605, 657, 658,** 660, **661, 662, 662E, 664,** 665, 700, 701, 882; and on Square 767, Lots 44-47; Square 768, Lots 19-22; and **Square 658, Lot 7;** Square 769, Lot 19 and those portions of Lots 18 and 20 within the CR District, shall be permitted as a special exception if approved by the Board of Zoning Adjustment pursuant to § 2110.2.

B. Chapter 9, WATERFRONT (W) DISTRICTS, § 901 Uses As A Matter of Right, is amended by adding the following new text (additions to the existing text are shown in bold and underlined):

901.1 (dd) Notwithstanding § 352.3, temporary surface parking lot accessory to the Ballpark shall be permitted on Squares **664E,** 707, 708, 708E, 708S, or 744S, in accordance with § 2110. In the event that the cumulative parking limit established in § 2110.1 (a) is met, additional temporary surface parking spaces accessory to the Ballpark on Squares **664E,** 707, 708, 708E, 708S, or 744S shall be permitted as a special exception in a W-2 District if approved by the Board of Zoning Adjustment pursuant to § 2110.2.

C. Chapter 21, OFF STREET PARKING REQUIREMENTS, § 2110 Temporary Surface Parking Lots and Spaces for the Ballpark, is amended as follows (additions to the existing text are shown in bold and underlined):

1. § 2101.1 is amended by adding the following new text:

2110.1 Permitted Use - Notwithstanding §§ 602.1 and 902.l and not subject to any otherwise applicable proximity requirement, a temporary surface parking lot accessory to the Ballpark shall be permitted as a temporary use on Squares **603, 605, 657, 658,** 660, **661, 662, 662E, 664, 664E,** 665, 700, 701, 707, 708, 708E, 708S, 744S, and 882; **Square 658, Lot 7;** and Square 767, Lots 44 – 47; Square 768, Lots 19 – 22; and Square 769, Lots 18 - 21 ("the subject squares") in accordance with §§ 2110.3 through 2110.5 and the following provisions:

2. § 2110.5 is amended by adding the following new subsection:

(j) **A minimum of 5% of parking spaces shall be reserved for a registered and recognized, publicly accessible car/ride-share program with a significant District user base and a mandate that is not commuter-oriented, such as GoLoco. These car/ride share spaces shall be provided in premium, visible, bannered locations**

and will be available, for a fee, exclusively for this use until the start of the event on that day.

Vote of the Zoning Commission taken at its public meeting on April 14, 2008 to **APPROVE** the proposed rulemaking by a vote of 5-0-0 (Anthony J. Hood, Peter G. May, Gregory N. Jeffries, Curtis L. Etherly, Jr., and Michael G. Turnbull to approve.)

Vote of the Zoning Commission taken at its public meeting on May 12, 2008 to **ADOPT** the final rulemaking by a vote of 5-0-0 (Anthony J. Hood, Curtis L. Etherly, Jr., Gregory N. Jeffries, and Peter G. May to adopt; Michael G. Turnbull to adopt by absentee ballot).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the D.C. Register.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 07-08A-2
Z.C. Case No. 07-08A
(Text Amendment – Additional Temporary Ballpark Accessory Surface Parking Lots)
May 12, 2008

The full text of this Zoning Commission Order is published in the "Final Rulemaking" section of this edition of the *D.C. Register*.