

THE PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKINGFORMAL CASE NO. 712, IN THE MATTER OF THE INVESTIGATION
INTO THE PUBLIC SERVICE COMMISSIONS RULES OF PRACTICE AND
PROCEDURE

The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to D.C. Code Section 2-505,¹ of its intent to adopt Chapter 9, "District of Columbia Affiliate Transactions Code of Conduct" of Title 15, D.C. Municipal Regulations in not less than 30 days from the date of the publication of this Notice of Proposed Rulemaking ("NOPR") in the *D.C. Register*. The Commission regulates the telecommunications, gas, and electric industries in the District of Columbia. The Commission's adoption of a Code of Conduct for regulated energy companies in the District of Columbia reflects a number of recent developments in the regulation of energy utilities, such as the development of competition in energy markets within the District of Columbia; allegations of improper conduct between regulated and unregulated affiliates related to recent energy company bankruptcies; possible congressional action to repeal of the Public Utility Holding Company Act of 1935 (PUHCA) which governs many affiliate transactions within holding companies; allocation issues between regulated and unregulated affiliates which arose in a recent Washington Gas rate proceeding; and adoption of Codes of Conduct in adjoining jurisdictions for energy companies also regulated in the District of Columbia.

When a regulated energy company becomes part of a corporate enterprise that includes both regulated and unregulated affiliates, the potential for cross-subsidization and other behavior, however subtle, which might advantage an unregulated affiliate is of concern to this Commission. Furthermore, competition could be hindered in a market where an unregulated affiliate takes advantage of the goodwill or other resources of its regulated affiliate that is already established in that market.

This Commission has a responsibility to protect customers of regulated energy companies from cross-subsidization and other behavior associated with unregulated affiliates which could unnecessarily increase the company's risk level or otherwise increase costs to customers. Moreover, the Commission has a responsibility to be a steward of competitive markets for energy and related services within the District of Columbia and to assure that competition is not hindered by anti-competitive activities of companies that include regulated and unregulated affiliates.

¹ See D.C. Code, 2001 Ed. § 2-505 (notice of proposed rulemaking to be published in *D.C. Register* before adoption).

The Code of Conduct that follows is based on two fundamental principles:

1. That utility ratepayers should not be disadvantaged by transactions between an energy company regulated in the District of Columbia and an unregulated affiliate; and
2. Unregulated affiliates should not gain any competitive advantage by being associated with an energy company regulated in the District of Columbia.

These principles underlie the specific rules on regulated energy company behavior that comprise this Code of Conduct. The Commission expects the activities of regulated companies and their affiliates to adhere to these principles as well as to the individual provisions of this Code of Conduct.

CHAPTER 9 D.C. AFFILIATE TRANSACTIONS CODE OF CONDUCT

900 CORE SERVICE TRANSACTIONS

- 900.1** Neither an energy utility nor its core service affiliate(s) shall represent that any advantage accrues to a customer or others in the use of the energy utility's services as a result of that customer or others dealing with the core service affiliate(s). Neither an energy utility nor its core service affiliate(s) shall represent that their affiliation allows the core service affiliate(s) to provide a service superior to that available from other licensed energy suppliers. No energy utility shall promote the services of a core service affiliate or disparage the services of a competitor of a core service affiliate.
- 900.2** Joint promotions, marketing, and advertising between an energy utility and its core service affiliate(s) are prohibited. Joint marketing shall include the sharing of billing materials. As such, an energy utility may not allow an affiliate access to space on its billing envelope or the ability to include marketing information inside the billing envelope.
- 900.3** Joint sales calls may not be initiated either by an energy utility or its core service affiliate(s). If a customer requests a joint sales call, joint calls may be conducted. If a customer enters into a contract with a core service affiliate, a joint call relating to that contract may be conducted.
- 900.4** An energy utility and its core service affiliate(s) shall operate from physically separate locations to avoid the inadvertent sharing of information and shall not share office space owned or used by the energy utility.
- 900.5** An energy utility shall provide information about its distribution and transmission services contemporaneously to all licensed energy providers in a

manner that does not favor its core affiliate in either the type or manner of access to such information. An energy utility shall not provide sales leads to its core service affiliate(s). An energy utility may not ask a customer for consent to provide the customer's name or information to its core suppliers licensed in the District of Columbia.

- 900.6** An energy utility must process all requests for service by any provider in the same manner and within the same period of time as it processes requests for service from its core affiliate(s). An energy utility must keep an annual log of the length of time it takes the energy utility to process each request for service. It must refrain from speaking for or appearing to speak on behalf of its core service affiliate(s).
- 900.7** An energy utility must apply all the terms and conditions of its tariff related to delivery of energy services in the same manner, without regard to whether the supplier is a core affiliate.
- 900.8** An energy utility may not condition or tie the provision of regulated utility services (a) to the purchase, lease, or use of any other goods or services offered by the energy utility or its affiliates; or (b) to a direct or indirect commitment not to deal with any competing energy supplier.
- 900.9** An energy utility may not give any preference to its affiliate(s) or customers of its own affiliate(s) in providing regulated services. With respect to regulated utility services, the energy utility shall treat all similarly situated providers and their customers in the same manner as the energy utility treats the affiliate or the affiliate's customers.
- 900.10** Except upon the informed written consent of the customer, an energy utility may not disclose any customer-specific information obtained in connection with the provision of regulated utility services, provided, however, that such information may be disclosed for lawful bill collection or credit reporting purposes, or pursuant to a subpoena or request by a duly authorized law enforcement official.
- 900.11** An energy utility must contemporaneously disclose any information provided to its energy marketing affiliate(s) to all non-affiliated suppliers or potential non-affiliated suppliers on the system with respect to its system, the marketing or sale of energy to customers or potential customers, or the delivery of energy to or on its system. Disclosure of such information must be published on the energy utility's electronic bulletin board or equivalent mechanism used to communicate with licensed energy providers.
- 900.12** Marketing/advertising material used by the affiliate claiming an association with the energy utility shall include a disclaimer stating that the affiliate supplier is not the same company as the energy company whose name or logo

may be at least partially used, that the prices and services of the affiliate supplier are not set by the Commission, and that the customer is not required to buy energy or other products and services from the affiliate supplier in order to receive the same quality service from the energy utility.

900.13 An energy utility must offer the same discounts, rebates, fee waivers, or penalty waivers to all similarly situated non-affiliated suppliers or customers that it may offer its core affiliate or customers of its affiliate. The energy utility must make such contemporaneous offers by making an appropriate posting on the energy utility's electronic bulletin board, or by some other appropriate fashion (e.g. internet website).

900.14 Dispute resolution of issues involving core affiliates should be enacted through the following procedure; first, there shall be a written notice of the dispute, including the names of the parties and/or customers involved, followed by an informal attempt to resolve the problem. Second, if resolution is not accomplished, then dispute mediation is attempted through a hearing examiner from the Office of General Counsel. The final step, if resolution does not occur, is a formal proceeding following the Commission's traditional complaint process.

901 NON-CORE SERVICE TRANSACTIONS

901.1 Neither an energy utility nor its non-core service affiliate(s) shall represent that any advantage accrues to a customer or others in the use of the energy utility's services as a result of that customer or others dealing with the non-core service affiliate(s). Neither an energy utility nor its non-core service affiliate(s) shall represent that their affiliation allows the non-core service affiliate(s) to provide a service superior to that available from other licensed energy suppliers.

901.2 An energy utility may not give any preference to its affiliate(s) or customers of its own affiliate(s) in providing regulated services. With respect to regulated utility services, the energy utility shall treat all similarly situated providers and their customers in the same manner as the energy utility treats the affiliate or the affiliate's customers.

901.3 Marketing/advertising material used by the affiliate claiming an association with the energy utility shall include a disclaimer stating that the affiliate supplier is not the same company as the energy utility whose name or logo it may be using, and that the customer is not required to buy energy or other products and services from the affiliate supplier in order to receive the same quality service from the energy utility.

901.4 An energy utility may not condition or tie the provision of regulated utility service to any other product or service.

902 **GENERAL PROVISIONS**

- 902.1** Allocations and Accounting of Shared Services. Beginning in January 2005, an energy utility must file annually a Cost Allocation Manual (CAM) -with the Commission explaining how it will allocate and account for shared services between the energy utility and any affiliate. The CAM must include the following: (a) an explanation of the corporate organization; (b) a description of each corporate entity, including location, list of officers and the statement of the business of each entity; (c) an explanation and calculation of each of the cost allocation factors used for transfers between and (among) corporate entities; (d) a listing of each type of cost which is allocated between (among) entities and the factor(s) which is (are) used in the allocation; and (e) a listing of the total amount of each cost allocated to each entity during the annual period. The energy utility will promptly file any amendment to the CAM as necessary for update reasons. The energy utility must make the CAM available for free upon request, subject to the signing of a confidentiality agreement where appropriate. In addition, any interested person may file comments at the Commission in response to these materials, and the Commission will review any such response prior to acting on filed materials.
- 902.2** Energy utilities will not be allowed to provide loans or loan guarantees to their affiliates or to their holding company, unless the utility can show just cause why a waiver should be granted. This general prohibition includes use of any utility rate base asset as collateral for any affiliate activity.
- 902.3** Asymmetric Pricing. Transfers of intangible assets, electric energy, and utility assets from an energy utility to an affiliate, or the provision of services by the energy utility to an affiliate, must be recorded at the greater of book cost or market value. Transfers of the same from affiliate to the energy utility should be at the lesser of book cost or market value. The Commission will maintain authority to restrict and mandate use and terms of sale of utility assets of \$50,000 or more.
- 902.4** An affiliate and an energy utility must maintain separate books and records that shall be subject to review by the Commission upon reasonable request.
- 902.5** An energy utility may share only non-operational employees with its core service affiliate. In addition, an energy utility may share officers and/or directors with its affiliates. An affiliate must maintain its own board of directors on which "at least one independent member" sits, and that independent member "whose fiduciary responsibility is to the regulated public utility" must agree to mergers, reorganization, bankruptcy, and or sale of its assets.

- 902.6 The employees of energy utility and a core affiliate may not share the same telecommunications system or computer system.
- 902.7 An energy utility may not temporarily assign any employee of the energy utility to a core affiliate. However, energy utility employees may be temporarily assigned to a non-core affiliate, provided those energy utility employees are not subsequently transferred to a core affiliate. For purpose of this rule, a temporary assignment is for a term for less than one year.
- 902.8 Commission Staff and the Office of the People's Counsel will be provided full access to the books and records of any affiliate and its associated energy utility that relate to the sharing of costs with the energy utility through an allocation methodology.
- 902.9 Availability of books for inspection. The energy utility and all affiliates must make their books available for inspection and review by the Commission upon demand so that the Commission may determine compliance with its Code of Conduct and the regulated utility's Code of Conduct Implementation Plan. Books must be maintained for inspection and review for at least five calendar years. However, the initiation of an investigation by the Commission does not shift the burden of proving compliance to the Commission. The energy utility still bears the burden of proving compliance with these rules.
- 902.10 Audits. Every two years the energy utility must conduct, at shareholder expense, an audit of its books and the books of any affiliate to ensure compliance with the District's Code of Conduct. The energy utility will be permitted to choose an independent auditor (approved by the Commission), and will be required to notify the Commission of that choice at least 60 days prior to the beginning of the audit.
- 902.11 An energy utility may petition for a waiver from any section of the DC Affiliate Transactions Code of Conduct, which may be granted by the Commission upon a showing of good cause.

903 ADDITIONAL PROVISIONS COVERING RING-FENCING ISSUES

- 903.1 Any energy utility owned by a holding company that transfers more than 5 percent of the utility's earnings to a holding company parent or - declares a special or regular cash dividend to the holding company parent shall notify the Commission in writing no less than 30 days before such action.
- 903.2 Affiliates shall maintain standalone credit and bond ratings separate from their utility or holding company interests.

999 DEFINITIONS

Affiliate: A person who directly or indirectly, or through one or more intermediaries, controls, is controlled by, or is under common control with, or has directly or indirectly, any economic interest in another person.

Asymmetric pricing: Pricing of energy utility assets, services, etc. transferred to an affiliate is recorded at the greater of book value or market value, with pricing of the same items transferred from the affiliate to the energy utility recorded at the lesser of book cost or market value.

CAM: the Cost Allocation Manual that explains how the energy utility will allocate and account for shared services between the regulated utility and any and all of its affiliates.

Commission: the District of Columbia Public Service Commission.

Competitive core services: the services previously provided by the energy utility as the monopoly provider of natural gas or electricity that the Commission has determined to be suitable for purchase by customers from energy suppliers.

Consumer protection regulations: the written dispute resolution procedures to address any alleged violation of these District-specific Affiliate Transactions Code of Conduct that are approved by the Commission.

Core Service Affiliate: Any energy utility's affiliate that performs activities that duplicate or replace the essential services provided by the energy utility.

Customer: a purchaser of natural gas or electricity for end use in the District of Columbia. The term excludes an occupant of a building where the owner, lessee, or manager manages the internal distribution system serving the building and supplies natural gas solely to occupants of the building for use by the occupants.

Energy supplier: a licensed person including an aggregator, broker, or marketer, who generates energy (natural gas or electricity); sells energy (natural gas or electricity); or purchases, brokers, arranges or markets energy (natural gas or electricity) for sale to customers in the District of Columbia. The term excludes the following: (A) building owners, lessees, or managers who manage the internal distribution system serving such building and who supply energy (natural gas or electricity) solely to the occupants; (B) (I) any energy purchases (natural gas or electricity) for its own use or its subsidiaries or affiliates; or (II) any apartment building or office building manager who aggregates energy (natural gas or electricity) service requirements for his or her buildings, and who does not: (a) take title to the energy (natural gas or electricity); (b) market energy (natural gas or electricity) services to the individually-metered tenants for his or her building; or (c) engage in the resale of energy (natural gas or electricity) services to others; (C)

property owners who supply small amounts of power, at cost, as an accommodation to lessors or licensees of the property; and (D) a consolidator.

Energy utility: a natural gas corporation or electric company that comes under the jurisdiction of the Commission. This includes the regulated rates, charges, terms and conditions, and the quality of services it provides to customers.

Non-core service: all services, other than core services, provided by the affiliate of the regulated utility.

Non-operational employees: those employees not directly involved in purchasing/generating of energy for use by customers.

OPC: the District of Columbia Office of the People's Counsel.

Operational employees: those employees directly involved in purchasing/generating energy for use by customers.

Person: every individual, corporation, company, association, joint-stock company, association, firm, partnership, or other entity.

PUHCA: Public Utility Holding Company Act of 1935.

Regulated utility service: all services provided by a natural gas corporation or electric company that come under the jurisdiction of the Commission. This includes the rates, charges, terms and conditions and quality of services provided to customers.

Comments on the proposed affiliate transactions code of conduct procedures should be made in writing to Sanford M. Speight, Acting Commission Secretary, at the Office of the Commission Secretary, 1333 H Street, N.W., Second Floor West Tower, Washington, D.C. 20005. 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, after which time the Commission will take final action on the following proposed affiliate transactions code of conduct procedures.

DEPARTMENT OF TRANSPORTATION

NOTICE OF PROPOSED RULEMAKING

DOCKET NO. 03-82-TS

The Director of the Department of Transportation, pursuant to the authority in sections 3, 5(3), 6 and 7 of the Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137, 49 DCR 5054 (June 7, 2002)), and sections 6(a)(1), 6(a)(6) and 6(b) of the District of Columbia Traffic Act, approved March 3, 1925 (43 Stat. 1121; D.C. Official Code § 50-2201.03(a)(6) and (b)), hereby gives notice of the intent to amend the Vehicle and Traffic Regulations (18 DCMR). Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the D.C. Register. The following rulemaking action is proposed:

Title 18 DCMR, Section 4019, PARKING RESTRICTIONS, Subsection 4019.1 (b), Northeast Section, is amended by adding the following:

1400 Okie Street, N.E.

From a point approximately 387 feet east of Fenwick Street to a point approximately 518 feet east of Fenwick Street; from a point approximately 547 feet east of Fenwick Street to a point approximately 665 feet east of Fenwick Street and from a point approximately 734 feet east of Fenwick Street to a point approximately 1,037 feet east of Fenwick Street, on the south side, "No Parking, 4 a.m.-Noon, Daily".

All persons interested in commenting on the subject matter in this emergency and proposed rulemaking action may file comments in writing, not later than thirty days (30) days after the publication of this notice in the D.C. Register, with the District Department of Transportation, Traffic Services Administration, 2000 14th Street, N.W., 7th Floor, Washington, D.C. 20009 (Attention: Docket No. 03-82-TS). Copies of this proposal are available, at cost, by writing to the above address.

DISTRICT OF COLUMBIA DEPARTMENT OF TRANSPORTATION

NOTICE OF PROPOSED RULEMAKING

DOCKET NUMBER 04-05-TS

The Acting Director of the Department of Transportation, pursuant to the authority in sections 3, 5(3), and 6 of the Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code §§ 50-921.02, 50-921.04(3) and 50-921.05), and sections 6(a)(1), 6(a)(6) and 6(b) of the District of Columbia Traffic Act, approved March 3, 1925 (43 Stat. 1121; D.C. Official Code § 50-2201.03(a)(1), (a)(6) and (b)), hereby gives notice of the intent to amend the Vehicle and Traffic Regulations (18 DCMR). Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

The following rulemaking action is proposed:

Title 18 DCMR, Section 4004, ONE-WAY STREETS, Subsection 4004.1, (d) Southeast Section, is amended by adding the following to the list of locations where traffic is restricted to one direction of travel:

O Street, S.E., from Branch Avenue to Carpenter Street, for eastbound traffic only.

All persons interested in commenting on the subject matter in this proposed rulemaking action may file comments in writing, not later than thirty days (30) days after the publication of this notice in the D.C. Register, with the Department of Transportation, Traffic Services Administration, 2000 14th Street, N.W., 7th Floor, Washington, D.C. 20009 (Attention: Docket No. 04-05-TS). Copies of this proposal are available, at cost, by writing to the above address.

DISTRICT OF COLUMBIA DEPARTMENT OF TRANSPORTATION

NOTICE OF PROPOSED RULEMAKING

DOCKET NUMBER 04-14-TS

The Director of the Department of Public Works, pursuant to the authority in sections 3, 5(3), and 6 of the Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code §§ 50-921, 50-921.04(3) and 50-921.05), and section 6(a)(1), 6(a)(6) of the District of Columbia Traffic Act, approved March 3, 1925 (43 Stat. 1121; D.C. Official Code § 50-2201.03(a)(1), (a) (6) and (b), hereby gives notice of the intent to amend the Vehicles and Traffic Regulations (18 DCMR). Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

The following rulemaking action is proposed:

Title 18 DCMR, Section 4002, TRUCK RESTRICTIONS, Subsection 4002.1, (a) Northwest Section, is amended by adding the following to the list of locations where TRUCK restrictions are installed:

“L Street, N.W., between 9th Street and Massachusetts Avenue”;

“M Street, N.W., between 5th and 7th Streets”;

“M Street, N.W., between 9th Street and Thomas Circle”.

Title 18, DCMR, Section 4025, BUS RESTRICTIONS, Subsection 4025.3 (a) Northwest Section, is amended by adding the following to the list of locations where BUS restrictions are installed:

“L Street, N.W., between 9th Street and Massachusetts Avenue”;

“M Street, N.W., between 5th and 7th Streets”;

“M Street, N.W., between 9th Street and Thomas Circle”.

All persons interested in commenting on the subject matter in this proposed rulemaking action may file comments in writing, not later than thirty days (30) days after the publication of this notice in the D.C. Register, with the Department of Public Works, District Division of Transportation, Bureau of Traffic Services, 2000 14th Street, N.W., 7th Floor, Washington, D.C. 20009 (Attention: Docket No. 04-14-TS). Copies of this proposal are available, at cost, by writing to the above address.

DISTRICT OF COLUMBIA DEPARTMENT OF TRANSPORTATION

NOTICE OF PROPOSED RULEMAKING

DOCKET NUMBER 04-16 -TS

The Acting Director of the Department of Transportation, pursuant to the authority in sections 3, 5(3), and 6 of the Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code §§ 50-921.02, 50-921.04(3) and 50-921.05), and sections 6(a)(1), 6(a)(6) and 6(b) of the District of Columbia Traffic Act, approved March 3, 1925 (43 Stat. 1121; D.C. Official Code § 50-2201.03(a)(1), (a)(6) and (b)), hereby gives notice of the intent to amend the Vehicle and Traffic Regulations (18 DCMR). Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

The following rulemaking action is proposed:

Title 18 DCMR, Section 4017 "RIGHT LANE MUST TURN RIGHT ONLY" REQUIREMENTS, is amended by adding a new subsection to read as follows:

4017.6 – At location listed in this subsection, all vehicles being driven in the right curb lane shall make a right turn, Except Buses.

Title 18 DCMR Section 4017, "RIGHT LANE MUST TURN RIGHT ONLY" REQUIREMENTS Subsection 4017.6 (a) Northwest Section, is amended by adding the following to the list of locations where vehicles shall make a Right Turn, Except Buses.

"Southbound Logan Circle, N.W., so as to proceed southbound on Logan Circle at P Street, N.W., in a RIGHT LANE MUST TURN RIGHT ONLY lane".

All persons interested in commenting on the subject matter in this proposed rulemaking action may file comments in writing, not later than thirty days (30) days after the publication of this notice in the D.C. Register, with the Department of Transportation, Traffic Services Administration, 2000 14th Street, N.W., 7th Floor, Washington, D.C. 20009 (Attention: Docket No. 04-16 -TS). Copies of this proposal are available, at cost, by writing to the above address.