PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKING

FORMAL CASE NO. 1009, IN THE MATTER OF THE INVESTIGATION INTO AFFILIATED ACTIVITIES, PROMOTIONAL PRACTICES, AND CODE OF CONDUCT OF REGULATED GAS AND ELECTRIC COMPANIES

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to D. C. Official Code Section 2-505,[1] of its intent to adopt Chapter 39, "Affiliate Transactions Code of Conduct" of Title 15, District of Columbia Municipal Regulation ("DCMR") in not less than 30 days from the date of publication of this Notice of Proposed Rulemaking ("NOPR") in the *D.C. Register*.

2. The proposed regulations develop a Code of Conduct for each regulated energy utility company and their non-regulated affiliates. Proposed regulations governing affiliate transactions have been published for public comment previously, the most recent having been published in the *D.C. Register* on February 6, 2009.[2] Comments to the most recent proposed regulations were filed by Potomac Electric Power Company ("Pepco"), Pepco Energy Services, Inc., WGL Holdings, Inc., Washington Gas Light Company, and the Office of the People's Counsel. All but Pepco filed reply comments.

3. Based on its review and analysis of the comments and replies, the Commission is of the opinion that another NOPR should be issued requesting comments and replies on the proposed revised regulations set forth below. The only changes made to the proposed rules from their February 6, 2009 publication are in section numbers 3902.4, 3904.6, 3906.1, 3907.2, 3908.1, 3908.2, and 3999.1 (the deletion of the term "compliance audit" and the addition of the term "Limited Engagement Review").

CHAPTER 39 AFFILIATE TRANSACTIONS CODE OF CONDUCT

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1 D.C. Code § 2-505 (2001).

2 56 *D.C. Register* 1292-1300 (February 6, 2009).

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3900 APPLICABILITY

3900.1 This Chapter establishes the Public Service Commission's ("Commission") Code of Conduct between regulated energy utilities and their affiliates.

3901 PROHIBITION OF FAVORABLE TREATMENT FOR AFFILIATES

3901.1 Neither an energy utility nor a 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).

3901.2 Neither an energy utility nor a core service affiliate(s) shall represent that the affiliation allows the core service affiliate(s) to provide a service superior to that available from other licensed energy suppliers.

3901.3 No energy utility shall promote the services of a core service affiliate or disparage the services of a competitor of a core service affiliate.

3901.4 An energy utility shall not condition or tie the provision of regulated utility services to:

(a) The purchase, lease, or use of any other goods or services offered by the energy utility or its affiliates; or

(b) The direct or indirect commitment not to deal with any competing energy supplier.

3901.5 An energy utility shall not give preferential treatment to an affiliate(s) or customers of the affiliate(s) in providing regulated services. With respect to regulated utility services, the energy utility shall treat all similarly situated energy suppliers and their customers in the same manner without regard to whether the supplier is a core service affiliate.

3901.6 An energy utility shall process all requests for service by any similarly situated energy supplier in the same manner and within the same period of time as it processes requests for service from a core service affiliate(s). An

energy utility shall keep an annual log of the length of time it takes the energy utility to process each request for service.

3901.7 An energy utility shall provide the same information about its distribution and transmission services contemporaneously to all energy suppliers in a manner that does not favor a core service affiliate(s) in either the type or manner of access to such information.

3901.8 An energy utility shall apply all the terms and conditions of its tariff related to delivery of energy services to similarly situated providers in the same manner, without regard to whether the supplier is a core service affiliate.

3901.9 An energy utility shall offer the same discounts, rebates, fee waivers, or penalty waivers to all similarly situated non-affiliated suppliers or customers that it may offer to its core service affiliate or customers of its affiliate. The energy utility shall make such contemporaneous offers, including an appropriate posting on the energy utility's electronic bulletin board, or by some other appropriate means (*e.g*. Internet website).

3902 LIMITATIONS ON JOINT MARKETING, SPACE, AND SALES FOR SERVICE AFFILIATES

3902.1 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. The energy utility may allow a core service affiliate access to space on its billing envelope or the ability to include marketing information inside the billing envelope only under the circumstance of a general promotion of supplier choice where space is made available to all competitors of the core affiliate under the same terms and conditions.

3902.2 Joint sales calls shall not be initiated either by an energy utility or its core service affiliate(s). However, when a customer requests a joint sales call, a joint sales call 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.

3902.3 An energy utility shall not provide sales leads to its core service affiliate(s).

3902.4 Marketing/advertising material used by the core service affiliate claiming an association with the energy utility shall include a disclaimer that:

(a) The affiliate supplier is not the same company as the energy company, whose name or logo may be at least partially used;

(b) The prices and services of the affiliate supplier are not set by the Commission; and

(c) 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.

3902.5 An energy utility and a core service affiliate(s) shall operate from physically separate locations to avoid the inadvertent sharing of information. The core service affiliate(s) shall not share office space owned or used by the energy utility.

3902.6 An energy utility shall not ask a customer for consent to provide the customer's name or information to its core service affiliates licensed in the District of Columbia. An energy utility shall refrain from speaking to its customers for, or on behalf of, its core service affiliates.

3903 DISCLOSURE OF INFORMATION

3903.1 An energy utility shall not disclose any customer-specific information obtained in connection with the provision of regulated utility services except upon written consent of the utility customer. The consent form signed by the utility customer shall state the purpose of the disclosure.

3903.2 Notwithstanding the limitations in 3903.1, customer-specific information may be disclosed for lawful bill collection or credit reporting purposes, pursuant to a subpoena or request by a duly authorized law enforcement official, or pursuant to a lawful request authorized by local or federal law.

3903.3 Any information provided by an energy utility to a core service affiliate(s) with respect to its electric or gas system, the marketing or sale of energy to customers or potential customers, or the delivery of energy to or on its system, shall be contemporaneously disclosed to all non-affiliated energy suppliers or potential non-affiliated energy suppliers 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.

3903.4 Notwithstanding the limitations in 3903.3 above, an energy utility may disclose the following information without making the disclosure publicly available:

(a) Information to an energy supplier, whether affiliated or non-affiliated, disclosed in the administration of a contract to supply Standard Offer Service;

(b) Information to an energy supplier, whether affiliated or non-affiliated, concerning the energy supplier's customer that is necessary for the energy supplier to bill or provide services to its customers; and

(c) Information disclosed to the energy utility's affiliate(s) required for the affiliate(s) to comply with federal and state laws and regulations, including those relating to financial reporting and corporate governance.

3904 COST ALLOCATION AND ACCOUNTING

3904.1 Four (4) months after the close of the energy utility's fiscal year, 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.

3904.2 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) A listing of each type of cost which is allocated or charged direct between entities and the factor(s) which is (are) used in the allocation;

(d) An explanation and calculation of each of the cost allocation factors used for transfers between and among corporate entities; and

(e) A listing of the total amount of each cost allocated or charged direct between or among corporate entities during the annual period.

3904.3 When changes occur to the CAM prior to the next annual filing period, the energy utility must file amendment(s) to the CAM within 30 days from the effective date of the change.

3904.4 An affiliate and an energy utility must maintain such separate books and records as required by the Public Utility Holding Company Act of 2005 ("PUHCA 2005") and the Commission and, upon written request by the Commission, provide timely access to the books and records.

3904.5 The energy utility and all affiliates to or from which assets included in rate base have been transferred by or to the energy utility and all affiliates that provide services to, or share costs with, the energy utility through any allocation method, must make available for inspection and review by the Commission books relating to the foregoing pursuant to PUHCA 2005 so that the Commission may determine compliance with the Code of Conduct. Books shall be maintained for inspection and review for at least five (5) calendar years.

3904.6 Biennially, the energy utility shall cause a limited engagement report to be prepared by an independent accountant of its books and the books of any affiliate that has entered into a transaction with the energy utility within the period of the limited engagement review to ensure compliance with the Commission's Code of Conduct. The energy utility shall select an independent accountant and shall seek approval by the Commission of the selection at least sixty (60) days prior to the beginning of the limited engagement review.

3905 LOANS AND LOAN GUARANTEES

3905.1 An energy utility shall not provide loans or loan guarantees to an affiliate or to the holding company. The general prohibition includes use of utility rate base asset as collateral for any affiliate or holding company activity.

3905.2 Notwithstanding any provision to the contrary, an energy utility may participate in a cash management or money pool subject to federal regulations of the Securities and Exchange Commission or the Federal Energy Regulatory Commission.

3906 TRANSFER OR SALE OF ASSETS

3906.1 Transfers of assets from an energy utility to an affiliate must be recorded on the utility's books at the greater of net book cost or market value. Transfers of assets from an affiliate to the energy utility shall be at the lesser of net book cost or market value. Such asymmetric pricing shall not apply to any transaction resulting from a competitive bidding process.

3907 RESTRICTIONS ON USE OF EMPLOYEES AND EQUIPMENT

3907.1 An energy utility is prohibited from sharing employees with an affiliate.

3907.2 An energy utility and an affiliate may share the same telecommunications system or computer system, so long as adequate security and system protections are in place to prevent the accessing of information or data of the energy utility by the affiliate that would be in violation of other provisions of this Chapter.

3907.3 An energy utility shall not temporarily assign any employee of the energy utility to an affiliate.

3908 RING-FENCING

3908.1 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 within 5 business days following such action.

3908.2 An energy utility shall issue debt securities and request that rating agencies maintain credit and bond ratings for those securities apart from the holding company or any affiliate. Nothing in this section shall prohibit an energy utility from issuing private debt securities without a rating.

3909 EMERGENCY SUSPENSION

3909.1 The provisions of this Code of Conduct may be suspended during an emergency. Energy utilities subject to the Code of Conduct shall, within 24 hours of the emergency suspension, and every 72 hour period thereafter, notify the Commission of the basis of the emergency that warrants the suspension of the Code of Conduct. The energy utility shall notify the Commission within 24 hours following the expiration of the emergency.

3910 WAIVER

3910.1 An energy utility may petition for a waiver from any section of the Affiliate Transactions Code of Conduct, which may be granted by the Commission upon a showing of good cause.

3911-3998 (Reserved)

3999 DEFINITIONS

3999.1 For the purposes of this chapter:

"Affiliate" means 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.

"Annual Log" means a log maintained by an energy utility to track information regarding a request for service from an energy supplier. The annual log shall include the following: (1) name of the supplier requesting service; (2) description of the type of

service being requested; (3) date of request; (4) status of request (5) date of completion of the requested service; (6) energy utility's affiliation with the energy supplier; and (7) contact information for supplier requesting service.

"Asset" means tangible and intangible property of an energy utility included in its rate base.

"Asymmetric pricing" means pricing, including, but not limited to, energy utility assets, services and things of value transferred to an affiliate recorded on the utility's books at the greater of book value or market value, with pricing of the same items transferred from the affiliate to the energy utility recorded on the utility's books at the lesser of book cost or market value.

"CAM" or "Cost Allocation Manual" means the manual that explains how the energy utility will allocate and account for shared services between the regulated utility and its affiliates.

"**Core service**" means a retail gas or electric energy service, including the sale and delivery of electricity or natural gas, provided to the public in the District of Columbia.

"**Core service affiliate**" means an affiliate that provides retail gas or electric energy service, including the sale and delivery of electricity or natural gas, to the public in the District of Columbia.

"Customer" means 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.

"Emergency" means any of the following, or similar, situations which require any action contrary to this Code of Conduct: (a) a natural disaster, including but not limited to a hurricane, tornado, snow storm, earthquake, flood, or land slide that impacts utility service; or (b) any national or District of Columbia declared state of emergency or condition resulting in federal, or District government closing its respective offices; or (c) an abnormal system condition requiring manual or automatic action to maintain system frequency, or to prevent loss of firm load, equipment damage, disconnection of system elements that could adversely affect utility service or the reliability of the utility's electric system or natural gas system or the safety of persons or property; or (d) acts of others such as riots, sabotage, acts of terrorism, insurrections, nationalization or wars, which adversely affect utility service or the reliability of the utility's electric system or natural gas system.

"Energy supplier" means 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 of the building for use by occupants; (B) (I) any person who 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" means a natural gas corporation or electric company under the jurisdiction of the Commission whose rates, charges, terms and conditions, and the quality of services it provides to customers are regulated by the Commission.

"**Limited Engagement Review"** means an independent accountant's examination of books and records to determine compliance with all of the sections of this Code of Conduct.

"Non-core service" means any service or activity that is not a retail gas or electric energy service, including the sale and delivery of electricity or natural gas, provided to the public in the District of Columbia.

"Non-core service affiliate" means an affiliate that does not provide any service or activity that is a retail gas or electric energy service, including the sale and delivery of electricity or natural gas to the public in the District of Columbia.

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

"Standard offer service" means electricity supply made available to: (1) customers who contract for electricity with an electricity supplier, but who fail to receive delivery of electricity under such contracts; (2) customers who cannot arrange to purchase electricity from an electricity supplier; and (3) customers who do not choose an electricity supplier.

4. Comments on the proposed revised regulations must be made in writing to Dorothy Wideman, Commission Secretary, Public Service Commission of the District of Columbia, 1333 H Street, N.W., West Tower, Suite 200, Washington D.C., 20005. All comments must be received within thirty (30) days of the date of publication of this Notice in the *D.C. Register*. Persons wishing to file reply comments may do so no later than forty-five (45) days of the date of publication of this Notice in the *D.C. Register*. Once the comment period expires, the Commission will take final rulemaking action.

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

The State Superintendent of Education, pursuant to the authority set forth in the Child Development Facilities Regulation Act of 1998, effective April 13, 1999 (D.C. Law 12-215; D.C. Official Code § 7-2031 *et seq*.); Mayor's Order 2009-130, dated July 16, 2009; Sections 5a and 6 of the Day Care Policy Amendment Act of 1998, effective April 13, 1999 (D.C. Law 12-216; D.C. Official Code §§ 4-404.01 and 4-405); and Mayor's Order 2009-3, dated January 15, 2009, hereby gives notice of the intent to adopt, in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*, amendments to Chapter 3 (Child Development Facilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

The proposed rules address qualifications for Montessori school directors and teachers and include revisions to the adult/child ratios and group size requirements to take into consideration the special nature of child care facilities certified as Montessori schools.

Chapter 3 (Child Development Facilities) of Title 29 (Public Welfare) of the DCMR is amended as follows:

1. Subsection 332.1 is amended to read as follows:

   a. Paragraph (e) is amended by striking the word "or" at the end.

   b. Paragraph (f) is amended by striking the period at the end and inserting the phrase "; or" in its place.

   c. A new paragraph (g) is added to read as follows:

      (g) For a Montessori school director:

         (1) At least forty-eight (48) hours of courses from a regionally accredited or OSSE-approved college or university;

         (2) A Montessori certificate issued by a program accredited by the Montessori Accreditation Commission for Teacher Education; and

         (3) At least three (3) years of supervised experience working with children in a licensed District of Columbia child development center or its equivalent in another jurisdiction.

2. Subsection 334.1 is amended to read as follows:

   a. Paragraph (d) is amended by striking the word "or" at the end.

b. Paragraph (e) is amended by striking the period at the end and inserting the phrase "; or" in its place.

c. A new paragraph (f) is added to read as follows:

(f) For a Montessori school teacher:

(1) At least forty-eight (48) credit hours of course work from a regionally accredited or OSSE- approved college or university;

(2) A Montessori certificate issued by a program accredited by the Montessori Accreditation Commission for Teacher Education; and

(3) At least two (2) years of supervised experience working with children in a licensed District of Columbia child development center or its equivalent in another jurisdiction;

2. Section 343 is amended by adding new subsections 343.9 and 343.10 to read as follows:

343.9 A licensed Montessori child development center that is accredited by either the American Montessori Society (AMS) or the Association Montessori Internationale (AMI), or as otherwise approved by the Superintendent, may exceed the adult/child ratios and group size requirements established in this section by up to fifty percent (50%).

343.10 When children of varying ages from two (2) years of age or older are grouped together in conformance with Montessori accreditation standards, the average age of all of the children in the age group of two (2) through five (5) years of age shall be used to determine the applicable group size requirement and adult/child ratio.

Persons wishing to comment on these rules should submit their comments in writing to Kerri L. Briggs, Ph.D., State Superintendent of Education, 441 4th Street, NW, Room 350N, Washington, D.C. 20001, Attention; Child Development Facilities Regulations, Jessica Morffi; or to osse.publiccomment@dc.gov. All comments must be received no later than thirty (30) days after publication of this notice in the *D.C. Register*. Copies of this rulemaking may also be obtained from the OSSE website at www.osse.dc.gov or upon request at the above location.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

NOTICE OF PROPOSED RULEMAKING

APPLICATION NO. 18049

The Board of Zoning Adjustment of the District of Columbia, pursuant to the authority set forth in section 206 of the Foreign Missions Act, approved August 24, 1982 (96 Stat. 286, D.C. Official Code § 6-1306), and the Zoning Regulations of the District of Columbia, hereby gives notice of its intention to approve, or in the alternative, disapprove, Application No. 18049, of **The Republic of Trinidad and Tobago,** to allow the expansion of an existing chancery (offices of a foreign mission) in the DC/SP-1 District at premises 1714 Massachusetts Avenue, N.W. (Square 158, Lot 834).

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 the Office of Zoning, at 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001. Copies of this notice are available from the Office of Zoning. For further information, call (202) 727-6311.