



June 29, 2020

BY ELECTRONIC FILING

Brinda Westbrook-Sedgwick
Commission Secretary
D.C. Public Service Commission
1325 G Street, N.W., Suite 800
Washington, D.C. 20005

Re: RM1-2020-01, RM2-2020-1, RM5-2020-01-E, RM14-2020-01, RM15-2020-01,
RM18-2020-0, RM20-2020-01, RM22-2020-01, RM23-2020-03, RM46-2020-02-E, RM47-
2020-02G, **PSC Rules of Practice and Procedures**

Dear Ms. Westbrook-Sedgwick:

Enclosed for filing in the above-referenced proceedings are the Comments of the Apartment and Office Building Association of Metropolitan Washington.

If you have any questions, please contact me at ecaldwell@aoba-metro.org or call me at (202) 296-3390 ext. 786. Thank you for your attention in this matter.

Sincerely,

/s/ Excetral K. Caldwell

cc: All parties of record



**BEFORE THE
PUBLIC SERVICE COMMISSION
OF THE DISTRICT OF COLUMBIA**

PUBLIC SERVICE)	FORMAL CASE NOS.
COMMISSION RULES OF)	RM1-2020-01, RM2-2020-1
PRACTICE AND PROCEDURE)	RM5-2020-01-E, RM14-2020-01
ET. AL.,)	RM15-2020-01, RM18-2020-0
)	RM20-2020-01, RM22-2020-01
)	RM23-2020-03, RM46-2020-02-E
)	RM47-2020-02G

**COMMENTS OF THE
APARTMENT AND OFFICE BUILDING
ASSOCIATION OF METROPOLITAN WASHINGTON**

The Apartment and Office Building Association of Metropolitan Washington (“AOBA”). pursuant to the May 29, 2020 “Notice of Proposed Rulemaking” (the “May 29 Notice”), hereby respectfully recommends that any and all rules governing the waiver of a Commission regulatory provision retain or adopt the “notice” and “advisory” provisions currently specified in Rule 146.1 of the Rules of Practice and Procedure.¹ Thus, if the AOBA recommendation is adopted by the Commission, the separate regulatory waiver provisions would be identical to Rule 146.1 and read:

The Commission may, in its discretion, waive any provisions of this title in any proceeding *after duly advising the parties of its intention to do so.*²

As proposed, the waiver provisions set out in Chapters 1, 2, 5, 14, 15, 18, 20, 22, 46 and 47 would be amended to read:

The Commission may, upon good cause shown, or upon its own initiative, waive any provision of Chapter [] of this title.

By the May 29 Notice, the Commission solicited comment on a revision to “the current waiver language” set out in Section 146.1 of the Rules of Practice and Procedure “to conform

¹ See 15 DCMR Section 146.1.

² *Id.* (emphasis added).

identically with the newly added waiver language” set out in other regulatory provisions.³ According to the Commission, because “[m]ost” of the Commission’s rules “contain a provision that allows a waiver,” but a few rules “do not,” a revision to and adoption of waiver provisions is necessary for “consistency and uniformity in the application of the Commission’s rules.”⁴

AOBA agrees that consistency and uniformity of the Commission’s regulatory provisions are laudable – even necessary – goals. AOBA respectfully suggests, however, that these goals would be better served by the retention and adoption of the notice and advisory provisions currently set out in Rule 146.1 of the Commission’s Rules of Practice and Procedure. Specifically, and if entered *sua sponte* by the Commission, the notice and advisory provisions provide the affected party(ies) with notice and an opportunity to be heard on the issue(s) underlying the waiver. A notice and advisory provision, thus, preserves the procedural due process rights of the party affected by the waiver and, in the process, allows the Commission to make an informed determination on the merits of the particular waiver.

Adoption of the proposed rule – eliminating the notice and advisory provisions – would unfairly and unnecessarily compromise procedural due process guarantees. Specifically, absent the notice and advisory provisions, a party would have no opportunity to contest or otherwise comment on a *sua sponte* waiver granted by the Commission. Instead, the Commission would simply wave the particular rule or regulation, forcing the parties to abide by the consequences.

The adverse and unintended consequences of eliminating the notice and advisory references from the waiver rule are illustrated by the following example: under the rules governing

³ See May 29 Notice, P 1.

⁴ May 29 Notice, P 2.

discovery, a non-utility party has 15 days to respond to a properly propounded data request.⁵ If adopted, the proposed waiver amendment would permit the Commission, “upon its own initiative,” to reduce the 15 day response period and do so without notice and an opportunity to be heard by the affected party. The consequences of the elimination of the notice and advisory provisions, accordingly, could result in prejudicial error.

Accordingly, given the potential for denial of due process and prejudicial impact, and the fact that Rule 146.1 currently protects against such prejudicial impact, AOBA respectfully suggests that the better practice would be to include the notice and advisory provisions in any amendment to the Commission’s waiver rules and regulations.

WHEREFORE, in view of the foregoing, AOBA respectfully recommends that any and all amendments to the waiver provisions include the notice and advisory provisions currently set out in Rule 146.1 of the Commission’s Rules of Practice and Procedure.

Dated: June 29, 2020

Respectfully submitted,

**APARTMENT AND OFFICE
BUILDING ASSOCIATION OF
METROPOLITAN WASHINGTON**

/s/ Excetral K. Caldwell

Excetral K. Caldwell, Esq.

The Apartment and Office Building Association

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⁵ See 15 DCMR Section 122.2 (“A party to whom a request is made other than a utility company shall respond to that request within fifteen (15) days.”).

CERTIFICATE OF SERVICE

RM1-2020-01, RM2-2020-1, RM5-2020-01-E,
RM14-2020-01, RM15-2020-01, RM18-2020-0,
RM20-2020-01, RM22-2020-01, RM23-2020-03,
RM46-2020-02-E, RM47-2020-02G

I hereby certify on this 29th day of June 2020, that the attached **Comments** were filed electronically on behalf of the Apartment and Office Building Association of Metropolitan Washington and copies were electronically delivered to the service list below:

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