

**PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA  
1325 G STREET, N.W., SUITE 800  
WASHINGTON, D.C. 20005**

**ORDER**

**February 6, 2019**

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

**and**

**RM3-2014-01, CONSUMER RIGHTS AND RESPONSIBILITIES, Order No. 19829**

**I. INTRODUCTION**

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) grants Retail Energy Supply Association’s (“RESA”) Motion for Temporary Waiver and Delayed Implementation of certain provisions of Chapter 3, “Consumer Rights and Responsibilities” (“CBOR”), of Title 15, the District of Columbia Municipal Regulations (“DCMR”). The Commission hereby waives until March 1, 2019, the requirement for the Energy Suppliers to comply fully with certain provisions of the rules noted in paragraph 8 of this Order as adopted by Order No. 19759 and published as final rules (“NOFR”) in the *D.C. Register* on December 14, 2018. In addition, RESA shall submit a filing by March 4, 2019, affirming Energy Suppliers’ compliance with the new CBOR provisions.

**II. BACKGROUND**

2. The Commission promulgated a rulemaking on October 17, 2014, by publishing a Notice of Proposed Rulemaking (“NOPR”) in the *D.C. Register*.<sup>1</sup> There were several subsequent NOPRs published.<sup>2</sup> In December 2018, by Order No. 19759, the Commission adopted final CBOR rules.<sup>3</sup> With the exception of Subsections 327.29 (acceptance, acknowledgement, and receipt of electronic enrollments), 327.35 (accelerates customer switching time), 327.36 and 327.37 (implements Purchase of Receivables Program), the amended rules became effective upon

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<sup>1</sup> 61 *D.C. Reg.* 10807-10822 (October 17, 2014).

<sup>2</sup> 64 *D.C. Reg.* 006128 – 006144 (June 30, 2017); 64 *D.C. Reg.* 013113 – 013129 (December 22, 2017); 65 *D.C. Reg.* 002979 – 002995 (March 23, 2018); 65 *D.C. Reg.* 6179 – 6180 (June 8, 2018); and 65 *D.C. Reg.* 011734-011752 (October 19, 2018).

<sup>3</sup> *Formal Case No. 712, In the Matter of the Investigation of the Public Service Commission’s Rules of Practice and Procedure and RM3-2014-01, Consumer Rights and Responsibilities (collectively, “RM3-2014-01”),* Order No. 19759, rel. December 5, 2018.

publication in the *D.C. Register* on December 14, 2018.<sup>4</sup> With respect to Subsections 327.29 and 327.35, the Commission permitted delayed implementation, until September 10, 2019, to allow the Electric Utility and Energy Suppliers to make any necessary operational changes in order to comply fully with those subsections of the rules. Whereas Subsections 327.36 and 327.37, dealing with Washington Gas Light Company's implementation of a purchase of receivables program, were adopted by Order No. 19675 and became effective as final rules on September 28, 2018.<sup>5</sup>

3. Almost a month after the rules were adopted as final, RESA filed a motion requesting a temporary delay or waiver of the effective date of the CBOR approved by Order No. 19759.<sup>6</sup> No Comments were filed in response to RESA's motion.

### III. DISCUSSION

4. RESA requests a temporary delay in the effective date of the revised CBOR, or a "market waiver" until March 1, 2019.<sup>7</sup> RESA argues that the revised CBOR added numerous new requirements and obligations on Energy Suppliers doing business in the District of Columbia and that there is good cause to support a short delay in the effective date of the revised CBOR.<sup>8</sup> More specifically, RESA asserts that, among other things, Energy Suppliers will need to update or develop their internal systems, enrollment and marketing practices, solicitation materials, and training materials and programs to ensure compliance with the revisions to the CBOR.<sup>9</sup>

5. According to RESA, in order for some Energy Suppliers to comply with the revised CBOR it will require them to implement significant changes by: (1) modifying some business processes and internal technology; (2) ensuring all agent training materials are up to date and agents are properly trained; (3) updating all sales scripts for telephone and home solicitations; (4)

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<sup>4</sup> 65 *D.C. Reg.* 013506-013523 (December 14, 2018).

<sup>5</sup> 65 *D.C. Reg.* 9968-9969 (September 28, 2018); *RM3-2014-01*, Order No. 19765, rel. September 19, 2018.

<sup>6</sup> *RM3-2014-01*, Retail Energy Supply Association's Motion for a Temporary Waiver of the Recently-Revised Consumer Rights and Responsibilities in the District of Columbia in Chapter 3 of Title 15 of the District of Columbia Municipal Regulations, filed January 7, 2019 ("RESA's Motion").

<sup>7</sup> RESA's Motion at 1-2.

<sup>8</sup> RESA's Motion at 2.

<sup>9</sup> RESA's Motion at 2. RESA provides the following examples of new provisions in the rules which require suppliers to make changes to their marketing material, training materials and programs: 1) § 308.1 (informing customer that provision of social security number is voluntary); 2) § 309.1 (privacy protection policy against unauthorized disclosure of customer information); § 327.7(c) (new disclosures in all solicitations relating to variable rate products); 3) §§ 327.7 and 327.8 (solicitations and contracting); 4) §§ 327.13 and 327.14 (direct mail solicitation with telephone response); 5) §§ 327.16 through 327.19 (requirements for telephone solicitations as it relates to Third Party Verification ("TPV")); 6) § 327.24 (direct mail solicitation); 7) § 327.30 (Energy Suppliers need to prominently display on their websites links to the Commission's website); 8) § 327.34 (added encryption using Secure Socket Layer (SSL)); and 9) §§ 327.44 and 327.45 (written notices to customers upon expiration/termination/automatic renewals of contracts).

making sure that TPVs are performed in accordance with the new rules; and (5) assessing all internal operations for compliance.<sup>10</sup> RESA also notes that as a result of the rule changes, Energy Suppliers will need to deploy considerable resources to properly implement the CBOR.<sup>11</sup> First, Energy Suppliers will need to determine the impact to its system. Second, Energy Suppliers need to assemble a project team to begin working on updates and coordinating with other systems updates and enhancements that are in progress.<sup>12</sup> Because of the extensive revisions to the CBOR, RESA states that the process for ensuring compliance with new regulations takes time and that Energy Suppliers need a short delay, or “market waiver,” of the effective date to come into full compliance.<sup>13</sup> RESA requests a “market waiver” of compliance with the new rules until March 1, 2019.

6. RESA states that the delay is reasonable because it will allow for an efficient transition and continuity of Energy Suppliers’ District operations.<sup>14</sup> Moreover, RESA asserts that a delay will enable Energy Suppliers to make a seamless transition with existing operations and compliance resources, minimizing costs to Energy Suppliers, for the benefit of District customers.<sup>15</sup> In addition, RESA contends that without the delay there would be added costs and the risk of rushing implementation and the risk of causing confusion to customers in the marketplace.<sup>16</sup> RESA notes that the NOFR was published on December 14, 2018, just before the winter holidays and that implementing the required changes takes time.<sup>17</sup> Lastly, RESA states that, consistent with Commission Rule 398.1, they have shown good cause for waiving the rules and allowing for a short delay in the effective date until March 1, 2019.<sup>18</sup> No opposition to RESA’s motion was made.

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<sup>10</sup> RESA’s Motion at 5.

<sup>11</sup> RESA’s Motion at 6.

<sup>12</sup> RESA’s Motion at 6.

<sup>13</sup> RESA’s Motion at 6. RESA notes that a temporary market waiver is not unprecedented and cites to a Maryland and Delaware proceedings in which those Commissions granted RESA’s request for waiver of six-to-eight weeks. See *MD. Pub. Serv. Comm’n., Letter Order, Rulemaking 54* (March 9, 2016) (granting requested waivers) and *Del. Pub. Serv. Comm’n, Order No. 9020, Docket No. 49* (February 2, 2017) (directing new effective date for Electric Supplier rules).

<sup>14</sup> RESA’s Motion at 6.

<sup>15</sup> RESA’s Motion at 7.

<sup>16</sup> RESA’s Motion at 9.

<sup>17</sup> RESA’s Motion at 9.

<sup>18</sup> 15 DCMR § 398.1 states that “[t]he Commission may, upon request with good cause shown, or on its own, waive any provisions of Chapter 3 of this title.”

#### IV. DECISION

7. The Commission initiated the CBOR Rulemaking process to update the consumer protections for District of Columbia utility customers and to clarify various requirements for Energy Suppliers. After considerable input and participation by the stakeholders, a NOFR was published on December 14, 2018, with the rules becoming effective on that date. RESA seeks a delay in the effective date or a market waiver of the rules until March 1, 2019 in order to comply fully.

8. Commission Rule 398.1 allows the Commission to waive any provision of Chapter 3 with good cause shown.<sup>19</sup> After reviewing RESA's arguments, the Commission recognizes that the new rules add a number of obligations on Energy Suppliers requiring them to, among other things, update or develop/enhance their internal systems, update their enrollment and marketing practices, and update their solicitation materials. In an effort to allow the Energy Suppliers to make the necessary changes to its systems, to ensure a seamless transition, and to alleviate the risk of confusing customers, the Commission believes that granting a temporary waiver of compliance with the rules adopted in December 2018 is reasonable. RESA has shown good cause for the Commission to grant a waiver of compliance with the following provisions of the CBOR: (1) § 308.1 (informing customer that provision of social security number is voluntary); (2) § 309.1 (privacy protection policy against unauthorized disclosure of customer information); (3) §§ 327.7 and 327.8 (solicitations and contracting); (4) §§ 327.13 and 327.14 (direct mail solicitation with telephone response); (5) §§ 327.16 - 327.19 (requirements for telephone solicitations); (6) § 327.24 (direct mail solicitation); (7) § 327.30 (Energy Suppliers prominent display on their websites links to the Commission's website); (8) § 327.34 (added encryption using Secure Socket Layer (SSL)); and (9) §§ 327.44 and § 327.45 (written notices to customers upon expiration/termination/automatic renewals of contracts).<sup>20</sup> With the exception of the Subsections 327.29 and 327.35, the Commission will grant a waiver until March 1, 2019, for the Energy Suppliers to come into full compliance with the provisions of the rules noted above. RESA shall submit a filing by March 4, 2019, affirming Energy Suppliers' compliance with the new CBOR provisions.

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<sup>19</sup> 15 DCMR § 398.1 (2009).

<sup>20</sup> See, e.g., *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, Order No. 12428, ¶ 13, rel. July 2, 2002.

**THEREFORE, IT IS ORDERED THAT:**

9. The Commission **GRANTS** Retail Energy Supply Association's Motion for Temporary waiver of the Consumer Rights and Responsibilities;

10. Consistent with paragraph 8 of this Order, the Commission hereby **WAIVES** until March 1, 2019, the requirement for the Energy Suppliers to comply fully with certain provisions of Chapter 3, "Consumer Rights and Responsibilities" of Title 15 of the District of Columbia Municipal Regulations as adopted by Order No. 19759 and published as a Notice of Final Rulemaking in the *D.C. Register*, on December 14, 2018; and

11. The Retail Energy Supply Association shall submit a filing by March 4, 2019, affirming Energy Suppliers' compliance with the new CBOR provisions.

**A TRUE COPY:**

**BY DIRECTION OF THE COMMISSION:**

A handwritten signature in black ink, reading "Brinda Westbrook-Sedgwick". The signature is written in a cursive, flowing style.

**CHIEF CLERK:**

**BRINDA WESTBROOK-SEDGWICK  
COMMISSION SECRETARY**