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**By Electronic Filing**

Ms. Brinda Westbrook  
Commission Secretary  
Public Service Commission of the District of Columbia  
1333 H Street, NW, 2<sup>nd</sup> Floor, West Tower  
Washington, DC 20005

**Re: RM 3**

Dear Ms. Westbrook:

On November 22, 2019, the Commission entered a NOPR that would move the Billing Error Notification provisions in Section 3604 of Chapter 36 (Electricity Quality of Service Standards) and Section 3706 of Chapter 37 (Natural Gas Quality of Service Standards) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations (DCMR), to Section 304 of Chapter 3, which is commonly referred to as the "Consumer Bill of Rights." Among other things, the Commission proposes to add a new provision, Section 304.21, that requires Electric and Natural Gas Suppliers to notify their customers of billing errors, and also Section 304.22, which allows for the imposition of penalties for a supplier's failure to comply with the provisions of the Section.

Vistra Energy Corp. files these comments on behalf of itself and its affiliated retail suppliers licensed in the District, including Energy Services Providers, Inc. d/b/a DC Gas & Electric; Everyday Energy, LLC d/b/a Energy Rewards; Viridian Network, LLC; Viridian Energy PA, LLC; and Public Power, LLC (collectively, "Vistra Energy"). Vistra Energy is the largest competitive residential electricity provider in the country and serves nearly 5 million electricity and natural gas customers in 20 states, the District of Columbia, and markets in Canada and Japan.

Vistra Energy appreciates the opportunity to comment on the proposed Billing Error Notification rules and offers the following comments for the Commission's and stakeholders' consideration:

*First*, the term "billing error" is not defined in the rules. This raises the question of what is a billing error; for example, is it a billing error if a utility rejects a supplier's charges because they are received outside the bill window and those charges go on the customers' next bill? What if the utility transmits corrected usage data to the supplier after the bills have been sent to the customers? If the latter is a billing error, a supplier could be required to send a notice to explain that the error was not the supplier's fault. And if these are billing errors, is it the utility or the supplier that is responsible for sending the notices and complying with the rules? These are issues that occur in the market today under the current rules, but more clarity would be welcomed.

*Second*, Rule 304.16(b) would require a supplier to “[s]ubmit an initial billing error notification within three (3) business days of discovering or being notified of the error.” The current Rules 3604.2 and 3706.2 require submission of an initial notification within 1 business day, so the proposed rule would extend the current time period which is a welcomed change. That said, Vistra Energy requests that the time period for an initial notification be expanded to 5 business days. As the Retail Energy Supply Association (“RESA”), of which Vistra Energy is a member, pointed out in its comments filed September 25, 2017,<sup>1</sup> in RM-36 and RM-37, a supplier’s initial notification to a billing error can take time, through no fault of the supplier. As RESA stated in its comments:

While the supplier’s operations department or team might discover the error, they must then communicate that to their regulatory team, which must then send the initial billing error notification with the specific content included in §§ 3706.3 and 3706.4. Other departments and/or even vendors may need to be consulted to obtain the relevant data and to determine customer impacts to fully understand the situation that occurred. That process, and gathering those facts and details, can take longer than one business day, even for suppliers that are doing their best to adhere to the rule.

Moreover, expanding the time to longer than 3 business days would not result in harm to anyone, as a billing error typically does not impact service reliability and there is no reason to rush the initial notification. Further, due to the length of the billing cycle, it is unlikely a customer would see the error before 5 business days. In short, suppliers should not find themselves in a penalty situation as a result of circumstances in which they did their best to comply, no customers were harmed, and stakeholders might have benefitted from allowing the supplier a longer period of time to investigate and file a more accurate and comprehensive initial notification.

*Third*, proposed Rule 304.18(e) refers to the submission of a timeline for completing the corrective action, which must include “the provision of refund and/or credits, no later than 60 days after the billing(s) was discovery....” Vistra Energy requests that the Commission clarify whether this means the supplier must send the refund/credit to the utility 60 days after the error is discovered or if the customer must actually receive the refund/credit within 60 days. Vistra Energy prefers the former interpretation, as the refund/credit will appear on a utility consolidated bill and suppliers do not have control over when the utility sends the bill to the customer.

*Fourth*, Vistra Energy requests clarification with respect to proposed Rule 304.21. At the outset, Vistra Energy does not object to the premise that customers should be notified of billing errors, although such a notification requirement is not required in other jurisdictions and can result in customer confusion. In any event, Vistra Energy provides the following comments regarding Rule 304.21 for the Commission’s consideration:

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<sup>1</sup> See Comments of RESA, Formal Case No., Proposed amendments to Chapter 37 of Title 15 of the DCMRs (commonly referred to as the Natural Gas Quality of Service Standards) (Sept. 25, 2017).

1. As written, there does not appear to be a limit or threshold for when the billing error notification that must be sent to the customer under Rule 304.21. Section 304.16 continues the requirement that a supplier notify the Commission and the Office of the People's Counsel ("OPC") when a billing error has affected one hundred (100) or more customers or when the number of affected customers is equal to or more than two (2) percent of the Energy Supplier's customer base in the District, whichever is fewer. The Energy Supplier with a customer base of fewer than one hundred (100) customers shall report errors when two (2) or more customers are affected. It is unclear whether this same reporting threshold applies to proposed Rule 304.21. Vistra Energy recommends that the Commission add language clarifying that these threshold requirements apply, or else the customer notification could result in a supplier dedicating costs and resources to comply with billing error notifications that were not intended by this proposed rule.
2. Proposed Rule 304.21(d) should be clarified for two reasons:
  - a. The first sentence allows a supplier to send a notification "describ[ing] to customers the nature of the billing error and the corrective action that the company intends to implement." That notice can be sent by letter, bill insert, or any other method of communication to which the customer has agreed. The next sentence requires the supplier to "provide a clear description and explanation of the reason(s) for the error" if a refund or outstanding balance appears on a customer's billing statement. Vistra Energy requests that the language be modified to state that the refund/outstanding balance information can be included in the letter, bill insert, etc., and not, for example, on the customer's actual bill. This may have been the intent of the proposed rule but in the interest of clarity, Vistra Energy requests that it be more specific.
  - b. The communication to the customer under Rule 304.21(d) must describe "the nature of the billing error and the corrective action that the company intends to implement." Vistra Energy is fine with providing this information to the Commission and OPC but prefers to keep its customer communications more general and not include highly technical or descriptive information which can be confusing. Vistra Energy requests that the Commission allow the description of the "corrective action" sent to the customer to be generic, such as: "We apologize for the inconvenience and have taken action to prevent this from occurring in the future."

Letter to DC PSC Re: RM3  
December 23, 2019  
Page 4

Again, Vistra Energy appreciates the opportunity to comment on these proposed rules and welcome any questions you may have.

Sincerely,



Brian R. Greene