

945 - E - 2534<sup>AH</sup>

## PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

## NOTICE OF FINAL RULEMAKING

## FORMAL CASE NO. 945 IN THE MATTER OF THE INVESTIGATION INTO ELECTRIC SERVICE MARKET COMPETITION AND REGULATORY PRACTICES

1. The Public Service Commission of the District of Columbia (Commission) hereby gives notice, pursuant to section 34-802 of the District of Columbia Official Code and in accordance with section 2-505 of the District of Columbia Official Code<sup>1</sup> and the "Clean and Affordable Energy Act of 2008,"<sup>2</sup> of its final rulemaking action to adopt chapter 44 of title 15 of the District of Columbia Municipal Regulations (DCMR), commonly referred to as Submetering and Energy Allocation (SEA) Rules. The proposed SEA Rules set forth the standards and requirements for the usage of submetering and energy allocation equipment in the District of Columbia. 2.

2. The Commission published a Notice of Proposed Rulemaking (NOPR) on May 27, 2011 at 58 *DCR* 4618.<sup>3</sup> The Apartment and Office Building Association of Metropolitan Washington (AOBA), the Potomac Electric Power Company (Pepco), and the Washington Gas Light Company (WGL) filed comments in response to the May 27, 2011 NOPR.<sup>4</sup> Pepco also filed reply comments on July 11, 2011.<sup>5</sup> On November 3, 2011, Order No. 16605 was issued addressing the comments and adopting the final regulations. The final rules will become effective upon the publication of this Notice of Final Rulemaking (NOFR) in the *D.C. Register*.

## CHAPTER 44 SUBMETERING AND ENERGY ALLOCATION

## Sections

4400	Purpose and Applicability
4401	General Requirements
4402	Submetering

<sup>1</sup> D.C. Official Code § 2-505 (2011 Repl.) and D.C. Official Code § 34-802 (2010 Repl.).

<sup>2</sup> D.C. Official Code §§ 34-1551, *et. seq.* (2010 Repl.).

<sup>3</sup> *F.C. 945*, 58 *DCR* 4618 (May 27, 2011). This NOPR replaced the NOPR published in *D.C. Register* on December 18, 2009.

<sup>4</sup> *F.C. 945*, Initial Comments of AOBA ("AOBA's Comments"), filed June 24, 2011; Comments of Pepco in Response to the Notice of Proposed Rulemaking ("Pepco Comments"), filed June 24, 2011; Comments of WGL ("WGL's Comments"), filed June 27, 2011.

<sup>5</sup> *F.C. 945*, Reply Comments of Pepco in Response to the Commission's Notice of Proposed Rulemaking ("Reply Comments"), filed July 11, 2011.

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**4400 PURPOSE AND APPLICABILITY**

- 4400.1 The purpose of this chapter is to establish standards and requirements for the accuracy, testing, billing, recordkeeping, and regulation of submetering and energy allocation equipment, and appropriate safeguards for the tenant, as well as to define the responsibilities of the owner.
- 4400.2 Any owner of a building which is not individually metered for electricity or natural gas for each nonresidential rental unit may install submetering equipment or energy allocation equipment for the purpose of fairly allocating:
- (a) The cost of electrical or natural gas consumption for each nonresidential rental unit; and
  - (b) Electrical or natural gas demand and customer charges made by the utility and electricity and natural gas supplier.

**4401 GENERAL REQUIREMENTS**

- 4401.1 Any individual nonresidential rental unit may use submetering or energy allocation equipment provided the rental agreement or lease between the owner and the tenant clearly states that the nonresidential rental unit is or will be using submetering or energy allocation equipment.
- 4401.2 All rental agreements or leases between the owner and the tenant shall clearly state:
- (a) The nonresidential rental unit uses submetering or energy allocation equipment;
  - (b) Bills for electric or natural gas consumption shall be rendered based on readings of such equipment; and

- (c) Any disputes relating to the amount of the tenant's electric or natural gas bills and the accuracy of the equipment will be between the tenant and the owner.

4401.3 The owner shall not engage in submetering or energy allocation with a tenant without first securing from that tenant, a written agreement for the purchase of electricity or natural gas. The agreement, which may be part of the tenant's lease agreement, shall be executed before any electricity or natural gas is delivered. The owner, upon establishing a submetering or energy allocation practice, agrees to supply any and all tenants with electricity or natural gas and shall be bound by such terms and conditions in acting upon agreements for electric service or natural gas service.

4401.4 Whether or not the parties have executed a written agreement for the purchase of electricity or natural gas, once the tenant enters into a lease as described in subsection 4401.3 and accepts electricity or natural gas service, such tenant agrees to be bound by the applicable regulations prescribed by the Commission for submetering or energy allocation equipment. Likewise, the owner agrees to supply any and all such tenants with electricity or natural gas and shall be bound by such Commission regulations in acting upon agreements for electric service or natural gas service.

4401.5 Any owner installing submetering or energy allocation equipment shall notify the Commission's Office of Engineering in writing concerning the utility providing electric or natural gas service to the nonresidential rental units, at least ninety (90) days prior to installation, that the equipment will be installed and shall:

- (a) Give the name of the building;
- (b) Number of nonresidential rental units to be metered;
- (c) Building location, mailing address of the owner, and approximate date of the scheduled installation of the equipment;
- (d) The type(s), manufacturer(s), and model number(s) of such equipment; and
- (e) Provide information used to establish the percentage registration as set forth in subsections 4402.2 (Section 4402, Submetering) and 4405.2 (Section 4405, Periodic Tests and Checks).

4401.6 Upon completion of the installation of the submetering or energy allocation equipment, the owner of the building shall provide written

notification to the Commission's Office of Engineering within thirty (30) days.

- 4401.7 Each owner shall be responsible for providing, installing, sealing (if necessary), and maintaining all submetering or energy allocation equipment necessary for the measurement or allocation of the costs for electric energy or natural gas consumed by tenants. The submetering equipment shall include, but not be limited to, the piping and wiring, as well as the meter and associated affiliate parts. The installation of submetering and energy allocation equipment shall comply with all building (including electric and natural gas) code requirements, as well as public and labor safety code requirements of the District of Columbia.
- 4401.8 All submetering and energy allocation equipment shall be installed in locations readily accessible for reading, testing, and inspection, and where these activities will cause minimum interference and inconvenience to the tenant.
- 4401.9 Any electric submeter installed shall be of a type and class to register properly the electric consumption of the nonresidential rental unit, and such meter shall meet the standards of the latest edition of the American National Standards Institute, Inc., Standard C12 - Code for Electricity Metering (ANSI C12).
- 4401.10 Any natural gas submeter installed shall be of a type and class to register properly the natural gas consumption of the nonresidential rental unit, and such meter shall meet the standards of the latest edition of the American National Standard Institute Standards Accredited Standards Committee ANSI/ASC B109.1 and B109.2 for Diaphragm Type Gas Displacement Meters and ANSI/ASC B109.3 for Rotary Type Gas Displacement Meters (hereafter, ANSI B 109); ANSI/American Petroleum Institute (API) 2530 (ANSI/API 2530 or American Gas Association Gas Measurement Report No. 3), entitled "Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids," for Orifice Type Meters; ANSI/American Society of Mechanical Engineers (ASME) MFC-4M (Measurement of Gas Flow by Turbine Meters) and American Gas Association Transmission Measurement Committee Report No. 7 (entitled "Measurement of Fuel Gas by Turbine Meters") for Turbine Type Meters; and American Gas Association Transmission Measurement Committee Report No. 9 (entitled "Measurement of Gas by Multipath Ultrasonic Meters") for Ultrasonic Type Meters; or other generally accepted industry practices.
- 4401.11 Any energy allocation equipment installed shall be of a type and class appropriate to the heating, cooling, ventilation, and air conditioning system of the nonresidential rental unit and shall be used in accordance with generally accepted industry practices as well as the manufacturer's

installation specifications and procedures for such energy allocation equipment.

- 4401.12 An owner shall not impose on the tenant any charges over and above the cost per kilowatt hour, cubic foot or therm, plus demand and customer charges, where applicable, which are charged by the utility company, the electricity supplier, and natural gas supplier to the building owner, operator, or manager, including any sales, local utility, or other taxes, if any; with the exception, that additional service charges permitted by sections 4405 (Periodic Tests and Checks) and 4407(Billing) may be collected to pay administrative costs and billing.
- 4401.13 An owner shall maintain adequate records regarding submetering and energy allocation equipment and shall make such records available for inspection by the Commission during reasonable business hours in accordance with D.C. Official Code § 34-1552(b)(2) and 34-1553(d) (2010 Repl.).
- 4401.14 For the purpose of the enforcement of the rules set forth in this chapter, building owners shall be treated as public utilities for the purposes of initiating a complaint, in accordance with D.C. Official Code § 34-917 (2010 Repl.).
- 4401.15 Except as provided for in subsection 4401.14, no owner of a building shall be considered a public utility engaged in the business of distributing or reselling electricity or natural gas.
- 4401.16 An owner's submetering or energy allocation equipment and its installation shall not interfere, change, or modify in any way the electric or natural gas utility's service connection or operation of the utility's equipment, including the utility's metering equipment.

#### **4402 SUBMETERING**

- 4402.1 When submeters are installed by an owner to measure the electricity or natural gas used by its tenants, all charges for electricity or natural gas used, except the allowed service charges permitted by sections 4405 (Periodic Tests and Checks) and 4407 (Billing), shall be calculated from the readings of such submeters.
- 4402.2 Submeters in service shall be tested periodically by the owner pursuant to Section 4405 (Periodic Tests and Checks). If the test results reveal that the submeter is found to be no more than two percent (2%) fast or slow, no adjustment will be made to the tenant's bill. If the submeter is found to be more than two percent (2%) fast or slow because of incorrect calibration, the owner will rebill the tenant for the correct amount as calculated for a

period equal to one-half (1/2) of the time elapsed since the last previous test, but in no case for a period in excess of twelve (12) months or since occupancy by the existing tenant, whichever is less. The percentage registration of an electric submeter will be calculated by the "weighted average" of light load and full load which is calculated by giving a value of one to the light load and a value of four to the full load. The accuracy of a natural gas submeter will be measured at the check rate of flow, as provided in subsection 4401.10 (Section 4401, General Requirements).

4402.3 Whenever it is found that unmetered electricity or natural gas is being used as a result of tampering, the tenant shall pay to the owner an amount estimated by the owner to be sufficient to cover the electricity or natural gas used but not recorded by the meter and not previously paid for by the tenant.

4402.4 Whenever it is found that, for any reason other than calibration or tampering, the submetering apparatus has not registered the true amount of electricity or natural gas which has been used by the tenant, the electricity or natural gas used during the entire period of incorrect registration will be estimated by the owner based upon all known pertinent facts, and the amount of electricity or natural gas so estimated will be used in calculating the corrected bill. The owner shall rebill the tenant for the adjusted amount for a period equal to one-half (1/2) of the time elapsed since the last previous test for submetering apparatus, but in no case for a period in excess of twelve (12) months or since occupancy by the existing tenant, whichever is less. The owner shall calculate the estimated bill in accordance with subsection 4407.10 (Section 4407, Billing).

### **4403 ENERGY ALLOCATION**

4403.1 Energy allocation equipment may be used solely to allocate the cost of electric or natural gas service among tenants using the nonresidential rental units.

4403.2 Energy allocation systems shall provide a reasonable determination of energy use and resulting costs for each nonresidential rental unit. The energy allocation system shall be appropriate for the heating, cooling, ventilation, and air conditioning system application. Components shall be properly installed to assure correct measurements of allocation parameters. Proper calculation procedures shall be used in converting from measurement to allocation.

4403.3 Energy allocation equipment in service shall be tested periodically by the owner, pursuant to section 4405 (Periodic Tests and Checks). Testable components of the energy allocation system should be accurate, consistent with the manufacturer's specifications.

**4404 TESTING CAPABILITY AND METERING EQUIPMENT**

4404.1 Each owner shall engage a certified lab to perform the equipment tests required by these regulations; such tests being performed with instruments, portable standards, reference manuals, and other equipment and facilities all of which shall comply with standards specified in subsections 4401.9 and 4401.10 (Section 4401, General Requirements) for submetering equipment, and with manufacturer's recommended practices for energy allocation equipment.

**4405 PERIODIC TESTS AND CHECKS**

4405.1 Each owner shall have a documented testing program, the primary purpose of which is to maintain an acceptable degree of accuracy during the service life of the equipment. All submetering equipment shall be tested in accordance with the provisions of the latest edition of the standards provided in subsections 4401.9 and 4401.10 (Section 4401, General Requirements). All energy allocation equipment shall be tested in accordance with the manufacturer's suggested testing procedures and practices for such equipment. Tests shall be conducted no more than once in a twenty-four (24) month period, in accordance with D.C Official Code § 34-1553(c) (2010 Repl.).

4405.2 All submeters shall be adjusted as close as possible to the condition of one hundred percent (100%) registration. No submeter shall be placed in service until its percentage registration has been established. The establishment of the percentage registration may be accomplished through the engagement of a certified lab or by a certificate provided by the manufacturer that is applicable only to the initial installation of the submeter. No electric submeter that exceeds the test calibration limits for watt-hour meters as set forth by the latest edition of ANSI C12 shall be placed in service or left in service. No natural gas submeter that exceeds the test calibration limits for meters as set forth by the latest edition of standards provided in subsection 4401.10 (Section 4401, General Requirements) shall be placed in service or left in service. In instances where an in service submeter is not properly calibrated, the owner shall calculate the corrected bill in accordance with subsection 4402.2 (Section 4402, Submetering).

4405.3 A submeter shall be adjusted by a certified lab, if it is determined that the test calibration exceeds the limits set forth in subsection 4405.2.

4405.4 Energy allocation equipment shall be adjusted to the manufacturer's specifications before being placed in service.

- 4405.5. Any submetering or energy allocation equipment removed from service or replaced by other equipment for any purpose whatsoever shall be properly tested and adjusted before being placed in service again.
- 4405.6. The owner shall keep and maintain the following records for a period of no less than three (3) years:
- (a) A record of all submetering or energy allocation equipment, identifying the equipment number and location (the tenant's address where installed or if in reserve);
  - (b) The record of each test conducted shall show the identifying number of the equipment, the standard number and other necessary devices used, the date and type of test conducted, name and contact information for the individual conducting the test, the percentage registration at each load tested for submetering equipment, the accuracy level of the parameter measured by the energy allocation equipment, and sufficient data to permit verification of the test results; and
  - (c) A record of all the portable standards and reference standards used to test submetering and energy allocation equipment. Test equipment shall at all times be accompanied by a certified calibration card signed by the proper authority, with the date of the most recent certification and adjustment. Records of certifications and calibrations of all standards shall be kept on file in the office of the owner.
- 4405.7. The aforementioned records, in subsection 4405.6, for each nonresidential rental unit shall be made available, upon request, to the tenant of that unit during reasonable business hours at the building manager's office or, if there is no building manager available, at the nonresidential rental unit of the tenant at the convenience of the owner and tenant. The owner of the building may impose and collect a reasonable charge for copying documents, reflecting the actual costs of materials and labor for copying, prior to providing copies of the records to the tenant.
- 4405.8. All records referenced in subsection 4405.6 shall be made available to the Commission upon request.
- 4406. REQUEST TESTS**
- 4406.1. Upon request by a tenant, the owner will test the submetering or energy allocation equipment without charge to the tenant, provided that the owner shall not be required to conduct such test more than once in twenty-four (24) months for the same tenant.

- 4406.2 The tenant, or his or her designated representative, may be present when the equipment is tested.
- 4406.3 A written report of the results of the test shall be made available to the tenant within ten (10) business days after the completion of the test.

**4407 BILLING**

- 4407.1 Bills shall be rendered for the same billing period as that of the utility, generally monthly, unless the rental agreement or lease expressly provides otherwise. Bills shall be calculated and rendered as promptly as possible following receipt by the owner of the bill from the utility, but no later than fourteen (14) days after receipt of the utility's bill. The submetering or energy allocation equipment shall be read within five (5) business days of the scheduled reading date of the utility's master meter.
- 4407.2 For submetering, the unit of measurement shall be the energy unit as defined in section 4499 (Definitions). For energy allocation equipment, the units of measurement shall be those characteristics monitored by the allocation equipment.
- 4407.3 The energy billed to any tenant shall constitute only the energy consumed within that nonresidential rental unit and so measured or monitored by the equipment. The cost of energy used in owner-paid areas may be recovered by the owner only as provided in subsection 4407.12, and may not be billed to any tenant as part of the billings rendered pursuant to this chapter and may not be measured through the nonresidential rental unit submetering or energy allocation equipment. Where permitted by tenant lease agreements, energy costs for usage consumed within the nonresidential rental unit, which are not allocated by energy allocation equipment, may be allocated by the owner among the various tenants in the same proportions as the leased space square footage. These costs shall be listed separately from energy billings based on energy allocation equipment, and appropriately marked on the monthly tenant bills.
- 4407.4 The owner shall render bills to the tenant in the same energy unit(s) as that billed to the owner by the utility.
- 4407.5 The tenant's bills shall be calculated in the following manner:
- After the owner receives the electric or natural gas bill from the utility, the owner shall divide the "total current charges" by the total number of energy units billed by the utility to determine the average cost in cents per energy unit. The average energy unit cost shall be multiplied by each tenant's energy unit consumption to obtain the tenant's monthly charges.

4407.6 For the purposes of computing the average cost per energy unit, the "total current charges" shall include or exclude the following, as applicable:

(a) Include:

- (1) Customer, demand, commodity, energy, transmission, and distribution charges;
- (2) Procurement cost adjustment;
- (3) Purchased gas adjustment;
- (4) Local taxes;
- (5) Surcharges; and
- (6) Credits;

(b) Exclude:

- (1) Miscellaneous charges, such as charges by the utility for late payments.

4407.7 The owner may impose a reasonable monthly service charge per nonresidential rental unit to offset the administrative cost of billing, reflecting the actual costs of materials and labor for preparing tenants' bills, in accordance with D.C. Official Code §§ 34-1552(b)(1) and 34-1553(d) (2010 Repl.).

4407.8 The tenant's bill shall show all of the following information:

- (a) The date the bill was prepared;
- (b) The dates and readings of the submetering or energy allocation equipment at the beginning and at the end of the period for which the bill is rendered and the billing date;
- (c) The number of energy units consumed during the current billing period;
- (d) The average cost in cents per energy unit used in computing the bill;
- (e) The amount due for electricity or natural gas consumed within the nonresidential rental unit, the administrative service charge, if any, the balance forward, and the total amount due;

- (f) The name or address, or both, of the tenant for whom the bill is applicable;
  - (g) The name of the firm rendering the tenant's bill and the name or title, address, and telephone number of the person(s) where payment can be made and, the name of the contact person in the case of any questions or disputes concerning the bill; and
  - (h) A precise statement that the bill is not from the utility providing the service to the nonresidential rental unit.
- 4407.9 Bills shall be mailed or delivered to the tenant's premises within five (5) business days after the billing date.
- 4407.10 Estimated bills shall not be rendered unless the meter or energy allocation equipment has been tampered with, or is out of order, or where access cannot be attained, or where the property owner receives an estimated bill from the utility company and, in any such case, the bill shall be distinctly marked "estimated." Such estimates shall be based upon one (1) of the following:
- (a) Consumption over a similar billing period where the information of previous consumption is available;
  - (b) The preceding billing period for a tenant that has resided on the premises for less than one (1) year and the consumption for a similar billing period is not available; or
  - (c) The average of the preceding two (2) billing periods, if available.
- 4407.11 Adjustment to a tenant's bill shall be made under any of the following conditions:
- (a) Any billing errors due to incorrect readings or improper billing calculations discovered by the owner on his or her own initiative or discovered as a result of an investigation because of a question or a dispute by a tenant;
  - (b) If it is determined that a cross-metering situation exists. The tenants involved will be rendered corrected bills to cover such period of time as the statute of limitations allows. If a tenant has been underbilled, the tenant shall be allowed to make payment of the amount underbilled in equal monthly installments for as many months as the corrected bill covers, but for not more than ten (10) months, the entire amount underbilled being due upon termination of tenancy. If a tenant has been overbilled and is due a credit, the

tenant may request a cash refund, otherwise such credit shall be posted to the tenant's account;

(c) If the utility adjusts the owner's bill; or

(d) As detailed in section 4402 (Submetering).

- 4407.12 Nothing contained in these rules shall prohibit the owner from recovery, in periodic lease payments, of the tenant's fair share of electricity or natural gas costs attributable to owner-paid areas and costs incurred in establishing and maintaining the submetering system or energy allocation equipment.
- 4407.13 Initial and final bills shall be rendered for the number of energy units actually consumed in the initial and final billing periods.
- 4407.14 On the date possession is taken by a tenant of a nonresidential rental unit, an initial reading will be taken from the submetering or energy allocation equipment serving such nonresidential rental unit to commence service to that tenant. The initial reading will be subtracted from the next reading of the equipment (taken on the regularly scheduled monthly reading dates on which other submetering or energy allocation equipment in the building is read) to determine the consumption during the initial billing period. The energy units consumed as determined in the above manner will be multiplied by the average energy unit cost which is determined for the computation of bills for all other tenants for the period ending with the regularly scheduled reading date of that month.
- 4407.15 On the date a tenant surrenders a nonresidential rental unit, a final reading will be taken from the submeter equipment serving such unit to terminate service to that tenant. The reading of the equipment taken on the last previous regularly scheduled monthly reading dates on which other submetering or energy allocation equipment in the building was last read will be subtracted from the final reading to determine the consumption during the final billing period. The energy units consumed or determined in the above manner will be multiplied by the average energy unit cost which is determined for the computation of bills for all other tenants for the regularly scheduled monthly reading date after the final reading. If the owner and tenant so agree in writing, the owner may use the average energy unit cost from the previous month when determining the amount due for the last month of tenancy.
- 4407.16 A late payment charge shall not be imposed on all amounts, including deferred payment installments, paid by the due date or on amounts in dispute before the Commission. Amounts paid after the due date shall bear a late payment charge of one percent (1%) and an additional late

payment charge at the rate of one and one-half percent (1.5%) on the remaining unpaid balance per billing month thereafter.

**4408 BILLING RECORDS**

- 4408.1 All records associated with the computation of charges rendered to tenants for electric service or natural gas service shall be retained for a minimum period of three (3) years.
- 4408.2 The owner shall maintain and make available for inspection by the tenant, upon request, the following records:
- (a) The billing from the utility to the owner for the current month and the thirty-six (36) preceding months;
  - (b) The calculation of the average cost per energy unit for the current month and the thirty-six (36) preceding months' and
  - (c) The tenant's submeter or energy allocation readings and billings for the current month and the thirty-six (36) preceding months or for the term of tenancy, whichever is less.

**4409 COMPLAINT AND HEARING PROCEDURES**

- 4409.1 Any dispute relating to the tenant's bill and to the accuracy of the submeter or energy allocation equipment is between the owner of the building and the tenant, and excludes the public utility.
- 4409.2 When an owner cannot resolve a billing dispute with a tenant, the owner shall refer the tenant to the Commission for resolution.
- 4409.3 The tenant shall contact the Office of Consumer Services (Office) to initiate a complaint proceeding. The Office shall:
- (a) Answer inquiries and make information available concerning the procedures for resolving disputes; and
  - (b) Accept the filing of the tenant complaint.
- 4409.4 The tenant may file a complaint with the Commission through the Office within ninety (90) days from the date the owner refers the tenant to the Commission, in accordance with subsection 4409.2.
- 4409.5 If the complaint has not been resolved by the tenant and the owner, the Commission shall make an effort through mediation to resolve it

- informally. This additional resolution effort shall not exceed five (5) business days.
- 4409.6 If the complaint is not resolved through the Commission's informal process, including mediation, the tenant may request a formal hearing.
- 4409.7 The tenant shall have fourteen (14) days after the conclusion of the informal process to request a formal hearing.
- 4409.8 A hearing, where necessary, shall be scheduled within twenty (20) days of the formal request for hearing. Except in special cases, hearings shall be conducted during business hours of the Commission. The Commission shall designate a hearing officer, who shall not have investigated the complaint.
- 4409.9 The Commission shall provide notice of hearing by personal delivery or by first class mail to the complainant, to any affected guarantor, and to the owner. The notice shall include a copy of the tenant's written complaint. The notice shall also state the potential consequences of failure to appear for a hearing.
- 4409.10 Service shall be made at least ten (10) days prior to the hearing date unless the parties agree on a shorter time. When service is by first class mail the service date is the date of mailing and service shall be made at least ten (10) days prior to the hearing date.
- 4409.11 The hearing officer may reschedule any hearing at the request of any party. Otherwise, a hearing may be rescheduled at the discretion of the hearing officer.
- 4409.12 In the event the tenant fails to attend a scheduled hearing without good cause, the hearing officer may dismiss the complaint (with or without prejudice at the discretion of the hearing officer), hear evidence and render a decision, or reschedule the hearing.
- 4409.13 In the event an owner fails to attend a scheduled hearing without good cause, the hearing officer may hear evidence and render a decision.
- 4409.14 Upon a reasonable request by either party or the hearing officer, the parties shall timely provide all information they have relevant to the matters at issue in the complaint, including relevant documents, account data, titles, and the names of witnesses.
- 4409.15 Parties may examine any public records of the Commission.

- 4409.16 Parties shall have the right to present evidence, call witnesses, and present written and oral argument. When directed by the hearing officer, parties shall file briefs no later than fifteen (15) days after the close of the hearing.
- 4409.17 Witnesses shall testify under oath, and the parties and the hearing officer shall have the right to examine and cross-examine all witnesses.
- 4409.18 The hearing officer shall have the discretion to limit any line of questioning to what may be required for a full and true disclosure of the facts and to limit the time for argument.
- 4409.19 Unless otherwise ordered by the hearing officer, the complainant's witnesses shall testify first, followed by the respondent's witnesses. A reasonable opportunity will be afforded all parties to present rebuttal evidence.
- 4409.20 The formal rules of evidence shall not apply, but the hearing officer shall exclude irrelevant or unduly repetitious evidence.
- 4409.21 Parties may stipulate to any facts and such stipulation may be put in evidence.
- 4409.22 All proceedings shall be recorded. The transcripts shall promptly be made available to any party upon request, at the party's expense. Every Commission prepared transcript shall be certified by the hearing officer. Any party may, at its expense, provide for transcription of the proceedings by a certified court reporter in place of recording, in which case, that transcript shall be the official record.
- 4409.23 Within twenty (20) days after the close of the hearing, the hearing officer shall issue a written decision which states the issues, summarizes the evidence and makes findings of fact, conclusions of law, and a disposition of the matter.
- 4409.24 Copies of the hearing officer's decision shall be served upon the parties either personally or by regular mail on the day the decision is issued together with instructions on how to appeal the decision to the Commission and indicating the last date the appeal may be filed.
- 4409.25 The decision of the hearing officer shall be final, if there is no appeal to the Commission within the time specified.
- 4409.26 Any party may appeal the hearing officer's decision to the Commission within thirty (30) days of personal service and thirty-five (35) days of service by first class mail of the decision.

- 4409.27 The appeal shall:
- (a) Be signed by the party;
  - (b) Identify the decision appealed from; and
  - (c) Specify the grounds on which it is based.
- 4409.28 The party appealing shall serve a copy of any appeal filed upon the opposing party on the day it is filed. Service may be made personally or by first class mail.
- 4409.29 The opposing party's response or counter-appeal shall be filed within ten (10) days of personal service and fifteen (15) days of service by first class mail.
- 4409.30 Within twenty (20) days of the filing an appeal, the record shall be prepared for review by the Commission.
- 4409.31 The Commission shall review the decision within sixty (60) days after the record is prepared.
- 4409.32 Upon review of the record, and after giving consideration to the matters raised on appeal, the Commission shall:
- (a) Adopt the decision of the hearing officer;
  - (b) Issue a Commission decision;
  - (c) Return the matter to the hearing officer for further proceedings; or
  - (d) Schedule the matter for hearing or argument before the Commission.
- 4409.33 Review of a final Commission decision shall be pursuant to D.C. Official Code §§ 34-604, 34-605 (2010 Repl.).
- 4410 RESERVATION OF RIGHTS**
- 4410.1 Tenants, owners, operators or managers shall retain any private right of action resulting from any breach of the rental agreement or lease terms required by Section 4401 (General Requirements).

**4411 through 4497 [RESERVED]**

**4498 WAIVER**

4498.1 The Commission may, upon request with good cause shown, or on its own, waive any provisions of this chapter.

**4499 DEFINITIONS**

4499.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

**Building** \_ all of the individual units served through the same utility-owned meter within a property defined as Class 2 Property under D.C. Official Code § 47-813(c-6)(3) (2005 Repl. & 2011 Supp.).

**Building owner, operator, or manager or Owner** - any person or entity responsible for the operation and management of a building.

**Commission** - the Public Service Commission of the District of Columbia.

**Certified lab** - a testing facility that includes a utility's meter testing facility or a facility approved for use by any state regulatory utility commission.

**Electricity supplier** - a person, including an aggregator, broker, or marketer, who generates electricity, sells electricity, or purchases, brokers, arranges or, markets electricity for sale to customers. The term excludes the following:

- (a) Building owners, lessees, or managers who manage the internal distribution system serving such building and who supply electricity solely to occupants of the building for use by the occupants;
- (b) Any person who purchases electricity for its own use or for the use of its subsidiaries or affiliates, or any apartment building or office building manager who aggregates electric service requirements for his or her building or buildings, and who does not take title to electricity, market electric services to the individually-metered tenants of his or her building, or engage in the resale of electric 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 allocation equipment** - any device, other than submetering equipment, used to determine approximate electric or natural gas usage for any nonresidential rental unit within a building.

**Energy unit** - the billing units for the energy delivered to the nonresidential rental unit— for example, kilowatt-hours, cubic feet, or therms.

**Master meter** - a meter used to measure for billing purposes, all electric or natural gas usage of a building, including common areas, common facilities, and nonresidential rental units therein.

**Natural gas supplier** - a person including an aggregator, broker, or marketer, who produces natural gas, sells natural gas, or purchases, brokers, arranges or, markets natural gas for sale to customers. The term shall not include a person that supplies natural gas exclusively for its own consumption or the consumption of one (1) or more of its affiliates. The term shall not include the following:

- (a) Building owners, lessees, or managers who manage the internal distribution system serving the building and who supply natural gas solely to occupants of the building for use by the occupants;
- (b) Any person who purchases natural gas for its own use or for the use of its subsidiaries or affiliates, or any apartment building or office building manager who aggregates retail natural gas sales requirements for his or her building, and who does not take title to natural gas, market retail natural gas sales to the individually-metered tenants of his or her building, or engage in the resale of natural gas to others;
- (c) Property owners who supply small amounts of natural gas, at cost, as an accommodation to lessors or licensees of the property; and
- (d) A consolidator.

**Nonresidential rental unit** - property leased for commercial purposes.

**Owner-paid areas** - the portion of the real property for which the owner bears financial responsibility for energy costs, which portions include areas outside individual nonresidential units or in owner-occupied or shared areas.

**Submetering equipment** - equipment used to measure actual electricity or natural gas usage in any nonresidential rental unit when the equipment is not owned or controlled by the electric or natural gas utility serving the building in which the nonresidential rental unit is located.

**Tenant** - tenant, subtenant, lessee, sublessee, or occupant or occupants entitled to the possession, occupancy or benefits of a nonresidential rental unit. The singular term tenant includes the plural.

**Utility** - every street railroad, street railroad corporation, common carrier, gas plant, gas corporation, electric company, telephone corporation, telephone line, telegraph corporation, telegraph line, and pipeline company.