

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., 2nd FLOOR, WEST TOWER
WASHINGTON, D.C. 20005

ORDER

February 8, 2001

FORMAL CASE NO. 945, PHASE II, IN THE MATTER OF THE INVESTIGATION
INTO ELECTRIC SERVICES, MARKET COMPETITION AND REGULATORY
POLICIES, ORDER NO. 11913

1. In Formal Case No. 945, Phase II, Order No. 11796,¹ the Public Service Commission of the District of Columbia ("Commission") adopted the consensus recommendations contained in a report² filed by the Retail Competition Working Group ("Working Group"), decided issues upon which the Working Group could not agree and, directed the Working Group to address and develop agreement on certain issues relating to aggregation. On November 2, 2000, the Working Group filed a report ("Aggregation Report") with the Commission stating that it had reached agreement on most, though not all, issues it was asked to address.³ On issues the Working Group had not reached agreement, it deferred attempts at resolution to a future date.⁴ By this Order, the Commission accepts the Aggregation Report, in part, and adopts the conclusions and recommendations agreed upon therein.⁵

¹ Formal Case No. 945, Phase II, *In The Matter Of The Investigation Into Electric Services, Market Competition And Regulatory Policies*, Order No. 11796 (September 18, 2000) ("Order No. 11796").

² Formal Case No. 945, Phase II, *Report of the Retail Competition Working Group* (May 23, 2000).

³ Formal Case No. 945, Phase II, *Report of the Retail Competition Working Group Regarding Aggregation Issues* (November 2, 2000).

⁴ See, e.g., "The concrete details about how the universal service program would be implemented for low-income customers who choose alternative Electricity Supplier have not been worked out. Until such details are determined, it is premature to consider whether any specific provisions should be adopted for low-income residential customers." Aggregation Report at 2. And, "[t]he Working Group has tried to address foreseeable problems by the regulations. However, other unanticipated problems could develop, as experience has shown in other jurisdictions further along in retail electric competition, and in other industries within the District[.]" *Id.* at 4.

⁵ Parties participating in the discussions leading to the agreement on aggregation issues included: Apartment and Office Building Association of Metropolitan Washington; Association and Agency Consortium for Energy; the Consumer Utility Board; District of Columbia Energy Office; District of Columbia Government; Energy Services Management, Inc.; FirstEnergy Services Corp.; International Brotherhood of Electrical Workers; Mona Energy Partners, Inc.; New Energy, Inc.; Office of the People's Counsel ("OPC"); Potomac Electric Power Company, and Washington Gas Light Company. Aggregation Report at 1-2.

2. In Order No. 11796, the Commission directed the Working Group to address five (5) specific issues regarding aggregation.⁶ In its Report, the Working Group responds to these issues by submitting proposed regulations to ensure that residential and small business loads are attractive to competitive suppliers;⁷ leaves open for a future date specific provisions applying to low income customers and details regarding how the universal program may be implemented for low income customers choosing alternative electricity suppliers;⁸ confirms the statutory and regulatory roles of OPC, the Commission, and parties in fostering and facilitating effective competition in the District;⁹ attaches proposed regulations to be adopted as interim standards for the pilot program;¹⁰ recommends adherence to the anti-discrimination provisions in the applicable statute and the Interim Consumer Protection Standards to ensure that the market remains nondiscriminatory;¹¹ leaves open for future discussion potential approaches to market monitoring;¹² and recommends the Commission use the first-year pilot program to gather information regarding potential problems and solutions which may occur as a result of deregulation.¹³

⁶ Order No. 11796, as enumerated in that Order:

Issue No. 20: A. What aggregation regulations or programs should be implemented in order to ensure that the residential and small business loads are attractive to competitive suppliers? B. What specific provisions, if any, should be adopted for low income residential customers?

Issue No. 21: What roles should each party and the Commission play in facilitating residential and small business consumer participation through aggregation or other customer grouping programs?

Issue No. 22: A. What aggregation rule, if any, should the Commission adopt for the pilot program? B. Should the Commission take steps to assure that alternative service suppliers serve residential and small business customers, without geographic or income-class disparity during and after the pilot program? C. Should particular provisions be adopted for low-income customers? D. What are the potential problems and solutions?

Issue No. 23: A. Should the Commission monitor prices paid by various types of customers obtained via aggregation? And if so, how? B. Should the Commission take any steps to assure that residential customers, including low-income customers, do not encounter significant price disparities relative to other customers? If so, what steps?

Issue No. 24: What regulations relating to customer-based aggregation programs are in the public interest (*see* Section 115 of the Act)?

⁷ Aggregation Report at 2 and Attachment: *Proposed Aggregation Program Regulations District of Columbia Public Service Commission.*

⁸ Aggregation Report at 2, 4.

⁹ *Id.* at 3.

¹⁰ *Id.* at 3; Attachment.

¹¹ *Id.* at 3.

¹² *Id.* at 3-5.

¹³ *Id.* at 4.

3. A policy goal of the District of Columbia Council in passing the Retail Electric Competition and Consumer Protection Act of 1999 (the "Act") was to provide adequate protection to residential and small business consumers while allowing new market participants to enter the market with minimum entry barriers.¹⁴ Section 107 of the Act¹⁵ and Order No. 11796, Attachment A, Section 2-1¹⁶ outline the types of protections to be afforded to consumers. The protections include the prohibition of unapproved disclosure of customer information, the unapproved change of a customer's electricity supplier, false or misleading advertising by market participants, and the prohibition of discrimination based on race, color, gender, religion, and national origin by market participants against consumers. We find that the Working Group's Aggregation Report complies with sections 107 and 115¹⁷ of the Act and duly notes the Commission's concerns over discrimination against consumers in a deregulated energy market. Furthermore, absent any objection from the parties regarding the conclusions and recommendations contained in the Aggregation Report, we find these conclusions and recommendations to be just, fair, reasonable, and in the public interest.

4. In accepting the conclusions and recommendations outlined in the Aggregation Report, we remind the Working Group that in a prior Order, the Commission directed it to submit comments on the Low Income Aggregation Program by June 1, 2001.¹⁸ We agree that the first year pilot program can provide additional information on aggregation.¹⁹ We also encourage the Working Group to continue to work towards developing methods for effective aggregation and to submit a recommendation to the Commission regarding aggregation programs for residential and small business customers by June 1, 2001.

5. Because the Working Group's Aggregation Report was issued on November 2, 2000 and Order No. 11862 was issued on December 18, 2000, we, at this time, modify the language in the licensing requirements section of the Working Group's Aggregation Report to include the bonding standards adopted in Order No. 11862.²⁰ The section entitled, "License Requirements" in the

¹⁴ See Order No. 11796 at 3, *citing* Committee on Consumer and Regulatory Affairs, Council of the District of Columbia, Report on Bill 13-284 (December 2, 1999).

¹⁵ Act at 22-23.

¹⁶ Order No. 11796, Attachment A at 5.

¹⁷ "(2) The Commission may adopt any reasonable regulations relating to customer-based aggregation programs that it determines to be in the public interest." The Act, Section 115. Aggregation Programs at 37.

¹⁸ Formal Case No. 945, Phase II, Order No. 11876 (December 29, 2000) at 23.

¹⁹ See Aggregation Report at 4.

Aggregation Report shall now read, in pertinent part: "An Aggregator or Broker must obtain an Electricity Supplier license from the Commission pursuant to the Interim Application for License to Supply Electricity or Electric Generation Service to the Public in the District of Columbia *and Order No. 11862 issued on December 18, 2000* in order to contract with retail customers as an Aggregator or Broker in the District of Columbia." (New language in italics).²¹ In all other respects, we adopt the remainder of the Working Group's interim standards and will promulgate regulations through a future rulemaking process.

THEREFORE, IT IS ORDERED THAT:

6. The Commission accepts the Working Group's Aggregation Report and **ADOPTS** the conclusions and recommendations agreed upon therein;

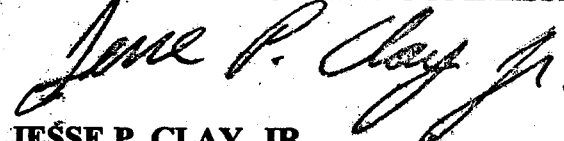
7. The Commission **ADOPTS** the Working Group's interim standards for the pilot program with modifications to the section concerning License Requirements (as outlined above); and

8. The Commission shall issue a Notice of Proposed Rulemaking to the public inviting comment on whether the interim standards should be ultimately adopted as final regulations.

A TRUE COPY:

CHIEF CLERK

BY DIRECTION OF THE COMMISSION:



**JESSE P. CLAY, JR.
COMMISSION SECRETARY**

²⁰ Formal Case No. 945, Phase II, Order No. 11862 (December 18, 2000).

²¹ See Aggregation Report, Proposed Aggregation Program Regulations, Section .03 Regulations, (1) License Requirements, at 4.