

**BEFORE THE
COMMITTEE ON BUSINESS AND ECONOMIC
DEVELOPMENT
OF THE
COUNCIL OF THE DISTRICT OF COLUMBIA
FOR THE FY 2016 PERFORMANCE OVERSIGHT HEARING
OF THE
OFFICE OF THE PEOPLE'S COUNSEL
STATEMENT OF SANDRA MATTAVOUS-FRYE PEOPLE'S
COUNSEL**

February 22, 2017

Good Morning Chairman McDuffie, Members of the Committee on Business and Economic Development and members of the public.

I am Sandra Mattavous-Frye, People's Counsel for the District of Columbia. Joining me today in the hearing room are key members of my staff. Thank you and the members of the committee for providing me the opportunity to share OPC's accomplishments in 2016 and provide a glimpse of the road ahead. Pursuant to your request, OPC forwarded our detailed responses to the 49 questions the Committee provided my office.

I. 2016 An Overview

The year 2016 was of epic proportion with fundamental changes to the regulatory landscape. DC consumers faced the acquisition of PHI-Pepco by Exelon; a \$20 million Washington Gas rate case; an \$85 million rate increase request by Pepco; early rumors of a WGL merger; the re-emergence of Third-Party Suppliers, and the development of attainable solar options for DC residents, including community solar. Indeed, it was an extremely active and challenging year for OPC.

We aggressively litigated the Pepco merger and two overlapping gas and electric utility rate cases; and opposed WGL's treatment of an unauthorized cash-pay-out to Third-Party Supplier gas companies resulting in a \$2.4 million refund for natural gas customers. OPC also participated in a Public Service Commission proceeding that redesigned the Residential Aid Discount ("RAD") program. Several of OPC's recommendations were adopted, including transparent billing formats.

We also joined a U.S. Supreme Court amicus brief in a landmark case that promotes demand response. OPC and various consumer advocates successfully argued in support of the Federal Energy Regulatory Commission's (FERC) jurisdiction over demand response resources in wholesale energy markets. We continued working closely with members of the Consumer Advocates of the PJM states ("CAPS") and with PJM's support, secured FERC approval of a permanent funding mechanism for CAPS.

Ever mindful that information is power, we increased our communications efforts; expanded our stakeholder base; and improved our consumer complaint process with the installation of a new consumer information data base. Finally, pursuant to the Council's directives as enumerated in Bill 21-158, (*The Fiscal Year 2016 Budget Support Act of 2015, Subtitle K Section 6102*), we developed a targeted outreach and education campaign for low-income and elderly residents to make them aware of the benefits and options available for energy efficiency programs and practices. Our findings and recommendations are presented in "Office of the People's Counsel Senior Outreach, Awareness and Energy Efficiency Education Campaign" A copy of which is attached to my testimony. In response to the second Council directive, OPC commissioned the District's first ever Value of Solar Study. Given the growing expansion of the District's solar footprint, we believe an assessment of the District's solar capacity, including costs and benefits, can be an effective tool for policymakers and energy stakeholders. The central components of this project are: 1) an assessment of solar capacity and valuation using "utility systems" and "societal benefits and 2) an analysis of low-income solar access issues, which is critical given that the utility burden for low-income consumers is disproportionately high, with estimates that some low-income customers pay as much as 40% of their income on utilities. The Value of Solar Study is in its final vetting stages and will be issued shortly. However, I can preview our conclusion

that the District of Columbia is on the right path and solar is a viable option for all DC residents.

In my prior appearances before the Council, I spoke of upcoming changes in the utility regulatory arena. Regulatory change is no longer a hypothetical; it is the new normal, which has fundamentally changed the regulatory conversation. Under my stewardship and with the commitment of my dedicated staff, OPC continues to strive to ensure the needs of DC utility consumers in all eight wards are met, and more importantly, all consumers are involved in the dialogue. During the course of 2016, I can say with confidence OPC has tackled the challenges and delivered tangible benefits to our clients.

II. LITIGATION ADVOCACY: LITIGATION SERVICES DIVISION

A. Public Service Commission Formal Cases

In 2016, OPC's Litigation Services Division was active in 60 cases before the Public Service Commission, Federal Energy Regulatory Commission, PJM Interconnection, DC Court of Appeals, and the U.S. Supreme Court. Today, I will highlight a few of the major cases.

1. Electric Cases

Formal Case 1119 Pepco-Exelon Merger: After almost two years of contentious litigation, the Public Service Commission on March 2016 approved the revised Pepco-Exelon merger application.

Merger Compliance Monitoring: In order to ensure Pepco is in compliance with the terms of the PSC Order, I developed a Merger Compliance Team charged with evaluating Pepco's compliance with each and every one of the 34 categories of merger commitments governed by terms contained in 127 paragraphs in the Commission's order approving the merger. We have submitted over 100 data requests, and have established quarterly meetings with Pepco on the merger commitments. So far, we have identified a number of concerns with some of the compliance filings submitted by Pepco. Specifically, OPC filed comments on Pepco's Service Company Integration Plan and the Arrearage Management Plan, and we are reviewing the Company's Root Cause Analysis and will file comments on it soon. In the rate case, the Office's testimony addresses our concerns with Pepco's treatment of the merger savings and the cost to achieve. Attached to my testimony is a matrix of the status of the commitments.

OPC v PSC Merger Appeal: OPC filed a Notice of Appeal of the Commission's final decision with the DC Court of Appeals on August 12, 2016. The District Government and Public Citizen have joined in the Appeal. OPC believes the Commission's final decision is procedurally and legally flawed.

Formal Case 1139 Pepco Rate Case: Three months after receiving approval to merge, Pepco filed a rate application seeking an \$85.4 million increase in distribution rates. It is important not only because of the magnitude of the request but also because this case will establish a baseline for future performance, and decidedly set the regulatory tone going forward. It will also be the first opportunity to evaluate Pepco's compliance with the merger commitments.

DC Power Line Undergrounding ("DC PLUG"): An unsuccessful legal challenge by the Apartment and Office Building Association (AOBA) delayed the start of the program.

Another delay has to do with the General Services Administration's (GSA) current representation that it will not pay one of the DC PLUG surcharges. GSA claims the charge is an impermissible tax.

Unfortunately, GSA's nonpayment would cause residential customers to incur a disproportionate share of DC PLUG costs, because they would be required to pay their costs and to make up for any GSA deficiencies.

OPC is working closely with other District stakeholders to resolve the GSA impasse so that shovels can get in the ground without further delay. OPC remains true to our original goal of ensuring DC PLUG affordably and effectively improves the resiliency and reliability of the District's electric distribution system.

2. Natural Gas Cases

Formal Case 1137 Washington Gas Rate Case: OPC urged the PSC to reject over 90% of Washington Gas Light's \$17.3 million rate increase request. Our recommendation was based on the company's unjustified cost overruns associated with its pipeline replacement project and its request for increased shareholder profits. If approved, the rate increase would create an unnecessary financial burden on natural gas consumers.

Formal Case 1126: OPC filed a petition with the PSC challenging WGL's treatment of overpayments to Third-Party Suppliers, which impermissibly increased ratepayer costs. As a result of our efforts, in August 2016, the Commission ordered WGL to refund \$2.4 million to DC natural gas consumers over a 12-month period starting December 2016.

Grid Modernization (Modernizing the Energy Delivery System for Increased Sustainability "MEDSIS") Formal Case 1130: OPC is actively participating in the PSC Grid Modernization proceeding. This case is designed to examine technologies and policies to modernize the city's energy infrastructure system. The Staff of the Commission recently issued a Staff Report on January 25, 2017 which captures the comments and positions of the participants in the Commission workshops conducted last year. OPC actively participated in the proceeding and will present comprehensive comments to the Commission.

3. Consumer Bill of Rights:

On February 21, 2017 OPC filed with the Commission proposed revisions to the Consumer Bill of Rights, last updated in 2008. Our recommendations are designed to address changes in the utility marketplace that include issues with Third-Party Suppliers, consumers' rights to privacy, data security, protections against disruption of service, and enhanced protections for seniors.

A list of OPC recommendations are attached to my testimony.

B. Legal Advocacy Outside the PSC

1. Supreme Court Amicus Brief

On January 25, 2016, the Supreme Court issued its decision *Federal Energy Regulatory Commission v. Electric Power Supply Association*, 136 S. Ct. 760 (2016), wherein it ruled in favor of FERC and upheld its Order No. 745. This was a tremendous victory for District ratepayers for several reasons. For one, when it costs less to pay consumers to refrain from using power than it does to pay producers to supply more of it, demand response can lower wholesale prices and ultimately lower customer bills by obviating the need for excess generation from the grid system during peak periods. In addition, if the Supreme Court had determined that demand response resources were not FERC jurisdictional, and District ratepayers would not be compensated by PJM's wholesale energy markets

for curtailing their energy use during peak periods, and there would be no incentive for them to do so in the future.

2. PJM/CAPS Committees and Working Groups

The Consumer Advocates of the PJM States (CAPS), of which OPC is a member, is a nonprofit organization specifically formed to coordinate the participation of State Consumer Advocate offices in the PJM stakeholder process. Originally funded through a settlement with Constellation Energy Commodities Group (Constellation). For a one-time payment of \$1.2 million for the states in the PJM footprint. CAPS also received \$350,000 in additional funding in June 2016 through one of the Pepco-Exelon merger commitments. CAPS members formally submitted a CAPS funding proposal to the PJM and gained widespread support among the members. On February 29, 2016, FERC issued an order reapproving permanent funding. *OPC continues to play an active role in the PJM stakeholder process through its involvement in numerous committees and user groups. As we know, 70% of the costs reflected on customer bills are generation over which the PSC has no jurisdiction.*

C. Independent Community Driven Investigations and Advocacy Activities

OPC proactively conducts independent investigations of utility actions and practices frequently resulting in the Office petitioning the PSC for formal action.

These cases are often an outgrowth of information we receive from our constituents when we attend community meetings. This year we have filed 2 petitions before the PSC. One seeks PSC action on behalf of WGL customers with pipeline and meter replacement complaints and the other seeks revisions to the Consumer Bill of Rights.

1. ProjectPipes (Formal Case 1115 and Inside Meter Relocations):

During the summer of 2016, OPC began to receive complaints from consumers, primarily in Wards 2 and 6, about the methods WGL was using to move meters from inside homes to outside locations in historic districts. Consumers complained about WGL's failure to provide notice of work, property damage, and inconsistent application of local historic preservation guidelines. OPC filed a petition requesting the PSC open an investigation into consumer complaints. The Commission has opened an investigation into this case (Formal Case 1141).

Our litigation efforts have not only held the line on rate cases, but as mentioned above, returned \$2.4 million to natural gas consumers and created a path for customers who are net energy generators to be compensated. In the coming year,

we will continue to advocate on behalf of consumers as the District's utility markets evolve.

2. OPC Works with Tenants:

Tyler House: During the course of our community outreach meetings with residents of the Tyler House apartments in Ward 6, we were alerted to complaints of high WGL customer bills. OPC resolved billing errors and high bill complaints for numerous residents. In addition, we notified DCRA of potential safety hazards at the Tyler House apartments. DCRA is currently investigating this matter and based on the results, we will take action.

Jetu Apartments: Through our work with tenant and civic associations in Ward 5, we were informed that the owner of the Jetu Apartments was converting the master-metered apartments to individual meters. As more and more apartments undergo conversion, this issue is going to recur across the District as demographics change. There are two components of this case. First, tenants are legally entitled to a rent reduction, based upon the removal of the electric charge from the cost of their rent, which they will now pay themselves. OPC provided an analysis of the landlord's proposed rent reduction, which was used by the tenants and the DC Office of the Tenant Advocate to negotiate a larger rent reduction. Second, recognizing the residents will be faced with paying their own electric bill for the

first time, we are initiating a targeted energy efficiency education program that will help the residents manage their bills.

III. Consumer Education and Energy Efficiency Outreach Programs

I am extremely proud of the work and efforts put forth by OPC's Consumer Services Division ("CSD"). They are the face of OPC. Now more than ever, we must ensure that consumers have accurate and complete information to help them make informed decisions. OPC's Energy Efficiency and Sustainability section ("EES") continues to expand its outreach to faith communities and nonprofits that are often in need of comprehensive energy upgrades. We supplemented our staff by hiring an intern from the Department of Employment Services' "LEAP" program, who focuses on outreach to our youngest consumers through a partnership with the Boys & Girls Clubs of Greater Washington. This program has proven so popular we are developing energy efficiency programs for middle and high school students, who will soon need to make utility decisions of their own.

A. Consumer Complaints and Outcomes

For FY 2016 to date, OPC's CSD responded to 3,106 consumer complaints and 1,253 consumer inquiries. This represents an increase of approximately 15% over last year, which we believe is a direct result of our intensified outreach and awareness campaign. Despite the complexity of today's utility issues, we were able to resolve 95% of these complaints in FY 2016. (*Pepco 59%, WGL 17%, Verizon 16%, Third Party Suppliers 8%*)

The consumer complaints trends include billing disputes, service reliability complaints, quality of customer service, and the effects of utility infrastructure projects on neighborhoods and commercial corridors. CSD staff conducted 154 community outreach meetings in 2016.

B. Expanded Neighborhood Outreach

CSD has developed an outreach approach we call "OPC in Your Neighborhood." Staff set up "Pop-Up" information stands throughout the District at shopping centers, Metro stops, and high-traffic events to talk directly with consumers, answer utility questions and share handouts and consumer guides about utility services. To date, we have conducted 12 Pop-Ups across the District. A list of these locations is attached to my testimony.

This expanded outreach has brought with it some recognition for the Office. I was honored to receive the Energy Bar Association's State Regulatory Practitioner

Award for 2016, and to be given the opportunity to present at the Capital Area Muslim Bar Association annual meeting which was featured in the DC Bar Association's Washington Lawyer Magazine on diversity.

In 2016, I directed staff to launch an awareness campaign that incorporated a dramatic doubling of our social media contacts through Twitter and Facebook, along with email, community newspaper ads in over 10 local news outlets (the Senior Beacon, the Washington Informer, The Current Newspapers, the Afro-American, Hill Rag, MidCity, and East of the River.) I conducted radio and television interviews on WAMU, WTOP, WPFW, WRC, WJLA, WTTG, WUSA, and NewsChannel 8. In addition, OPC also contributed to numerous trade and newspaper publications.

C. OPC Works With Advisory Neighborhood Commissions (ANC)

Advisory Neighborhood Commissions remain a primary channel of community relations for OPC. We conducted extensive briefings on utility issues for ANC commissioners throughout the District during the year. OPC also conducted briefings in our offices to assist commissioners seeking to respond to the concerns of their constituents. In 2016 we attended 30 ANC meetings. We are continuing our focus on ANC's this year with a series of 8 briefings for Commissions in each

ward that began earlier this month and will continue through February 28. To date we have briefed 34 Commissioners in Wards 1, 2, 4, 7.

D. Social Services Networking

We have also established a Social Service Networking group, partnering with agencies and other groups who provide social services. Participants include several Councilmembers' offices, Strong Families, Salvation Army, Iona Senior Services, Housing Counseling Services, Catholic Charities, United Planning Organization, the Mayor's Office of Community Relations and Services, Pepco-Exelon, the DC Office on Aging, Whitman-Walker Health, and the Executive Office of the Mayor.

In Closing, OPC provides a comprehensive set of services to benefit and empower consumers. These include OPC's 1) legal advocacy 2) outreach efforts, 3) negotiation on behalf of consumers with the utility companies, 4) interaction with social service agencies to provide energy assistance funds and other resources, and 5) energy efficiency and renewable energy (solar) education.

All indications suggest the incoming Federal Administration has plans that may affect the District. Utility consumers may see cuts to programs such as LiHeap that thousands of DC residents depend upon. There have also been signals that a shift in energy policy may be coming that could affect support for solar programs as

well as natural gas and electricity provision. It is critical that all DC consumers have effective representation and a place at the table.

Attachment # 1

Merger Agreement Matrix

(Attachment #2)

Senior Specific Amendments to the Consumer Bill of Rights (CBOR):

- 1. Amending CBOR §§306.1 & 306.3 to establish mandatory repayment plans.**
Utilities would have a duty to offer and provide a DPA. Currently, DPA's are not mandatory in the District. Seniors, as well as all residential customers, will benefit from this change. CSD has encountered problems when considerable funds are required before the utility will approve a DPA. Therefore, if a customer does not have the funds, the utility may not establish a DPA and the utility can still disconnect service. By contrast, if DPAs were made mandatory, a customer would avoid disconnection via §311.6.
- 2. Amending CBOR §310.3 to include both extreme hot and cold weather.**
Permanent legislation addressing extreme hot weather (in excess of 95 degrees) and extreme cold weather (less than 32 degrees), was passed by the D.C. Council and approved by Congress in the "Extreme Temperature Safety Amendment Act of 2015". (See, DC Code § 34-1506.01). The legislation benefits all residential customers including seniors since there will be no disconnections during extreme weather.
- 3. Amending CBOR §311.4 to establish third party notification prior to disconnection.**
Seniors will benefit from this change by having an additional layer of notification to remind them of a pending disconnection. Seniors would have more time to address and possibly cure the cause of the pending disconnection, such obtaining a DPA or other form of payment assistance, such as an AMP.
- 4. Amending CBOR §311.4 to create enhanced notices prior to disconnection.**
This revision adds another layer of protection for seniors from disconnections.
- 5. Amending CBOR §315.2 to set an upper limit of \$20.00 on reconnection fees.**
Currently, §315.2 states: "The Utility may charge the customer for reconnection of service in an amount authorized by the Commission." We note that §315.2 gives the Utility the discretion to charge whatever amount it determines is fair. Therefore, the replacement provision would benefit seniors by significantly decreasing the amount of a reconnection fee. It also allows seniors to avoid paying the reconnection fee by entering into a DPA or other form of payment assistance, such as an AMP.

(Attachment #3)

OPC Energy Efficiency Education Campaign and Senior Outreach Project

Background: On February 22, 2016, OPC convened a Low- and Limited-Income Seniors Focus Group to obtain information on the best methods to educate seniors on energy efficiency practices and programs. The focus group was established in response to Bill 21-158, the Fiscal Year 2016 Budget Support Act of 2015, which instructed OPC to award a grant not to exceed \$125,000 for targeted outreach to and education of low-income and elderly residents on energy efficiency programs and practices. The focus group was comprised of a diverse group of 17 seniors, ANC commissioners, and non-profit and community leaders. Participants engaged in dialogue that generated discussion culminating with voting to determine priority rankings for problems and suggested solutions. The recurring themes from the focus group included a lack of awareness of OPC's work to assist consumers with utility issues like disconnections or making payment arrangements, and a need for greater outreach in the community, including radio and newspapers, on energy efficiency measures and programs.

OPC'S actions: Based on focus group feedback, OPC launched an OPC Awareness and Energy Efficiency Education Campaign. OPC issued an RFP for an outreach consultant to provide targeted outreach and education of low-income and elderly consumers regarding OPC's services and the benefits and options for energy-efficiency programs and practices in the District of Columbia. The outreach consultant was tasked with (1) direct resident household dissemination of educational publications on energy efficiency, renewable energy and low-income energy assistance programs available in the District; and (2) direct resident household dissemination of OPC literature to increase resident awareness of the function of OPC and the utility-related services provided by OPC. The outreach consultant, CNXIS, began this door-to-door campaign on September 5th and concluded on October 31st. At completion, CNXIS disseminated information to 8,358 low-income and elderly households in Wards 5, 7 and 8. Following another one of the focus group recommendations, OPC placed informational announcements in publications like east of the River and The Beacon to inform consumers how OPC can assist them in resolving their utility issues. The Office has also expanded its information dissemination to include notices on metro trains and buses to advise consumers of the services it provides.

(Attachment #4)

Wards 2, 6, Meter Installation Photos

(Attachment # 5)

Office of the People’s Counsel “Pop Up” Outreach Events

- July 1, 2016 –Giant Food Store (Park Village Shopping) Ward-8
- July 8, 2016 –Safeway Food Store (Good Hope Marketplace) Ward-7
- July 15, 2016 –Safeway Food Store (East River Park) Ward-7
- July 26, 2016 – Petworth Library Ward-4
- August 1, 2016 – Lamond Riggs Library Ward-4
- August 29, 2016 – Frances Gregory Library Ward-7
- September 1, 2016 – Anacostia Library Ward-8
- September 13, 2016 – Martin Luther King Jr. Library Ward-2
- September 3, 2016 – Walmart (Riggs Road) Ward-4
- October 12, 2016 – Columbia Heights Farmers Market Ward-1
- October 13, 2016 – Rhode Island Row Farmers Market Ward-5
- November 12, 2016 – Parkside Farmers Market Ward-8
- January 25, 2017 – Shaw Library Ward-6
- February 9, 2017 – Mt. Pleasant Library Ward-1

Attachment # 6

ABA Washington Lawyer article.