

**BEFORE THE
COMMITTEE ON BUSINESS, CONSUMER,
AND REGULATORY AFFAIRS
OF THE
COUNCIL OF THE DISTRICT OF COLUMBIA
FOR THE FY 2015 PERFORMANCE OVERSIGHT HEARING
OF THE
OFFICE OF THE PEOPLE'S COUNSEL
STATEMENT OF SANDRA MATTAVOUS-FRYE PEOPLE'S COUNSEL**

March 7, 2016

Good morning Chairman Orange, Members of the Committee on Business, Consumer and Regulatory Affairs, and other members of the Council, staff and members of the public. For the record, I am Sandra Mattavous-Frye, People's Counsel for the District of Columbia.

With me today are key members of my staff, including Deputy People's Counsel Karen Sistrunk, Chief Operating Officer, Eric Scott and Ms. Gurmeet Scoggins, Agency Fiscal Officer from the Office of the Chief Financial Officer, who is available to provide specific financial details.

Today I am responding to your request to update the committee on the progress the Office of the People's Counsel has made in advocating for the needs of District of Columbia utility consumers in FY15 and FY16 to date. Attached are detailed responses to the 48 questions you submitted to the Office on February 8, 2016.

INTRODUCTION

When I came before you a year ago, I spoke of the “new regulatory horizon” facing DC consumers and how OPC was preparing to meet the challenge. It was apparent to me then, and has been borne out by our experiences, that our local utilities and the utility industry as a whole are undergoing a dramatic shift affecting not only regulation and consumer engagement, but the infrastructure development required to serve present and future customers. OPC now finds itself at a curious juncture between diverse consumer demand and utility efforts to prepare for an uncertain utility future. Consumers clamor for new services and modern technologies, including distributed generation and renewable energy options such as community solar. Utility providers are changing their business models scrambling to find the mix of services that will meet new regulatory requirements for customers and will provide shareholder returns. This is a defining moment that can either lead to chaos or open the doors for new regulatory opportunities. I am hoping for the later.

OPC’s activity in FY 2015, demonstrates that collectively, OPC, policy makers and consumers are shaping *the future of utilities* in the District of Columbia. This is a responsibility I take seriously.

SUMMARY OF FY 15 ACTIVITIES

Throughout FY 15, OPC through both our Litigation and Consumer Services Divisions operated on all cylinders.

KEY LITIGATION

As reflected in our written responses, our FY 15 case load included 17 active cases. Included in this list are five major precedent setting cases: (1) the Pepco Acquisition/Merger application;(2) the WGL Pipe Replacement settlement; (3) Verizon’s Copper Wire to Fiber Transition investigation, (4) the Pepco Power Line Undergrounding—the PSC decision and DC Court of Appeals (“DCCA” or “Court of Appeals”) filed by the Apartment and Office Building Association (“AOBA”) ; (4) the Grid Modernization proceeding (Grid of the Future) proceeding. Singularly and collectively, these five cases reflect the complexity of the new regulatory landscape.

KEY CONSUMER OUTREACH AND EDUCATION

In concert with our litigation, OPC was incredibly busy in its efforts to reach out to the community and educate consumers on the myriad issues facing them.

This encompassed traditional issues, new issues and OPC driven initiatives.

On April 18, 2015, OPC hosted a first of its kind public symposium “Horizons 2015: Uniting Consumers, Energy and Technology” at the David A. Clarke School of Law. The symposium focused on the rapid and profound changes in utility services and utility technology to help consumers make informed choices about their renewable energy, energy conservation and environmental issues.

Over 200 DC consumers representing the diversity of interests found in Washington were able to connect with local and national leaders involved in government, industry and energy activism, to discuss the direction of policy and programs and the future of energy services.

Among the key participants were LaDoris G. Harris, Director of the U.S. Department of Energy Office of Impact and Diversity; Tommy Wells, Director of the District Department of Energy and Environment; the Honorable Willie L. Phillips, Commissioner—DC Public Service Commission; Quentin James, Co-Founder & COO of Vestige Strategies; and the renowned youth and social justice advocate, Reverend Lennox Yearwood Jr., President of the Hip Hop Caucus.

The flurry of expanded activity taking place on the local utility stage required OPC to adopt new community outreach approaches. OPC sponsored or attended 230 meetings, including 33 meetings specifically targeting Advisory Neighborhood Commissions.

As the Commission approved the first phase of the DC Power Line Undergrounding (“DC PLUG”) plan, OPC held a series of special undergrounding leaders’ briefings to educate and inform an array of citizen and community groups about this electric reliability construction plan, including the related surcharges.

OPC sponsored in-house briefings and attended over 30 community meetings on the Pepco/Exelon merger alone. These well-attended briefings brought community leaders and individuals into the case “on the ground floor,” allowing lay advocates to learn, prepare and fully and substantively participate in the regulatory process. Consumer empowerment along with affordability, reliability and energy efficiency and sustainability are central to my mantra as People’s Counsel. I submit we are at our best when there is a place at the table for all consumers, even when there may be disagreement.

My testimony today will focus on a few major proceedings and highlight how OPC’s activities resulted in measureable benefits for consumers.

DC PLUG

The District's Power Line Undergrounding Initiative ("DC PLUG") is the culmination of the findings of a Mayoral Task Force formed in 2012 to study the issue of placing overhead power lines underground to improve electric system reliability and public safety in the District. It was a proactive initiative in the face of recurring and prolonged service outages during winter and summer storms that left customers without service for extended periods of time.

As a member of the Task Force, OPC successfully advocated on behalf of District consumers to ensure DC PLUG would provide a maximum reliability benefit to D.C. consumers at an affordable cost. The recommendations and findings in the Task Force's Final Report were enacted by the DC Council and became effective on May 3, 2014. The law authorized the undergrounding of Pepco's poorest performing overhead primary and lateral power lines throughout the District.

The PSC approved the joint Pepco/DDOT construction and financing plans as well as the related customer surcharge to pay for the undergrounding project.

Construction was scheduled to begin in Ward 3 in June 2015; however, AOBA challenged the Commission Orders approving the two DC PLUG surcharges at the DC Court of Appeals. OPC joined the PSC in defending its decision before the Court. On January 14, 2016, the Court of Appeals issued a decision rejecting AOBA's challenge.

The Court's ruling represents a significant victory for DC ratepayers by removing a legal impediment to more reliable service for DC consumers. However, the U.S. General Services Administration ("GSA") has indicated that it believes it is exempt from the surcharge and therefore will not pay the charge. This creates another potential impediment.

Project Pipes

Project *Pipes* is the initial 5 year phase of Washington Gas Company's ("WGL") Commission-approved 40 year plan to upgrade its natural gas delivery infrastructure and enhance public safety. This first phase is estimated to cost \$125 million. OPC was integral in securing a settlement agreement facilitating cost-effective, expedited replacement of aging pipes. Safety concerns, particularly with respect to upgrading aging and deteriorating pipelines, were and remain of paramount concern. OPC continues to be the voice in ensuring consumer protections and affordability are not compromised while utility service is being delivered over upgraded infrastructure.

In this case OPC's advocacy has effectively delivered tangible results to consumers in the form of stronger consumer protections, improved utility service and implementation of a cost recovery mechanism to protect the interests of DC ratepayers and ensure this mechanism does not overcharge ratepayers.

Verizon

In a case seeded by an OPC petition for an investigation of Verizon's quality of service, the PSC issued a landmark decision adopting many of the recommendations advocated by the Office.

After consumers complained about the way Verizon was marketing its fiber-based and FiOS Digital Voice services Formal Case No. 1102 was established to investigate Verizon's transition from copper to fiber-based services.

Consistent with OPC's position and many consumer complaints, the PSC determined that Verizon's new fiber and FiOS services often did not provide the same or better call and response

capabilities for emergency services, crisis management, priority access and security services requiring battery backup.

This case demonstrates that despite the broad consumer adoption of cellular and digital communications, some consumers, including low and limited income consumers, simply do not want or cannot afford other options and must rely on, or choose to rely on traditional phone service as their lifeline to the world. It is my job to ensure that these customers too, receive service that is safe, adequate and reliable in every respect.

Grid Modernization (Grid of the Future)

The electric industry is evolving much akin to the changes that occurred in the telephone industry over 30 years ago. Grid of the Future (or “grid modernization”) generally refers to adjustments that must be made by the utility industry and other stakeholders to accommodate changes in fuel sources, generation sources, siting, renewable energy requirements, distributed generation, rate structures and infrastructure investment. Several states, including Hawaii, New York are taking similar action.

In June 2015, the PSC established Formal Case No. 1130 to identify the technologies and policies that can modernize the District’s energy delivery system for increased sustainability, reliability, and cost-efficiency. Examining advanced consumer-driven energy infrastructure options will better enable DC consumers to benefit from grid reliability, reduced carbon emissions, energy cost savings and promote clean energy jobs in our city.

The Office has filed comments and has attended technical workshops hosted by the Commission. The Office will continue to be active in this proceeding and is working to engage consumers to understand their concerns and the capabilities they wish to see as the grid of the future is

developed. Foremost are OPC's goals are ensuring that the "grid of the future" leaves no group of consumers behind, including those in underserved communities.

Demand Response

Another major victory for District consumers is the recent U.S. Supreme Court decision affirming the authority of the Federal Energy Regulatory Commission (FERC) to regulate "demand response" in the wholesale energy markets. OPC actively supported FERC's Supreme Court appeal by joining with the Sierra Club, Natural Resources Defense Council, Environmental Defense Fund and other noted environmental organizations in filing briefs in February and July, 2015.

Demand response refers to the practice of electricity customers reducing or temporarily shutting off their use of energy during periods of high (or peak) electricity demand. Customers who respond to the peak demand by curtailing their energy usage help prevent outages that result from high demand and in the long term reduce customer bills.

The Supreme Court's ruling will help consumers save money and keep energy prices lower in the wholesale energy marketplace. The ruling also bolsters the District's sustainability goals through the reduction of energy usage and greenhouse gas emissions. Further, it will allow FERC to continue establishing incentives for electricity consumers to be compensated for reducing their electricity consumption.

Exelon/Pepeco Merger

The Pepeco/Exelon Merger proceeding dominated the utility news cycle in 2015 and now in 2016. On April 30, 2014, Exelon Corporation announced Exelon's purchase of PHI. On June 18, 2014,

Exelon and PHI, the Joint Applicants, filed a Joint Application for merger approval by the Commission. OPC strongly opposed the original proposal. On August 27, 2015, the Commission issued Order No. 17947, which denied the Joint Application and found that the proposed merger, as filed, was not in the public interest.

On October 6, 2015, the Joint Applicants, and seven settling parties, including OPC and the District of Columbia Government, filed a Non-unanimous Full Settlement Agreement (“Settlement Agreement”) in response to the Commission’s denial of the Pepco/Exelon merger proposal. OPC examined every aspect of this case and after careful consideration, determined that the proposed merger settlement agreement offered meaningful benefits to consumers. These benefits included a residential consumer rate offset until March 2019, solar programs, sustainability and energy efficiency programs, jobs for low income DC residents, and risk mitigation protections.

On February 26, 2016, the Commission issued Order No. 18109 denying the Settlement Agreement by a vote of 2-1. Concomitantly, the Commission proposed an alternative terms to the settlement agreement for consideration by the Settling Parties. The Commission indicated that if all the Settling Parties accepted the revised settlement agreement, the Joint Applicants’ merger Application will be approved without the necessity of any further Commission action.

OPC has consistently focused on ensuring that any outcome—whether the District moves forward with an Exelon-owned or a PHI-owned Pepco—is in the best interest of the public. When the Joint Applicants’ proposals did not provide meaningful and direct and traceable benefits that outweighed the risks of the merger, OPC vigorously opposed those proposals. In fact, my office was the single most vocal opponent to the proposed merger, as filed.

When a settlement agreement was presented that provided targeted essential consumer benefits, OPC supported the new proposal because it more than doubled the benefits previously offered. The PSC denied the agreement and presented alternative terms that unfortunately removed a benefit I consider essential to ensuring that the merger would be just and reasonable and in the best interests of District residential consumers. The Office therefore cannot support the PSC's alternative terms.

Throughout this proceeding, OPC worked tirelessly to brief the community and create opportunities for public participation in the regulatory process during the PSC's review of both the litigation and settlement phase of the proceedings. OPC held briefings in-house and attended 32 community meetings in all 8 wards on this issue. I and my staff faced stiff criticism and at times, highly emotional, and sometimes vituperative accusations that polarized and divided the community and confused DC residents. For the record, OPC does not object to or discount a different point of view and I was personally forthright that I would not always agree with a given party's position, but that OPC would provide access, support and encourage community participation in every phase of the process. Which we did!

While not all consumers agreed with OPC, we found that once explained, many consumers understood OPC's positions. Moving forward, OPC will continue to advocate for quality utility services at affordable rates for DC consumers.

Council Mandates

As part of the Budget Support Act of 2015, the Council entrusted the Office with two grants to: conduct studies and report back to the Council regarding, (1) emerging alternatives for energy choice for residential customers in the District of Columbia (A RFP was issued early this year

and we are currently reviewing the responses); and 2) targeted outreach and education to low-income and elderly residents on energy-efficiency programs and practices. As steward of these specially designated ratepayer funds, I am committed to ensuring that the money is well-spent and results in beneficial and sustainable outcomes.

Emerging Alternatives for Energy Choice for Residential Customers

The Emerging Alternatives for Energy Choice study will comprehensively analyze current solar value, capacity and policy and make projections for solar deployment in the future, emerging alternatives for energy choice for residential customers in the District of Columbia, and the integration of those alternatives into Pepco's evolving smart grid.

Our intended objective is to help DC consumers expand energy supply options, enhance energy efficiency and sustainability efforts, and ensure that the District builds the correct, reliable and cost effective infrastructure our consumers require.

Outreach and Education of Low-Income and Elderly Residents Regarding the Benefits of Energy-Efficiency Programs

Prior to issuing a RFP, OPC convened a focus group on February 22, 2016 to collaborate with Senior Advocates in an effort to determine the root causes and underlying roadblocks in the delivery of energy efficiency services to our senior/low-income constituency. The results of the focus group will be included in the final RFP to develop an effective energy efficiency education and outreach program for seniors and low-income and limited-income residents throughout the city.

Consumer Services

OPC remains focused on our obligation to provide superior customer service to consumers facing difficulties with their utility services.

Consumer Complaints

In FY15 OPC responded to over 2,058 complaints. Of these, 57% were attributed to Pepco, 23% to WGL, 13% to Verizon and 5% to third party suppliers. To date, in FY16, this trend continues with nearly 828 complaints: 58% to Pepco, 17% to WGL, 16% to Verizon and 9% to third party suppliers. OPC continues to see a closure rate of 96%.

The nature and complexity of cases is changing and we are seeing new issues emerge. For example, we became involved with a large apartment complex in Ward 6. Individual residents were receiving multiple concurrent bills for gas services as they were moved during a major renovation through different apartment units. OPC staff negotiated with building management and WGL to stop any disconnections and determine each resident's appropriate bill.

The conversion of master-metered apartment buildings to individually-metered units is also becoming an issue. More than half of District residents living in large multifamily dwellings, including older housing stock. When a building is converted to individual meters many apartment dwellers will be forced to begin paying for utility service for the first time. In the past, residents have experienced extremely high bills after building conversions, especially in older buildings with inefficient insulation, windows and heating systems. OPC works closely with residents to provide education and referral resources to conserve energy and ultimately lower bills. We are currently working with residents in an apartment building in Ward 5.

Outreach and Education

OPC's outreach and education efforts target a cross section of District residents that include tenant groups, senior groups, community and civic associations and other ratepayer groups and stakeholders.

We continue to conduct our Energy Efficiency and Sustainability outreach featuring our "Hands on Energy Efficiency Workshops" where consumers are taught the basics of applying energy efficiency techniques to their home.

LEAP Intern

OPC has benefitted greatly by sponsoring a Department of Employment Services Learn—Earn—Advance—Prosper ("LEAP") intern in our Energy Efficiency and Sustainability section. Our intern has quickly learned our policies and has been an effective addition to our community outreach and education process.

Mitigating Service Disconnection

Service disconnections continue to plague many of our residents, particularly low income consumers. Aggressive intervention on the part of OPC to advocate for and negotiate on behalf of individual consumers has been instrumental in keeping the actual rate of disconnections down. My staff continues to make every effort to minimize service disconnections in the District. As the winter season ends and the disconnection moratoriums are lifted, we can expect to see an uptick in disconnections. While in many instances this problem reflects broader social issues, my role is to make every effort to ensure uninterrupted service.

Social Media; Twitter, Facebook

OPC continues to expand its use of social media. We have increased our use of Twitter and Facebook to provide real-time updates on important utility issues to the community. In addition, we recently launched, “The OPC Connection,” our electronic monthly newsletter.

Language Access Services

FY15 was a busy year for OPC with respect to its Language Access activities. OPC encountered over 2,500 limited-English speaking and non-English speaking (“LEP/NEP”) persons with the majority being Spanish-speaking residents. OPC encountered the majority of LEP/NEP residents through nearly 50 outreach events in FY15.

Seniors and Utilities

Late last year, OPC began working with Legal Counsel for the Elderly and AARP to formulate methods of lessening the detrimental impact of high utility bills on seniors’ quality of life. One of OPC’s goals is to identify issues and develop solutions. We look forward to further discussions and collaboration on projects benefitting the senior community.

WHAT’S NEXT

On February 26th, WGL filed a rate case for \$17.4 million. The Commission has scheduled a prehearing conference for March 23, 2016. OPC will carefully review WGL’s rate increase request to ensure that residential ratepayers are not subject to unjust and unreasonable rates.

Conclusion

In closing, despite a challenging year, the Office of the People's Counsel has exceeded expectations in furtherance of its mandate to advocate, educate, and protect consumers. I am confident that we are well positioned to handle the coming challenges of an evolving utility landscape.