

Testimony of People’s Counsel

Sandra Mattavous-Frye

Before the

**DC Council Committee on Transportation and the
Environment**

on

**B23-640, the District of Columbia Water and Sewer
Authority Transparency Amendment Act of 2020;**

**B23-624, the Impervious Area Charge Water Utility
Consumer Protection Fund Act of 2020;**

and

**B23-836, the Lead Service Line Priority Replacement
Assistance Act of 2004**

July 30, 2020

Good Morning Chair Cheh, members of the Committee, staff, and the viewing public. I am Karen Sistrunk, Deputy People’s Counsel at the Office of the People’s Counsel for the District of Columbia (OPC). I am appearing on behalf of the

People’s Counsel Sandra Mattavous-Frye who is unable to attend today.

Thank you for the opportunity to share the views of OPC regarding these important pieces of legislation: (1) B23-640, the District of Columbia Water and Sewer Authority Transparency Amendment Act of 2020; (2) B23-624, the Impervious Area Charge Water Utility Consumer Protection Fund Act of 2020; and (3) B23-836, the Lead Service Line Priority Replacement Assistance Act of 2004.

OPC has diligently implemented our new statutory role and responsibilities under the DC Water Consumer Protection Amendment Act of 2018 (DWCPAA). We have worked to ensure that District residents in all eight wards have access to clean, affordable, and reliable water services. In fact, OPC has provided numerous benefits to water consumers since becoming the statutory representative in April 2019. These benefits are documented in the recently released report “OPC Water Services Division 2019-2020 Progress Report” attached to this testimony and available on the OPC website. Our mandate to protect and

assist District water consumers is especially relevant in the midst of the COVID-19 pandemic.

I shall separately address each bill as delineated above.

B23-640 - The District of Columbia Water and Sewer Authority Transparency Amendment Act of 2020

OPC supports this legislation as it advances openness and transparency in the operations and processes of the District of Columbia Water and Sewer Authority (DC Water). As a result of OPC's advocacy for greater transparency in DC Water's ratemaking process, DC Water now posts materials supporting its proposed rate adjustment, for example, its Cost of Service Study, for public review on its website. While this is an important initial step towards improving the transparency of DC Water's rate-setting process, there are additional enhancements to the process that can be implemented to further improve transparency and allow for meaningful public input. Today I will discuss the need for deeper and broader opportunities for public input and recommend the implementation of improvements to current DC Water practices and procedures.

There Should Be Enhancements to the Process for Initial Comments and the Addition of Reply Comments

The existing process for public comment on DC Water rate adjustments consists of the issuance of a Notice of Proposed Rulemaking (NOPR) and Notice of Public Hearing approximately two (2) months prior to the scheduled public hearing date, with the opportunity to submit public written comments approximately five (5) calendar days after the public hearing. In the pending rate proceeding, the NOPR was initially noticed in the District of Columbia (DC) Register on March 20, 2020 with a public hearing of June 10, 2020. Due to the COVID-19 pandemic, DC Water added two (2) months to the process for the current rate adjustment so that the public hearing is now scheduled for August 5, 2020. Notwithstanding the additional two (2) months, the current DC Water practice provides a deadline of August 10, 2020 for the filing of written comments - less than a week - after the public hearing takes place.

This practice impairs the public's ability to learn about and voice its views on the issues and concerns pertaining to the

proposed rate increase adjustment at the public hearing. Therefore, to enhance the opportunity for meaningful public input, OPC recommends the period for public written comment be extended to thirty (30) days after the public hearing, as per the legislation. This change would facilitate the public's ability to review and analyze DC Water's proposed rate action fully. Providing additional time for filing public written comments after the public hearing should increase public participation, improve public discourse, coordination, and communication.

In addition, DC Water should encourage and facilitate public discourse of its rate proposal by providing the public an opportunity to submit written reply comments thirty (30) days after the filing of initial comments. Both initial and the proposed reply comments should be posted publicly on DC Water's website for public review. Reply comments provide OPC and other stakeholders the opportunity to investigate and respond to issues and concerns raised by the initial comments. Importantly, reply comments can refine the key issues and provide a more thorough and complete record for the DC Water Board to consider in its review and decision-making process. Notably, the additional

time to the public hearing and comment process due to the COVID-19 pandemic has not negatively impacted any party. In fact, the additional time has provided increased opportunity for participation. Accordingly, OPC submits that the time for written comments and reply comments by the public as proposed above will enhance rather than harm the process.

DC Water Should Formally Acknowledge Consideration of Public Comments

Under DWCPAA, if OPC submits comments related to the establishment or adjustment of water and sewer rates, DC Water shall respond in writing why it accepted or rejected, in whole or in part, any recommendations submitted by OPC. In 2019, OPC submitted such written comments and DC Water responded with a letter to OPC. To further transparency in the rate-setting process, OPC recommends the legislation include a provision requiring DC Water to publish an Order, noticed in the DC

Register, explaining its consideration of all the initial comments and reply comments submitted by the various stakeholders in the proceeding. This recommendation is analogous to the process followed by the District of Columbia Public Service Commission (DC PSC) whereby it includes a reference to public comments and reply comments in any Final Order.

There Should be Enhancements to the Process for the Review of the Cost-of-Service Study and Other Data Inputs that Affect Rates

DC Water both proposes and approves its rate adjustments. Therefore, it has an even higher burden to ensure that the public is well-informed and has access to all data with adequate time to review and respond. Public input can only be meaningful when all parties work from the same basic set of facts, data, and analyses.

While DC Water's COS Study is now available publicly on its website, there should be additional enhancements towards transparency and meaningful public participation. DWCPAA states that DC Water shall provide OPC access to any accounts, books, paper, and documents considered necessary to carry out OPC's functions under the Act. With this clear authority provided to OPC, there should be a more formal process to ask for and obtain information on the COS Study and other data inputs, such as Budgets and Financial Planning Models, that affect rates to facilitate OPC's statutorily required review of DC Water's proposed rate adjustments. The process should include a timeline of twenty-one (21) days for responding to a question and a five (5) business day timeline for responding to a follow-up question, a process with timelines analogous to Rules 122.3 and 122.6 of the Commission's Rules of Practice and Procedure followed by the DC PSC. These recommended enhancements

to the rate-setting process would require additional time beyond the existing timeline of approximately four (4) months from the beginning of a rate proceeding (the issuance of the Notice of Proposed Rulemaking) to the end of the proceeding (the issuance of the Notice of Final Rulemaking).

OPC Supports Additional Time for Written Bill Challenges

DC Water has finalized a rule change consistent with the legislation's provision to provide customers additional time to initiate a challenge to their DC Water bill. OPC filed comments supporting the proposed rule change that extended a customer's time for initiating a bill challenge from "within ten (10) working days after receipt of the bill" to "within thirty (30) calendar days after the bill date".

When a customer first contacts OPC, a number of days, or even weeks, has elapsed from the receipt of the challenged bill so that either the timing is very close, or even past the ten (10) working days to initiate a bill challenge. And, some of these customers come to OPC after unsuccessful attempts to resolve their billing disputes with DC Water. Therefore, providing additional time to initiate a challenge to the charges on the customer bill is both reasonable and appropriate.

**OPC Contact Information Should Be on DC Water's
Website and Customer Bills**

Pursuant DWCPAA, handling consumer complaints is an integral and important part of OPC's mission to advocate on behalf of all DC Water consumers. Therefore, OPC supports the provision that OPC's contact information should be on the DC Water website and on DC Water customer bills.

OPC Supports Changes to the Reporting Requirements as to the Clean Rivers Impervious Area Charge (CRIAC) Fund

OPC supports the provisions for increased transparency regarding CRIAC funding, including public accessibility of general data related to applicants receiving financial assistance. While this data is compiled by the District Department of the Energy and the Environment (DOEE), having this information on the DC Water website is a positive development to advance transparency, information exchange, and coordination.

OPC Supports the Reporting Requirements as to the Lead Service Line Priority Replacement Assistance Act of 2004 Amendments

OPC supports the reporting requirements of these provisions to advance transparency and openness. The requirement for DC Water to publish a list of approved contractors on its website will

assist consumers with the process of selecting a contractor to use for the replacement of a lead service line. In addition, a central repository of approved contractors will strengthen consumer protection from contractor abuses, including inadequate work and overcharging for work.

OPC Proposes Remote Access to the DC Water Public Meetings

OPC proposes that DC Water continue to provide remote listening access to their public meetings, including Committee meetings, in order to allow increased public awareness and participation, in furtherance of increased transparency. During the COVID-19 pandemic, DC Water provided a call-in number for its Committee meetings to allow for remote listening by the public. Even before the COVID-19 pandemic, DC Water provided remote access to the monthly Meetings of its Board of

Directors. Given that DC Water has shown that remote meetings can work, this practice should be able to be extended to the various DC Water public meetings. I note that the value of remote access to meetings was clearly reflected in the success of DC Water's 2020 Town Hall meetings, where increased public participation has been recognized by both DC Water and the community. DC Water has noted that approximately 4,100 District residents attended its eight (8) virtual Town Halls to discuss its pending rate increase.

**B23-624 - The Impervious Area Charge Water Utility
Consumer Protection Fund Act of 2020**

OPC fully supports this legislation to allow the Clean Rivers Impervious Area Charge (CRIAC) Relief Assistance Funds to be applied to accounts in arrears for the purposes of reconnection. In the current economic environment as a result of the COVID-19

pandemic, this is a positive development to assist low- and moderate-income customers who are having issues with paying their DC Water bills.

B23-836 - The Lead Service Line Priority Replacement Assistance Act of 2004

OPC fully supports this legislation to address the efforts to remove lead from the District drinking water system. The amendments further provide that other types of water service lines should be included in the line replacement effort. As you know, there is no level of lead exposure that is safe. Therefore, refinements to address any sources of lead in the drinking water is a positive development.

Conclusion

Thank you again for the opportunity to provide OPC's views on these important pieces of legislation.