

**BEFORE THE**  
**COMMITTEE ON**  
**PUBLIC SERVICES AND CONSUMER AFFAIRS**  
*of the*  
**COUNCIL OF THE DISTRICT OF COLUMBIA**  
**PUBLIC ROUNDTABLE**  
*on*  
**PR 19-0182, the “Sandra Mattavous-Frye Confirmation Resolution of 2011”**  
**TESTIMONY**  
*of*  
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**June 24, 2011**

Good Morning Chairperson Alexander and members of the Committee on Public Services and Consumer Affairs. I am Sandra Mattavous Frye, Acting People’s Counsel. I am both pleased and honored to have been nominated by Mayor Vincent C. Gray to serve as People’s Counsel for the District of Columbia. Thank you for the opportunity to appear before you today as you consider my qualifications to serve in this capacity. I would also like to thank all of the public witnesses who took time out of their day to offer testimony or submit letters of

support, as well as District of Columbia consumers who are viewing these proceedings on cable television. Their participation underscores the fact that D.C. consumers are engaged and keenly interested in who will represent them.

The People's Counsel plays a pivotal and critical role in the regulatory arena governing the provision of vital utility services to D.C. consumers. The People's Counsel is the "voice of the People" and, by law, must advocate to protect the interests of utility users in the District of Columbia and to ensure their entitlement to "safe, reliable, and affordable service." These are not merely hollow words or the sound bites that too often characterize our culture, but rather a reflection of the statutory mandate and mission of the Office of the People's Counsel ("OPC" or "Office").

At the start, I would be remiss if I failed to acknowledge the 35 year body of work created by the prior agency heads whose contributions established the stellar reputation of the Office. Four outstanding People's Counsels have served the District: the Honorable Chief Judge Annice M. Wagner, the esteemed Brian Lederer, the Honorable Frederick D. Dorsey, and the renowned Elizabeth A. Noël. Individually and collectively, they set an unparalleled standard of excellence for utility advocacy that has been recognized and copied around the nation. I have

been privileged to work under the tutelage of the three preceding People's Counsels. Brian Lederer who hired me as an intern, Judge Dorsey who invested in me as a young attorney, and Elizabeth Noël who was a mentor, colleague and friend. I pledge to continue the legacy of the Office through strong, proactive and zealous advocacy. My priorities will be reliable service, quality service, affordable rates and consumer empowerment.

Before expanding on my vision for the Office, I would like to take a few moments to present myself and my qualifications to head the agency.

## **PERSONAL BACKGROUND**

I received my Bachelor of Arts from Howard University's, School of Communications, and my Juris Doctorate from Antioch School of Law (now the David A. Clarke School of Law). Antioch, established as a public interest law school, was one of the first in the nation to adopt the law clinic approach as an integral part of its curriculum. I am licensed to practice in the District of Columbia, Maryland, and before the United States Supreme Court. I am currently a resident of the Ward 5 Ledroit Park area and have lived in Fort Lincoln. My husband attended D.C. City Teachers College and graduated from Federal City

College and my children are graduates of D.C. schools, having attended both public and independent schools.

My career at the Office of the People's Counsel began over 25 years ago, when I was hired as a legal intern. Through the course of my tenure at the Office, I have held many positions with increasing levels of responsibility, including staff attorney, Energy Section Trial Supervisor, Director of Litigation, and for the past 15 years, Deputy People's Counsel. I have litigated numerous major rate and service quality cases. I have been involved in the development of OPC policy on the myriad and complex utility issues of our times, including, but not limited to: deregulation and nascent competition in the energy and telecommunications sectors; cogeneration; energy efficiency; conservation management; decoupling of utility revenue from utility sales; and consumer rights. I have also represented the Office outside the continental United States, including presenting on utility policy issues in Anchorage, Alaska and Johannesburg, South Africa.

In sum, I bring a wealth of knowledge and experience to this position. I commit to you and the hundreds of thousands of District of Columbia ratepayers who are my clients, that if entrusted with this stewardship, I will zealously advocate on their behalf serving with commitment, integrity and the singular

purpose of ensuring that D.C. consumers receive safe, adequate and reliable service at just and reasonable rates.

## **VISION STATEMENT**

I would like to briefly share my personal vision for the Office and the path I will follow as I endeavor to ensure public utility entitlements are guaranteed and consumers are empowered with a meaningful voice in the decision-making process.

In simple terms this means: First, when the lights are turned on, they stay on and our utilities are not at the bottom of the reliability list. Second, the costs for essential utility service should not be out of reach for any D.C. consumer. Third, service quality must be at the highest possible level. Fourth, consumers must be educated to understand and participate in the regulatory process.

District utility consumers face unparalleled challenges in the coming years. We are at a pivotal point in the utility regulatory industry. The manner by which utility service is provided is evolving. Utility performance is rightly becoming a measure for cost recovery. Demand side options and renewable resources are replacing reliance on fossil fuels. As supply side energy sources dwindle, consumers are becoming consumer-producers and stakeholder alliances are

shifting. While still a trickle, hundreds of consumers are investing in renewable and other energy alternatives, changing the nature of the distribution network and how future decisions will affect what constitutes a prudent investment and equitable sharing of the costs. Yet, with all these changes, the fundamental mission to protect the public interest remains constant. The challenge is how to keep pace with the new reality and at the same time preserve and protect the public interest. I believe this is achievable.

The approach must be strategic and solutions driven. Business as usual is the death knell to progress. The focus must be delivery of tangible short and long term benefits to consumers. The overall unemployment rate in the District of Columbia is nearing 11 percent and as high as 25 percent in some wards of the city. But it is the 18 percent citywide poverty rate that more clearly defines the plight of our poorest residents. These are the consumers who are least able to pay and most in need of any job opportunities resulting from the implementation of new technologies.

As we hurtle toward a future where some are able to use technology to their advantage, many of our historically underserved residents are poised to be left behind. What we must envision is the trickle of activity around energy

technology becoming a mighty wave that lifts all boats. Reaching this goal will require the collective efforts of ratepayers, Potomac Electric Power Company (“Pepco”), Washington Gas Light Company (“Washington Gas”), Verizon, the Sustainable Energy Utility (“SEU”), Council of the District of Columbia (“Council”), the D.C. Public Service Commission (“PSC”), OPC and others to create programs to address infrastructure and service delivery issues.

While predicting the future is difficult at best, I believe the following issues will be center stage in the coming years: affordable utility prices, quality of utility service, service reliability, utility communication with consumers (including customer education), technology innovations, supply and demand side options and jobs.

## **WHERE HAVE WE BEEN?**

I would like to begin with a quote from a Congressional hearing, which noted the “need for close public vigilance of the utility industry:” *The stated purpose of the hearing was:*

*“...to focus congressional and public attention on the factors affecting rising electric rates in the Nation’s Capital and their impact on the consumer... we see this proceeding as a challenge to local officials and the utilities,*

*encouraging them to take a more immediate and direct action to hold down increasing utility rates.”*

Ironically, this is not from any recent event on Capitol Hill, but from the Congressional hearings convened in 1974, which provided the basis for the re-establishment of the Office of the People’s Counsel for the District of Columbia.

It is a recognized axiom that “the more things change, the more they stay the same.” It was 35 years ago that Congress recognized that utility ratepayers were being negatively impacted in the process of receiving and paying for utility services, and consequently established OPC specifically to represent, advocate for, and educate ratepayers on utility matters and facilitate their participation in the regulation of the utilities serving them.

So what difference has OPC made during the course of the years? From 1975 through 2010, OPC’s zealous advocacy saved ratepayers over \$900 million in rate increases and addressed major regulatory policy matters, many of which would not have been addressed, but for OPC advocating for them.

For example, in the mid ‘80s the deregulation boom gained steam, initially in the telecommunications industry, followed by the natural gas industry, and lastly spreading to the electricity industry. OPC was actively involved in the

evaluation and implementation of the rules and regulations that implemented these new policies.

Fast forward 10 years to 1994. The quality of D.C. utility services was in peril and consumers did not know where to turn. In response, OPC held its own Quality of Service Hearings resulting in a landmark “Community Brief,” which was filed with the PSC. The Brief captured the frustrations of consumers around a broad range of utility service issues. Quality of Service hearings were also subsequently convened by the Council.

In 1999, Pepco petitioned the PSC for permission to divest its generation assets following the deregulation trend sweeping the country at the time. Consumers did not ask for this, but promises of lower rates were persuasive in convincing policy makers that deregulation was in the broad public interest. OPC was not a proponent of deregulation or divestiture. Throughout this fight OPC called for Pepco to fix its system first, before divestiture, to avoid burdening ratepayers with a massive “down the line” bills for infrastructure improvements. Unfortunately these warnings were not heeded. Ten years have passed and we are now painfully aware of the impact that relaxed regulation has had on electric service reliability. Little or no oversight has been given to the deterioration of

Pepco's infrastructure or the absence of a skilled in-house labor force to fix system problems as they occur.

In the District, electric deregulation led to the divestiture of Pepco's generation assets and a rate freeze on distribution service, which extended to 2007, as a result of a subsequent settlement agreement. The extended rate moratorium was a direct result of OPC's push to protect consumers during the transition to competitive energy supply.

Unfortunately, as OPC predicted, following the end of the rate caps, D.C. electric consumers have seen the costs for electricity increase by 80 percent. Notably, 73 percent of what consumers now pay for electric service is the unregulated cost of acquiring the actual electricity. Neither the PSC nor OPC have control over this portion of the consumer's bill.

Similarly, fluctuations in the cost of natural gas are borne entirely by the consumer. Before deregulation, we saw natural gas supply charges that hovered around 25 cents per therm. In the past seven years, D.C. consumers have seen natural gas supply charges rise to as much as \$1.61 per therm. The average supply charge for 2011 has been 73.5 cents per therm. This price volatility is an issue that affects consumer bills.

In the telecommunications industry, deregulation has led to the expansion of a broad group of new services, but at a significantly increased cost. Sadly, years after the concessions that allowed the Chesapeake and Potomac Telephone Company/Bell Atlantic DC to merge into Verizon, many communities in the District of Columbia continue to wait for these new offerings.

I am also pleased to note that the District of Columbia Court of Appeals, just yesterday issued a decision in which it noted that “[T]he Commission also appears to have lost sight of OPC’s critical role as an independent investigatory authority and a statutory party in the regulatory scheme.” *Office of the People’s Counsel v. Public Service Commission of the District of Columbia, et. al*, 10-AA-1223 and 10-AA-1504, issued June 23, 2011.

## **WHERE ARE WE NOW?**

Deregulation and divestiture have worked well for utility companies. Unfortunately, the benefits to residential consumers have yet to materialize. Ten years after divestiture, residential consumers still await the robust competition, choices and lower prices that were promised. Ten years later, price caps and safeguards have expired, yet lower rates remain elusive. Ten years later, consumers consider themselves lucky if they can reach a utility representative by

telephone. Ten years later, reports of poor and unreliable utility service seem to be as frequently in the news as the weather.

It is not a consumer folly to expect the lights to come on and stay on or to lift the telephone receiver and have dial tone. The smell of gas seeping up from the streets should be a thing of the past. Too often these expectations are not met. Consumers deserve fair value for their dollar.

I am acutely aware of the strain maintaining basic services places on ratepayers. As agents of government, we must soberly accept that at the core of the regulatory compact is our responsibility to make utility services affordable, safe and reliable while protecting the entitlement of consumers to these services. It is an immutable fact that OPC, the Public Service Commission and the Council exist to serve the *People* of the District of Columbia.

For ratepayers such as our seniors and working class families, dwindling resources compromise their ability to obtain and maintain utility service. This cannot be the standard we continue to accept for the Nation's Capital. Keeping utility service affordable extends beyond a public entitlement; it is an economic imperative and a call to consider the broad societal impact of utility service.

## **WHAT CAN WE DO?**

Reliable service, quality service, affordable rates, and consumer empowerment- How do we make these happen in real time?

Washington, D.C. is our Nation's Capital. It is the seat of power. There is no reasonable explanation why we cannot find answers to address the utility issues that have plagued our city. Utility companies recover millions in expenditures through rates; we must ensure that consumers are getting what they pay for. Utilities have a responsibility to provide service that is safe, adequate and reliable; we must hold them to it. Utilities have the ability to identify potential savings and to deploy new technologies cautiously and prudently. There must be zero tolerance for chronic unreliable service or continuously poor quality of service. Utilities must be directed to identify and correct reliability problems in a cost effective and equitable manner. Financial penalties must be imposed for failure to comply with reasonable standards.

The District Council has created a SEU to achieve energy efficiency goals and reduce our carbon footprint. Collectively, we must produce value from the \$15-20 million in annual fees that are collected from ratepayers to fund this function. Of all the energy technologies and regulatory proposals on the table,

energy efficiency, in my view, offers the single greatest opportunity for consumers to save both energy and dollars with estimates of up to 25 percent reduction in their bills. This could be a huge benefit for the District and take us further toward addressing greenhouse gas concerns and meeting our energy goals of facilitating alternative energy, distributed generation and renewable energy options.

In tandem with our energy efficiency efforts, we must comply with District law requiring that natural resources, the environment and the economy be considered in the rate making process.<sup>1</sup> The law notwithstanding, this is just the intelligent choice to make.

Consumer education is critical to protecting consumer rights and serves a dual purpose. First, consumer education provides the Office the opportunity to empower consumers with knowledge about their rights and responsibilities. Second, consumer education allows the Office to sharpen and prioritize its advocacy based on information from consumers about specific issues that need to be addressed.

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<sup>1</sup> "In defining its positions while advocating on matters pertaining to the operation of public utility or energy companies, the Office shall consider the public safety, the economy of the District of Columbia, the conservation of natural resources, and the preservation of environmental quality," D.C. Code § 34-804(e).

There must be consumer protections in an era of technological advancement. Meters, billing systems, payment schedules, service and repair processes must all meet the needs of modern consumers.

Perhaps the consumer protection offering the greatest return is consumer empowerment through participation in the regulatory process. Time and again, we have seen consumers grow a seed of an idea into a mighty forest. Who can forget the late George Gurley who took on the battle for his entire community to prevent the expansion of the Benning Road power plant, or the community effort to ensure the safety of the Georgetown cogeneration facility? Likewise, who can forget the consumers in Anacostia, who successfully fought the closing of the Washington Gas customer service center.

For its part, the modern utility must do more, not less, in terms of communicating with customers, particularly when a crisis can be avoided. I will work towards ameliorating the tone and tenor of the regulatory dialogue that has long been characterized by the inability of stakeholders to see their common mission. In practical terms this means galvanizing and expanding the stakeholder base to include homeowners, renters, small businesses, and net metering

customers. We have an opportunity to pull these parties together and begin to forge a new paradigm.

## **CHALLENGES FOR THE FUTURE**

Serving as People's Counsel in this new environment, I am prepared to meet these challenges and I pledge to participate in the process of developing solutions.

At the end of the day, I believe delivering on the promises made to consumers will hinge on the quality of consumer advocacy we provide. We must constantly ensure that consumer protections remain relevant in light of technological advances and respond to issues previously unimagined, such as remote service termination, data security and consumer privacy. Questions remain as to what will constitute regulated local telecommunications service. Similarly, what can be done to meet the demands of this new class of Home Energy Producers ("HEPs") who seek to net meter their electricity at competitive rates and consumers interested in aggregation through cooperatives? These are often competing goals with seemingly conflicting interests. I am confident I have the experience and leadership skills to represent the interests of D.C. consumers.

Thank you for allowing me this opportunity to share my vision. I am available to clarify anything I have stated or to answer questions you may have.