

BEFORE THE
Committee on Business, Consumer, and Regulatory Affairs
Of the
COUNCIL of the District of Columbia
On the
OFFICE OF THE PEOPLE’S COUNSEL’S
TESTIMONY OF SANDRA MATTAVOUS-FRYE
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I. Introduction

Good Morning Chairman Orange and members of the Committee. I am Sandra Mattavous-Frye, and I serve as the People’s Counsel for the District of Columbia. Appearing with me today are key members of my managerial staff— Deputy People’s Counsel, Karen Sistrunk; Director of Litigation, Attorney Laurence Daniels; and Herbert Jones, External Affairs Manager.

II. The Office of the People’s Counsel

The Office of the People's Counsel serves as the legal advocate for District of Columbia utility consumers. By law, I am required to advocate on behalf of DC utility consumers to ensure they receive quality utility service and pay rates that are just, reasonable, and non-discriminatory. In exercising this mandate, I must also consider public safety, the economy of the District of Columbia, the conservation of natural resources, and the preservation of environmental quality.

The Office is a party to all utility-related proceedings before the District of Columbia Public Service Commission (“Commission” or “PSC”) and appears before federal regulatory agencies—including the Federal Communications Commission (“FCC”) and the Federal Energy Regulatory Commission (“FERC”).

III. The People’s Counsel’s Policy Platform

Throughout my tenure as People’s Counsel, I have developed policy positions to address the myriad issues raised by the rapidly evolving changes in the utility industries. Over the past five years, massive changes to telephone, electric, and natural gas infrastructure have forced the evolution of the city’s regulatory landscape. Many of these changes are the direct result of technological advances, national and local policy decisions, and progress. OPC enthusiastically supports technological advances and regulatory progress reflecting changed circumstances. However, OPC has been the stalwart voice in ensuring consumer protections and affordability are not compromised while utility services morph into new configurations.

During my tenure as People’s Counsel, some of my signature achievements have been expanding the network of community support, engaging in strategic litigation, and, where appropriate, negotiating settlements that are in the public’s interest. Indeed, under my platform—which includes zealous and creative advocacy, consumer empowerment, rate affordability, and improvements in reliability and energy efficiency—the Office has effectively delivered tangible results to consumers by mitigating rate hikes, garnering stronger consumer protections, and securing improved and more reliable utility service. OPC has supported implementation of cost-recovery mechanisms that, are new, but more importantly, are protective of the interests of ratepayers. Additionally, the Office has effectively made use of various forms

of media, including social media, to educate consumers and assist them in participating in the regulatory process.

IV. Major Cases

My testimony today will highlight the three major cases you identified in your public notice for this hearing: (1) the proposed merger of Exelon and PHI, (2) electric reliability and undergrounding, and (3) the accelerated natural gas pipeline replacement case. The first part of my testimony will be devoted to the proposed merger of Exelon and PHI, as the decision in this case has the potential to significantly and permanently alter the District's regulatory landscape. If approved, it undoubtedly will have long-term effects on the city and its residents for years to come.

I will then use the remainder of my time to briefly outline the pertinent issues, OPC's position, and the status of the Commission proceedings involving the District's Undergrounding Initiative and the Washington Gas Accelerated Pipeline Replacement plan.

Exelon/Pepco Merger:

The proposed acquisition of Pepco by Exelon Corporation ("Exelon"), in my view, unequivocally is the most important utility case ever presented to the Commission. Exelon—the Chicago based company with over 8 million customers, \$24.8 billion in revenues, and significant nuclear assets—is poised to purchase PHI (Pepco's parent company), in an all cash offer for \$6.8 billion. The proposed merger seeks to combine Exelon's three operating utilities—BGE, PECO, ComEd—and Pepco Holdings' electric and gas utilities (namely, Pepco, Delmarva Power, and ACE). The stakes are high. The risks are high, and the decisions will be irrevocable. At stake is the future of electric utility service in the District of Columbia. Pepco has provided electric service to the District for almost 120 years and may be replaced by a company headquartered

over seven hundred miles away in Chicago, Illinois. At risk are the interests of DC consumers. The challenge to policy and decision makers is to ensure that short-term-and long-term benefits inure to DC consumers.

As People's Counsel, my singular goal is to ensure that after all the briefs have been filed, all the expert witnesses have testified, and all the lobbyists have lobbied, that, as required by law, DC consumers are better off than they would have been without a merger.

The law requires that the Commission must determine if the proposed merger is in the public interest, as set forth in section §34-504 of the DC Code. The PSC has determined in previous cases that to meet this standard the merger “must not come at the expense of ratepayers,” and “must produce a direct and traceable financial benefit to ratepayers.” Order No. 11075 at 18. In this proceeding, the PSC has indicated that it will evaluate the proposal using seven public-interest factors. For District consumers, my clients, the practical questions on their minds as they consider this proposed merger are: 1) will Exelon be a better provider of electric service than Pepco? 2) how will this merger benefit me?

These two burning questions, and the seven factors set for hearing by the Commission, formed the basis for my evaluation of the Joint Applicants' merger proposal. After a thorough review and analysis by expert witnesses, my office has concluded that the proposal, as presented to the PSC, is not in the public interest and should not be approved. If approved *as filed* it would result in a woeful imbalance of risks and benefits between the merged company and ratepayers. Paramount is the impact on rates, reliability, renewables, and regulatory governance.

Let's start with benefits:

Exelon is pursuing a business strategy to acquire regulated distribution companies (such as Pepco) because they offer a stable source of revenue to counterbalance the less certain nature of Exelon's nuclear revenues, which are more volatile. Equally benefitted are PHI (Pepco's parent company) shareholders', who will receive a substantial financial benefit in the form of a \$1.6 billion premium for their stock, which translates to a 25% premium on their stock holdings. In stark contrast, the only "benefit" ratepayers are promised, in the filed application, is a possible one-time \$50 rate credit from the Customer Investment Fund. A credit, absent a rate moratorium, will be swallowed up by any future rate case filed by the new company. By way of example, the Company has filed two rate cases in Maryland since the 2012 merger was approved.

Let's turn first to potential rate impacts:

Since 2008, the DC Commission has authorized Pepco to increase rates by nearly \$96 million. Pepco has pursued a serial rate case strategy despite the fact that consumers in some areas continue to experience poor service. OPC is concerned that under Exelon, rate increases will be even higher than with Pepco if certain protections are not in place. This is evidenced by the fact that in recent years Exelon's stock value has declined, pay-out dividends have been cut, and Exelon's current BBB credit rating is lower than Pepco's current BBB+ rating. Exelon's need to shore up its weakened financial portfolio is likely to put upward pressure on DC rates. Such a result is simply untenable.

Accordingly, I am proposing a rate moratorium and ring-fencing requirements to protect DC consumers from continually increasing rates. Ring-fencing is a legal mechanism designed to insulate a regulated utility within a holding company structure from the activities of its affiliates. Rate protection is particularly important given the upcoming increase in rates due to approved

electric power line undergrounding construction costs that will begin to be recovered this year from all Pepco customers (except Residential Aid Discount customers) in a non-by-passable surcharge.

Turning next to Reliability:

After enduring nearly a decade-and-a-half of substandard service—including blue-sky outages, extended outages caused by infrastructure system failures, and poor response to severe weather—and Pepco’s consistent performance in the lower quartile of reliability metrics, consumer anger and frustration were palatable. OPC persistently urged the Commission to fully consider and make Pepco accountable for its poor reliability performance. The City Council held hearings and, ultimately, the PSC promulgated stringent electric reliability standards. These EQSS (Electric Quality of Service Standards) establish the standards which govern the frequency and duration of outages. Exelon, in its filing, states that it will not be able to meet the PSC’s standards governing outage duration. This is a non-starter for OPC. My experts have concluded that Pepco can meet the pre-established standards at a reasonable cost.

The EQSS standards were designed to control overall system performance under normal operating conditions. Unfortunately, the region in recent years has been hit with severe weather events, including Snowmageddon in 2010 and the Derecho in 2012. In response to the Derecho in 2012 and the widespread and prolonged outages that resulted, Mayor Vincent Gray created an Electric Power Line Undergrounding Task Force (“Undergrounding Task Force”); it was charged with finding ways to improve the resilience of Pepco’s District distribution system in response to severe weather events and Pepco’s outage restoration during such events. OPC played a pivotal role in the Undergrounding Task Force as the only party representing residential consumers. Taken together, OPC’s advocacy, the Commission’s orders establishing new quality

of service standards, and the undergrounding project have set Pepco in the right direction towards delivering a reliable distribution system. Pepco is making progress and the city is beginning to see the early fruits of improved reliability. According to the Company's most recent consolidated report, Pepco has moved from the fourth quartile to the first quartile in SAIFI and is in the second quartile in terms of SAIDI. These hard-fought consumer victories must not be compromised.

Environmental Impact of the Merger:

The merger's impact on the environment is another critical consideration. As People's Counsel, part of my job is to give full consideration to the environmental impacts when developing my position on utility matters affecting District consumers. I take this duty very seriously. My staff and I have actively supported and prioritized DC's sustainable energy policy and legislative initiatives over the years, including the Community Renewables Energy Amendment Act, the Renewable Portfolio Standard Amendment Act and the Sustainable DC Omnibus Act, to name a few. I am a statutory member of the DC Sustainable Energy Utility Advisory Board (SEU-AB). Additionally, my Office's Energy Efficiency & Sustainability Section is engaged in several local and national sustainability initiatives, including the Distributed Energy Resources Committee of the National Association of State Utility Consumer Advocates—for which I currently serve as Chair.

The seventh public-interest factor delineated by the PSC pertains to the effects of the proposed merger on “conservation of natural resources and preservation of environmental quality.” In my view, and based upon the analysis of my witnesses, including former PSC Commissioner Rick Morgan, the proposed merger of Exelon with PHI (Pepco's parent

company) does not provide tangible environmental benefits to DC consumers and, in fact, falls well short of meeting the seventh public-interest factor of conservation of natural resources and preservation of environmental quality.

Indeed, I believe the merger, as filed, could result in a regressive step for the District, which has made tremendous strides in reducing its carbon footprint over the past decade. These strides have included efforts to reduce our city's dependence on carbon-dioxide-emitting fossil fuels through advancing the use of renewable energy sources, especially solar energy. These initiatives have positioned the District to be a leader nationwide in the area of renewable energy generation. For example, the District's sustainability plan establishes specific benchmarks, which will reduce the District's carbon footprint by the year 2020 and substantially increase green jobs. The District's Renewable Portfolio Standard—mandates 20% renewable energy by 2020, with 2.5% of the required amount to be provided by solar resources by 2023. As technological advances and costs for distributed generation decrease, it should be even easier for the District to experience greater gains in renewable generation.

I believe it is critical that the city continue its march toward greater sustainability through the promotion of renewable energy, particularly solar energy, given its potential availability to all residents of the District—whether they reside in Ward 3 or Ward 8 or are a homeowner or apartment dweller. It is also critical that the city continue its economic development goals of ensuring/promoting green jobs for its residents and the necessary training for such jobs.

Consistent with the District Government's sustainability policies, OPC is holding an energy symposium this April 18th, at the UDC Law School. This event will provide a forum for

DC residents to learn about our rapidly evolving energy landscape which includes solar deployment, energy efficiency tools and grid modernization. I believe such forums are necessary to make energy-efficiency-and renewable-energy options real for all DC residents.

Unfortunately, Exelon's record supporting the type of renewable generation beginning to take shape in the District falls short. On the national level, Exelon has consistently opposed policies that support the development of solar and wind power, such as the production tax credit. They are particularly vocal in opposing policies geared towards supporting non-utility renewable resource providers. At the state and regional levels, Exelon has challenged legislative initiatives promoting expanded behind-the-meter solar deployment. For example, Exelon opposed legislation supporting community-shared renewables in Maryland. Community shared renewables are designed to level the playing field between those consumers who have the ability to pursue renewable options, such as solar, and those without the financial resources or roof-top capability to share the benefits. Also, in Illinois Exelon aggressively opposed meter aggregation that would enable multiple consumers to receive the benefits from a single rooftop solar installation.

Exelon's opposition to distributed generation incentives for rooftop solar and community-shared renewables and federal tax incentives for renewable energy is at odds with the District's sustainability objectives. DC is emerging as a national leader in sustainability. In contrast, Exelon has devoted substantial resources to opposing subsidies for renewables while it continues to benefit from significant tax subsidies for its nuclear fleet, such as the nuclear production tax credit.

Exelon is primarily engaged in selling generated energy. The increase in behind-the-meter solar generation will cut into Exelon's prospective profits. This alone presents serious questions regarding how the District's environmental commitments, which focus on renewable energy and distributed generation, can be reconciled with Exelon's business model. In the short term, reconciling these competing options requires Exelon to embark upon an affirmative integrated resource plan which includes renewables. The District cannot afford to allow any setbacks in its sustainability agenda. By no means should the city's progress in renewables be sacrificed or abandoned.

Regulatory Governance and Oversight:

As noted, Exelon is an energy company primarily engaged in selling energy in the wholesale market. Pepco is a distribution company (*i.e.*, a "wires only" company) that sold its generation plants in 1999. The two companies will retain their regulatory structure. Pepco will continue to purchase its energy supply from the Standard Offer Supplier (SOS). Technically, Humpty Dumpty is not back together. However, the relationship between Exelon (the seller) and Pepco (the buyer) must be closely monitored. FERC has approved the merger, however, the independent Market Monitor has raised concerns with respect to excess influence over the Regional Transmission Organization known as the PJM.

OPC is also concerned with the Joint Applicants proposed corporate governance structure. Under the Joint Applicants' proposal, there will be a seven-member Board of Directors governing PHI. The primary concern is that under the Joint Applicants' proposed structure, the PHI Board will not have ultimate authority over Pepco's budget. Specifically, there are expenditure maximums set that require certain levels of expenditures to be approved by Exelon's

Board of Directors. This limitation is of great concern to OPC because it potentially subjects future reliability-related capital expenditures to a degree of corporate financial prioritization that could differ from the District's local needs. OPC does not want the District's local reliability needs competing with the capital needs of Exelon's far-flung unregulated generation projects located all around the country. In addition to this limitation, OPC is concerned that the PHI Board will not have a substantial connection to the District of Columbia. Therefore, OPC proposed a number of recommendations in the PSC proceeding investigating this matter to ensure the District's interests are not ignored by this new Board structure such as:

(1) At least one-third and no fewer than two members of Pepco's Board of Directors should be independent.

(2) The majority of Pepco's board members should reside in the District of Columbia.

(3) PHI's and Pepco's headquarters should remain in Washington, DC.

(4) The majority of PHI's Board of Directors should remain independent.

(5) The District of Columbia should be included as a meeting location in the regular rotation for Exelon's Board of Directors, shareholders and Executive Committee meetings. In summation, this is a watershed moment for the District of Columbia. The regulatory landscape is changing on all levels. However, as policy makers we must determine the topography of the landscape. Like other jurisdictions, we must prioritize what is best for our city and for our citizens.

Electric Reliability and the Undergrounding of Power Lines:

In June 2012, the city was hit with a powerful string of severe thunderstorms. The storms damaged an extensive portion of Pepco's electric distribution network and caused outages that lasted for over a week in some parts of the city during a period of frequent triple-digit temperatures. While protracted storm-related service outages were not uncommon over the previous decade, the June 2012 storms served as the turning point for the city, as then mayor Vincent Gray called for a "game changer" in the form of a coalition of government agencies and private entities to develop a plan to harden the network to avoid extended outages in the future due to downed overhead power lines during severe storms. The collective group worked for almost two years to develop a plan and legislation necessary to underground extensive portions of Pepco's overhead distribution network. On May 3, 2014, the legislation entitled "The Electric Company Infrastructure Improvement Financing Act of 2014" became law in the District of Columbia. Since that time, the Office has actively participated in the two litigated proceedings before the PSC involving the implementation of that law. The Commission approved Pepco and DDOT's construction plan on November 12, 2014, and on November 24, 2014, it approved the method being used to finance the project.

OPC's role in the Task Force was two-fold: (1) to ensure that any work done to the distribution system would significantly improve both the reliability and resiliency of the distribution system in the face of severe weather; and (2) to ensure that consumers' would have the lowest reasonable costs. OPC succeeded on both counts. The experts estimate undergrounding should result in a 97% reduction in the frequency and a 92% reduction in the duration of outages for District consumers currently served by overhead distribution lines after completion of the project, which is expected to take 7-10 years. Additionally, and equally important to consumers, the monthly cost of the program is projected to start at approximately

\$1.35 in Year 1, top off in Year 7 at approximately \$3.25, and decline thereafter. This is significantly less than the early projections of an independent study that said the monthly cost would be nearly \$20 a month for similar construction. This is a colossal consumer victory that many said could not be done. Not only will it result in measurable reliability improvements, but it will also provide tangible economic benefits to the city.

Natural Gas Accelerated Pipeline Replacement Program:

At the same time that Pepco was evaluating how to improve its distribution system, Washington Gas Light, in a rate case, put forth a proposal to the Commission to replace significant portions of its underground network on an accelerated basis [WGL's "Accelerated Pipe Replacement Plan" ("APRP" or the "Plan")]. OPC participated in the proceeding, which was fully litigated. OPC objected to WGL's APRP because it lacked specific details as to how the massive construction program would be implemented and proposed a recovery mechanism that was unnecessary given that such costs should be properly recovered through a base rate case. The Commission rejected WGL's construction proposal and allowed the Company the opportunity to file a revised APRP. WGL filed its revised APRP and the Commission approved the first 5 years of the Plan, contingent upon receipt of additional details and information concerning the development and implementation of the Plan. The PSC also established a separate proceeding to consider the funding mechanism for WGL's revised APRP. OPC participated in this case as well and again demanded the cost of the program be reasonable and that specific details needed to be included to allow the Commission to measure the progress and success of the program. Instead of being fully litigated as most cases are, this case resulted in the parties submitting a unanimous settlement proposal to the Commission. A decision is expected soon.

Under the terms of the agreement, a customer with an average usage of 760 therms can expect to see a surcharge of \$6.22 per year. This breaks down to about \$.51/month. As initially proposed, this surcharge would compound year- after-year for the term of the approved plan. However, if the settlement proposal is accepted, the surcharge will be reset as completed APRP projects are rolled into the rate base during the rate proceedings WGL is mandated to file in 2016 and 2020 per the proposed Agreement. Additionally, the Commission will be supplied with sufficient details about the construction program as each year's project list is filed and a thorough review of the project will be undertaken during base rate cases to be filed over the next five years. The entire length of the construction project as approved by the Commission is five years. Yet, the revised APRP as filed was for a period of 40 years.

While the Electric Undergrounding Program was fully litigated and the natural gas pipeline replacement case resulted in a proposed settlement, the outcome was the same—OPC delivered tangible benefits to consumers in the form of improved service at reasonable rates.

In addition to OPC's legal advocacy, the Office will continue to carry out its mandate in these two cases by educating consumers and addressing their issues while each of these extensive construction programs is implemented over the next several years.

V. CONCLUSION

In conclusion, I remain firmly committed to protecting the interests of DC consumers and ensuring that the District's utility companies provide safe, adequate, and reliable service at just and affordable rates; are partners in reaching the District's sustainability goals; and provide ratepayers with direct and tangible benefits.

Thank you. I am available to respond to any questions the committee may have.