

**DETERMINATION AND FINDINGS
FOR
SOLE SOURCE PROCUREMENT**

1. **Authorization**ⁱ

- D.C. Code § 34-801
- D.C. Code § 34-804
- 15 D.C.M.R. § 3700

2. **Minimum Need**

The Office of the People’s Counsel for the District of Columbia (“OPC” or “Office”) requests the services of Spiegel & McDiarmid to assist OPC (jointly with the Delaware Division of the Public Advocate, Maryland Office of People’s Counsel, and New Jersey Division of Rate Counsel) in filing a brief in opposition to the March 28, 2024, petition for a writ of certiorari filed by the Public Utilities Commission of Ohio (PUCO). The PUCO’s petition seeks review by the United States Supreme Court of the decision of the Third Circuit Court of Appeals in PJM Power Providers Grp. v. Federal Energy Regulatory Commission, 88 F.4th 250 (3d Cir. Dec. 1, 2023).

3. **Estimated Fair and Reasonable Price**

The total contract not-to-exceed price is **\$30,000**. This contract price is allocated for filing comments jointly on behalf of OPC, the New Jersey Division Rate Counsel, the Delaware Division of the Public Advocate, and the Maryland Office of the People’s Counsel, each entity will be charged **\$7,500**.

4. **Facts That Justify a Sole Source Procurement**

- A. The Office of the People’s Counsel for the District of Columbia is an independent agency of the District of Columbia government. By law, it is the advocate for consumers of natural gas, electric and telephone services in the District. District of Columbia law designates the Office as a party to all utility-related proceedings before the Public Service Commission. The Office also represents the interests of District ratepayers before federal regulatory agencies. The Office is authorized to investigate the operation and valuation of utility companies independently of any pending proceedings.

The case concerns judicial review under Federal Power Act section 205(g) of the Commission’s inaction (due to deadlocked vote), and the resulting effectiveness by operation of law, of PJM’s Focused MOPR filing. The PUCO is asking the Supreme Court to address the applicable standard of review under FPA section 205(g). It argues that the Third Circuit erred in applying a deferential standard where the FERC Commissioners are evenly divided two versus two and there is no majority order to which to defer.

Our understanding (unconfirmed) is that the United States Solicitor General's office will be filing a response in opposition to the PUCO petition. That filing is currently due on May 1, but the expectation is that the Solicitor General's office will be seeking an extension of that deadline. If an extension is sought, we understand it will apply to all parties, including you. We have spoken concerning this matter with FERC Solicitor Robert Solomon, who informed us that if, as expected, the United States files an opposition, FERC would find it helpful if other, aligned parties do so as well. We agree that supporting the position of the United States is important, especially if parties on the other side file in support of the PUCO's petition.

Spiegel & McDiarmid LLP during the proceedings before the Third Circuit your group signed onto an intervenor brief that included the Maryland, New Jersey, and Illinois state utility commissions. A separate intervenor brief was filed by a larger group that included PJM, Constellation Energy, AMP, ODEC, NRECA, a collection of various environmental groups, and others.

The tasks associated with this effort will include:

- Reviewing and commenting on a draft brief in opposition;
- Reviewing and responding to the comments/feedback of multiple parties.
- Participating in a meeting (if one is held) with FERC Solicitor or Solicitor General's office to discuss the case and possible arguments that the SG's office would like our group to emphasize.

- B. Given Spiegel & McDiarmid's expertise in FERC and Third Circuit matters, this consultant is uniquely qualified to assist the Office of the People's Counsel with representation of the PUCO's petition.
- C. It is for the reasons outlined herein that it is recommended that a sole source contract be awarded to Spiegel & McDiarmid.

5. **Certification by the Contracting Officer**

I hereby certify that the above facts are accurate and complete.

Cherry Belle
Contracting Officer

Date

DETERMINATION

Based on the above findings and in accordance with the District of Columbia procurement regulations: *DC Law: 34-804; DC Law: 34-801; and 15 DCMR §3700*,

I hereby determine that the award of a sole source contract for the services described herein is in the best interest of the Office of the People's Counsel.

Michael Smalls
Chief Operating Officer

Date

ⁱ Procurement authority is vested in the Commission pursuant to § 13(c) (2) of the Residential Real Property Seller Disclosure, Funeral Services Date Charge, and Public Service Commission Independent Procurement Authority Act of 1998 (D.C. Law 12-263). The Commission is statutorily exempt from the D.C. procurement rules as set forth in D.C. Official Code § 1-1181 et seq.

D.C. Code § 34-804, hereby established within the Public Service Commission of the District of Columbia, as established by D.C. Code § 34-801, as Office to be known as the “Office of the People’s Counsel.” The Office shall be a party, as of right, in any investigation, valuation, revaluation, or proceeding of any nature by the Public Service Commission of or concerning a public utility operating in the District of Columbia.

15 D.C.M.R. § 3700: Public Utilities and Cable Television – Public Service Commission Rules of Practice and Procedure.