

PUBLIC HEARING
before the
COMMITTEE ON PUBLIC SERVICES
AND CONSUMER AFFAIRS
of the
COUNCIL OF THE DISTRICT OF COLUMBIA
ON

BILL 17-492
“THE CLEAN AND AFFORDABLE ENERGY ACT OF 2007”

TESTIMONY OF
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Wednesday, January 30, 2008

INTRODUCTION

Good morning Chairman Cheh and members of the Committee on Public Services and Consumer Affairs.¹

My name is Elizabeth A. Noel, Esq. I serve as the People’s Counsel for the District of Columbia. As always, I am privileged to appear before this Committee. I am here today to offer the views of the Office of the People’s Counsel (“OPC” or the “Office”) on the interests of D.C. utility consumers regarding Draft Bill 17-492, the “*Clean and Affordable Energy Act of 2007*” (“Draft Bill”).

While Retail Electric Competition and Consumer Choice are required by law, energy efficiency and the protection of the environment, including, the assumption of responsibility for D.C.’s carbon footprint, are among our chief concerns. Thus, all reasonable and appropriate vehicles reasonably calculated to achieve these goals are laudable and desirable for the benefit of all District residents and energy consumers.

As the statutory representative of utility consumers, OPC is viewing the proposed legislation through a narrow prism in which the following issue is paramount:

¹ On the date of this Hearing, the members of the Committee on Public Services and Consumer Affairs are Mary Cheh, Chair, and Council Members Marion Barry, Kwami Brown, Jim Graham, and Tommy Wells.

How to assure the continued provision of safe, adequate and reliable electric at reasonable (read: affordable) electric rates while crafting an effective and viable plan to significantly reduce D.C.'s footprint on the environment and "ensuring every ratepayer dollar spent is a good dollar."

Appreciating this prism through which this statutory consumer advocate must always view issues affecting utility consumers, OPC submits the Draft Bill raises several overarching issues

- (1) *What are the reasonable costs of the Program?*
- (2) *Who are the beneficiaries?*
- (3) *If this is a government-sponsored program then, is the pricing structure such that all beneficiaries pay the costs?*
- (4) *Is the structure to be established by the legislation reasonably likely to produce benefits the Draft Bill seeks to achieve in the foreseeable future?*
- (2) *What is the impact on the utility rates or taxes to be paid by District consumers and residents?*

I. GUIDING PRINCIPLES OF ANY APPROACH: LEADERSHIP, FISCAL ACCOUNTABILITY, GOVERNANCE WITH ACCOUNTABILITY, AND ENFORCEMENT AUTHORITY

There is no magic pill or a panacea to resolve the issues affecting our energy future. Yet, as "*shepherds of the process*" leading toward an energy efficient and an environmentally aware future, today's lawmakers, policy makers, regulators and consumer advocates must weigh, consider and implement all reasonable options, reasonably calculated achieving the stated goals. These goals are safe, adequate and reliable energy service at reasonable rates (read: affordable) while protecting the environment and taking responsibility for the District's carbon footprint on this planet.

OPC submits every reasonable idea is on the table should be considered provided proponents of those ideas do not seek to impose the costs of such ideas on energy consumers alone, and in particular, on residential energy consumers alone. Thus, it is important to step back and understand the fundamental principles that must guide the District as we consider the best steps for addressing the city's energy future.

A. LEADERSHIP

OPC commends this Committee for taking this next step toward addressing the concerns many have about ensuring the District of Columbia has clean and affordable energy. It is critical that the Executive and Legislative branches of our government have strong leadership in partnership with the residents and consumers who will be affected by this legislative initiative. OPC believes this is essential to for the District to prove to the nation that it is possible to ensure

affordable energy while reducing our carbon footprint on the planet.

First, OPC believes the Executive must demonstrate its commitment, which in fact he has by revitalizing the District Department of the Environment's Energy Office. The Executive must further demonstrate its willingness to commit the city's resources and taxpayers' monies to achieve energy efficiency and the protection for the environment.

Second, the legislative branch must develop legislative mandates that require the committed and collaborative efforts by and from all stakeholders toward achieving an energy efficient city.

What is critically essential is a comprehensive plan reflecting the collective wisdom of all stakeholders that considers all possible measures to be taken in the areas of power generation, transportation, and buildings. Such a plan must consider the measures, the costs, and, most important, the expected benefits the city and its residents and consumers will receive. Again, leadership is key in developing this comprehensive energy plan for the District.

The truth is residents and consumers look to you, the Executive and the legislative branch, working in concert with policy makers, regulators, and the consumer advocate to take these next important steps.

B. FISCAL ACCOUNTABILITY

As the statutory representative of D.C. consumers, OPC must concern itself with any attempt to saddle D.C. ratepayers with the costs for new and untested programs that may or may not yield benefits greater than the costs either today or in the foreseeable future. This is because costs are being incurred today, and today's ratepayers are being asked to pay, today.

The Sustainable Energy Utility ("SEU") is an expensive proposition, and OPC is concerned.

In the D.C. Council's deliberations on this legislation, **fiscal accountability must be high on the list**. OPC submits it is incumbent upon all stakeholders, including the District Department of the Environment ("DDOE") the Council, and the Public Service Commission ("Commission" "PSC"), to be vigilant in ensuring taxpayer or ratepayer dollars are spent wisely and well, and not simply on the latest energy efficiency whim or fancy.

Fiscal restraint must be the guiding principle used to determine how ratepayer funds will be spent. Programs must be cost-effective and provide real and tangible benefits to District ratepayers in this lifetime. OPC supports reasonable and appropriate programs that encourage energy efficiency, provided they translate into measurable benefits for D.C. consumers when compared to program costs. It is imperative that fiscal accountability is a priority, given that natural gas and electricity prices are increasing steadily every year.

C. GOVERNANCE

By governance, OPC is referring to the appropriate governmental organizational structure needed to oversee the SEU, which will have the power to plan and coordinate the efforts taken under the plan. This entity should have the full faith and support of the highest level of governance and the people. As OPC indicated in testimony before this Committee's hearing on Government-funded Energy Efficiency in the District of Columbia,² what the District needs is an appropriate organizational structure in the form of an executive level energy agency and an energy czar with the laser-like focus on implementing and enforcing the District's energy policy and laws. This agency should coordinate the activities of the stakeholders, identify "best practices" suitable for the needs of the District, and lead the way to an energy efficient future for the city.

Clearly, with such responsibility must come accountability to the people whose dollars are being spent.

D. ENFORCEMENT

OPC strongly supports the development of policies that allow for the enforcement of laws designed to carry out the mandate for the city's energy future. Without enforcement authority, any meaningful policy becomes nothing more than a "*feel good solution*" without any accountability to the ratepayers and citizens. Governance demands sound enforcement authority that ensures the goals and objectives are accomplished. **Effective enforcement ensures accountability for the expenditure of the people's monies.**

OPC suggests the proposed legislation not be viewed in a vacuum. It is important to understand and take into account the regulatory background and history undergirding the development of the current regulatory environment.

The Office has prepared a comprehensive white paper detailing the legislative and regulatory history of electric restructuring and deregulation in the District of Columbia. It includes a discussion of pre-1999 electric restructuring, electric restructuring and divestiture/deregulation of generation and the impact of the 1999 Act on the PSC's authority to control generation costs, standard offer service, generation supply, options to promote retail competition (i.e., municipal aggregation and portfolio management), wholesale market impacts, and the current state of retail competition in the District of Columbia. **See Attachment 1.**

We offer this white paper for your consideration as you continue to explore the efficacy of this plan and other recommendations.

² Testimony of Elizabeth A. Noel, Esq. on "Government-Funded Energy Efficiency in the District of Columbia" (a.k.a.; *The Energy Efficient Future for the District of Columbia*) before the Committee on Public Services and Consumer Affairs of the Council of the District of Columbia (May 17,2007), .

II. INCONVENIENT TRUTH: WE MUST RECONCILE CONSUMERS' NEED FOR REASONABLE (READ: AFFORDABLE) RATES, ENERGY EFFICIENCY AND THE MITIGATION OF D.C.'s ENERGY FOOTPRINT

The Office acknowledges the District of Columbia, like most of our nation, faces a daunting challenge to ensure the District's increasing demand for energy does not continue to push energy prices higher. At the same time, energy efficiency has gained renewed interest to address the inconvenient truth of the global climate change and greenhouse gas emissions and their impact on the District's energy footprint. As these issues merge, the growing concern is how the District of Columbia will accomplish both objectives, stable energy prices and reduced greenhouse gas emissions.

A. NEED TO REDUCE ENERGY CONSUMPTION

There is no doubt the District needs to do its part to reduce energy consumption because growing demand has contributed to driving up energy costs. As noted above, D.C. has seen the price of electricity rise by 42 percent since generation rate caps were removed in 2005, and implementation of the SOS. Indeed, the price is not likely to drop as demand for electricity continues to rise. It is predicted future increases will approximate what we have seen to date.

OPC would agree that at least two major ways to reduce demand are energy efficiency and greater reliance on renewable energy sources.

1. Energy Efficiency and Rising Energy Prices

The National Action Plan for Energy Efficiency has identified several benefits from energy efficiency: (1) lower energy bills, greater customer control, and greater customer satisfaction; (2) lower costs than supplying new generation from new power plants; (3) energy efficiency is modular and quick to deploy; (4) energy savings; (5) environmental benefits; (6) economic development; and (7) energy security.³

While these are laudable benefits, the District, like many jurisdictions, faces a serious conflict with the emergence of energy efficiency and increased incentives occasioned by the PJM's Reliability Pricing Model ("RPM"), which was designed to provide financial incentives to generators to build new generating plants in the PJM footprint to address growing energy demand. RPM has done no more than drive up PJM generation costs with little movement among generators to build new generation.

OPC is currently reviewing the results of the first three "Base Residual Auctions" PJM held after RPM was implemented. The Office's initial determination is that RPM has produced unjust and unreasonable capacity prices without attracting new generation in PJM. Consequently,

³ "National Action Plan for Energy Efficiency," Executive Summary, p.4. (July 2006).

there is an inherent disconnect between the desire to reduce demand and the need to build more capacity because of increased demand. Competing policies have done nothing more than force District consumers to pay more for energy with no assurance prices will stabilize, let alone fall at anytime in the near future.

As we stated in our testimony before this Committee on July 12, 2007, energy efficiency is not the substitute for the failure of electricity deregulation and divestiture in the District of Columbia. Rather, energy efficiency is a “demand” side approach aimed at enabling consumers to use energy supply in an efficient and economic manner that should result in an overall reduction in energy consumed. But critical to this discussion is the need to fully understand and acknowledge that failing to address steady increases in the cost of electricity cannot be offset by focusing on efforts to make the District more energy efficient, regardless of the options chosen to accomplish energy efficiency.

As stated in our February 3, 2005 message to the public, “*The Truth Behind Rising Electric Rates and Deregulation*,” OPC favors legislation requiring the PSC to establish a system of economic rewards and incentives for reducing electricity demand of all customer classes, in particular, the commercial class as that approach will allow consumers to share in those savings in the foreseeable future. **See Attachment II.**

It is critical that given the failure of deregulation, energy efficiency be a component of a comprehensive energy policy that ensures reliability while also ensuring the price for energy is just and reasonable.

2. Greater reliance on renewable energy resources

OPC believes the District will have to increase its reliance on renewable energy sources to meet growing demand. The “*Renewable Energy Portfolio Standard Act of 2004*”⁴ is a valuable piece of legislation in recognizing it is in the public interest to establish a market for renewable energy resources that should increase energy security and economic development while reducing the District’s footprint on the environment.

B. EXISTING PARADIGM IN D.C.: RELIABLE ENERGY TRUST FUND AND THE NATURAL GAS TRUST FUND

Under the current scheme, the DDOE proposes programs, OPC and the affected utility review and file comments, and the PSC has the exclusive authority to approve and set funding for the programs.

⁴ D.C. Law 15-340, codified as D.C. Code § 34-1431, *et seq.*

With the enactment of the “Retail Electric Competition and Consumer Protection Act of 1999”⁵ and the “Omnibus Utility Amendment Act of 2004”⁶ the D.C. Council created public benefit charges to be paid by District ratepayers. It was believed these monies were needed to fund energy efficiency programs approved by the Commission and administered by what was then the D.C. Energy Office.⁷

As the statutory representative of District consumers, OPC has filed comments on programs proposed by DCEO in Formal Case Nos. 945 and 1037. While OPC believes reasonable and appropriate energy efficiency programs that are in the public interest should be approved and funded, many of the programs DCEO proposed failed to provide tangible support that the proposals served the public interest, especially since ratepayer funds were being used to finance the programs. A recent study raises questions on how RETF funds were used to create energy savings in the District.⁸ In many instances, the PSC agreed with OPC and did not approve the proposals.

As will be further discussed below, the Draft Bill will not provide OPC with the same ability to scrutinize proposals to ensure they are in the public interest given the enormous amount of ratepayer funds that will be used to fund the Sustainable Energy and Energy Assistance trust funds. The Office believes that OPC’s statutory authority cannot be diminished whenever ratepayer funds are involved. It is the role of a consumer advocate to ensure that ratepayer funds are spent prudently and that the purposes for which those funds are spent serve the public interest.

1. Uncertain impact of existing paradigm on reducing price volatility, greenhouse gas and carbon emissions

Much has been said about how to reduce energy price volatility, as well as reducing greenhouse gas and carbon emissions. As we said earlier, there appears to be a belief reducing greenhouse gas and carbon emissions will result in lower energy prices. Many of the studies and best practices from other states referenced when debating how the District must embark on energy efficiency may reflect unrealistic expectations and results given the distinguishing nature of the District’s retail energy market. That is not to say that what is occurring in other jurisdictions is not useful for considering options for the District, but just as deregulation was a bust for the District when other states had embarked on it with uncertain results, the Office is

⁵ D.C. Law 13-107, Section 104, codified as D.C. Code § 34-1514.

⁶ D.C. Law 15-342, section 101, codified as D.C. Code § 34-1651.

⁷ The D.C. Office of Energy has since been consolidated with the District Department of the Environment. For purposes of this discussion, the acronym DCEO will be used when referring to the D.C. Energy Office.

⁸ See, Formal Case No. 945, “Impact Evaluation Study of the District Department of the Environment’s Two-Year Pilot Reliable Energy Trust Fund Programs” prepared by DOXA, Inc., filed October 15, 2007.

concerned about jumping in without fully examining what is needed for the city to make the greatest impact

C. DILEMMA: HOW TO RECONCILE D.C.’s NEED TO PROVIDE SAFE, RELIABLE AND ADEQUATE ENERGY SERVICE AT REASONABLE COSTS WITH THE NEED TO ENGAGE IN ENERGY CONSERVATION AND ENERGY EFFICIENCY TO ENSURE D.C. RESPONDS TO THE NEED TO ADDRESS THE NATION’S ENVIRONMENTAL CONCERNS?

OPC believes this legislation reflects the Committee’s attempt to address this conundrum.

Without undertaking a comprehensive study to examine the projected impact of the District embarking on a comprehensive plan, what this Draft Bill does is provide but one solution to a very huge problem. In this regard, OPC has reviewed legislative initiatives in neighboring jurisdictions, including the Maryland Energy Administration’s (“MEA”) recently released Maryland Strategic Energy Plan.⁹ OPC believes the MEA raised the appropriate questions:

- What are the challenges to keeping electric bills down?
- What are the challenges to keeping the lights on?
- What are the challenges to keeping the environment healthy?

The MEA recommended to Governor O’Malley the state

- (1) establish a Strategic Energy Investment Fund consisting of revenue generated through the sale of carbon allowances under the Regional Greenhouse Gas Initiative to fund the research of programs to reduce or mitigate the effects of climate change and fund energy efficiency programs that would reduce statewide electricity consumption and invest in renewable technologies while also developing financial tools to attract clean energy businesses;
- (2) reduce electricity consumption by legislating the state’s goal of reducing overall electricity consumption by 15 percent by 2015, create target electricity savings, encourage the adoption of energy efficient measures for residential and commercial buildings, and evaluate smart meters and smart grid technology;
- (3) increase the state’s electricity supplies by strengthening the renewable energy portfolio standard, enhance solar and geothermal grants, encourage long-term contracts for new generation, evaluate the creation of a power authority to explore options to meet peak load, and increase green power purchases to mirror the Renewable Portfolio Standard requirements;

⁹ “Maryland Strategic Electricity Plan” prepared by the Maryland Energy Administration (Jan. 14, 2008).

- (4) enhance the state's energy planning by requiring a biennial state energy plan, promote regional transmission and electricity planning, establish a central repository to gather and analyze energy use, consumption and production data for public dissemination, and require integrated resource planning; and
- (5) create a Green Workforce Development Task Force and a Clean Energy Center.

Again, Maryland's energy market has characteristics that do not resemble characteristics existing in the District's energy markets. In one significant area, the Maryland PSC has agreed to a revenue decoupling mechanism proposed by PEPCO, which the MEA supports in its strategic plan as an incentive for utility-administered energy efficient programs. **OPC does not support revenue decoupling and strongly opposed the proposal in the PEPCO distribution rate proceeding.**

Further, the Office does not support PEPCO's Blueprint for the Future as it is premised on the belief PEPCO, a mere wires company, should be the purveyor of energy efficiency in the District of Columbia. If that is true, then retail competition has been a resounding failure in every single respect.

The development of a comprehensive strategic energy plan is critical to ensuring every possible option for addressing the energy challenges the District of Columbia faces has been vetted. A comprehensive energy plan may ultimately contain the components identified in the Draft Bill, but may also contain other components that may be more cost-effective. Taking the time to explore the possibilities and determining the best fit for the District is a worthwhile and beneficial endeavor, which OPC supports as necessary at this juncture.

OPC does not favor imposing greater costs on the residential rate class to solve a problem that may be linked to greater energy consumption in the commercial rate class. More precisely, the Energy Information Administration ("EIA") predicts delivered energy will grow by 1.1 percent each year from 2005-2030,¹⁰ a steady growth primarily in commercial customer demand. Moreover, EIA reports residential energy use per person has remained fairly constant since 1990. This is due to the combination of increased energy efficiency and consumer preference for larger homes and by new residential uses for energy, both of which have offset each other. Further EIA projects electric demand will grow by 39 percent from 20005 to 2030 in the residential sector, but 63 percent in the commercial sector and by 17 percent in the industrial sector.¹¹

¹⁰ Energy Information Administration Annual Energy Outlook 2007 with Projections to 2030 (Feb. 2007), available at www.doe.gov/oiaf/aeo/deman.html.

¹¹ *Id.* Available at www.eia.doe.oiaf/aeo/electricity.html,

What is needed is a more collaborative approach among the city's government, residents, visitors, businesses, nonprofit organizations, and energy consumers to determine the best ways to reduce the city's environmental footprint while also finding ways to reduce energy prices.

III. SUSTAINABLE ENERGY UTILITY IS NOT A PANACEA. IT IS JUST ONE MORE ALTERNATIVE IN THE CURRENT ENVIRONMENT

A. OPC'S UNDERSTANDING OF THE SEU

In preparation for a day like today, in October 2007, OPC staff attended a presentation by Dr. John Byrne, Co-Chair, Delaware Sustainable Energy Utility Task Force, during which he described Delaware's Sustainable Energy Utility. This presentation was helpful as OPC considered the merits of the SEU proposed by the Draft Bill.

At the time of this presentation, OPC had some concerns about the Delaware SEU-handled ratepayer funds, a concern echoed with the Draft Bill.

This section provides OPC's general understanding of the pertinent provisions of the SEU concept, the centerpiece of the Draft Bill.

OPC will address specific concerns after this discussion.

1. The D.C. Sustainable Energy Utility

Rather than establish an executive level energy agency and an energy czar, which OPC believes is essential, the Draft Bill creates three players: the SEU, the SEU Oversight Board and DDOE. The SEU, "a private contractor selected to develop, coordinate, and provide programs for energy end-users in Washington, D.C. for the purpose of promoting the sustainable use of energy in Washington, D.C."¹² Critical to understanding the Draft Bill is that participation in the programs provided by the SEU is voluntary. However, virtually every District ratepayer will be subject to a surcharge to fund these programs, even though they may elect not to participate.

Under the draft Bill, the SEU would:

- design and deliver end-user energy efficiency and customer-sited renewable energy services under a five-seven-year contract for no less than an average of \$15 million per year subject to revocation if requirements not met¹³

¹² Bill 17-492, the "Clean and Affordable Energy Act of 2007," section 2 (6).

¹³ *Id.* at section 3 (c) (1) and (2).

- be required to reduce overall electricity and natural gas use by established levels; reduce peak electricity demand; implement programs and incentives to install renewable energy equipment; foster development of green-collar jobs; reduce energy bills for low-income residents; coordinate efforts with similar entities in neighboring jurisdictions operating DSM programs; submit bids that meet or exceed performance requirements¹⁴
- provide biannual performance progress reports to SEU Oversight Board and DDOE¹⁵
- not be an incumbent electric or natural gas utility, except as an implementation contractor¹⁶
- receive up to \$20 million annually from the SEU Trust Fund¹⁷
- have authority to raise bonds with a cumulative initial value up to \$100 million to fulfill SEU contract terms¹⁸

The Draft Bill also establishes an SEU Oversight Board “comprised of public and private sector representatives that acts to advise the DDOE in the development and revision of SEU performance targets.”¹⁹ More specifically, the SEU Oversight Board consists of eleven members (serving two years): DDOE (chair); PSC; OPC; two designees from the Council’s utility regulation committee chair; four mayoral appointees from the building industry, the building management industry, residential customers, and the renewable energy industry; one each from natural electric utilities.²⁰ DDOE is required to staff and fund the SEU Oversight Board.²¹

The SEU Oversight Board would:

¹⁴ *Id.* at Section 3(d) (4).

¹⁵ *Id.* at Section 3(c) (3).

¹⁶ *Id.* at Section 3(c) (5).

¹⁷ *Id.* at Section 3(e).

¹⁸ *Id.*

¹⁹ *Id.* at Section 2 (7).

²⁰ *Id.* at section 3(d) (1) (A)-(E).

²¹ *Id.* at section 3(a) (5).

- set and approves rules governing its structure and function²²
- review the requests for proposals developed by DDOE for the SEU and provide recommendations based on its analysis²³
- set annual and contract term performance requirements²⁴
- consider SEU request to change performance targets²⁵
- set performance-based incentives for the SEU contract²⁶
- select an independent entity to monitor and verify SEU reported results²⁷
- prepare an annual report for the D.C. Council on the SEU's performance²⁸

The role of DDOE would be to

- convene SEU Oversight Board²⁹
- issue RFP for SEU³⁰
- select the SEU through an open, competitive bidding process³¹
- provide staff, funding and other resources for the SEU Oversight Board³²

²² *Id.* at Section 3(d) (3).

²³ *Id.* at Section 3(d) (8).

²⁴ *Id.* at Section 3(d) (4).

²⁵ *Id.* at Section 3(d) (3) (C).

²⁶ *Id.* at Section 3(d) (5).

²⁷ *Id.* at Section 3(d) (9).

²⁸ *Id.* at Section 3(d) (10).

²⁹ *Id.* at Section 3(a) (1).

³⁰ *Id.* at Section 3(a) (2).

³¹ *Id.* at Section 3(a) (4) and (3) (b).

³² *Id.* at Section 3(a) (5).

- ensure program implementation continuity and funding between SEU contract terms³³
- administer existing energy efficiency, renewable energy, and universal service funds until the SEU commences activities³⁴
- manage routine administration of the SEU contract³⁵

2. Sustainable Energy Trust Fund

The Draft Bill establishes a Sustainable Energy Trust Fund³⁶ to be used to fund the SEU, the activities of the SEU Oversight Board, and DDOE’s administration of the SEU.³⁷ The Sustainable Energy Trust Fund will be funded through a non-bypassable charge on bills issued by PEPCO and Washington Gas.³⁸ Additionally, the Draft Bill proposes to repeal the Reliable Energy Trust Fund and the Natural Gas Trust Fund and transfer remaining funds to the Sustainable Energy Trust Fund.³⁹ The Draft Bill designates the D.C. Office of the Chief Financial Officer as the fiscal agent responsible for managing the funds to support SEU activities.⁴⁰

3. Energy Assistance Trust Fund

³³ *Id.* at section 3(a) (6).

³⁴ *Id.* at section 3(b).

³⁵ *Id.* at Section 3(b).

³⁶ High program costs-projected to be \$26 million annually; \$13-14 million more than current amounts being collected from ratepayers. On an annual basis, the current Reliability Energy Trust Fund and Natural Gas Trust Fund cost District consumers approximately \$10,825,204 and \$1,629,306, respectively, or a total of approximately \$12,454,510.

In contrast, based upon 2007 usage, the non-bypassable surcharge for the proposed Sustainable Energy Trust Fund would collect approximately \$21 million per year from District consumers, and the proposed Energy Assistance Trust Fund Surcharge would collect approximately an additional \$5 million from District consumers. In total, these two funds will cost District consumers approximately \$26 million and constitute an annual rate increase of approximately \$13,000,000 to \$14,000,000.

³⁷ *Id.* at Section 4(c).

³⁸ *Id.* at Section 4(b) (1).

³⁹ *Id.* at Section 6 (a) and section 7.

⁴⁰ *Id.* at Section 4 (d) and (e).

The Draft Bill also establishes an Energy Assistance Fund funded through a non-bypassable charge on bills issued by PEPCO and Washington Gas to be used solely to fund the Universal Service Program established by DDOE.⁴¹

4. Other provisions

The Draft Bill contains other proposed mandates regarding net metering standards,⁴² solar therm systems,⁴³ renewable energy source standards,⁴⁴ solar renewable energy credit purchases,⁴⁵ Green Building benchmarks,⁴⁶ added roles for OPC and the DC PSC,⁴⁷ and interconnection standards.⁴⁸ The Draft Bill also proposes a minor amendment to the Mayor's authority to prepare a comprehensive air pollution control program that permits the Mayor to advise, cooperate and enter into agreements and agencies of any state or political subdivision, regardless of whether it is adjacent to the District of Columbia.⁴⁹

B. OPC IS NEITHER “FOR” NOR “AGAINST” THE SEU, IN CONCEPT

In an era of retail competition, consumer choice, renewed emphasis on energy efficiency, and the protection of the environment, all reasonable concepts are on the table so long as they are reasonably calculated to achieve benefits for consumers and residents of the District of Columbia in the foreseeable future, provided such concepts further ensure consumers' interest in receiving safe and reliable energy service at reasonable rates

The Office believes the SEU concept is but one option for achieving our goals concerning affordable energy for the District. OPC has concerns about the SEU concept and for the reasons outlined below, does not take a position as to whether the SEU is the solution that addresses the current dilemma discussed above. Again, it is critical that the District take a more comprehensive look at the state of D.C.'s electric market. After assessing the markets, the city

⁴¹ *Id.* at Section 5(b) (1) and (c).

⁴² *Id.* at Section 6(b).

⁴³ *Id.* at Section 8(a) and (b).

⁴⁴ *Id.* at Section 8(c).

⁴⁵ *Id.* at Section 8(d) and (e).

⁴⁶ *Id.* at Section 9.

⁴⁷ *Id.* at Section 10.

⁴⁸ *Id.* at Section 11.

⁴⁹ *Id.* at Section 12.

must determine the reasonable goals that must be set to ensure the District obtains reliable, clean and affordable energy.

C. THE ROLE OF THE OFFICE OF THE PEOPLE'S COUNSEL

1. Ensuring OPC's observations, concerns, and recommendations are addressed

As we indicated in testimony presented to this committee on May 17, 2007, OPC's role in presenting District utility ratepayers and consumers has not and should not change. The Office continues to **advocate** for, **educate** and **protect** D.C. ratepayers and consumers. OPC believes consumers must receive safe, adequate and reliable service at just and reasonable rates. Part of OPC's advocacy component is protecting ratepayer interest as stakeholders seek innovative approaches to ensuring reliable, clean and affordable energy. OPC will thus continue to **educate** consumers to expand their knowledge and understanding of energy markets and the regulatory environment.

OPC has sponsored 12 Energy Expos designed to increase awareness for District ratepayers and consumers in the area of energy efficiency. OPC believes these expos are critical to educating the public. The Office will continue to **protect** ratepayers to ensure the responsibility and financial impact of decisions are shared by all stakeholders. OPC will continue to **advocate** for policies that are in the public interest, including consumer safeguards and protections, with the expectation that such policies will provide the District with reliable, clean, and affordable energy.

2. Consumer education funded by Sustainable Energy Trust Fund

Considering the need to ensure consumers are provided essential education, OPC recommends that monies from the Sustainable Energy Trust Fund budget be provided for OPC's consumer education component. OPC, by statute, has the responsibility to educate consumers on utility matters.

3. Unless OPC has authority to affect change under a traditional regulatory scheme, it is inappropriate for OPC to be a member of the SEU Oversight Board

We are extremely concerned that the Draft Bill designates the People's Counsel as one of the members of the SEU Oversight Board. OPC is an advocate for the interests of District ratepayers and consumers. The Agency's ability to scrutinize and criticize failings of the SEU could be compromised if OPC were a member of the Oversight Board tasked with establishing the SEU performance requirements. Consequently, OPC strongly recommends the Office not sit on the SEU Oversight Board.

D. OPC'S OBSERVATIONS AND CONCERNS

1. Additional level of bureaucracy

Given the multiple players involved in developing energy efficiency programs for the District, the Draft Bill proposes an additional level of bureaucracy in the form of a private contractor tasked with accomplishing an objective established by the legislature. While there may be some concern about the current process for evaluating the merits of energy efficiency proposals, substituting that process may add additional bureaucracy that may not provide the timely, tangible results the Draft Bill seeks to achieve.

2. Shifting statutory authority in D.C. Code § 34-1514 (RETF) and § 34-1651 (NGTF) from PSC to SEU Oversight Board

One significant change is the shifting of authority for evaluating and adopting programs from the statutory utility regulator to a private contractor. This proposal raises a question as to whether this approach makes good practical and fiscal sense when the private contractor operates under funding from District of Columbia ratepayers. The Draft Bill removes the Commission's role in D.C. Code §§ 34-1514 and 34-1651 to determine, among other things, whether proposed energy efficiency and universal service programs serve the public interest, particularly when public funds are being used to fund such programs. The Draft Bill further removes the PSC's statutory responsibility for studying, and issuing a report on the current state of the energy markets in the District and market opportunities for the implementation of energy efficiency and renewable energy programs. Because the PSC is focused on ensuring programs serve the public interest, this responsibility cannot be shifted to a private contractor without any statutory responsibility to protect the public interest.

3. SEU not accountable to D.C. ratepayers

The Commission has broad statutory authority regarding the maintenance of the District's electric and natural gas distribution systems. Consequently, if ever there were a concern about the provision of utility service, including energy efficiency service, the PSC is responsible for ensuring such service is safe, adequate, and offered at just and reasonable rates. The SEU and its oversight board are accountable to no one under the proposed regime. Now, if the District elects to use public funds for the purposes outlined in the Draft Bill, such a proposed regime may be an option, leaving the oversight to the D.C. Council, a branch of government responsible for the city's fiscal policy. However, when ratepayer funds are being used, it is the Commission that has that responsibility.

The SEU will be retained by contract and given a budget of at least approximately \$20 million annually with which to discharge the responsibilities consigned to it by contract. The SEU itself will have no funds at risk; its shareholders will invest no capital in this venture. Only D.C. ratepayer funds will be at risk under the proposed SEU concept. In the event programs fail, ratepayers alone will pay for those failures.

A corporation's board of directors is immediately accountable to the shareholders for all its actions (and failures to act). The SEU has no such body to hold it accountable for its actions. A PSC-jurisdictional public utility is accountable to its shareholders and to the Commission. In the event a project or program is, for example, 10 percent over budget, the public utility is accountable in the first instance to the Commission and ultimately to its shareholders if costs are disallowed by the Commission.

The proposed SEU will not be subject to similar discipline. The only recourse against the SEU would be for DDOE to revoke the contract or not renew it at the end of the term should the SEU fail to meet its requirements.⁵⁰ These remedies are effective for obvious failures to meet contractual obligations, but provide little means to discipline the SEU to seek the most efficient and most cost-effective means of accomplishing an end. Consumers will pay the price for this lack of discipline.

4. No enforcement authority in SEU Oversight Board

The proposed SEU would be subject to an Oversight Board comprising 11 members: a representative of DDOE, the PSC, OPC, two designees from the District Council's regulation committee chair, four mayoral appointees from the building industry, the building management industry, residential customers, and the renewable energy industry, and one each from the incumbent natural gas and electric utilities.⁵¹ Essentially the Oversight Board would draft and approve annual guidelines and contract performance requirements for the SEU, but lacks any enforcement authority over these guidelines and performance requirements.

A particularly bemusing mandate is that the SEU "shall be responsible for reducing the energy use of the District's largest energy users."⁵² The largest energy users in the District are the federal and District governments and entities such as the D.C. Water and Sewer Authority and the Washington Metropolitan Area Transit Authority. The SEU cannot force the federal or District governments or any other large energy users to reduce their energy consumption. If these users choose not to cooperate, the SEU has no recourse.

⁵⁰ *Id.* at Section 3(c) (2) (C).

⁵¹ *Id.* at Section 3(d) (1).

⁵² Draft Bill at §3(d) (4) (I).

5. SEU is a de facto monopoly over sustainable energy services in D.C. without traditional monopoly oversight

The Draft Bill essentially gives the SEU a de facto monopoly over sustainable energy services in the District without imposing the requisite oversight traditionally associated with monopolies. The Draft Bill identifies no formal process whereby the SEU can be held accountable for its actions and decisions. The Draft Bill also does not establish a forum for reviewing the SEU's actions or a standard for reviewing such actions. The PSC will have no jurisdiction over the SEU or its actions. Similarly, OPC will have no formal means for questioning or challenging the proposed actions of the SEU.

6. High program costs - projected to be \$26 million annually; \$13-14 million more than current amounts being collected from ratepayers

On an annual basis, the current Reliability Energy Trust Fund and Natural Gas Trust Fund cost District consumers approximately \$10,825,204 and \$1,629,306, respectively, or a total of approximately \$12,454,510.

In contrast, based upon 2007 usage, the non-bypassable surcharge for the proposed Sustainable Energy Trust Fund would collect approximately \$21 million per year from District consumers, and the proposed Energy Assistance Trust Fund Surcharge would collect approximately an additional \$5 million from District consumers. In total, these two funds will cost District consumers approximately \$26 million and constitute an annual rate increase of approximately \$13,000,000 to \$14,000,000.

7. Burdens D.C. ratepayers rather than D.C. taxpayers because being funded by ratepayers: every dollar spent must be a good dollar

When coupled with the rising electric generation and transmission costs discussed above, the cost to fund the Sustainable Energy Trust Fund and the Energy Assistance Trust Fund is significant. Moreover, the burden on District consumers may be burdened by an increase in the distribution rates paid to PEPCO. Given the tremendous burden on ratepayers, it is vitally important that every dollar be wisely spent and in furtherance of the public interest.

8. Proposed increase in renewable portfolio Standards will drive up retail electricity prices

The increase in renewable energy portfolio standards will inevitably cause upward pressure on wholesale electricity prices, which in turn will be reflected in retail electricity prices. The Draft Bill would mandate an increased demand for renewable energy sources. This demand will be inelastic, irrespective of price. In addition, supply to meet the demand will be inelastic in the short- to medium-term (like all energy generation capacity). Thus, if supply is insufficient to meet the demand of all renewable energy portfolio standards in the Eastern Interconnection, the

price will move well above the competitive market level. The Draft Bill provides no price cap or release valve to mitigate excessive prices.

There are similar concerns about inadequate supply in the long-term. When one looks at the possible sources of renewable energy delineated in the Renewable Energy Portfolio Standard Act of 2004, one must question how many of those sources are viable, even in the extended PJM footprint or adjacent regions. Except for some larger solar energy projects located in desert regions, facilities to utilize solar energy are typically on an individual consumer basis because of the substantial land over which solar panel arrays need to be arranged for a central station solar generator.

Wind energy generation, while becoming more prevalent, continues to meet resistance on environmental and aesthetic grounds. The same is true of ocean, wave and tidal generators. There is little, if any, geothermal generation east of the Mississippi River, and the prospect of adding significant hydroelectric facilities east of the Mississippi seems highly unlikely. Waste-to-energy facilities are also increasingly the subject of complaints about their potential environmental impact. Of the list of renewable resources included in the legislation, all that remains are qualifying biomass, methane, and fuel cells. Mandatory increases in the Renewable Energy Portfolio Standard, without increases in supply of qualifying resources, will inevitably lead to increased wholesale electricity costs.

9. Ratepayers will subsidize private sector “green collar” jobs

The Draft Bill also mandates the SEU “shall be responsible for fostering the development of green-collar jobs in the District.”⁵³ Under this mandate, District ratepayers will be required to subsidize, through mandatory non-bypassable surcharges on their utility bills, the costs to develop private sector “green collar” jobs.

OPC submits it is not appropriate for utility consumers to subsidize the private sector.

10. SEU Trust Fund and Energy Assistance Trust Fund surcharges will be paid by Residential Aid Discount recipients

The language in the Draft Bill suggests all consumers, other than those participating in the Residential Essential Service (“RES”) program will be subject to the surcharge that will be collected by Washington Gas and PEPCO to fund the Sustainable Energy Trust Fund and the Energy Assistance Trust Fund.⁵⁴ Stated differently, consumers who participate in the Residential Aid Discount (“RAD”) program, which provides discounted electricity service for the District’s

⁵³ *Id.* at Section 3(d) (4) (d).

⁵⁴ See, Sections 4(b) (1) and 5 (b) (1).

low income households, will be subject to a surcharge. Consumers who participate in RES, which provides discounted natural gas service for the District’s low income households, will not be subject to a surcharge.

11. Section 10 appears to impose additional duties on OPC and PSC

Section 10 of the Draft Bill has the potential to drastically change the statutory standards of the PSC and OPC. It states in full:

The Public Service Commission shall through its decisions, orders, and regulations attempt to minimize the negative effects of energy company operations on public safety, the economy of the District and its residents, the conservation of natural resources, and environmental quality.

The Office of the People’s Counsel shall through its advocacy and outreach efforts attempt to minimize the negative effects of energy company operations on public safety, the economy of the District and its residents, the conservation of natural resources, and environmental quality.

OPC and the PSC are already charged with ensuring District utilities’ facilities, services, and rates are reasonably safe, adequate, and in all respects just and reasonable. The Draft Bill, however, appears to impose an additional affirmative obligation on the Office and the Commission to ensure District utilities’ facilities, services, and rates conserve natural resources and preserve environmental quality. Does this mean, for example, that because of the potential threat of EMF or the negative effects of overhead distribution lines on lines of sight, a complaint could be brought arguing the PSC has an affirmative obligation to “minimize” these negative effects? The terms “minimize” and “negative effects” are extremely broad and could be read to require OPC and the PSC to act *without regard to cost*. If this reading is correct, Section 10 would constitute a fundamental change in focus of the regulatory scheme in the District.

E. OPC’S RECOMMENDATIONS (GUIDING PRINCIPALS ARE FISCAL ACCOUNTABILITY, GOVERNANCE AND ENFORCEMENT AUTHORITY)

- 1. Request a report from PSC on current state of energy markets and market opportunities for implementing energy efficiency and renewable energy programs**

D.C. Code §§ 34-1514 (c) (4) (A) and 34-1651 (f) (1) require the Commission to “study, and issue a report on, the current state of the energy markets in the District and market opportunities for the implementation of energy efficiency and renewable energy programs.” OPC is unaware of any such reports being issued that would provide the D.C. Council and the public with information that would enable the Mayor, the D.C. Council, OPC, and ratepayers to make an informed decision about the direction in which the city should proceed. Merely shifting responsibility from the governmental agency charged with the responsibility provides a quick fix to a problem needing thorough evaluation.

2. Need to clarify goals and objectives for D.C. and SEU to ensure accountability

As indicated earlier, a much needed approach before moving forward with this legislation is the development of clear, tangible goals and objectives to ensure the District can meet the desired goal of reliable, clean and affordable energy. The Draft Bill attempts to do that but leaves much of the decision-making to the SEU Oversight Board with no accountability to ratepayers who will ultimately fund the undertakings.

The SEU Oversight Board is charged with drafting and approving a set of annual and contract term performance requirements for the SEU based on a number of vague, sometimes nonsensical guidelines. For example, “[the SEU] shall focus on reducing the electricity and natural gas bills of low-income residents in the District.”⁵⁵ It is unclear how this goal is to be achieved. As discussed above, District ratepayers’ rates will be increasing under the proposals of the Draft Bill.⁵⁶ It would seem, at least in the near-term, the only way to reduce the bills of low-income consumers is to subsidize their utility service.

3. Need to identify “best practices” energy savings programs

Much has been written and discussed about the “best practices” for assuring reliable, clean and affordable energy. It is critical for the D.C. Council to determine and reflect on the “best practices” while evaluating what may best serve the District of Columbia. Some best practices may work for jurisdictions that retained generating facilities and operate with multiple energy utilities. The District has a different make up, so consequently, what may be good for one jurisdiction may not ultimately be the “best” for the District of Columbia.

4. Need to provide enforcement authority for SEU to ensure measurable goals and objectives met

⁵⁵ *Id.* at Section 3 (d)(4)(E).

⁵⁶ *See e.g., id.* at Sections 4(b) and 5(b).

Stronger enforcement powers must be given to the SEU Oversight Board to ensure goals and objectives are met by the SEU. The SEU Oversight Board must have the authority to force the government and commercial sectors, for example, to meet timetable specific energy efficiency goals. Otherwise, if such goals are not met, there would be no incentive in place to ensure compliance. Thus, the city's goals may not be reached.

5. Need to protect D.C. ratepayer investment with reasonable rate of return on amounts collected to fund Sustainable Energy Trust Fund?

Given the lack of accountability from the SEU and the SEU Oversight Board to District ratepayers who will pay for SEU undertakings, the D.C. Council must provide a mechanism that ensures the SEU is fiscally prudent. At the Delaware SEU presentation, OPC raised a question about the practicality of providing ratepayers with a rate of return on the amount of their "investment" in the SEU via the Sustainable Energy Trust Fund surcharge. The investment of District ratepayers should be protected with a reasonable return, especially since not all ratepayers will participate in SEU-administered programs.

6. Given cost, need understanding of corresponding benefits D.C. ratepayers will receive

The desirability and benefits of potential reductions to electricity and natural gas consumption, potential reduction to peak demand, and increased development and use of clean and other renewable energy technologies should not obscure the very real fact that achieving any of these goals will come at a cost to consumers. The question that must be answered is: "What will be the cost to consumers?" The Council's decision whether to enact the Draft Bill must be an informed one in which the benefits the Draft Bill are intended to obtain are weighed against the costs to consumers to obtain those benefits. This is not to prejudge whether such costs should be incurred, but rather to make it clear there will be a price to be paid by consumers, and the Council must consciously decide the costs are worth the benefits.

7. Need to ensure consumers receive proper education of SEU programs and adequate safeguards and protections

Critical to the success of any programs administered by the SEU is adequate consumer education to ensure consumers are aware of the programs and how they can meaningfully participate. Considering consumer participation in any SEU-administered program is voluntary, the ability of the District to reach its stated goals and objectives to provide reliable, clean and affordable energy is the message being communicated to the public to prompt participation. Additionally, to the extent there is a

need to ensure consumers are protected by actions of a private contractor, the District must consider the development of essential consumer safeguards and protections.

8. Need bond to compensate D.C. ratepayers for amounts paid if SEU unable to meet goals and objectives

In addition to providing a return on the investment being made by District ratepayers, a bond is needed to further protect this investment. The SEU, unlike a regulated utility operating in the District of Columbia, is not answerable to District ratepayers. Because the SEU and the SEU Oversight Board may not consider programs utilizing standards used by the Commission to evaluate the effectiveness of proposed energy efficiency programs, there is no assurance the investment will produce the expected goals and objectives which would provide benefits to the District and its ratepayers. The SEU proposal in the Draft Bill burdens ratepayers with all the risk. A bond should be procured so the SEU can reimburse ratepayers accordingly.

9. Need to encourage diversified portfolio management with focus on procuring energy through long-term contracts

As the Council considers the entire market for reliable, clean and affordable energy, OPC recommends this body consider the following:

(1) the potential benefits of an SOS procurement process that reflects an actively managed portfolio of diverse resources, including long-term acquisitions beyond the existing three-year ladder to minimize cost and manage risk on behalf of consumers,

(2) the full range of available resource types and product durations,

(3) whether SOS procurement can and should accommodate goals such as fuel diversity (both of type and source) and diversity of suppliers at all stages of planning and implementation, and

(4) whether energy efficiency can be procured as a comprehensive, long-term program with SOS procurement providing the remainder of default service supply through a managed portfolio.

10. Need detailed analysis of impact of increased renewable energy portfolio standards on D.C.'s electricity prices

There should be a detailed analysis of the likely upward pressure on wholesale electricity prices as a result of increases in the RPS standards for the District (and in other jurisdictions in the Eastern Interconnection). The Council should have before it a realistic evaluation of the prospects for increased development of renewable resources

and other mechanisms to mitigate potential upward pressure on wholesale electricity costs.

Thank you.

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