

**BEFORE THE
COMMITTEE ON PUBLIC SERVICES AND CONSUMER AFFAIRS**
of the
COUNCIL OF THE DISTRICT OF COLUMBIA
Public Hearing
on
**“Recent Power Outages and the Reliability of
the Electricity Distribution System”**

Testimony

of

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INTRODUCTION

Good afternoon Councilmember Cheh and members of the Committee on Public Service and Consumer Affairs.

I am Elizabeth Noel, People’s Counsel for the District of Columbia.

Thank you for inviting the Office of the People’s Counsel to appear before you today as the Committee explores and examines the circumstances related to the 2008 electric power outages on the Pepco distribution system serving the District of Columbia. This is an important hearing because Pepco alone is the regulated monopoly with an exclusive franchise to provide distribution and transmission services to D.C. Thus, Pepco alone has the legal obligation to use its distribution and transmission facilities to provide safe, adequate and reliable electric service to D.C. utility consumers at all times and in all seasons.

As the statutory representative of the residential consumers this system services, as well as a D.C. residential consumer, I take the electric outages that have plagued the District the first six months of 2008 very seriously. Indeed, each person who lives, pays electric bills, works, frequents our restaurants, national museums, rides the Metro or otherwise enjoys the wonderful things the District of Columbia offers should be very concerned about the efficacy of Pepco's electric distribution system and the Company's current ability to provide electric service in the summer, winter, spring and fall.

OPC submits the corollary to this responsibility is Pepco's ability to use its facilities to effectuate reliable, timely and accurate information to affected consumers and the public at large about the underlying facts of the "electric outage events" and what consumers can reasonably expect during the period of the "electric outage event" or incident.

Moreover, the most recent "electric outage event" reminds us of the need for continuing public education about emergency management. The Committee is well aware consumers and residents, as well as your constituents, are asking "In the event of a power 'electric outage event,' who does what?" Implicit is the need for interagency coordination, as well as education of Pepco employees.

This hearing is timely and comes on the heels of the June 13 "electric outage event," which affected portions of Downtown D.C., as well as the White House. Let me be quite clear, while this was a traumatic and significant "*electric outage event*," **this** is merely one of the **152** "*electric outage events*," which have disrupted the lives of D.C. consumers since January 2008.

Given this expanded reality, on June 17, OPC, relying on its statutory authority, filed before the Public Service Commission, a petition requesting the initiation of a formal investigation into the circumstances of the outages on the Pepco system. OPC's petition requested the focus not be only on the June 13 "event, but also the 151 other "electric outage events" that have since January of 2008.¹

Almost simultaneously, but unbeknownst to OPC, the PSC instituted a public investigation. Sadly, this investigation was limited to an inquiry about the June 13 "electric outage event" only. The Commission docketed this case as Formal Case 1062.

To ensure any such PSC "investigation" concerning Pepco, service reliability, and the 2008 outage events reflect the reality D.C. consumers face and which would explore the appropriate time period and actual circumstances, OPC immediately filed a supplementary motion asking the PSC to combine the two investigations to ensure the PSC take a hard look at the **152 electric outage events** that have occurred from January through June 13 of this year.²

On **June 18**, the Commission moved OPC's petition to **Formal Case 982** and issued an order in that same case directing Pepco to address all the outages during the month of June with the exception of the June 13 event.

In short, the PSC has declined to look at the outages that occurred in January, February, March, April and May 2008.

Frankly, OPC hopes as a result of this Committee's hearing and inquiry, the PSC will be persuaded that the more prudent approach would be to expand the scope of its

¹ The June 13 outage was classified as a "major event" by Pepco. The outage was mentioned in the pleading, but was not included in the numbers (151), since we had not received the outage report from PEPCO.

² There have been an **additional 42** outages since the filing of OPC's pleading, making the total number of outages **194** from **January through July 5, 2008.**

investigations in Formal Case Nos. 1062 and 982 to examine the circumstances underlying the 152 electric outage events. OPC believes this approach would enable the Commission to best perform its statutory duty and in so doing allow it to take a good, long hard look at the circumstances underlying the **152**.

OPC submits this approach would permit the PSC to create a public record to support an insightful, relevant, and more appropriate decision that will put Pepco on a corrective course of action for its system reliability and communications problems. Surely, the public interest deserves such an enlightened approach.

Most assuredly, such a regulatory “*hard look*” on the public record would permit D.C. ratepayers and affected consumers to bear witness to this regulatory examination and Pepco’s on-the-record responses. This approach best assures public confidence in the agency with exclusive and plenary authority to regulate and otherwise oversee the monopoly electric distribution company. This approach also allows consumers to know and have confidence the regulatory process operates to protect the public’s interest in receiving safe, adequate and reliable electric service -- summer, winter, spring and fall.

PEPCO IS A DISTRIBUTION, “WIRES-ONLY” COMPANY

It is important to recall that of its volition, since 2000, Pepco has operated as a distribution-only company, or as Pepco refers to itself, a “*wires only*” company.

In 1999, Pepco, of its own volition, sought and received regulatory authority to sell its generation facilities to the Mirant Corporation and to otherwise transform itself into a “wires only” company. In return for regulatory approval of this transmogrification, Pepco promised D.C. regulators and consumers such a change would allow it to have a “*laser like focus*” on its distribution efforts, system and facilities.

It is argued that because of this transmogrification and promise to regulators and consumers, Pepco has enhanced its obligation to ensure distribution system reliability—summer, winter, spring or fall. But here we are eight years later, and I submit there are many consumers who now question whether Pepco has made good on its promise.

The host of recent electric outage events, combined with an increased trend over the last three years in the frequency and length of interruptions,³ casts doubt on whether Pepco is fulfilling its duty to provide safe and reliable service to its customers by maintaining, investing and in upgrading its distribution system.

WHAT ARE PEPCO'S OBLIGATIONS?

Pepco is charged with providing safe, adequate and reliable electric service to D.C. consumers at rates that are just, reasonable and nondiscriminatory. Inherent in this legal duty, is Pepco's responsibility to use its expertise and technology to undertake appropriate engineering system planning in light of forecasted needs and growth trends of the District of Columbia, its residents, consumers and ratepayers.

Yes, Pepco is charged to use its expertise and technology to do "*forecasting*" and to plan for the future; to plan in advance what is needed for its distribution and transmission system so the Company can implement appropriate measures to enable it to fulfill its statutory duty to continue to serve existing customers, as well as handle increasing load growth in the District.

OPC submits it is not Pepco's task, regardless of its performance in 2008, to do minimal work to support its distribution system, and then wait for a hurricane, light rain,

³ Pepco's 2008 Consolidated Report, pg. 128.

ice storm, “*squirrels running across the lines*,”⁴ trees falling on the lines, mechanical failures, etc., to decide to upgrade or fix a problem.

I submit there is a huge difference between timely and appropriate “*system planning*” and “*reacting*” to an anticipated problem. By this I mean in the summer it rains, and sometimes there are hurricanes. In the winter, there may be ice storms. In either scenario, trees are the natural enemies of electric lines. And in any event, affected consumers and residents want to know what is going on, what can be expected, and who is supposed to do what. This is not news. An understanding of consumers’ wants and needs during an “electric outage event” does not require an engineering degree or a degree in governmental public policy.

The public record before this Council and the PSC evinces that since 2000, Pepco has reacted to isolated problems, failures, and acts of God when it should have had plans to upgrade its system, as appropriate and to install necessary new equipment, as well as to apply new technologies to manage the existing system in an efficient manner.

Again, one need not be an electrical systems engineer to appreciate those 151 electric outage events that culminated in the June 13 fiasco downtown, suggest there is something very wrong with Pepco’s distribution system and related infrastructure. These system outages signal Pepco is not meeting its obligation to ratepayers. It is also highly doubtful Pepco is meeting the Electricity Quality of Service Standards adopted by the Commission at the beginning of this year.

⁴ OPC petition dated January 25, 2007, which resulted in the initiation of Formal Case No. 1055 concerning the recurring electric service outages in the Ward 4 Crestwood and Petworth communities.

Worse, consumers will attest that Pepco has also failed to maintain a communications system that permits D.C. consumers to talk to real people in emergencies, and to otherwise be apprised, in real time, of what is going on and what can be expected.

Let's be clear. By this **OPC is not suggesting** Pepco is obligated to give consumers specific "restoration times." Obviously, in emergencies such information is not necessarily reliable, and surely, Pepco should not be placed in a position to provide inaccurate or unreliable information to the public or to a consumer who may already be distressed about the outage itself. This would be counterproductive.

HOW IS PEPSCO MEETING OR NOT MEETING ITS OBLIGATIONS?

Pepco files a "Consolidated Report"⁵ every year consisting of three reporting requirements. This report includes Pepco's new and proposed projects to improve the productivity and/or reliability of the distribution system and a manhole event report. OPC understands some projects may take several years to complete. However, the five productivity projects listed in the 2008 report first appeared in the Company's 2000 Report. The Company's reliability projects will appear for the first time in the 2009 Consolidated Report.

Pepco uses three indices to measure reliability. According to graphs included in the 2008 Consolidated Report, the number, duration and frequency of interruptions on the system have increased significantly since 2004. They peaked in 2006, but still remained very high in 2007.

Reports received by OPC from D.C. consumers verify this trend. In February 2008, this Committee held "**Quality of Utility Service Hearings.**" More than 150 District

⁵ These reporting requirements were ordered by the Commission in Formal Case Nos. 766 and 991.

residents attended the two-day session, and approximately 68 consumers provided substantive testimony about utility services. **With respect to Pepco, these consumers complained of system maintenance deterioration, problems getting through to a live customer service representative to report outages or to check the status of service restoration, the length of outages, and frequent power surges.**

The Office has filed several petitions with the Commission requesting formal investigations of Pepco's distribution system.⁶ For example, on **January 24, 2007**, the Office requested an investigation into the frequent, unplanned outages occurring in Ward 4 for the preceding three to five years.

Another petition was filed on **June 22, 2007**, requesting the Commission investigate outages in Wards 7 and 8 on June 3 and June 12, 2007. These outages caused significant damage to electric appliances and electronic equipment, causing dangerous conditions in the affected homes. And, as previously mentioned, we filed a petition in June of this year requesting the Commission investigate the 2008 outages.

Clearly, Pepco's laser-like focus on the District's distribution system has dissipated.

⁶ **Formal Case No. 1055**, *In the Matter of the Petitions of the Office of the People's Counsel for the District of Columbia for an Investigation Into the Recurring Electric Service Outages and Power Surges in Affected Areas of Ward 4, 7 and 8*, Petition of the Office of the People's Counsel for an Investigation into the Recurring Electric Service Outages in Affected Areas of Ward 4 (filed Jan. 24, 2007).

Formal Case No. 1055, *In the Matter of the Petitions of the Office of the People's Counsel for the District of Columbia for an Investigation Into the Recurring Electric Service Outages and Power Surges in Affected Areas of Ward 4, 7 and 8*, Petition of the Office of the People's Counsel for an Investigation into the Electric Service Outages and Power Surges in Wards 7 & 8 (filed June 22, 2007).

WHAT HAS HAPPENED IN THE PAST?

It is important to put events relating to the distribution system into perspective. In **January of 1999**, the District was hit by a significant ice storm. Over 12,000 District customers were affected. Pepco was ordered by the Commission to file a report on its planning, preparedness and improvements it could make. **The main thrusts of the investigation were communication between Pepco and consumers and the procedure for releasing information to consumers and the D.C. Office of Emergency Preparedness, as well the ability to speak to a live customer service representative. Sound familiar?**

In September 1999, strong winds and severe rainstorms from Hurricane Floyd caused significant outages in D.C. **Again, Pepco was to address its response to the hurricane and the applicability of its emergency response plan. Communication between Pepco and its customers continued to be an issue.**

The Commission found that at the time of all the storms Pepco was inadequately prepared to handle the number of incoming calls.⁷ By the time the order addressing the Company's reports was issued, Pepco had increased the number of its local and 1-800 lines so customers would have a better chance of getting through to customer service representatives. The Commission found Pepco had ameliorated the communication problem and commended Pepco on its actions.

In **February and March 2000**, a series of manhole explosions and underground fires occurred. Since then, Pepco has been required to file an annual report

⁷ Formal Case No. 982, *In the Matter of the Investigation of Potomac Electric Power Company Regarding Interruption to Electric Energy Service During the Period January 14-19, 1999*, Order No. 11604, pp. 17-18 (Feb. 10, 2000).

categorizing the incidents, along with a progress report on the ways it is addressing and remedying the conditions.

On **August 14, 2003**, the Northeast Blackout occurred. OPC was asked by then Committee Chair Phil Mendelson to appear before the then Subcommittee on Public Interest regarding the Northeast Blackout and whether a similar situation could occur in the Nation's Capital. District residents were fortunate not to have suffered through that crisis, but the testimony from the experts from PJM and elsewhere was instructive.

Ironically, just days after the Northeast event, D.C. consumers did suffer severe outages in August. And then, in **September 2003, came Hurricane Isabel** (see OPC's 2003 Annual Report attached). More than 104,000 District customers were without power. At the time, Pepco assured D.C. the sheer magnitude of the storm and the number of consumers affected had significantly compromised their ability to communicate with consumers, etc.

OPC urged⁸ the Public Service Commission to launch a full investigation into Pepco's distribution system, so corrective actions could be taken to strengthen it. As ordered by the Commission, Pepco hired an independent consultant, James Lee Witt Associates, to review its response to the hurricane and to make recommendations on how it could improve its response to customer needs during critical times. Again, one of the main issues addressed was communication between Pepco and its customers.

In 2004, the WITT Report was issued. Taken in its entirety, the Report called for more effective interaction between PHI/Pepco and the community at large when

⁸ **Formal Case No. 982, *In the Matter of the Investigation of Potomac Electric Power Company Regarding Interruption to Electric Energy Service During the Period January 14-19, 1999***, Renewed Petition and Expanded Request of the Office of the People's Counsel for an Investigation and Hearings into Pepco Responses to the 2003 Natural Disasters and Request to Enlarge the Scope of the Investigation to Encompass Pepco's Response to Hurricane Isabel (filed Sept. 24, 2003).

disasters strike. The Report also repeats that the need for accurate communications by PHI/Pepco is paramount. Sound familiar?

As a result, the Commission ordered Pepco⁹ to implement the Report's recommendations, as well as several Commission directives. For example, Pepco was ordered to review its distribution system, paying particular attention to the system's robustness as compared to industry practice. The Commission approved Pepco's distribution report and found the Company's performance, as a whole and its performance as it compared to industry standards, showed it was performing well. According to Pepco, all the recommendations and directives given by the Commission have been put into place.¹⁰

Based on OPC's assessment, however, only two significant improvements to the distribution system have been made since then. The first was a substantial upgrade to a feeder in Ward 4, which had been suffering outages on a regular basis for years. The second was a new substation to help improve the reliability of the system installed in Northeast in 2007.

Nonetheless, all this, combined **with lack of communication**, has continued to plague the residents of the District. Based on this, it is not unreasonable that consumers question whether anything has changed since the ice storm of 1999.

Given Pepco's continued failure to adequately communicate with the public during "electric outage events," it is not unreasonable that OPC questions, as we did in 2004, whether the underlying problem is that Pepco cannot tell the public

⁹ **Formal Case No. 982, *In the Matter of the Investigation of Potomac Electric Power Company Regarding Interruption to Electric Energy Service During the Period January 14-19, 1999***, Order No. 13381, dated September 15, 2004, pp. 34-37.

¹⁰ The Commission issued an order agreeing with Pepco. Formal Case 982, Order No.14650 (Dec. 7, 2007).

what it does not itself know about the condition of its distribution system. To put a finer point on it, a utility cannot know the minute-by-minute condition of its vast, complicated system without adequate computerized monitoring, reporting, and control systems in place to handle such a complex and critical function. The question is does Pepco now have in place the type of coordinated and interrelated systems needed to handle the technically demanding task of utility restoration in the aftermath of an “event?”

WHAT CAN BE DONE -- RECOMMENDATIONS

We have known as far back as 1999, the **most common and enduring Pepco customer complaints are lack of timely, accurate communication and lack of access to a live voice on the other end of Pepco’s “telecommunications system.”**

It is imperative Pepco perform needed maintenance to remove most of the dangers to structures and conductors before an event occurs. Trees represent a major source of danger to utility systems. Thus, trees must be dealt with through proper and necessary trimming practices, and D.C. and the neighboring jurisdictions must coordinate. None of us can afford to address the needs of our electrical systems after an “event” has occurred. OPC submits Pepco, D.C. government and the National Park Service must refocus on tree trimming guidelines and practices and pro-actively implement them in accordance with appropriate tree trimming procedures and in collaboration with the community.

Once again, as we did in 2004, OPC raises the question whether the inadequacy of Pepco’s overall system maintenance, together with the inadequacies of tree trimming programs and the lack of other systems, including, communications systems, as

discussed before, are at the root cause of the underlying and recurring problems with Pepco's performance during an "electric outage event."

Once again, OPC recommends that Pepco initiate measures that will provide for more effective interaction between the Company and the community when such "electric outage events" occur.

In short, Pepco must improve the way it communicates with consumers, and affected Public during an emergency- period!

Consumer education is key. Yes, it is true. Consumers want to be able to communicate with Pepco at the onset of an outage. Yes, affected consumers also want to be "*able to talk to a live customer service representative to be "assured" Pepco actually knows there is a problem, and they want to "find out what the problem is."* Frankly, reading a press release in *The Post* explaining the outage the day after does not qualify as "*meaningful communication*" with consumers, who are also Pepco's paying customers.

Coordination with D.C.'s Homeland Security and Emergency Management Agency is critical. This next recommendation concerns the need for consumers to know "who is to do what?" during an emergency.

Clearly, D.C.'s **Homeland Security and Emergency Management Agency**¹¹ is critical. Thus, OPC recommends efforts be made to increase communication between Pepco and EMA, and EMA and the public. This absolutely requires communication and District resident education. Clearly, such consumer education must be done "in advance" of an event so people "just know" whom to call and what to do.

¹¹ The Agency's mission is to reduce the loss of life and property and protect citizens and institutions from all hazards by operating and maintaining a comprehensive all-hazard community-based, state-of-the-art emergency management infrastructure.

At a June 20 meeting with Councilmember Graham and staff consumers stressed the need for communication.¹² In response, on **July 3 2008**, in a meeting arranged by **Homeland Security and Emergency Management Agency** Public Information Officer Jo-Ellen Gray Countee, the Office met with Kerry Payne (*Deputy Chief of Operations and Logistics*) and Kim McCall (*Outreach Specialist*).

EMA provides coordination and support in the District's response to emergencies and disasters. Emergency situations encompass all kinds of events (*not just a 'September 11th' situation, which apparently is what many residents believe*). And, believe it or not, it is this very agency that provides dry ice to residents, when needed in such emergencies, and otherwise arranges for cooling centers or other housing arrangements in the event of a winter season outage.

Based on our conversations with consumers, it is clear there seems to be a disconnect of sorts in knowing whether Pepco and/or which, if any D.C. agencies handles different aspects of an emergency, which often includes a power outage.

Handling emergencies and tragedies must be a collaborative process. Yes, the District has a plan, and the government will be there, but citizens must be able to help themselves, especially in the first 24-72 hours when assessments are made.

Because preparedness is essential to handling emergency situations, OPC has asked the EMA to participate in Joint Utility Discount Day and OPC's Energy Expo. The Agency has graciously accepted our invitation.

¹² Councilmember Graham's staff was represented by Ted Losa and Wilson Reynolds. In addition, from the Office of the Mayor the following persons attended the meeting: Jackie Reyes-Yanes, Outreach and Service Specialist, Ward 1, and Donny Gonzalez, Outreach and Service Specialist. Further, Pepco was represented by Linda Jo Smith, Chet Knapp, and Donna Cooper.

Pepco's performance should be tied to financial penalties. The Commission adopted quality of service standards for Pepco, which were published in the D.C. Register on February 29, 2008.¹³ One way to ensure Pepco invests in improving the distribution system would be to tie its performance to financial penalties. There is, however, no provision for penalties in the standards. Were there penalties, if Pepco failed to perform, meaning it did not meet an adequate level of quality and reliability, it would be financially penalized. The penalty should be structured so it would be borne by the Company, or in other words, the shareholders, and Pepco would be unable to pass the penalty through to ratepayers in a subsequent application or filing.

OPC also recommends there be greater transparency among Pepco, the Commission and OPC with respect to planning. While reliability and productivity projects are discussed within working groups such as the PIWG¹⁴ and as mentioned in the Consolidated Report, there is no formal process for suggesting, approving or implementing a project. Perhaps, a proceeding on the record with a hearing, like a resource plan, would be beneficial.

Finally, Councilmember Cheh, in your e-letter, you asked OPC to address a number of issues, which I believe have been discussed in this testimony.

You did, however, raise one other matter not here addressed. How does Pepco stack up compared to other utilities? Frankly, OPC has had some difficulty over the years comparing Pepco's performance with other similarly-situated utilities. OPC

¹³ District of Columbia Register, Vol. 55, No.9, pp. 001943 – 001960 (Feb. 29, 2008).

¹⁴ The Productivity Improvement Working Group ("PIWG") was established in 1983, in accordance with 15 DCMR 513.5.

submits this question might best be posed to the PSC so its Senior Engineer, Dr. Joseph Nwude, could respond.

Conclusion

I trust these comments, observations, questions and recommendations will assist the Committee in assessing Pepco's performance, its ability to provide reliable service and the need for immediate change to best protect the public's entitlement to safe, adequate and reliable electric service at rates that are just, reasonable and non discriminatory.

Again, thank you for this invitation to appear before you.