BEFORE THE

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

PUBLIC OVERSIGHT ROUNDTABLE
on the
"AN EXAMINATION OF POWER OUTAGES
IN THE DISTRICT OF COLUMBIA"

TESTIMONY
of
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July 14, 2010

I. <u>INTRODUCTION</u>

Good afternoon Chairperson Bowser and members of the Committee on Public Services and Consumer Affairs. I am Brenda K. Pennington, Esq. I serve as the Interim People's Counsel for the District of Columbia.[1]

Thank you for inviting the Office of the People's Counsel ("OPC" or "Office") to appear before the Committee today to examine the recurring problem with power outages in the District of Columbia. It was two years ago today when this Committee held a public hearing on power outages and the reliability of the

District's electric reliability system after the power outage at the 10th Street Substation downtown.

Since the hearing two years ago, District ratepayers and consumers have seen their electric distribution service rates increase once again. This time the Potomac Electric Power Company ("PEPCO") received a $ 20.3 million dollar increase despite OPC's attempt to make service reliability an issue in the rate case and advocating for a reduction in PEPCO's overall rate of return because of its poor performance. In response to public hearing testimony received during the 2009 rate case, the Public Service Commission of the District of Columbia ("Commission") indicated, "While the Commission already has several proceedings investigating Pepco's service quality and reliability, given the widespread complaints from the public about the quality of Pepco's service, service quality issues could be ripe for consideration in Pepco's next rate case."[2]

The Office has raised concerns before the Commission about PEPCO's distribution service reliability since PEPCO became a wires only company (See Attachment A). On September 25, 2009, OPC filed its Analysis of PEPCO's

[1] D.C. Code § 34-804 (2010).

[2] Formal Case No. 1076, Order No. 15710 (Mar. 2, 2010).

Electric Distribution System in the District of Columbia ("OPC Analysis")[3] with the Commission detailing the Office's findings following its independent investigation and analysis of PEPCO's distribution system. At this point in time, no Commission action has been taken with regard to OPC's Analysis. In the last two PEPCO rate cases, Formal Cases 1053 and 1076, OPC asked the Commission to determine whether the reliability and quality of PEPCO's distribution service is safe, adequate and in all respects just and reasonable.

The Commission declined to consider PEPCO's reliability in both cases even though it is statutorily required to insure that PEPCO's distribution service is safe, adequate and in all respects just and reasonable.[4] Ironically, the Commission has even determined that PEPCO's reliability performance is poor, has been declining since 1998 and, in comparison to other utilities is at or near the bottom in industry benchmarking studies.[5] PEPCO also concedes its performance is below par, has been static over the past two years as measured by standard industry reliability indices and that the "reliability expectations of customers, the D.C.

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3 *See*, Analysis of the Potomac Electric Power Company's Distribution System in the District of Columbia filed in Formal Case Nos. 766, 982, 991, 1002, 1026 and 1062 on September 25, 2009.

4 D.C. Code § 1-204.93 (2010).

5 Formal Case Nos. 766 & 991, Commission Order No. 15152 at ¶ 60 (Jan. 6, 2009).

Council and the Commission are not being met."[6] Yet, the Commission has taken no meaningful steps to direct PEPCO to improve its performance and the outages continue.

These are difficult economic times. Unemployment rates have reached unprecedented levels. Consumers are facing increasing financial pressures with many losing their savings, pensions and homes. For many, particularly seniors, low income consumers and those who are on the margin, keeping the lights and heat on are becoming increasingly difficult. Of course, this does not even speak to the countless consumers who manage to pay their bills but are forced to live with unreliable and poor electric quality of service. These problems have plagued District consumers for years and continue to evade resolution.

In this testimony, OPC highlights the problems with power outages and offers a number of recommendations for this Committee's consideration in an effort taken to obtain relief for ratepayers and consumers. The Office hopes this Committee takes swift action on its recommendations.

The chorus of concerns echoed by my clients in all eight wards of the city is the same. They want: (1) reliable service, (2) reasonable and affordable rates, (3) effective, open and courteous communication with the utilities service providers,

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6 *See*, Attachment B for a copy of Pepco's 2009 Consolidated Report Executive Summary.

and (4) responsive and accountable representatives, regulators and decision makers.

II. SUMMARY OF OPC'S RECOMMENDATIONS

The Office is recommending this Committee consider taking the following actions to address the concerns ratepayers and consumers:

1. Amend the provisions of the District Code to include the word "reliable" in order to clarify the obligation of the Commission to ensure public utilities provide reliable service; in other words, service that is "safe, reliable and adequate."[7]
2. Approve legislation requiring the Commission to consider a public utility's service quality and reliability in rate case proceedings when determining the allowed return on equity.
3. Clarify the Commission's authority to impose and receive a civil penalty if a public utility violates any Commission rule, order, or regulation.
4. Approve legislation requiring the Commission to impose a civil penalty if a public utility violates the Commission's quality of service standards.
5. Conduct periodic oversight hearings to consider the performance of public

utilities operating in the District of Columbia.

6. Require public utilities to provide education on the process for submitting claims for damages sustained by a utility's operations.

7. Approve legislation authorizing and requiring the Commission to select a consulting firm to perform a full management audit of public utilities operating in the District of Columbia at least once every five years with the utility bearing the cost of the audit.

III. THE PSC HAS FAILED TO ACT ON CONSUMERS' REQUEST

Power outages are a serious concern for District ratepayers and consumers and we hope the Council will take steps to ensure the improvement of the District's electric distribution system. PEPCO is the monopoly supplier of distribution service in the District and a part of a holding company with numerous unregulated and regulated affiliates. As a regulated public utility company, PEPCO is required to furnish safe and adequate service and facilities.[8] The Commission has the exclusive authority and responsibility to protect the public interest by ensuring every public utility doing business within the District furnishes service and facilities that are safe and adequate.[9]

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[7] *See*, e.g., D.C. Code §§ 1-204.93 and 34-1101(a) (2010).

[8] D.C. Code § 34-1101(a).

[9] D.C. Code § 1-204.93.

Currently, there are at least five (5) open dockets where various aspects of PEPCO's electric distribution system are the subject of an investigation. Although PEPCO did not oppose OPC's request in September 2009 to consolidate all reliability issues into a single docket, the Commission declined to do so by indicating it "believes a close examination of reliability in the context of the system's various components and in separate proceedings offers insights that a broad overview does not."[10]

Having multiple reliability dockets is not getting the job done. They are not spurring the improvement in reliability that ratepayers and consumers who pay for this service deserve. Unless the Commission takes seriously the issue of PEPCO's poor performance and its responsibility to make PEPCO act to fix the service problems District ratepayers and consumers are experiencing, we will continue to discuss the issue without seeing any tangible improvement.

The Office acknowledges there is a cost of improving the reliability of the distribution system. Indeed, OPC did not recommend any reductions to the construction budget PEPCO proposed in the 2009 distribution rate case. OPC did raise concerns regarding PEPCO's proposed reliability projects and whether they would address the reliability concerns. After further examination, OPC concluded

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[10] Formal Case Nos. 766, 982, 981, 1002, 1026, and 1062, Order No. 15567, rel. Jan. 25, 2010.

none of the 2009 reliability projects proposed by PEPCO would reduce the frequency of system outages. As a result, PEPCO would spend less for distribution reliability projects in 2009 than the Company spent in 2008, even as PEPCO reports a continuing deterioration of system reliability. This raises concerns about what PEPCO is doing to improve system reliability and whether it is wisely using ratepayers' funds.

WHAT IS NEEDED NOW?

What is needed now is a complete examination of proposed and approved reliability projects with an eye towards ensuring the cost of these projects will provide greater system reliability for the District and significantly reduce (if not eliminate) the frequency of system outages.

Some will say the deployment of the multi-million dollar automated metering infrastructure ("AMI") will address the problem. Quite the contrary. AMI <u>will not</u> prevent system outages but merely allow PEPCO to determine where outages have occurred on the system instead of having to wait for a customer to report an outage. Putting expensive smart meters on an old and decaying infrastructure will prove to be of little assistance when it comes to preventing outages from occurring in the first place, which is the goal of reliability. Without taking active steps to improve the current system's reliability, AMI will only amplify the current problem while increasing customer costs.

Moreover, the recent electric outage events remind us of the need to continue educating the public about emergency management so members of the Council can respond to constituent questions about what they should do in the event of an outage and consumers have answers before the next outage.

OPC has submitted numerous recommendations to the Commission in the various reliability dockets to address the problem with service outages. While not adopted, OPC believes they are important measures that will help address the problems while also holding PEPCO accountable for meeting its obligation to promptly correct any distribution system problem.

While there has been some attention paid to the outage problems, more can and should be done to assure ratepayers all actions possible are being taken to identify and resolve the problem. Instead, there is a myriad of Commission dockets, directives and indecision and rate increases while ratepayers and consumers continue to feel frustrated, unheard and uncertain about whether steps will ever be taken to fully address the problem. Ratepayers and consumers justifiably expect the Commission to direct PEPCO to take steps to provide reliable service, especially considering the steady growth in the rates the Commission has allowed PEPCO to receive even while providing such poor service.

The public record before this Council and the Commission evinces PEPCO's reaction to isolated problems, failures, and acts of God when the Company should plan for system upgrades to prevent recurring problems.

IV. ADDRESSING PEPCO'S POOR SYSTEM RELIABILITY

PEPCO files a "Consolidated Report" every year.[11] This report is intended to provide data and information detailing PEPCO's planning, design and operation of the District Distribution System and includes PEPCO's performance as measured by industry accepted reliability indices — SAIDI, SAIFI and CAIDI — and compares PEPCO's performance to peer utilities in industry studies. (SAIDI measures the average length of a sustained outage on the system. SAIFI stands for system average interruption frequency index. CAIDI measures the average length of time (duration) per outage that a customer is without service.)

The 2009 Consolidated Report included four industry studies (based on 2007 data: PEPCO's performance in **each** study for **each** reliability index is poor. In fact, for each of the three critical measures, PEPCO commonly **places** in the **bottom quartile,** if not **dead last.**

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

PEPCO's dismal performance is not a one-time event but rather a recurring theme repeated yearly for more than a decade.[12] Consequently, PEPCO's performance shows there has been deterioration in reliability as reported by PEPCO for 2005, 2006, 2007 and 2008. PEPCO's performance varies slightly from 2005 - 2008, but is always poor.

A. CONCRETE STEPS MUST BE TAKEN TO ENCOURAGE PEPCO TO IMPROVE ITS RELIABILITY.

What can be done? Steps should be taken to direct PEPCO to improve its service reliability. The electric quality of service standards ("EQSS") adopted by the Commission on February 19, 2008 must be modified and strengthened.[13] The EQSS are intended to ensure PEPCO meets an adequate level of quality and reliability in serving District ratepayers and consumers.[14] The EQSS establish benchmarks for SAIDI, SAIFI and CAIDI reliability indices. Unfortunately, the EQSS reliability standards as they exist today are not adequate. They neither ensure nor encourage PEPCO to improve its reliability. For example, in 2007 and 2008 PEPCO met the benchmarks established under the EQSS rules yet as I have noted and as PEPCO admits, its performance is still poor.

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[12] Formal Cases 766 & 991, Commission Order No. 14643, page 26 (Nov. 30, 2007).

[13] 55 *D.C. Register* 1943-1960.

Why? Prior to the adoption of the EQSS, PEPCO was reporting under Interim Standards adopted by the Commission on April 27, 2005.[15] In adopting the EQSS, there was no change in the way in which the SAIDI, SAIFI and CAIDI benchmarks are calculated. Five years is long enough to be able to appraise the efficacy of these benchmarks. The benchmarks are neither ensuring nor encouraging PEPCO to improve its reliability. For example, the benchmarks are calculated using a five year rolling average of data. Therefore, if PEPCO performs poorly in 2009, meaning its SAIDI, SAIFI and CAIDI numbers are high, when calculating the benchmarks for these indices for the following year, the high numbers from 2009 will increase the benchmarks for 2010. **Consequently, PEPCO can perform even worse in 2010 than it did in 2009 and still meet the new benchmarks.** Benchmarks for a subsequent year should not be less stringent than those set for the previous year, and they should **never** be more liberal than actual results for the previous year. Until the reliability standards are modified to encourage improvement, PEPCO's achievement of the benchmarks does not equate to sufficient or adequate service.

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[14] 15 D.C.M.R. § 3600.1 (2010).

[15] Formal Case No. 982, *Report of Potomac Electric Power Company Regarding Interruption to Electric Energy Service*, Order No. 13565 (April 27, 2005); *Formal Case No. 1002, In the Matter of the Joint Application of PEPCO and the New RC, Inc. for Authorization and Approval of Merger Transaction*, Order No. 13565 (April 27, 2005).

1. PEPCO'S PERFORMANCE SHOULD BE TIED TO FINANCIAL PENALTIES.

The Commission should adopt and enforce financial penalties. One way to ensure PEPCO invests in improving the distribution system would be to tie its performance to financial penalties. Although OPC has consistently advocated for the imposition of financial penalties, the Commission declined to adopt a provision for financial penalties in the EQSS.[16] With revised rules for establishing reasonable and justifiable benchmarks and financial penalties, if PEPCO failed to meet the benchmarks it would be financially penalized. Financial penalties should keep the utility constantly working to improve its distribution. However, the penalty must be structured so it would be borne solely by the Company, or in other words its shareholders. Allowing PEPCO to pass the penalty through to ratepayers in a subsequent rate application takes away the incentive for improvement.

2. PEPCO'S POOR PERFORMANCE SHOULD BE REFLECTED IN A REDUCTION IN ITS AUTHORIZED RETURN ON EQUITY.

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[16] *See*, FC 982, OPC's Analysis of the Potomac Electric Power Company's Distribution System in the District of Columbia (Sept. 25, 2009) and OPC Comments on the Commission's Proposed Electric Quality of Service Standards (Aug. 27, 2007).

FCs 766 & 991, OPC's Comments on Pepco's 2007 Consolidated Report (May 15, 2007) and OPC's Comments on Pepco's 2008 Consolidated Report (April 14, 2008).

Another way to encourage improvement in reliability is through a reduction in PEPCO's return on equity ("ROE") for poor performance. OPC proposed such a reduction in PEPCO's last rate case, Formal Case No. 1076. This proposal is neither Draconian nor confiscatory; rather, it is consistent with sound ratemaking principals. The rate of return ("ROR") set by the Commission assists PEPCO in maintaining its financial integrity. The Company's ROE is a component of its ROR. In essence, the ROE is the profit which PEPCO is afforded an opportunity to earn as compensation for performing its legal obligation of providing reasonably safe and adequate service. Therefore, when PEPCO's performance is poor, it is reasonable for it and its shareholders to be held responsible for that poor performance in the form of a reduced ROE. This is, after all, the keystone of the utility's public obligation. This ratemaking mechanism appropriately shifts the burden of poor reliability from the consumers to PEPCO. At the same time, receiving a reduced ROE due to poor performance should spur PEPCO to perform better in the future.

The establishment of financial penalties in whatever form will require PEPCO to make some hard choices. It can invest money to improve system reliability for which it will be allowed recovery if the costs are just and reasonable, or it can continue in the same manner and take the risk of having to pay a penalty for failure to meet a benchmark(s).

V. RATE IMPACT ON CONSUMERS

PEPCO's mechanism for funding system improvements and upgrades is through rates paid by its customers. In the last two years, District ratepayers and consumers have been bombarded by mammoth rate increase requests. PEPCO requested $50 million in 2007 and another $51 million in 2009. Beleaguered utility consumers cannot continue to suffer under these conditions while rates increase. In 2008, the Commission approved a $28 million increase in PEPCO's distribution service rates in the District. This was a 12 per cent increase for the average residential customer. In 2010, the Commission approved a $ 20.3 million increase in PEPCO's distribution service rates in the District. This is a 17.5% increase for the residential customer whose average monthly use is 750 kilowatt hours.

According to data from the U.S. Bureau of Labor, the District's unemployment rate remains high at 10.4 percent for May 2010. Increasing utility rates have a harsh impact on stagnant household budgets. Not surprisingly, consumer dissatisfaction has deepened as billing amounts increase and services become more unreliable.

VI. **OPC's RECOMMENDATIONS**

Given the continued problems District ratepayers and consumers are experiencing, OPC offers the following recommendations to this Committee which are designed to improve the quality of service provided by utilities operating in the District:

1. Amend the provisions of the District Code to include the word "reliable" in order to clarify the obligation of the Commission to ensure public utilities provide reliable service; in other words, service that is "safe, reliable and adequate."[17]

2. Approve legislation requiring the Commission to consider a public utility's service quality and reliability in rate case proceedings when determining the allowed return on equity.

3. Clarify the Commission's authority to impose and receive a civil penalty if a public utility violates any Commission rule, order, or regulation.

4. Approve legislation requiring the Commission to impose a civil penalty if a public utility violates the Commission's quality of service standards.

5. Conduct periodic oversight hearings to consider the performance of public utilities operating in the District of Columbia.

6. Require public utilities to provide education on the process for submitting claims for damages sustained by a utility's operations.

7. Approve legislation authorizing and requiring the Commission to select a consulting firm to perform a full management audit of public utilities operating in the District of Columbia at least once every five years with the utility bearing the cost of the audit.

In conclusion, the Office remains committed to representing and advocating on behalf of District consumers. OPC will continue to use its resources in an efficient, effective and efficacious manner.

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[17] *See*, e.g., D.C. Code §§ 1-204.93 and 34-1101(a) (2010).