

# OFFICE OF THE PEOPLE'S COUNSEL OF THE DISTRICT OF COLUMBIA

NASUCA Mid-Year Meeting

June 28-30, 2009

Boston, Massachusetts



## THE PEOPLE'S COUNSEL GOES INTERNATIONAL

People's Counsel Elizabeth A. Noël presented at the UtiliPoint International, Inc. 2<sup>nd</sup> Annual European Executive Summit on March 22-24, 2009, in Dublin City Centre, Ireland. This year's theme was *"The Smart Utility and Energy Company - Smart Meters, Smart Utility, Smart Buildings, Smart Grid. How Smart Is Your Company?"* The Summit contemplated that a smart utility and energy company will be one that recognizes that "Smart Energy" is not just a fad, but rather a trend that will affect every aspect of the industry and will continue to grow.

People's Counsel Noël's, presentation: "Washington, D.C.: Our Nation's Capital's Approach to Advanced Metering Infrastructure ("A Consumer Advocate's Perspective")" discussed PowerCents DC., which is a collaborative two-year pilot project involving AMI and dynamic pricing in the District. Ms. Noël's presentation was unique because it focused on the consumer's perspective. As an active participant in the program; she shared her



*OPC Attorneys Laurence Daniels and Jennifer Weberski pictured with People's Counsel Elizabeth Noël prior to her departure to Ireland.*

hands-on experience. She underscored the five lessons learned so far:

1. The PSC does not regulate 86% of the cost of electricity.
2. Low-income consumers are saving and conserving at a greater percentage than the consumers with no income limitations.
3. Consumers feel as though the winter peaking times provide a false choice, essentially asking consumers to choose against themselves.
4. The participants who have blogged expressed displeasure and confusion with the thermostat and its readings. In addition, consumers would like to adjust the thermostat via the web using a web portal.

5. The consumer advocate's objective for smart meter technology is to provide consumers with information and technology designed to enable them to alter their usage habits, potentially resulting in lower energy costs, achieving energy efficiency gains and a reduction in the number of kilowatts needed to supply the District of Columbia demand, thereby benefiting all consumers.

Ms. Noel's presentation was well received by the attendees, who appreciated her providing the consumer's perspective, which they acknowledged will be a critical factor in the overall success of any Demand Response program.

**Roll Call Report  
June 2009**



## OPC-DC “Rallies” THE CALL for CONSUMERS COMPLAINING OF HIGH PEPCO BILLS

OPC-DC became aware of unusually high Pepco electric bills during the 2008-2009 winter heating season. Typically, complaints about Pepco’s services begin to decline slightly in the fall after the summer cooling season. However, OPC-DC’s Consumer Complaints Specialists noticed a major surge in Pepco complaints in November 2008. By December, a pattern in the complaints had emerged: Complainants were reporting very high Pepco bills, some as much as double or triple the amount of the previous year. Consumers were perplexed by the increase and advised OPC they had not added new electronic equipment or changed their consumption patterns.

The Office was alarmed because 75% of D.C. ratepayers heat their homes with natural gas, yet the unexpected high bill complaints appeared to be largely coming from Pepco customers. By December, the increase in complaints had become a trend, with Pepco high bills complaint calls coming from every ward.



Consumers, whether in apartments, condominiums or single family homes, reported Pepco bills significantly higher than usual. The People’s Counsel appeared on several Fox Five Television News programs, discussing the spike in Pepco bills and advising consumers how to reduce their home energy costs.

During one televised interview, the People’s Counsel asked ratepayers to send OPC their electric bills to be analyzed within the context of an existing formal case proceeding. OPC-DC more than 400 high Pepco bill complaints, which represented a 1,557% increase, compared with 26 complaints in 2008 for the same billing period.

On February 18, 2009, OPC-DC filed a Petition for Investigation before the DC PSC requesting it investigate consumers’ complaints of unexpected high bills and direct Pepco to fully explain the causes of the bills. OPC-DC limited the number of consumer complaints to be investigated and analyzed to those complaints lodged with the Office by a date certain and where written authorization was obtained.

OPC-DC received 208 written and executed consent forms from complainants who were then individually interviewed by OPC-DC staff to obtain additional information for use in OPC-DC’s analysis.

OPC-DC staff interviewed the complainants over a two-week period. Their responses illustrated the variety of consumers across the city affected by the billing increase. OPC’s Pepco High Bill Investigation Questionnaire included questions regarding customer background information, type of home, Pepco customer class, energy supplier, billing service periods and issue dates, and metering and energy consumption.

As a result of its survey interviews, the Office found three trends were responsible for the high Pepco bill during the 2008-2009 winter heating season. They are (1) faulty meters, (2) meter reading error, and (3) increased consumption. OPC-DC is now finalizing its report to the Commission.

## PEPCO'S PERFORMANCE IN THE DISTRICT STILL DISMAL AFTER ALL THESE YEARS

The reliability, or lack thereof, of the distribution system in the Nation's Capital has caused serious concern, particularly in light of Pepco wanting ratepayers to shoulder the costs of expensive new advanced metering infrastructure and distribution automation. While OPC-DC is not averse to the stunning technological advances made over the last few years in the energy industry, it maintains that putting smart meters on old and decaying infrastructure will prove of little or no value when it comes to preventing the outages from occurring in the first place.

So, where are we? OPC-DC is relentlessly pursuing its own investigation into the reliability of the distribution system and is dragging Pepco kicking and screaming along for the ride. The

DC PSC granted OPC-DC's request for a community hearing on the 2008 power outages, however, the Office's request for a formal evidentiary hearing is being held in abeyance until further analysis of data submitted by Pepco is completed by the Commission.

According to information received from Pepco, there have been 2,766 sustained outages and 404 non-major outages in the District through December 31, 2008. The 404 non-major outages are included in the 2,766 sustained outages. From January 1, 2009 through April 31, 2009, there have been 615 sustained outages and 100 non-major outages. Still unexplained are the momentary outages, causing flickering, blinking lights and appliances to turn off or reset,

which continue to plague the District.

OPC-DC has serious concerns about the outage data reported by Pepco to the D.C. PSC. To add insult to injury, in each industry study presented in Pepco's 2009 Consolidated Report, Pepco's reliability performance as measured by the reliability indices — SAIDI, SAIFI and CAIDI— was uniformly poor. Pepco, on average, is in the lowest quartile, **the bottom 25%** for each of the three critical measures.

Utilizing Pepco's average position in the various studies for the past three reporting years, 2007 through 2009, OPC-DC found a deterioration in all three reliability performance indices.

## AMI/MDM CONFERENCE AT THE NATIONAL HARBOR, WASHINGTON D.C.



*Attorney Laurence Daniels answers questions from participants about OPC-DC's role in the deployment of smart grid technology in the District.*

On May 18, 2009, OPC-DC Attorney Laurence Daniels made a presentation to the AMI/MDM Conference at the National Harbor in Fort Washington, Maryland. The audience comprised primarily utility companies and vendors of the electric industry.

The presentation entitled, *The Consumers Advocates Perspective on Smart Grid*, outlined how OPC-DC will carry out its statutory mandate as the smart grid is deployed in the District of

Columbia. Attorney Daniels used empirical data from the PowerCentsDC demand response pilot program to highlight how consumers in the District are altering their consumption behavior and in most cases, saving money. The key point in his presentation underscored for the smart grid to be successful, consumers must be properly educated and empowered with technology and rate options to change their energy consumption behavior.

## OPC-DC APPEALS D.C. PSC'S DECISION ON PEPSCO EXECUTIVE BENEFITS AND THE NORTHEAST SUBSTATION

In January 2008, the D.C. PSC authorized a \$28 million increase in Pepco's distribution service rates for the District of Columbia. While disappointed OPC-DC there were two areas in the D.C. PSC's decision were legally incorrect and appealed the decision on these two areas to the D.C. Court of Appeals.

### Supplemental Executive Retirement Plan

In 1995, the last Pepco rate case before the District's retail markets were restructured, OPC-DC argued, as a matter of policy, that District ratepayers should not have to pay rates that included Supplemental Executive Retirement Plan ("SERP") expenses exceed, the amount the IRS allows Pepco to deduct. The D.C. PSC accepted OPC-DC's argument and took it one step further by deciding to disallow all SERP costs, including capitalized costs.

Pepco admitted it did not remove capitalized SERP costs, arguing it did not understand the D.C. PSC's 1995 Order requiring the removal of all SERP costs – a holding the D.C. PSC confirmed in its 2008 rate case order. As a result, Pepco left the capitalized SERP costs in the rates it filed with the Commission after the 1995 rate case order was issued. Additionally, Pepco continued to include capitalized SERP costs in its rate base each year thereafter. OPC-DC argued that all these costs should be removed from the

rate base used to establish the rates in this case.

The D.C. PSC held that an adjustment to remove these previously disallowed capitalized SERP costs would constitute retroactive ratemaking and could not be made. OPC-DC maintains not allowing these costs to be included in rate base on a going forward basis does not constitute retroactive ratemaking because the adjustment was forward looking.

### Northeast Substation

Pepco requested an adjustment to rate base of \$51.9 million for the construction of the Northeast Substation, a new substation which Pepco claimed was necessary to provide reliable electric service. OPC-DC pointed out that making the adjustment would create a mismatch between costs underlying and revenues to be produced by Pepco's proposed rates, *i.e.*, the proposed rates would reflect costs incurred by Pepco after the test year to bring the Northeast Substation into service, but would not reflect the additional revenues that would result from service the Northeast Substation would permit Pepco to provide. The D.C. PSC concluded OPC-DC had not adequately substantiated the need for a revenue adjustment.

OPC-DC asked the D.C. Court

of Appeals vacate the D.C. PSC's decision to reject OPC's proposed adjustment to revenues because: (1) the D.C. PSC failed to fully and clearly articulate why it rejected OPC's proposed adjustment to revenues in light of record evidence, (2) the D.C. PSC's decision was contrary to its precedent on this issue, and (3) the D.C. PSC failed to fully and clearly explain its decision to abandon its precedent.

The D.C. Court of Appeals heard arguments from OPC-DC, the Commission and Pepco on March 12. A decision is pending.

OPC-DC argued, as a matter of policy, the District ratepayers should not have to pay rates that included Supplemental Executive Retirement Plan expenses the exceed the amount IRS allows Pepco to deduct

## SMART METER PILOT IS UP AND RUNNING

In July 2008, a group of 1,200 randomly selected electric consumers in the District of Columbia began participating in a demand response pilot program, PowerCentsDC, a program originally conceived by OPC-DC. PowerCentsDC is a nonprofit organization comprising OPC-DC, the D.C. PSC, Pepco, the Consumer Utility Board and the International Brotherhood of Electrical Workers. Collectively the organization is known as the Smart Meter Pilot Program, Inc. Board (“SMPPPI”).

This innovative program is the first of its kind in the electric utility industry to test the response of residential customers to three different pricing options: Hourly Pricing, Critical Peak

Pricing, and Critical Peak Rebate in the same jurisdiction. Each pricing option includes “critical peak hours” when the price of electricity is higher than usual. When a consumer alters their energy consumption during critical peak hours, it is known as demand response.

The pilot program is designed to give consumers the opportunity to reduce their energy bills. There is no guarantee consumers using smart meter technology will have lower energy bills. Specifically, the program measures five factors: 1) customer reduction in electricity use during peak times; 2) customer changes in overall consumption; 3) customer satisfaction with different pricing options and technologies; 4) usefulness of the selected technologies; and 5) value

of presenting additional pricing information to customers. The pilot will conclude in March 2010.

At the conclusion of the program, the SMPPPI Board will have an evaluative report to be made available to stakeholders and policymakers who will be able to assess the cost-effectiveness of these residential pricing and technology options.

Currently, the SMPPPI Board is conducting an initial evaluation of PowerCentsDC, with results expected during Summer 2009. OPC believes the current evaluation and final report will be useful in determining how to proceed with demand response programs in the District.

**\*\*To learn more about PowerCentsDC, please visit [www.PowerCentsDC.org](http://www.PowerCentsDC.org).\*\***

## D.C. COUNCIL GIVES PEPCO THE GREEN LIGHT ON AMI DEPLOYMENT

On June 2, 2009, the D.C. Council enacted emergency legislation, the *Advanced Metering Infrastructure Implementation and Cost Recovery Authorization Emergency Act of 2009*. The legislation does two things. First, it grants Pepco authority to deploy advanced AMI in the District of Columbia and to establish a regulatory asset to recover the costs for deploying AMI, provided Pepco obtains sufficient federal funds from the DOE for AMI implementation. Second, the legislation gives the

DC PSC 60 days, once the Company informs the Commission of the amount granted to the Company from DOE, to determine whether Pepco received sufficient federal funds. Pepco convinced the Council that the legislation was necessary to facilitate the Company’s ability to pursue ARRA funding for its AMI project.

The Council’s action essentially resolves Formal Case No. 1056, a proceeding in which the DC PSC is considering whether to grant

Pepco’s request to deploy AMI in D.C. The law’s impact on consumers is that Pepco will be able to create a regulatory asset and accrue costs for the deployment of AMI without prior Commission approval. The legislation does require that before Pepco can recover those costs from consumers, the DC PSC must convene a “prudency” review of Pepco’s expenditures to ensure they are reasonable.

# OPC AND COUNCILMEMBER MURIEL BOWSER CO-SPONSOR BROADBAND WORKSHOP



*D.C. Councilmember Muriel Bowser and People's Counsel Elizabeth Noël discuss the digital transition and its affect on D.C. Consumers.*

On Tuesday, March 17, 2009, Councilmember Muriel Bowser, Chairperson of the Committee on Public Services and Consumer Affairs, and the Office of the People's Counsel co-sponsored "A Consumer Workshop: Digital TV Conversion, Cable Television and FiOS." More than 60 consumers attended the workshop held at Shepherd Park Elementary School in Ward 4. The workshop

was in direct response to inquiries received by OPC-DC staff about DTV conversion, FiOS deployment and cable service providers. The workshop was designed to educate and inform consumers about options in digital telecommunications services and the digital television transition on June 12.

Following opening remarks by People's Counsel Elizabeth A. Noel and Councilmember Bowser, a panel comprising experts in the digital and cable television industries presented information about their products and services offered in the District. The panel, moderated by Assistant People's Counsel

Brenda K. Pennington, included Samuel Rodriguez of the Federal Communications Commission; Michael Powers of Dish Network; Eric Richardson of the DC Office of Cable Television; Donna Rattley Washington of Comcast; Don Channell of RCN; Kimberly Bassett of Verizon FiOS and Denise Rhodes, "The Digital Dynamo." Ms. Rhodes explained how to apply for digital TV converter box coupons and demonstrated set up and operation of digital TV converters. The event concluded with a lively and informative question and answer session highlighting District consumers' preparation for the broadcast industry to "go digital."



*OPC Consumer Complaint Specialist Ardella Newman assists District residents.*



## FiOS IN DC GETS CLOSER — FRANCHISE AGREEMENT APPROVED

On October 31, 2008, the D.C. Council held hearings on Bill 17-950, “Approval of Verizon Washington, DC, Inc.’s Cable Television System Franchise Act of 2008,” seeking public response to the negotiated agreement between Verizon DC and the D.C. Office of Cable Television authorizing the company to finally bring FiOS to the nation’s capital.

Notwithstanding OPC-DC’s overall excitement about the deployment of the latest broadband technology in D.C., (FiOS has already been deployed in surrounding Maryland and Virginia suburbs), OPC-DC cautioned the D.C. Council about the need for consumer protections and offered seven recommendations for Council consideration in approving the franchise agreement. They are:

- 1) It must ensure FiOS deployment will not thwart competition and

will preserve customer choice:

- 2) It should be amended to prevent Verizon DC from

**“In November 2008, the D.C. Council approved the negotiated franchise agreement to deploy FiOS throughout D.C. over the next 10 years.”**

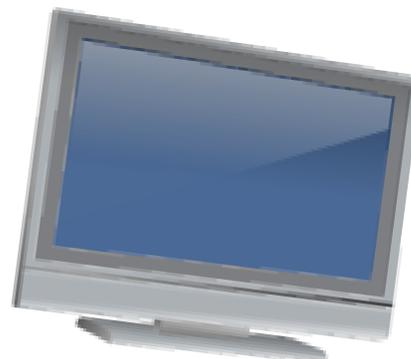
imposing onerous deposits:

- 3) It should include financial sanctions against Verizon DC for missed appointments:
- 4) It must be amended to remove Verizon’s authority to decide when billing disputes are resolved:
- 5) It must be clarified how complaints will

be handled:

- 6) It must be amended to require Verizon DC to have trained personnel based in D.C. to handle system outages and repairs:
- 7) It should be amended to include OPC-DC as a participant in the status meetings on the deployment of services to ensure equitable and ubiquitous deployment of FiOS.

In November 2008, the D.C. Council approved the negotiated franchise agreement to deploy FiOS throughout D.C. over the next 10 years. On March 25, 2009, the franchise agreement became DC Law 17-349; it did not include the major consumer protections advanced by OPC-DC.



## OPC-DC PRESENTS A PANEL AT THE NASUCA MID-YEAR



**Brian O. Edmonds, Esq.**

Attorney Brian Edmonds serves as Assistant People's Counsel and has been with OPC-DC since 2000. He has over eight years of experience advocating on behalf of public utility consumers. He will moderate a panel, "*Does ARRA Spell R-E-L-I-E-F for Utility Consumers?*" which will focus on the expected benefits utility consumers will achieve from the recently enacted American Recovery and Reinvestment Act of 2009 and the role of the consumer advocate in ensuring consumers realize those benefits.

**Jennifer L. Weberski, Esq.**

Attorney Weberski serves as Assistant People's Counsel with the Office. She joined the Office in 2003, and has 12 years of experience advocating on behalf of public utility consumers. Ms. Weberski is representing OPC at the NASUCA Mid-Year and will participate in the discussions on the Resolutions and Roll Call. Ms. Weberski represents the Office on the Electric and Gas Committee and has particular interest in Smart Grid deployment and technologies.



### About the Office of the People's Counsel

The Office of the People's Counsel is the public advocate for natural gas, electric, and telecommunications ratepayers in the District of Columbia. By law, the Office represents D.C. utility ratepayers' interest before the Public Service Commission, FERC, FCC, other utility regulatory bodies and the courts. The Office is mandated to conduct consumer education and outreach and may represent individual consumers with complaints related to their utility service bills.

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