

More Power to the People

In July Mirant Corp., which bought Pepco's electric generation units in 2000, filed for bankruptcy. At that time Pepco assured the D.C. Office of the People's Counsel that Mirant's troubles would not affect the reliability of electric service, but as the consumers' lawyer, I must consider a worst-case scenario. If Mirant, Pepco's largest supplier of power, cannot or will not honor its contracts to supply power, this could have a significant effect on electric rates for District consumers.

Now Mirant is seeking to reject contracts that obligate it to provide power to Pepco at below-market prices and, in effect, to take on Pepco's liability of buying power at above-market prices from other utilities if necessary [Business, Aug. 29]. These contracts also require Mirant to provide power to fulfill Pepco's service obligation in the District through February 2005. If Mirant fails to honor these obligations, Pepco will be forced to look for new and potentially higher-cost power—an ominous prospect for D.C. consumers.

Mirant has persuaded a Texas bankruptcy court to issue a temporary restraining order against Pepco and the Federal Energy Regulatory Commission (FERC). This order enjoins FERC from taking any action to require Mirant to abide by the terms of its contracts with Pepco. The Texas court has scheduled hearings later this month to decide whether

the temporary restraining order should become permanent, but FERC remains the District consumers' best hope.

Pepco says it is prepared to contest any effort by Mirant to reject the agreements in the bankruptcy proceeding. The Office of the People's Counsel wholeheartedly supports Pepco in this effort, and it will provide whatever assistance it can. But if Pepco is unsuccessful in forcing Mirant to honor its contracts, Pepco could seek to pass on its added costs to D.C. ratepayers.

Pepco's sale of its generating plants to Mirant was purportedly a way for it to improve its profits and eliminate risks to its shareholders. But recovery of costs associated with business ventures is supposed to be a risk assumed by investors—not by ratepayers. At the time, the Office of the People's Counsel alone questioned the sale through which D.C. consumers received a mere \$73 per person.

Assuming that D.C. consumers dodge Mirant's bullet, the best way to protect them from the risks raised by the bankruptcy is for Pepco to reacquire generation plants. By owning and controlling its own generation facilities, Pepco would possess the strongest possible tool for guarding against costly power or a lack of supply.

To protect D.C. consumer's interests, the

Office of the People's Counsel has filed a request with the D.C. Public Service Commission for an investigation of the possible effect on rates of the Mirant bankruptcy. The commission also should require Pepco to keep the People's Counsel apprised of all aspects of the bankruptcy. Most important, Pepco must prepare for the possibility that its contracts could be rejected in the bankruptcy proceeding so that it can take steps to protect the interests of D.C. consumers.

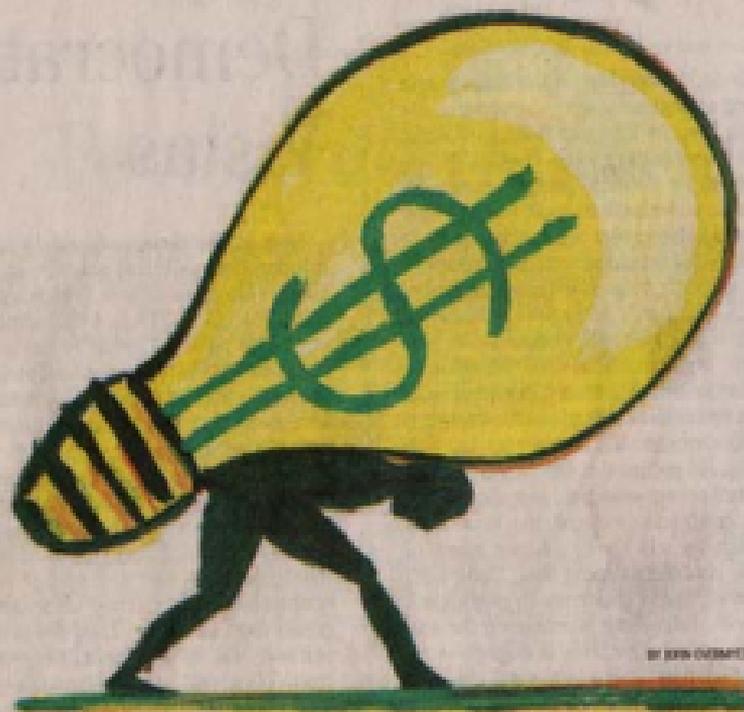
As People's Counsel, I will continue to monitor Pepco's actions and to support efforts to safeguard D.C. ratepayers. However, consumers also must be vigilant in demanding the rates promised, in remaining informed about the changes taking place and in taking steps to manage their energy use.

If the District reexamines the wisdom of retail deregulation, I also would urge consideration of whether the regulatory climate created by the 1999 Retail Electric Competition and Consumer Protection Act continues to be the best choice for consumers.

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BY KEVIN CHAMBERS

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