

Testimony of Sandra Mattavous-Frye
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Before the
Committee on Transportation and the Environment
On Bill 22-0662, The DC Water and Consumer Protection
Amendment Act of 2018”

July 12, 2018

INTRODUCTION

Good morning Chairperson Cheh, Members of the Committee, and Committee Staff. For the record, I am Sandra Mattavous-Frye, People’s Counsel for the Office of the People’s Counsel for the District of Columbia. Accompanying me today is Karen Sistrunk, Deputy People’s Counsel, Laurence Daniels, Director of Litigation and other key members of my staff.

I would like to begin by thanking Chairman Mendelson and other members of the Council for introducing proposed “Bill 22-0662, the DC Water and Consumer Protection Amendment Act of 2018” (the Act or Bill 22-0662). Councilmember Cheh and members

of the Committee, I also appreciate your convening this hearing to provide OPC an opportunity to share the Office's views on Proposed Bill 22-0662. First and foremost, OPC is honored by the Council's trust and confidence in our ability to advocate on behalf of the District's water consumers as proposed by the legislation under consideration today.

This is an important moment. Water is an essential and vital service. For many years, consumers have called OPC to complain about their water bills. Because we do not have statutory authority over water matters, we refer these consumers to DC WASA. Recently, consumer concerns have escalated over rapidly rising water and sewer bills, particularly over new charges and fees for critical infrastructure projects. District consumers are frustrated, confused, angry, and uncertain of their legal rights when faced with the prospect of challenging a disputed water bill. With the long-term capital expenditures associated with the Clean Rivers Project just beginning to impact rates, these issues and the related costs are not going away.¹

Mayor Bowser has dedicated \$6 million in funds from her budget to provide financial relief for nonprofits and others who cannot afford to pay their bills and DC Water has matched the Mayor's funding. The Council augmented this amount by an

¹ The Approved 2018 DC Water Budget indicates that the proposed monthly Clean Rivers Impervious Area Charge is expected to range from \$25.18 per ERU (Equivalent Residential Unit) in FY 2018 to \$44.40 per ERU in FY 2026. DC Water, Approved FY 2018 Budgets at 15 (adopted December 1, 2016) available at: https://www.dewater.com/sites/default/files/documents/approved_fy_2018_operating_and_capital_budgets_final.pdf

additional \$1 million dollars to provide a total of \$13 million in financial assistance for DC Water customers. This Committee convened two public hearings, and DC Water itself has been conducting public information forums throughout the city. The Mayor, the Council, and District officials are attempting to tackle this complex and thorny issue.

OPC's core mission is "to advocate on behalf of consumers, to educate consumers about their rights and to protect consumers in utility ratemaking and complaint proceedings." As part of their mission, other consumer advocate offices across the country represent consumers in water rate proceedings. The District, however, is unique due to DC Water's statutory structure. Indeed, the Office is not aware of any other consumer advocate that is tasked with representing consumers before an entirely independent water authority similar to DC Water. While I am confident OPC can perform an important role in assisting consumers in their interactions with DC Water, I would be remiss if we did not point out the significant challenges ahead.

WHAT ARE THE STATUTORY CONSTRAINTS AND OTHER CHALLENGES?

For a start, there are very important, indeed fundamental, distinctions between the representation of consumers before DC Water and the electric, natural gas, and telecommunications proceedings in which the Office has traditionally advocated on

behalf of consumers. The very structure and independence of DC Water,² as mandated by the District Code, will limit the scope of OPC's advocacy on behalf of District residents, particularly with respect to DC Water rates and charges.³

DC Water is an independent authority of the District government. When the District of Columbia Water and Sewer Authority Establishment and Department of Works Reorganization Act of 1996 was passed, this reorganizational step was deemed necessary to ensure sufficient funding for the water authority to address concerns such as untreated wastewater flowing into the Potomac and Anacostia rivers, the effects of such discharge on the surrounding ecosystem, and adequate funding for necessary repairs to the Blue Plains Wastewater Treatment Plant. To that end, the 1996 Reorganization Act separated water and sewer revenues from the District's General Fund, granted the water authority the independent power to set its rates at the level DC Water decided was required to make it completely self-supporting, and permitted the water authority to finance capital projects through revenue bonds secured by its own revenues.⁴ Perhaps

² D.C. Code § 34-2201.01. By contrast, D.C. Code § 34-801 establishes an independent Public Service Commission to regulate electric, natural gas, and telecommunication utilities operating in the District.

³ D.C. Code § 34-2202.16(b) empowers DC Water to establish its own retail water and sewer rates.

⁴ D.C. Code § 34-2202.03.

most importantly, the budget level established by DC Water cannot be modified without Congressional approval.⁵

This statutory independence granted to DC Water constrains the ability of any participant in a DC Water rate proceeding to meaningfully impact the level of rates established for water and sewer services in the District. DC Water is both the public utility and the entity approving the rates. In contrast, Pepco and WGL must justify the rates they propose to charge to consumers to the independent DC Public Service Commission, which must approve those rates before they can be charged to customers.⁶ The proposed legislation envisions that the Office will represent the interests of District consumers at rate hearings before DC Water and the Board of Directors of DC Water, but unlike the other utility service providers that the Office deals with, D.C. Code § 34–2202.16 provides that DC Water alone shall establish and adjust retail water and sewer rates. Essentially, the Office would be advocating before DC Water for changes to rates that DC Water, in its broad discretion, chooses to propose. This is obviously very different from the posture of an adjudication of a utility rate case before the Public Service Commission.

⁵ D.C. Code § 1–204.45a(a).

⁶ D.C. Code § 34-911.

I recognize and appreciate that the proposed legislation directs DC Water to afford “great weight” to the Office’s position.⁷ It is clear the legislative intent is to facilitate meaningful input from OPC; however, it is not clear to the Office that the obligation to consider OPC’s comments would overcome the ultimate independence and authority granted to DC Water to establish rates to fund DC Water’s operations and meet its obligations under existing bond issuances.

The Office would also be limited in what it could advocate. For example, DC Code § 1-204a(a) provides that, while DC Water must forward to the Mayor and this Council its estimated budget for comment and recommendation, this Council has no authority to revise such estimates. The sole source of revenue for the maintenance of the District’s water and sewer systems are the water and sewer rates, which is not subject to challenge by the Office.⁸ OPC’s advocacy would be limited to proposing rate design changes. Simply stated, OPC cannot argue to change the size of the pie, but merely how the slices are cut up. This could have the effect of driving costs down for some classes of customers and up for others.

A further concern of the Office is whether appropriate administrative rules and procedures are in place that would allow the Office to effectively participate in rate hearings before DC Water. For example, DC Water’s rules governing public hearings

⁷ Bill 22-0662 at Sec. 2 (c).

⁸ DC Code § 34-2202.16(b).

concerning rate adjustments do not provide an opportunity for a party to (conduct “discovery”) access the books, records, and studies underlying DC Water’s proposed rate levels, cost allocations, or rate design. While Section 2(b) of the proposed legislation would give OPC access to certain DC Water records to resolve certain disputes, we need clarification of whether that includes the data and analyses underlying a proposed rate change. Even if it does, Section 4001.2 of DC Water’s regulations provides that a hearing on a rate change under Section 216 of the Reorganization Act can be held in as few as 10 days after the publication of the notice in the D.C. Register.

By way of example, DC Water’s notice of the proposed rates for Fiscal Years 2019 and 2020 were published in the DC Register on March 16, 2018, and DC Water held its hearing to consider the proposed rates on May 9, 2018. Contrast this timeframe with the typical utility rate case in which parties are afforded months to issue data requests, review discovery responses, and develop testimony prior to full evidentiary hearings before the Public Service Commission, where expert witnesses are subject to cross examination.⁹ To be clear, I am not recommending a similarly attenuated proceeding in this instance, but rather pointing out that the proposed truncated process makes it difficult to adequately review and evaluate the proposed rates.

⁹ 15 D.C.M.R. § 100 *et seq.*

WHAT IS THE ADDED VALUE OF OPC'S INVOLVEMENT IN THE PROCESS?

If the Council authorizes OPC to represent District consumers before DC Water, the Office will do so with its usual dedication and perseverance, but I believe it is important to manage public expectations, because the Office's ability to change DC Water rates will be limited, at best. Nonetheless, we believe the Office can add value to the process in three program areas.

OPC's mission is to Advocate, Protect and Educate. I believe we can apply these principals to our DC Water involvement.

Advocacy

OPC can advocate on behalf of individual consumers with respect to disputed individual water bills, threatened disconnections, and customer service complaints. This is a natural extension of the Office's current role of mediating resolutions for individual consumer complaints with the electric, natural gas, and telecommunications utilities offering services in the District. OPC already has in place a comprehensive consumer complaint resolution process that is designed to ensure that utility ratepayers are adequately represented in their disputes with utility service providers. I believe that this program could be readily expanded to cover DC Water disputes if the proposed

legislation becomes law. The chart below shows the internal process OPC currently has in place for consumer complaint resolution.

Consumers' complaints require negotiations between OPC staff and utility company representatives to resolve the disputes.

1. OPC receives complaints by phone and fax, in person, through its website, from other District government agencies, social services agencies and DC Council staff members.
2. OPC staff interviews the consumer to get details of the complaint.
3. Staff reviews OPC's informal complaints resolution process with the complainant, including a timeframe when staff will provide the complainant with the investigation findings.
4. OPC staff then initiates an investigation of the complaint through the utility company. The company's findings are reviewed with the consumer.
5. Depending on the utility company's response, OPC may then find it necessary to ask utility company representatives additional follow up questions.
6. OPC's intervention can usually resolve a dispute in the informal complaint resolution phase. However, if the consumer is not satisfied with the results of the informal complaints resolution findings, they are informed they can request the DC Public Service Commission (PSC) open a complaints investigation.
7. The PSC's findings may result in scheduling a pre-hearing conference. The PSC pre-hearing conference is mediation between the consumer and the utility company.
8. OPC staff can attend the pre-hearing conference, but does not legally represent the consumer. The PSC staff person will render a decision on the complaint. If dissatisfied with the decision, the consumer can request a formal hearing.

9. Following a review of the case, an OPC attorney may represent the consumer at the formal hearing.
10. The hearing officer will issue an order on the merits. The complainant can appeal the decision to the PSC En Banc. The commission will render a final decision.
11. The PSC's final decision can be appealed before the DC Court of Appeals.

Consumer Protection

In addition, OPC could share best practices from other consumer advocate offices, consumer protection agencies, and adopt applicable provisions of the D.C. Utility Consumer Bill of Rights for water customers.

Again, however, the Office's representation of consumers in individual complaint proceedings will face DC Water's regulations, which provide that DC Water is the entity that adjudicates all complaints brought against the authority. If a consumer requests a hearing to adjudicate a disputed decision by DC Water, the regulations provide that the DC Water General Manager or a hearing officer assigned by the DC Water General Manager will conduct the hearing and resolve the dispute.¹⁰ Understandably, these optics do not sit well with many consumers and those who have gone through the process

¹⁰ 21 D.C.M.R. § 414.1.

express dissatisfaction. DC Water, however, has represented that it utilizes independent hearing officers to hear consumer complaints. OPC recommends that the proposed legislation expressly include detailed provisions for the use of independent mediators and hearing officers to hear and resolve individual informal and formal consumer complaints.

Education and Outreach

OPC can also educate the public about their rights and responsibilities. This is a complex process made even more complex by the unique statutory construction of DC WASA. OPC has extensive experience in customer education and could use our existing education programs to help consumers better understand the processes and procedures of water services.

Despite the challenges, the Office nevertheless believes it can meaningfully assist District consumers before DC Water in four areas: individual complaints, public education, limited rate design recommendations, and in navigating the administrative process. For example, OPC can help forestall disconnections, and negotiate payment plans. OPC can also educate consumers about water conservation and leak identification.

Likewise, Impervious Area Charges have been the cause of significant concern for DC Water customers, and the process for challenging such charges is not obvious. DC Water regulations permit only non-residential and multi-family customers to challenge the charge under limited factual circumstances. Specifically, the owner subject to an

Impervious Area Charge can argue that the property has been assigned to the wrong rate class, that the impervious service area used in the computation of the charge is incorrect, or that ownership information is incorrect. The Office could certainly help consumers navigate these regulations and bring factual challenges under such circumstances. The broader policy question regarding whether the Impervious Area Charge is a fair and equitable way to distribute the costs of maintaining the sewer system and protecting waterways, however, cannot be addressed through the individual consumer complaint process.

OPC RECOMMENDATION GOING FORWARD

OPC proposes to meet regularly and work collaboratively with DC Water and other stakeholders to identify public policy and systemic issues for submission to the Council and the Mayor for consideration.

In closing, I thank you for allowing me to testify on this important matter.