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**APPROVED**  
**JAN 2-1975**

ACTION

**THE WHITE HOUSE**  
**WASHINGTON**

Last Day: January 10

December 31, 1974

*Postal*  
*1/3*  
*To Archie*  
*1/3*

MEMORANDUM FOR THE PRESIDENT  
FROM: KEN COLE  
SUBJECT: Enrolled Bill H.R. 17450  
D.C. People's Counsel

Attached for your consideration is H.R. 17450, sponsored by Representative Adams and four others, which would provide for a People's Counsel for the Public Service Commission in the District of Columbia.

OMB recommends approval and provides additional background information in its enrolled bill report (Tab A).

Max Friedersdorf (Loen) and Phil Areeda both recommend approval.

RECOMMENDATION

That you sign H.R. 17450 (Tab B).





EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

DEC 30 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 17450 - D.C. People's Counsel  
Sponsor - Rep. Adams (D) Washington and 4 others

Last Day for Action

Purpose

To provide a People's Counsel for the Public Service Commission in the District of Columbia.

Agency Recommendations

Office of Management and Budget	Approval
District of Columbia	Approval
Civil Service Commission	Approval

Discussion

The 1926 Act which created the D.C. Public Utilities Commission (later the Public Service Commission) was amended to provide for the appointment of a People's Counsel (Counsel) to intervene at hearings or judicial proceedings in matters concerning services provided by public utilities. The Commission is the local regulatory body responsible for regulating gas, electric and telephone utilities; taxi operations in D.C.; and some charter bus services. However, the position of Counsel was abolished by a reorganization plan in 1952.



The Senate Committee on the District of Columbia report states:

"The local utility regulatory commission had served admirably in its role as the independent judicial body responsible for making comprehensive and detailed decisions on complex rate procedures. However, it has not been able to serve simultaneously as the vigorous defender of local consumer interests."

H.R. 17450 would reestablish the "Office of the People's Counsel" to represent such local consumer interests. The Counsel would be appointed for a three-year term by the Commissioner of the District of Columbia with consent of the D.C. council. He would be authorized to employ necessary staff and prescribe their duties.

The Counsel would have authority to:

- represent the people of D.C. at hearings and judicial proceedings involving the interests of public utility users
- represent before the Commission petitioners who have complaints concerning rates or services
- investigate services given and rates charged by local public utilities
- develop means to assure that the interests of users of public utility products and services are adequately represented in Commission proceedings

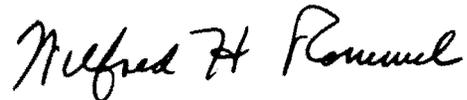
Expenses incurred by the Counsel would be paid in connection with specific cases by the public utility involved. The bill authorizes appropriations of \$50,000 for fiscal year 1975 and \$100,000 for fiscal year 1976 to cover the basic costs of the Counsel not covered by case by case reimbursements.

Although home rule is to become effective January 1975, Congress apparently believed this bill was urgently needed because the Potomac Electric Power Company and the Chesapeake and Potomac Telephone Company have recently petitioned for major rate increases. It believed that the Counsel's function should commence as soon as funds are available.



In a letter to the Committee, the D.C. Government stated its support for the legislation and all of its proposed changes were included in the bill.

The various utilities and the Public Service Commission, with some reservations not affecting the basic purposes of the bill, each generally supported the enrolled bill in reports to the Senate Committee on the District of Columbia.



Assistant Director for  
Legislative Reference

Enclosures



THE DISTRICT OF COLUMBIA

WASHINGTON, D.C. 20004

WALTER E. WASHINGTON  
Mayor-Commissioner

December 27, 1974

Mr. Wilfred H. Rommel  
Assistant Director for  
Legislative Reference  
Office of Management and Budget  
Washington, D. C. 20503

Dear Mr. Rommel:

This is in reference to a facsimile of an enrolled enactment of Congress entitled:

H.R. 17450 -- To provide a People's Counsel for the Public Service Commission in the District of Columbia, and for other purposes.

H.R. 17450 authorizes the Commissioner of the District of Columbia to appoint, by and with the advice and consent of the District of Columbia Council, a People's Counsel who would appear for, and represent, the people of the District of Columbia in matters involving the rates and services of public utilities at all hearings of the Public Service Commission and in matters before the courts. Such Counsel would also be authorized by the bill to represent petitioners filing complaints before the Commission in matter pertaining to rates or services, and may investigate the service given by, the rates charged by, and the valuation of properties of, public utilities under the jurisdiction of the Commission.

Section 2 of H.R. 17450 would amend existing law to allow the expenses of the People's Counsel arising out of any investigation, valuation, revaluation, or proceeding of any nature by the Commission

involving public utilities operating in the District of Columbia, and any litigation, including appeals resulting therefrom, to be borne by the public utility affected thereby as a special franchise tax. This section would also authorize the Commission to charge expenses of the People's Counsel to operating expenses, which amount is to be amortized from the rates that can be charged by the affected public utility. Existing law is further amended to provide that operating expenses of the People's Counsel are to be budgeted and handled through the normal appropriation process in accordance with the provisions of paragraph 42 of the Act of March 4, 1913 (D.C. Code, sec. 43-413); and that the amounts authorized to be expended by People's Counsel in any valuation or rate case shall not, when combined with the amounts authorized to be expended in such cases by the Commission, exceed that amount prescribed by the Act.

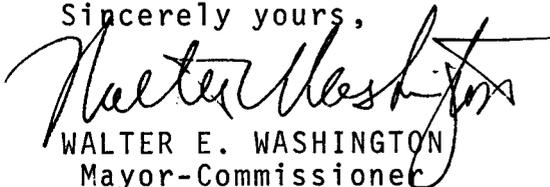
Finally, the bill would authorize an appropriation not to exceed \$50,000 for the fiscal year ending June 30, 1975, and not to exceed \$100,000 for any fiscal year thereafter, as may be necessary to carry out the purposes set forth therein.

We assume that the employees of the Office of the People's Counsel will be appointed and compensated in accordance with all applicable provisions of title 5 of the United States Code as is customary with other District employees since the amendment made by section 1(c) of the bill does not otherwise provide with respect to their employment.

The Government of the District of Columbia has continuously supported the objectives of the enrolled bill. We view as vitally important to the welfare of consumers of public utility commodities and services that their special concerns and interests be advocated before the Public Service Commission in rate-setting and other regulatory proceedings.

The District Government recommends the approval of H.R. 17450.

Sincerely yours,



WALTER E. WASHINGTON  
Mayor-Commissioner



THE DISTRICT OF COLUMBIA

WASHINGTON, D.C. 20004

WALTER E. WASHINGTON  
Mayor-Commissioner

December 27, 1974

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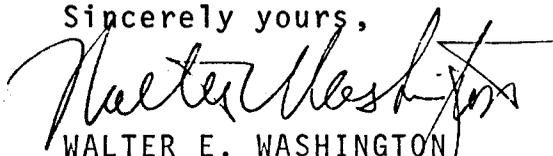
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The District Government recommends the approval of H.R. 17450.

Sincerely yours,

  
WALTER E. WASHINGTON  
Mayor-Commissioner



UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D.C. 20415

CHAIRMAN

December 26, 1974

Honorable Roy L. Ash  
Director, Office of Management and Budget  
Washington, D.C. 20503

Attention: Assistant Director for  
Legislative Reference

Dear Mr. Ash:

This is in response to your request for the Commission's views on enrolled H.R. 17450, a bill "To provide a People's Counsel for the Public Service Commission in the District of Columbia, and for other purposes."

This bill establishes an Office of the People's Counsel within the Public Service Commission of the District of Columbia to perform a variety of representational functions under the Act. The new office would be headed by a People's Counsel appointed by the Commissioner of the District of Columbia, by and with the advice and consent of the District of Columbia Council, and without regard to the provisions of title 5, United States Code, governing appointments in the competitive service.

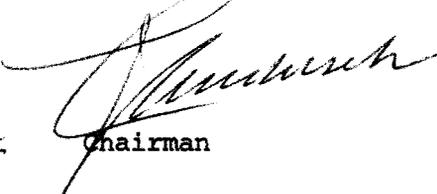
Under the bill, the People's Counsel would receive compensation at the maximum rate established for GS-16. Since District of Columbia government positions are subject to the classification and pay laws of title 5, we would have preferred that the bill not establish the level of compensation of the People's Counsel. In effect, this amounts to classifying a job at the supergrade level by statute--a practice which is inconsistent with laws giving the Commission the authority to establish supergrade positions. As stated in P.L. 87-367, Congress did not intend for agencies and departments to attain additional supergrade spaces through the enactment of laws outside the jurisdiction of the proper House and Senate committees.

The new Counsel would be authorized to appoint such staff as may be necessary to carry out all functions under the Act. Employees of the District of Columbia government are not under the competitive appointment provisions of title 5, United States Code, unless specifically included by statute. Since there is no such provision in the bill, the Counsel's staff would be outside the competitive civil service. We consider this appropriate.

Insofar as the personnel provisions are concerned, we recommend that the President sign enrolled H.R. 17450.

By direction of the Commission:

Sincerely yours,

*ACTING*  *Chairman*

THE WHITE HOUSE

WASHINGTON

December 31, 1974

MEMORANDUM FOR: WARREN HENDRIKS  
FROM: *Ken Lauer for* MAX L. FRIEDERSDORF  
SUBJECT: Action Memorandum - Log No. 917

The Office of Legislative Affairs concurs with the Agencies that the enrolled bill should be signed.

Attachments



To  
Hanson  
12-30-74  
11:00 9:00



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

DEC 30 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 17450 - D.C. People's Counsel  
Sponsor - Rep. Adams (D) Washington and 4 others

Last Day for Action

January 10, 1975

Purpose

To provide a People's Counsel for the Public Service Commission in the District of Columbia.

Agency Recommendations

Office of Management and Budget	Approval
District of Columbia	Approval
Civil Service Commission	Approval

Discussion

The 1926 Act which created the D.C. Public Utilities Commission (later the Public Service Commission) was amended to provide for the appointment of a People's Counsel (Counsel) to intervene at hearings or judicial proceedings in matters concerning services provided by public utilities. The Commission is the local regulatory body responsible for regulating gas, electric and telephone utilities; taxi operations in D.C.; and some charter bus services. However, the position of Counsel was abolished by a reorganization plan in 1952.

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 917

Date: December 30, 1974

Time: 5:00 p.m.

FOR ACTION: Andre Buckles *noohj*  
Phil Areeda  
Max Friedersdorf

cc (for information): Warren Hendriks  
Jerry Jones  
Jack Marsh

FROM THE STAFF SECRETARY

---

DUE: Date: Tuesday, December 31

Time: 2:00 p.m.

---

SUBJECT:

Enrolled Bill H.R. 17450 - D.C. People's Counsel

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

---

K. R. COLE, JR.  
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 917

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ACTION REQUESTED:

For Necessary Action

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Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

*No objection - HWY*



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks  
For the President

Date: December 30, 1974

Time: 5:00 p.m.

FOR ACTION: Andre Buckles  
Phil Areeda ✓  
Max Friedersdorf

cc (for information): Warren Hendriks  
Jerry Jones  
Jack Marsh

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ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

*No Objection  
P. Areeda*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks  
For the President

## PEOPLE'S COUNSEL FOR THE PUBLIC SERVICE COMMISSION

DECEMBER 13, 1974.—Ordered to be printed

Mr. EAGLETON, from the Committee on the District of Columbia,  
 submitted the following

### REPORT

[To accompany H.R. 17450]

The Committee on the District of Columbia, to which was referred the bill (H.R. 17450) to provide a People's Counsel for the Public Service Commission in the District of Columbia, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That (a) there is hereby established within the Public Service Commission of the District of Columbia, established by section 8 of the Act of March 4, 1913, as amended (D.C. Code, sec. 43-201), an office to be known as the "Office of the People's Counsel".

(b) There shall be at the head of such office the People's Counsel who shall be appointed by the Commissioner of the District of Columbia, by and with the advice and consent of the District of Columbia Council, and who shall serve for a term of three years. Appointments to the position of People's Counsel shall be made without regard to the provisions of title 5 of the United States Code, governing appointments in the competitive service. The People's Counsel shall be entitled to receive compensation at the maximum rate as may be established from time to time for GS-16 of the General Schedule under section 5332 of title 5 of the United States Code. No person shall be appointed to the position of People's Counsel unless that person is admitted to practice before the District of Columbia Court of Appeals. Before entering upon the duties of such office, the People's Counsel shall take and subscribe the same oaths as that required by the Commissioners of the Commission, including an oath or affirmation before the Clerk of the Superior Court of the District of Columbia that he is not pecuniarily interested, voluntarily or involuntarily, directly or indirectly, in any public utility in the District of Columbia.

(c) The People's Counsel is authorized to employ and fix the compensation of such employees, including attorneys, as are necessary to perform the functions vested in him by this Act, and prescribe their authority and duties.

(d) The People's Counsel—

(1) shall represent and appear for the people of the District of Columbia at hearings of the Commission and in judicial proceedings involving the interests of users of the products of or services furnished by public utilities under the jurisdiction of the Commission;

(2) may represent and appear for petitioners appearing before the Commission for the purpose of complaining in matters of rates or services;

(3) may investigate the services given by, the rates charged by, and the valuation of the properties of, the public utilities under the jurisdiction of the Commission; and

(4) is authorized to develop means to otherwise assure that the interests of users of the products of or services furnished by public utilities under the jurisdiction of the Commission are adequately represented in the course of proceedings before the Commission, including public information dissemination, consultative services, and technical assistance.

SEC. 2. Paragraph 42 of section 8 of the Act of March 4, 1913 (making appropriations for the government of the District of Columbia) (D.C. Code, sec. 43-412), is amended as follows:

(a) The first sentence of such paragraph 42 is amended to read as follows: "The expenses, including the expenses of the Office of the People's Counsel, of any investigation, valuation, revaluation, or proceeding of any nature by the Public Service Commission of or concerning any public utility operating in the District of Columbia, and all expenses of any litigation, including appeals, arising from any such investigation, valuation, revaluation, or proceeding, or from any order or action of the Commission, shall be borne by the public utility investigated, valued, revalued, or otherwise affected as a special franchise tax in addition to all other taxes imposed by law, and such expenses with interest at 6 per centum per annum may be charged to operating expenses and amortized over such period as the Commission shall deem proper and be allowed for in the rates to be charged by such utility."

(b) The second sentence of such paragraph 42 is amended by inserting "; or certified by the People's Counsel with respect to his expenses" immediately before the period at the end of that sentence.

(c) The third sentence of such paragraph 42 is amended by inserting "and the People's Counsel, combined" immediately after "Commission".

SEC. 3. For the fiscal year ending June 30, 1975, there is authorized to be appropriated such sum, not to exceed \$50,000, as may be necessary to carry out the purposes of this Act. For the fiscal year ending June 30, 1976, and each fiscal year thereafter, there are authorized to be appropriated such sums, not to exceed \$100,000 in any one fiscal year, as may be necessary to carry out the purposes of this Act.

#### PURPOSES OF THE BILL

The purpose of H.R. 17450 is to amend the statutes of the District of Columbia to establish a People's Counsel within the local Public Service Commission of the District of Columbia.

This Counsel would be responsible for representing the people of the District of Columbia at hearings of the Commission and in judicial proceedings involving the interests of consumers regarding public utilities services. The People's Counsel is also given the authority to represent consumer complaints before the Commission and to investigate the service, rates, and operations of the public utilities.

The bill would also make clear that when the District of Columbia self-government and governmental Reorganization Act (P.L. 93-198) amended the Act of March 4, 1913, to continue the Public Service Commission and to provide for a third appointed member, such amendment continued the Commission and the terms of the members previously appointed and provided for the third member to have a like term of office.

#### BACKGROUND

The Public Service Commission is the local regulatory body responsible for regulating gas, electric and telephone utilities; taxi operations within the D.C. boundaries; and some charter bus services. The original legislation which established the Public Utilities Commission in 1913 (predecessor to the Public Service Commission) (D.C. Code, Title 43, Section 101, et al) was amended in 1926 to provide for the appointment of additional counsel in the Public Service Commission called the People's Counsel, to intervene at hearings or judicial proceedings in matters concerning services provided by public utilities. However, the People's Counsel was abolished through Reorganization Plan No. 5, approved in 1952. The bill, as reported by this Committee, re-enacts Title 43, Section 205 of the D.C. Code, drawing upon the original thinking and concerns of Congress when it initially enacted this law.

#### NEED FOR LEGISLATION

In developing and enacting this legislation in 1913, the Congress recognized that the responsible regulatory commission must in many instances act in a judicial fashion, balancing in an independent manner the varying viewpoints of public groups appearing before it. This necessarily independent posture has inhibited the Commission from vigorously protecting the consumers' viewpoints and needs in rate proceedings. Their function has been rather to insure the development of a full and complete record which presents the facts and other rate-making considerations relative to a fair and meaningful determination of the complex issues involved. This is different from a conventional adversary position. As such, the 1926 amendment created a separate office, with legal counsel, to advocate the views and needs of local consumers with regard to utility rates, distribution of these rates, service levels, fuel costs, and other utility operations.

Most Americans must depend on a power company to provide them with electricity and a gas or oil company to provide them with home heating fuel. The consumer has virtually no opportunity to shop around for this basic commodity. As such, there is a need for close public vigilance of the utility industries and a requirement that we balance competing public interests in the regulatory process.

The local utility regulatory commission had served admirably in its role as the independent judicial body responsible for making comprehensive and detailed decisions on complex rate procedures. However, it has not been able to serve simultaneously as the vigorous defender of local consumer interests.

#### PRECEDENT STATE LEGISLATION

Five States provide for an independent counsel to represent the general public in such regulatory proceedings. These states are Vermont, Maryland, Indiana, Missouri, and Montana. Still other States, such as Kentucky, rely upon intervention through a separate office of the State Attorney General. The Committee recognizes that it is only by allowing the public to truly become a proper party in all such proceedings that the local regulatory commission will gain the breadth of

information and viewpoints necessary to make the difficult decisions with which it is faced.

#### REASONS FOR IMMEDIATE CONGRESSIONAL ACTION

This Committee seriously considered whether in view of the Self-Government and Governmental Reorganization Act, Congress should be legislating in this area. It was determined that Congressional action at this time to authorize the establishment of a People's Counsel is both necessary and desirable.

There have been recent announcements by local District utilities, notably the Potomac Electric Power Company and Chesapeake and Potomac Telephone Company, indicate that they have filed or will be filing for major rate increases. PEPCO announced on November 8 they will petition the PSC for a rate hike totaling \$51 million. The Washington Gas company already has a rate increase pending. The PSC in turn has indicated its hope to complete actions on these requests by January, 1975, that is, just as the new Home Rule government takes office. Furthermore, this new government will be confronted with a myriad of major policy decisions, including the F.Y. 1976 budget. It will be understandably difficult for the new City Council to promptly enact legislation in this PSC area. Accordingly, because of the immediate nature of these rate increases and their substantial potential impact on local residents, the Committee believes it advisable that a special office such as People's Counsel be established immediately to provide appropriate consumer representation.

#### PRINCIPAL PROVISIONS OF THE BILL

The first section of the bill, as reported, provides for the appointment by the Commissioner of the District of Columbia with the advice and consent of the District of Columbia Council, a People's Counsel within the Public Service Commission.

The duties of the Counsel are set forth in this section. He shall represent and appear for the people of the District of Columbia at hearings of the Commission and in judicial proceedings involving the interests of users of the products or services furnished by public utilities within the PSC's jurisdiction. It is the Committee's understanding that "judicial proceedings" include appeals before appropriate courts which are brought by the PSC, the People's Counsel, the utility, or public intervenors in the proceeding under contention.

Secondly, he may represent and appear before the Commission for the purpose of complaining in matters of rates and services. Such appearances will be at the discretion of the People's Counsel, since he will not be able to represent all interests of all consumers. There is a wide diversity of consumer interests and in any one case a number of different consumer interests may conflict with one another. For example, in setting gas or electric rates the interests of residential and commercial customers on interruptible service may have yet a third and entirely different set of interest to protect. The People's Counsel is not expected to resolve such conflicts. Using his best judgement, he will usually determine which side to represent. In some cases, how-

ever, the consumers' interests may lie simply in presenting all relevant information on different sides of the same question. He will also be expected to facilitate constructive user involvement in consumer proceedings. His efforts may well include such activities as public information dissemination, consultant services, and technical assistance.

Thirdly, the Counsel may investigate the service given by the rates charged by, and the valuation of the properties of the the public utilities under the jurisdiction of the Commission. It was the intent and belief of the Committee that the local Public Service Commission and the Council of the District of Columbia working in conjunction with the People's Counsel established herein could most properly develop appropriate powers, procedures and regulations, necessary to carry out the responsibilities and duties described in Section 1 of this Act. The Committee fully notes that establishing a People's Counsel does not preclude intervention by private groups, classes of service or others who may desire to be parties to proceedings before the local Commission. Furthermore, nothing in this bill prohibits the Public Service Commission from carrying out its general responsibility to protect the public interest in its proceedings.

It is the Committee's view that in order to truly function, the People's Counsel must be independent. An effective consumer advocate must be able to argue his case on the merits and support the interests he is protecting. By the very nature of his function as an advocate, the People's Counsel will be continually taking positions in controversial matters. Thus the position of People's Counsel is established for a term of years and the authorization for his staff is separately set. While he and the Public Service Commission may wish to utilize the same personnel, share offices, or otherwise cooperate, the specific authorization contained in the bill is intended to provide the People's Counsel with protection against any problems that might arise from his taking positions which he believes to be in the people's interest and which are effectively contesting the decisions of the Public Service Commission. Since the People's Counsel is an advocate rather than a regulatory decision maker, any position that may be taken does not commit the District of Columbia government to any policy. It is his duty to protect the interests of consumers. It continues to be the duty of the Public Service Commission to balance the overall interests of the government in assuring both adequate service for the people of the District of Columbia and a fair return on investments for the private utilities that are under the regulatory authority of the Public Service Commission.

Section 2 of H.R. 17450 amends the D.C. Code to provide that the expenses of the People's Counsel in any investigation, valuation, revaluation litigation, appeal, or proceeding of the Public Service Commission concerning a public utility operating in the District of Columbia, shall be borne by the public utility involved. Subsection 2b states that these expenses must be certified prior to payment. Present law provides that the expenses of the Public Service Commission itself for investigations, valuations, revaluations or other proceedings of utilities shall be assessed against the utility involved. These include the costs of expert witnesses, special accountants, or other extra costs incurred as a result of that particular proceeding or investiga-

tion. The basic salaries and expenses of the Public Service Commission are paid through the standard appropriations process. The present law limits these expenses to one-half of 1 percent of the existing valuation of the company investigated in rate and evaluation cases, and not more than 1/10 of 1 percent in all other investigations for any one year. In the case of the electric company, Potomac Electric Power Company, these limitations would equal \$6 million and \$1.3 million respectively. Normally, however, assessments are under \$100,000. The highest amount the PSC has ever assessed was \$224,500.

Under the provisions of Section 2, these same types of costs incurred by the People's Counsel as a result of investigative or rate casework could be assessed against the utility. The basic salaries and expenses of the People's Counsel Office would be covered by the current authorization for appropriations for the Public Service Commission. The Committee wishes to stress that the limitations on dollar totals for such assessments in the existing statute would remain the same.

#### HISTORY OF COMMITTEE ACTION

The Committee requested comments on H.R. 17450 from the District of Columbia government and private groups interested in such legislation. All communications which were received are included in the appendix of this report.

No testimony or statements in opposition to this legislation was received by the Committee. A clarifying provision was requested by the Public Service Commission to clearly delineate the Commission's existing authority to grant reimbursements to private organizations intervening in the public interest, the Committee felt it was both unnecessary and inappropriate to include this in the current legislation. The Committee understands that the D.C. Code, title 43, Sections 412 and 1003, provides the Commission with the authority to grant such reimbursements at their discretion.

The Committee was unable to obtain estimates of the potential costs of reimbursing such private intervenors.

#### DISTRICT GOVERNMENT RECOMMENDATION

[Letter appears in the appendix.]

#### LEGISLATIVE REPORT ON THE 1926 CREATION OF THE OFFICE OF PEOPLE'S COUNSEL

This Committee, by legislation which became law in the 69th Congress (H.R. 11119, approved December 15, 1926, 44 Stat. 920), created the Office of People's Counsel of the Public Utilities Commission, which was later redesignated the Public Service Commission (P.L. 88-503, approved August 30, 1964, 78 Stat. 634).

The Committee's report (H. Rept. 967) filed in the House on April 23, 1926, made this statement in support of the appointment of that time of the People's Counsel:

Believing that the corporation counsel of the District, who is the legal adviser of the District Commissioners, should not be called upon to present rate-making cases before either the

commission or the courts, and that his duties are such that he is unable to give the proper time to coping with questions of rate making and valuation and to oppose the array of talent representing the corporations and public utilities, your committee has provided for the appointment of a people's counsel to present rate-making cases and other complaints of the people before the commission and in the courts. The officer to be appointed under the provisions of this bill will be called upon to negotiate proceedings looking to improved service and lower rates of fare and also lower rates of service, and your committee believes that he will be of material assistance to the public.

Your committee is of the opinion that these two changes will materially benefit the people of the District and will compensate a hundredfold for the small expense which will be incurred under the provisions of this measure.

#### COMMITTEE VOTE

H.R. 17450, as amended, was unanimously ordered reported by the Committee on December 13, 1974.

#### COSTS OF BILL

The basic expenses of the Office of People's Counsel, including salaries, rent, supplies, telephones, and equipment, will be appropriated by Congress under the authorization contained in the bill, that authorization is for a maximum budget of \$100,000 for this office for each fiscal year. This is in line with the operating costs of the Maryland State Office and in keeping with the Allocation of money for this function in the states. A list of the expenses of five other states with similar offices is included herein:

#### COMPARISON OF EXPENSES WITH OTHER STATES

##### VERMONT

There is no office of Consumer Counsel in Vermont within the Public Service Board; however an attorney is appointed, on a per case basis, to represent consumer interests. The attorney may hire outside consultants. Last year the Board spent \$66,000 on attorney fees and \$130,000 on consultant fees. Funds for these expenses are received from a special fund from the State, assessed from the gross revenues of utilities. There are no direct assessments of the utilities by the Board. There is an Office of Consumer Affairs within the Board, but it is responsible for handling consumer complaints only.

##### WISCONSIN

The Public Service Commission in Wisconsin is funded generally by assessments of utilities. It receives very few funds from the State. There are nearly 700 public utilities regulated in the state, and each is assessed 1/10th of 1% of

their gross operating revenue. This is called a "remainder assessment" and totaled \$1.6 million for the fiscal year ended June, 1974. The Commission may make a "direct assessment" on a utility after a certain rate case, at the rate of 4/5 of 1% of the utility's gross operating revenue. This totaled about \$174,000 for the same period.

#### INDIANA

The Commission in Indiana is not funded by the direct assessment of utilities, rather, each rural cooperative, and investor-owned utility pays a state fee, based on plant valuation. These funds are then appropriated to the Commission. The present budget totals about \$1 million. The State also collects fees from municipal or public power companies, based on expenses incurred from rate proceedings on a per case basis.

There is an Office of Public Counselor, independent of the Commission and funded by state appropriations only. This office represents consumer interest in all matters before the Commission. It is budgeted at about \$130,000 per year. Neither this office, nor the Commission, may assess utilities for outside consultant expenses, however the State made available \$50,000 to the Public Counselor in a recent case, for the hiring of outside consultants. This money came from the fees collected from utilities.

#### MISSOURI

Funding of this Commission in Missouri comes from two sources. Each year, the State Legislature approves an amount of revenues taken from the Highway Fund (i.e., licenses, taxes of vehicles, and motor carriers) and the Commission assesses "P.S.C." funds from the utilities, which are based on a percentage of their gross revenues. The Commission's current budget consists of \$1,876,670 assessed from utilities, and \$958,090 appropriated from the Highway Fund. This two to one ratio of funding is always maintained.

In Missouri, the office of Public Counsel is also independent of the Commission, and is funded by general revenues from the State at about \$30,000 per year. The Commission and the Public Counsel cannot assess utilities for the expense of hiring outside consultants.

#### MONTANA

The Public Service Commission in Montana is funded entirely through state appropriations, at a yearly budget of \$400,000. It may hire outside consultants from its own budget, but may not assess utilities for that purpose. They did not have the amount of that expense available.

The budget for the Office of Consumer Counsel was not available, but it is funded primarily by the direct assessment of utilities, based on a percentage of the gross revenues of each

utility. It also receives some appropriations from the State's general fund.

\* \* \* \* \*

In addition to these basic expenses, the D.C. People's Counsel will be permitted to assess expenses incurred in specific utility proceedings against the company involved. These would include, for example, the costs of hiring expert witnesses, rate design economists, safety engineers and other specialized consultants in specific rate cases. The Public Service Commission has informed the Committee that such expenses range between \$75,000 and \$100,000 per proceeding for the entire Commission, which translates to about 50¢ every two years per utility customer in the District of Columbia. It is estimated that an additional \$25,000 to \$50,000 in assessments per year would be incurred by the People's Counsel.

The Committee wishes to stress that these amounts are well within the present statutory limitation for such assessments (the limitation is equal to 1/2 of 1% of the value of the company involved, in rate and valuation proceedings; for an electric company case the limitation would equal \$6 million).

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman).

#### PARAGRAPH 42 OF SECTION 8 OF THE ACT OF MARCH 4, 1913

PAR. 42. [That the] The expenses, *including the expenses of the People's Counsel*, of any investigation, valuation, revaluation, or proceeding of any nature by the Public [Utilities] Service Commission of or concerning any public utility operating in the District of Columbia, and all expenses of any litigation, including appeals, arising from any such investigation, valuation, revaluation, or proceeding, or from any order or action of the [said] Commission, shall be borne by the public utility investigated, valued, revalued, or otherwise affected as a special franchise tax in addition to all other taxes imposed by law, and such expenses with interest at 6 per centum per annum may be charged to operating expenses and amortized over such period as the [Public Utilities] Commission shall deem proper and be allowed for in the rates to be charged by such utility. When any such investigation, valuation, revaluation, or other proceeding is begun the said Public Utilities<sup>1</sup> Commission may call upon the utility in question for the deposit of such reasonable sum or sums as in the opinion of said Commission, it may deem necessary from time to time until the said proceeding or the litigation arising therefrom is completed, the money so paid to be deposited in the Treasury of the United States to the credit of the appropriation account known as "Miscellaneous trust fund deposit, District of Columbia" and to be disbursed in the manner provided for by law for other expenditures of the

government of the District of Columbia, for such purposes as may be approved by the Public Utilities<sup>1</sup> Commission; *or certified by the People's Counsel with respect to his expenses.* Any unexpended balance of such sum or sums so deposited shall be returned to the utility depositing the same: *Provided*, That the amount expended by the Commission *and the People's Counsel, combined* in any valuation or rate case shall not exceed one-half of 1 per centum of the existing valuation of the company investigated, and that the amount expended in all other investigations shall not exceed one-tenth of 1 per centum of the existing valuation for any one company for any one year.

<sup>1</sup> Section 31 of the Act of August 30, 1964 (Pub. L. 88-503, 78 Stat. 634) declares that ". . . Whenever reference is made to the Public Utilities Commission . . . such reference shall be held to be a reference to the Public Service Commission of the District of Columbia."

## APPENDIX

THE DISTRICT OF COLUMBIA,  
Washington, D.C., December 6, 1974.

HON. THOMAS F. EAGLETON,  
*Chairman, Committee on the District of Columbia,*  
*U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: The Government of the District of Columbia has for report H.R. 17450, a bill "To provide a People's Counsel for the Public Service Commission in the District of Columbia, and for other purposes", as passed by the House of Representatives on November 25, 1974.

H.R. 17450 authorizes the Commissioner of the District of Columbia to appoint, by and with the advice and consent of the District of Columbia Council, a People's Counsel who would appear for and would represent the people of the District of Columbia in matters involving the rates and services of public utilities at all hearings of the Public Service Commission and in all judicial proceedings. The People's Counsel would also be authorized by the bill to represent petitioners before the Commission for purposes of complaining in matters of rates or services and may investigate the service given by, rates charged by, and the valuation of properties of public utilities under the jurisdiction of the Public Service Commission.

Section 2 of H.R. 17450 would amend existing law to allow the expenses of the People's Counsel arising out of any investigation, valuation, revaluation, or proceeding of any nature by the Public Service Commission involving public utilities operating in the District of Columbia, and any litigation, including appeals, resulting therefrom, to be borne by the public utility affected thereby as a special franchise tax. This section would also authorize the Public Service Commission to charge expenses of the People's Counsel to operating expenses and be allowed for in the rates to be charged by the affected public utility.

The District Government supports in principle the objectives of H.R. 17450. We view as vitally important to the welfare of consumers of public utility commodities and services that their special concerns and interests be advocated before the Public Service Commission in rate-setting and other regulatory proceedings.

We would like to invite the attention of the Committee, however, to certain provisions in, and omissions from, the bill which we believe will require clarification. Among other things, H.R. 17450 does not provide for payment of the administrative or overhead expenses of the office of the People's Counsel. The amendment to the Act of March 4, 1913 (D.C. Code, sec. 43-142) would authorize the assessment against public utility companies only of the expenses of the Public Service Commission (and the People's Counsel) which are directly related to a specific proceeding (usually involving a rate-setting proc-

ess) on a case-by-case basis. The general operating expenses of the Public Service Commission are budgeted and handled through the normal appropriation processes in accordance with the provisions of paragraph 95 of section 8 of the Act of March 4, 1913 (D.C. Code, sec. 43-206). Likewise, the administrative overhead of the People's Counsel, which will not be met by the pass-through provisions of H.R. 17450, should be subject to annual appropriation. We recommend, accordingly, the inclusion of a provision in the bill to authorize such appropriations specifically for the office of the People's Counsel.

Presumably, it is the intent of the bill that the office of the People's Counsel shall be autonomous and will operate independently of the jurisdiction of the Public Service Commission. We believe that consideration should be given to the questions of whether the office will be authorized to employ and compensate a staff, or if the Commission will provide such supportive services as may be required, or if the Counsel will be permitted, to the extent possible, to utilize resources available throughout the District Government. Appropriate revisions should be made in the bill to achieve one or a combination of these approaches.

Although H.R. 17450 will become effective upon approval, the reference to the Public Service Commission to be established pursuant to section 493 of the Self-Government Act seems to imply that the office will not become operational until after January 2, 1975. If this is the case, the appointment of the People's Counsel should be by the Mayor, subject to confirmation by the Council of the District of Columbia.

Subject to clarification of the foregoing suggestions, the District Government would favor the enactment of H.R. 17450.

Sincerely yours,

WALTER E. WASHINGTON,  
*Mayor-Commissioner.*

CONSUMERS UNION,  
*Washington, D.C., December 6, 1974.*

Senator THOMAS EAGLETON,  
*U.S. Senate,*  
*Washington, D.C.*

DEAR SENATOR EAGLETON: Consumers Union<sup>1</sup> is pleased to present its views on legislation (H.R. 17450) to establish a People's Counsel in the District of Columbia in response to your invitation to comment. Consumers Union, primarily through its monthly publication, *Consumer Reports*, has long sought to educate its readers about public utilities and the consumer's stake in their proper regulation. For example, the November 1974 issue of *Consumer Reports* carried an article on the uses and abuses of fuel clause adjustments by public utilities.

<sup>1</sup> Consumers Union of the United States Inc. ("Consumers Union") is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide information, education, and counsel about consumer goods and services, and the management of the family income. Consumers Union's income is derived solely from the sale of *Consumer Reports* (magazine and TV) and other publications. Expenses of occasional public service efforts may be met, in part, by nonrestrictive, noncommercial grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports*, with its 2.2 million circulation, regularly carries articles on health, product safety, marketplace economics, and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry on advertising and receive no commercial support.

The Washington Office of Consumers Union was established in November 1972 in order to play an active role in monitoring regulatory policies of significance to consumers. While virtually all of our work has been done in connection with the actions of Federal regulatory agencies, the Washington Office has participated in two proceedings before the District of Columbia Public Service Commission. Last year, we intervened in the Pepco rate proceeding and this year, we intervened in the Washington Gas Light Company rate proceeding now awaiting decision.

A brief summary of our role in these two proceedings may impart some sense of the formidable obstacles to meaningful consumer participation which exist and which necessitate immediate reforms, including the establishment of a People's Counsel. The resources available to us for advocacy and litigation are extremely limited. There are a total of four attorneys in my office, yet we seek to have an input into all Federal legislation of significance to consumers and major regulatory actions of all of the Federal agencies affecting consumers, as well as carrying a substantial caseload of litigation in the Federal courts. Given these resource and time constraints, it is simply not possible for Consumers Union to do more than participate in a very occasional rate proceeding before the D.C. Public Service Commission. Even with respect to those very few proceedings in which we participate, our role must of necessity be limited. Thus, we have not raised all rate issues which should have been raised, but have been obliged to limit ourselves to one issue in each proceeding. Thus, in the Pepco case, we raised only the issue of late payment charges, while in the Washington Gas case, we addressed only the issue of the perverse incentives contained in the existing declining rate block structure. We cannot afford to appear at all or even most hearing sessions. We cannot afford to pay for expert witnesses. In short, we cannot fully participate in the advocacy process.

And if Consumers Union, which is one of the largest consumer organizations in the nation, cannot fully participate in even a few proceedings, it is easy to understand why there are few or no consumer intervenors in most rate proceedings. Consider the current Washington Gas Light case, a very typical rate proceeding. Consumers Union is the only representative of average residential consumers. The issue we are raising in that case is an extremely important and complex one that none of the other intervenors wished to raise and which the staff of the Commission—which numbers, we understand, barely thirty persons—has hardly had a chance to consider. This issue is the propriety of the existing declining block rate structure, under which small users pay more per therm of gas than do large users. In gas distribution, as in electricity production, it is no longer true that serving large users is more efficient and less costly than serving small users. During times of shortage and inflation, which make replacement or creation of new facilities much more costly than maintenance of the old, serving the demands of ever-larger users places a greater drain on the system than does serving the little customer. In gas this is particularly noticeable because, as traditional supplies of cheap gas from the American south contract, they must be replaced or enlarged by such expensive sources as synthetic gas and liquified natural gas, both of which are much more costly than the traditional

supplies. Marginal cost pricing would encourage conservation of these scarce resources. Needless to say, the large users who are the only intervenors in most rate cases are not enthused about our position.

We believe that our participation in these two cases has been valuable—notwithstanding that the current case has not yet been decided. But no individual consumer and no private consumer organization that I know of can afford to purchase the expertise—in the form of lawyers, accountants, economists, and the like—to participate adequately in a complex proceeding before the Commission. Even a **consumer organization like our own**, which has a small legal staff and some access to expertise, and can afford to bear some costs of copying and postage, could not afford to participate regularly in these proceedings. Consumers Union has members in Maryland and Virginia as well as in the District, but we simply did not have the resources to enter the Washington Gas Light rate proceeding in all three jurisdictions. Similarly, we have Virginia members but lack the resources to participate in the very important VEPCO case. It is doubtful whether we will intervene in other D.C. rate proceedings, unless some way is found to reimburse us for the expenses which we undertake on behalf of the general public.

Consumers Union believes that reimbursement authority already exists. It is found in section 43-412 of the D.C. Code. That section provides, in pertinent part, that:

The expenses of any investigation, valuation, revaluation, or proceeding of any nature by the Public Service Commission of or concerning any public utility operating in the District of Columbia, and all expenses of any litigation, including appeals, arising from any such investigation, valuation, revaluation, or proceeding, or from any order or action of the said commission, shall be borne by the public utility investigated, valued, revalued, or otherwise affected . . .

We believe that this statute gives the D.C. Public Service Commission the power, if not the duty, to require a regulated utility to pay the legal expenses incurred in a rate proceeding not only by the Commission but by an intervenor as well, at least where the intervenor has made a substantial contribution to the furtherance of the public interest in the proceeding.

This is not a novel doctrine. The Federal courts have long exercised their equitable powers to award reimbursement of reasonable attorneys' fees to private parties who vindicate important public interests through litigation.<sup>2</sup> The Senate Judiciary Committee is considering legislation to extend this reimbursement principle and formalize it in statutory law.<sup>3</sup>

After the end of the Pepco case, in which Consumers Union succeeded in eliminating Pepco's illegal and perverse late payment charge,<sup>4</sup> Consumers Union filed a motion for expenses under section

<sup>2</sup> See authorities cited in Consumers Union's motion for expenses of proceeding in Formal Case No. 596. See also, *Wilderness Society v. Morton*, 495 F.2d 1026 (D.C. Cir. 1974).

<sup>3</sup> See Hearings on The Effect of Legal Fees on the Adequacy of Representation, Part III, before Subcom. on Representation of Citizen Interests of the Sen. Judiciary Comm., 93d Cong., 1st Sess.

<sup>4</sup> The flat, one-time, 5% charge had the effect of penalizing those who paid only slightly late and encouraging those who delayed payment. It produced a penalty equivalent to 1825% interest per annum against those who paid only one day late. As a result of the Pepco decision, Washington Gas Light also agreed to withdraw its similar late payment charge.

43-412, seeking reimbursement for the reasonable expenses, including attorneys' and expert witness fees, incurred in the course of participation in the proceeding. The motion was filed on January 4, 1974. After responsive briefs from Pepco and a reply from Consumers Union, the matter rested with the Commission, but it has not yet been ruled upon. Pepco recently filed with the Commission a motion to dismiss the Consumers Union motion to which we responded. We are hopeful for a decision before the end of the year.

Rate proceedings are extremely complex matters. In both the Pepco and Washington Gas Light cases, Consumers Union has been fortunate to secure the services of a public-spirited economist (Dr. Fred Wells) with experience in public utilities regulation to study the issues and to serve as an expert witness. We have been doubly fortunate that this expert has been able to serve on a "contingent fee" basis, so to speak. If we are successful in obtaining reimbursement for his services, whatever value is placed upon those services by the Commission will be his compensation. And if our motion fails, he has agreed to sustain the loss. In addition, our participation has taken significant amounts of the time of our Washington staff attorneys, not to mention clerical time and the out-of-pocket costs attributable to the need to copy and serve all the parties to the proceeding with testimony and documents.

In these cases, we have represented and benefitted not so much our members—most of whom live far away from the District—as the interests of the rate payers in the District, most of whom are not Consumers Union members. Under the circumstances, the costs of that representation and benefit should be borne by the ratepayers, not by our members. In our view, that is what section 43-412 is all about and that is what the court cases awarding counsel fees are all about. The House Report on H.R. 17450 specifically recognized that this section "provides the Commission with the authority to grant such reimbursements. . . ." (Cong. Record, Nov. 25, 1974, H. 11009).

In sum, then, some way has to be found to encourage groups like Consumers Union to intervene in rate proceedings and support those efforts financially. If not, those very occasional efforts will probably cease for lack of resources. For a rate proceeding is simply too time-consuming a matter, and our chances of success are too slim, to justify tying up 25% of our office on a proceeding of economic concern to only a small portion of our membership. And, to repeat a point made earlier, most if not all other consumer groups have even fewer resources for this type of activity than we do.

The proposal to establish a People's Counsel in the District of Columbia to represent consumers before the D.C. Public Service Commission is not a new one. Between 1925 and 1952, as you may know, an official called the "People's counsel" represented the interests of the public before the District of Columbia Public Service Commission (D.C. Code Sec. 43-205). Since 1952, however, when the 1952 Reorganization Plan No. 5 went into effect, the general public has been without any specific representative to pursue its interests in matters concerning public utilities.

The Commission itself is supposed to represent the public interest and from all that we have observed, it strives mightily to do so. One must recognize, however, that the public interest is often difficult to discern. More often than not, the public interest is best determined

through a process of advocacy, in which facts, perspectives, arguments, rebuttals, cross-examination, and other mechanisms for getting at the truth are employed by someone other than the decision-maker.

Rate proceedings are particularly suitable forums for such advocacy, since the utility controls the data, records, witnesses, and expertise upon which the Commission must ultimately rely. If, as is so often the case, there is no one to interpret the data in new ways, cross-examine the company's witnesses, demonstrate the boundaries of expertise, and adduce new definitions of the public interest, the proceedings become little more than a sham, an elaborate and time-consuming ritual.

A "People's Counsel" could help to fill the yawning void of consumer advocacy before the Commission, although we should not delude ourselves that such a reform will solve the problem. The utilities, with their law firms, accountants, engineers, computer programmers, and other assorted support troops—all of which are paid for by the rate-payers—will continue to overwhelm the opposition with a flood of statistics, briefs, print-outs, charts, and arguments. Given the minimal level of funding and personnel which can be anticipated if the "People's Counsel" is established, one can easily predict that the contest will remain quite unequal.

This is not an argument against a "People's Counsel," of course; consumers need all the help they can get. It is, however, an argument for several safeguards in the legislation. First, the budget of the "People's Counsel" should be adequate to the task and should recognize that the potential savings to consumers and taxpayers from an effective advocacy process will far out-weigh the costs of such an office. Second, establishment of a "People's Counsel" must not displace efforts to encourage *other* private citizens and organizations to intervene in Commission proceedings. In that connection, it must be made clear, either in the bill or in accompanying materials, that the People's Counsel will not be the *exclusive* representative of consumer interests in rate proceedings and reaffirm that section 43-412 of the D.C. Code authorizes reimbursement for an intervenor's expenses, at least where the intervention has assisted the Commission in performing its difficult task. Third, the "People's Counsel" should be authorized to utilize the Commission's fact-finding and subpoena powers in order that its investigations and representation may be effective and useful to the Commission. In addition, the public should be assured access to the Counsel's files unless some strong public interest dictates otherwise.

Thank you again for the opportunity to present our views. If we may be of further assistance in this matter, please call on us.

Very truly yours,

PETER H. SCHUCK,  
Director, Washington Office.

C&P TELEPHONE,  
Washington, D.C., December 9, 1974.

Senator THOMAS EAGLETON,  
Chairman, Senate District Committee, Room 6235 Dirksen Senate Office Bldg., Washington, D.C.

DEAR SENATOR EAGLETON: Reference is made to H.R. 17450, a bill to provide a People's Counsel for the Public Service Commission in the

District of Columbia which passed the House of Representatives on Monday, November 25, 1974. It was my understanding that the Senate District Committee plans to take up this bill in the very near future and we had been advised to submit our views on the bill.

Please be advised that C & P Telephone Company supports the principle of full representation of interested parties in rate proceedings before the Public Service Commission. Therefore, we would have no objection to the establishment of a People's Counsel under the Public Service Commission to represent and appear for the people of the District of Columbia. However, we think that clarifying language should be added to sec. 2 of the bill in order to avoid unnecessary litigation as to the meaning and intent of the statute.

The following points under section 2 should be clarified:

1. A literal reading of section 2(a) would presuppose that the expenses of the office of the People's Counsel would be borne by public utilities, i.e., basic salaries and administrative costs. However, House Report No. 93-1485 (page 5) states that basic salaries and expenses of the People's Counsel's office would be covered by the current authorization for appropriation for the Public Service Commission. We assume that Congress would want to retain supervision of the operation of the People's Counsel through the appropriations process.

2. It should be made clear that the limitation on expenditures, under section 43-412 of the D.C. Code, does not give the People's Counsel a separate authority but is combined with that of the Public Service Commission. Therefore, the total authorized expenditures of the People's Counsel and the Public Service Commission can not exceed one half of 1% of the existing evaluation of the company investigated and not more than one tenth of 1% of all other investigations for the year.

While we support an office under the Public Service Commission to represent the interest of the rate-payer, such an office raises the question of whether or not rate cases might not be further delayed. If our past experience, without a People's Counsel, is any example, it has taken the Commission an average of about two years to close a rate case. There are many ways to avoid undue "regulatory lag" such as use of a forward-looking rate base and automatic adjustment clauses but one that seems reasonable to us in the face of the delays that are likely to result from People's Counsel intervention in rate cases is provision for rates under bond pending the outcome of the rate case. This provision is working in over 30 states and in most or all federal regulatory agencies. When the case is finally decided, adjustments are made to the rate-payer to reflect the decision by the Commission. Such a provision would allow the company to maintain its earnings to meet the financial realities of the day.

In conclusion, under sec. 493(b) of District of Columbia Self Government and Governmental Reorganization Act, it is unclear as to the term of office of the Public Service Commissioners. It is our position in order to provide continuity in pending rate cases, we would prefer that the present commissioners finish out their term of office. Upon expiration of their term the newly elected mayor could appoint the commissioners with advice and consent of the City Council. Certainly this would not preclude the mayor reappointing the present

commissioners. It might be appropriate to add this clarifying language to the People's Counsel's bill to insure continuity of our Public Service Commission.

In view of the above, we would support H.R. 17450 if these points were clarified. Thank you for your consideration in this matter and we will be available to testify or submit further comments.

Sincerely,

DELANO E. LEWIS,  
*General Public Affairs Manager.*

ROBERT JAY STEIN-RONALD L. PLESSER,  
*Washington, D.C., December 5, 1974.*

Senator THOMAS F. EAGLETON,  
*Chairman, Committee on the District of Columbia, Dirksen Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: I am writing this letter to set forth my comments on currently pending legislation to establish an Office of People's Counsel within the Public Service Commission of the District of Columbia.<sup>1</sup> The legislation passed by the House of Representatives (H.R. 17450) could, with some minor revisions, provide mechanisms to assure adequate representation of user interests before the Commission. The purpose of this letter is to suggest language changes for incorporation in the Senate Bill.

A People's Counsel should serve at least two fundamental purposes. First, it should assure adequate representation of user interests in administrative proceedings. Secondly, it should assist, to the extent practical, users and the Commission in developing means for constructive user involvement in those proceedings. H.R. 17450 accomplishes the first goal, but leaves ambiguous the second. Accordingly, I have prepared some language designed to remedy the apparent omission.

I propose that a new subsection (4) should be added to Section 1 of H.R. 17450 to read as follows:

"(4) Shall develop means to otherwise assure that the interests of users of the products of or services furnished by public utilities under jurisdiction of the Commission are adequately represented in the course of proceedings before the Commission."

The Committee report could provide some further explication of the purpose for Section 4.

"It was the intent of the Committee that the Counsel shall work to facilitate constructive user involvement in Commission proceedings. These efforts might include such activities as public information dissemination, consultative services and technical assistance."

I believe this language would serve the best interests of the Commission, the utilities and users of utilities' goods and services. If I can be of further assistance, please let me know.

Sincerely,

ROBERT JAY STEIN.

<sup>1</sup> I am an attorney in private practice in Washington, serve as Co-Vice Chairman of the D.C. Bar's Administrative Law Section Standing Committee on Public Participation and, as a consultant to the Interstate Commerce Commission, have been responsible for helping to create and develop the Office of Public Counsel in the Rail Services Planning Office.

WASHINGTON GAS,  
*Washington, D.C., December 6, 1974.*

HON. THOMAS F. EAGLETON,  
*Chairman, Committee on the District of Columbia, U. S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: Thank you for the opportunity to present the position of the Washington Gas Light Company on HR 17450, which Bill establishes a People's Counsel in the Public Service Commission of the District of Columbia. Washington Gas has no objections to this Bill as passed by the House of Representatives on November 25, 1974.

We sincerely hope that the establishment of the office of People's Counsel will provide a voice for small residential consumers in the District of Columbia and will expedite future rate proceedings through the ability of People's Counsel to consolidate and coordinate the public's case.

Yours very truly,

PAUL E. REICHARDT.

PUBLIC SERVICE COMMISSION  
OF THE DISTRICT OF COLUMBIA,  
*Washington, D.C., November 29, 1974.*

HON. THOMAS F. EAGLETON,  
*Chairman, Senate District of Columbia Committee, New Senate Office Building, Washington, D.C.*

DEAR SENATOR EAGLETON: The Senate District of Columbia Committee has for consideration a Bill to revive the office of People's Counsel as an adjunct of the Public Service Commission. This bill passed the House of Representatives on November 25th. References in this letter will be to the text of that bill (H.R. 17450), a copy of which is enclosed.

The Public Service Commission supports this legislation. I enclose a copy of my previous statement on the bill. We do recommend an amendment, which I will describe later in this letter.

In a nutshell, the People's Counsel would represent the undifferentiated consumer interest in all rate cases and other proceedings before the Commission. He would also have independent investigative authority.

The Commission regulates the utilities under its jurisdiction "in the public interest," a mission our statute describes, and we have interpreted, as balancing the investor and the consumer interest. Our decisions, like those of other regulatory agencies, are rendered on a record established in a quasi-judicial, adversary proceeding. The People's Counsel would be the public advocate of the citizens of the District in these proceedings. This advocacy role is not always filled in our cases; when it is, it is by intervenors who are self-appointed spokesmen for the public interest as they see it. We view the establishment of a permanent office to represent this interest as salutary, and, therefore, we support the bill.

As I pointed out in my testimony to the House Committee when they considered a similar bill, "The public interest" sought to be represented by the People's Counsel is not unitary. There are times when one "public" or one "interest" might oppose another (particularly on rate

design issues) yet both be of the type that the People's Counsel should represent. In these cases representation by the People's Counsel might not be available to either group. They will have to appear as independent intervenors in the case. In such an instance, the Commission feels that the public interest would be advanced through effective representation, and we have sought authority to award expenses to intervenors for that reason. My statement to the House Committee addresses this subject in detail, and page 6 suggests the standards we would apply in making these awards. The House bill does not grant this authority; concern was expressed at the House Committee mark-up session that the authority was too open-ended and would lead to increases in utility bills since the amounts involved are assessed against the utilities and ultimately passed on through the rates, to consumers. I believe this concern is unwarranted. The amounts involved, a few thousand dollars per case at most, are comparatively small and would be subject to Commission review.

Therefore, we request that this bill extend the discretionary authority to the Commission to award expenses to intervenors in appropriate cases. This could be accomplished by adding the words "and, in the discretion of the Commission, reimbursement of the expenses of intervenors," after the word "Counsel" on line 18, page 4 of the text of the copy of the House bill enclosed with this letter.

I note that the word Counsel is misspelled Council at that point in the bill.

I should also make clear for the record our understanding of the way Section 43-412 of the District Code would work if the amendments contemplated by the pending bill are made. Under this section as it now stands, the Commission may assess the utility involved for the expenses incurred by the Commission in connection with any of its proceedings. These assessments are deposited into a trust fund and disbursed upon the authority of the Commission. These assessments are deemed to be expenses of the utility and they are allowed as such and hence are ultimately paid by the ratepayers. The Commission has made liberal use of this authority in the past. We operate with a rather small staff and this additional source of funding has made it possible for us to engage experts and undertake special investigative work that we could not otherwise have done. In a typical case assessed expense will run on the order of \$100,000, the high point being \$224,500 in the pending telephone rate case in which exhaustive study and litigation of costing and pricing of several classes of telephone service was involved.

Under the bill the People's Counsel would have independent authority to assess the utility for his expenses of participation in a Commission proceeding, and disbursements from the trust fund created by assessments for his expenses would be made upon his certification and would not be subject to the approval of the Commission. This is as we would prefer to have it: the Commission should not impose prior approval over activities of the People's Counsel nor have a veto power over his expenses. We believe the independence of that office requires that the incumbent have the authority and responsibility for its activities, including the expenditure of ratepayers' funds in conducting the case in their behalf.

I should make it clear that the ability to assess expenditures applies only to particular proceedings on a case-by-case basis. The basic budget of the People's Counsel—just as the basic budget of the Commission itself—would come from appropriated funds. I estimate that this basic budget would be in the order of \$50,000 to \$60,000 per year if the People's Counsel had the assessment power to bolster his resources in each case he participated in.

Please call upon me for any further information you may require.

Very truly yours,

WILLIAM R. STRATTON,  
*Chairman.*

OPENING STATEMENT OF WILLIAM R. STRATTON, CHAIRMAN, PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA, BEFORE THE HOUSE DISTRICT COMMITTEE SEPTEMBER 26, 1974

Mr. Chairman, I am William R. Stratton, Chairman of the District of Columbia Public Service Commission. I am accompanied by the Vice Chairman of the Commission, H. Mason Neely.

Consumer concern with rising utility bills has prompted this hearing. The Congress has delegated the responsibility of regulating utilities to the Commission. We hold the public interest in trust. The environment in which utilities and their customers must live, and in which the Commission must work has changed dramatically in recent months and years. It is timely that the public record contain an accounting of our discharge of our responsibilities.

The chance to comment on the pending Bill to revive the Office of People's Counsel offers the opportunity to discuss an issue which is very close to my heart, namely, how best to achieve effective representation of every affected group in proceedings before the Commission. I will return to that subject shortly but first there are some other points that I feel I should mention.

I want to say at the outset with all the conviction that I can bring to bear, that I believe the District Public Service Commission is second to none at the state level in safeguarding the interests of consumers. Appended to this statement is a list of specific actions ordered or inspired by our Commission in recent years which reflects this concern.

On a second point, our present plans to monitor the areas that have been most productive of consumer discontent with utility bills in recent months, I am appending a letter which the Commission sent to Mayor Washington on that subject. The letter outlines two investigatory initiatives that we will soon be taking.

First is a formal inquiry into Pepco's fossil fuel purchasing activities. The Committee is probably aware that it is rising fuel costs which are responsible for most of the increase in electric bills in the past year. Under rules approved by this Commission Pepco is permitted to pass increased fuel costs through to its customers automatically, after certification of the amount of the increase by the Commission's resident accountant. Some say that the automatic pass-through provision of the, so-called, fuel adjustment clause contributes to a "cost-plus mentality" on the part of the utility. Our inquiry—which we will pursue through outside experts engaged by the Commission—will examine Pepco's

organization and practices, both past and prospective, in the purchase of fossil fuels to ascertain their effectiveness in obtaining the lowest prices possible. In addition, we will seek advice on changes to the fuel adjustment clause that can be expected to motivate Pepco to achieve every economy in its fuel purchases.

Secondly, we will initiate a staff inquiry into Pepco's procedures for calculating and rendering estimated bills. Customer complaints over estimated electrical bills increased markedly this summer, and we intend to respond to that by a review of the utility's internal rules for estimated billing to insure their reasonableness and fairness.

Now let me move to the bill to reinstitute the Office of People's Counsel. The concept is an appealing one. When I went on the Commission late last year I believed that we should have such a public advocate in the District of Columbia.

I still believe that a People's Counsel would provide a useful and effective voice for the otherwise unrepresented. But I must tell you that I have since concluded that there is a better way. The better approach, in my view, would be to extend authority to the Commission to reimburse fees and expenses to members or groups of the public who themselves appear before us to urge their own cause.

Let me explain why I have modified my point of view on the subject. I am confident that every elected official is aware that his constituency is made up of many "publics" with many "interests". No single one of these "publics" can lay legitimate claim to represent *the* public interest, in the broad sense of the word. The overall public interest is discovered in a weighing and balancing process in which the interests of as many segments of the public as possible are considered. The Congress does this in its day-to-day work. The Congress has delegated this function and responsibility to the Commission on which I serve so far as utility regulation is concerned. I believe that the responsibility of determining what is in the overall public interest should continue in our trust.

The lack of confidence that regulators labor under is not rooted in the belief that we do not or cannot act in the public interest. Rather, it is that we do not hear all the voices that want to be heard, or do not heed all that we hear.

As to the claim that we don't or won't listen, I disagree. The Commission, and I personally, have sought and continue to seek expressions from every side to guide us in establishing rates and distributing their incidence among the various classes of rate payers. To this end we have liberalized our rules and practices concerning intervention in our cases so that no one with a legitimate interest, even though it may not be expressible in dollar terms, is denied the opportunity to appear before us. Many of our consumer-related orders and rulings are the direct result of competent and responsible presentation before us by intervenors.

The real problem is that we don't respond—or at least appear not to respond—to some of the proposals that are urged upon us, or to some of the interest groups who appear before us. To the extent that this is true there is a reason. It is that our proceedings—conducted pursuant to law—are complex and detailed. Before we can adopt any particular position its validity must be established on the record in a

formal proceeding—much like a court case—before us. To make an effective presentation in a utility rate hearing requires effort and expertise. Effort and expertise must be sustained with money, and money is a commodity in very short supply for most consumer and environmental groups. Fresh ideas and special focuses are there in abundance, but the wherewithal to mount their effective presentation is lacking.

The quest, in my view, is how best to insure effective representation before the Commission of those who are otherwise inadequately represented. The Bill under consideration today is a step toward achieving the goal of adequate representation. A People's Counsel would have the professional capability and resources to plead a cause effectively before the Commission. If I have a problem with it, it stems from its underlying premise—that "the people" have a unitary interest which one public advocate can represent. I honestly do not believe that to be the case. There will be cases, and they will come very early in the career of the People's Counsel, in which a selection will have to be made from among the many causes who seek his representation. He will have to make these choices, not only because he can't represent every interest no matter how vast his resources, but because these interests are often themselves in conflict. The day that he makes his first choice is the day that the public will experience its first disillusion with the office. It is also the day when the first pressures will be felt for a second public advocate, to represent the interests spurned by the People's Counsel.

So I am led to the conclusion that the best course is to start with a program that will support many voices, speaking directly to the Public Service Commission.

The Commission, given the authority, could establish rules that would focus intervenors on the aspect of the case that most closely touches their interest, and could award reimbursement for fees and expenses at the conclusion of a case on the basis of considerations relating to the quality and effectiveness of the presentation, degree of indigency, avoidance of delay in the proceeding, and whether the Commission has adopted the position urged by the intervenor. In my view reimbursement should be assessed against the utility and allowed as an expense ultimately to be passed on the ratepayers who would be the ultimate beneficiaries of intervention determined to be in the public interest.

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## PEOPLE'S COUNSEL FOR THE PUBLIC SERVICE COMMISSION

NOVEMBER 20, 1974.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DIGGS, from the Committee on the District of Columbia,  
submitted the following

### REPORT

[To accompany H.R. 17450]

The Committee on the District of Columbia, to whom was referred the bill (H.R. 17450) to provide a People's Counsel for the Public Service Commission in the District of Columbia, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That there shall be appointed by the Commissioner of the District of Columbia, by and with the advice and consent of the District of Columbia Council, an additional counsel of the Public Service Commission (established under section 493 of the District of Columbia Self-Government and Governmental Reorganization Act) to be known as the People's Counsel, who—

(1) shall represent and appear for the people of the District of Columbia at all hearings of the Commission and in all judicial proceedings involving the interests of users of the products of or services furnished by public utilities under the jurisdiction of the Commission;

(2) shall represent and appear for petitioners appearing before the Commission for the purpose of complaining in matters of rates or services; and

(3) may investigate the service given by, the rates charged by, and the valuation of the properties of, the public utilities under the jurisdiction of the Commission.

SEC. 2. Paragraph 42 of section 8 of the Act of March 4, 1913 (making appropriations for the government of the District of Columbia) (D.C. Code, sec. 43-412), is amended as follows:

(a) The first sentence of such paragraph 42 is amended to read as follows: "The expenses, including the expenses of the People's Counsel, of any investigation, valuation, revaluation, or proceeding of any nature by the Public Service Commission of or concerning any public utility operating in the District of Columbia, and all expenses of any litigation, including appeals, arising from any such investigation, valuation, revaluation, or proceeding, or from any order or action of the Commission, shall be borne by the public utility investigated, valued, revalued, or otherwise affected as a special franchise tax in addition to all other taxes imposed by law, and such expenses with interest at 6 per centum per annum may

be charged to operating expenses and amortized over such period as the Commission shall deem proper and be allowed for in the rates to be charged by such utility."

(b) The second sentence of such paragraph 42 is amended by inserting "; or certified by the People's Counsel with respect to his expenses" immediately before the period at the end of that sentence.

(c) The third sentence of such paragraph 42 is amended by inserting "and the People's Counsel, combined" immediately after "Commission".

#### PURPOSE OF THE BILL

The purpose of H.R. 17450 is to amend the District of Columbia Self-Government and Governmental Reorganization Act (the Home Rule Act, P.L. 93-198, 87 Stat. 774) to establish a People's Counsel within the local Public Service Commission of the District of Columbia.

This Counsel would be responsible for representing the people of the District of Columbia at all hearings of the Commission and in all judicial proceedings involving the interests of consumers regarding public utilities services. The People's Counsel is also given the authority to represent consumer complaints before the Commission and to investigate the service, rates, and operations of the public utilities.

#### BACKGROUND

The Public Service Commission is the local regulatory body responsible for regulating gas, electric and telephone utilities; taxi operations within the D.C. boundaries; and some charter bus services. The original legislation which established the Public Utilities Commission in 1913 (predecessor to the Public Service Commission) (D.C. Code, Title 43, Section 101, et al) was amended in 1926 to provide for the appointment of additional counsel in the Public Service Commission called the People's Counsel, to intervene at hearings or judicial proceedings in matters concerning services provided by public utilities. However, the People's Counsel was abolished through Reorganization Plan No. 5, approved in 1952. The bill, as reported by this Committee, re-enacts Title 43, Section 205 of the D.C. Code, drawing upon the original thinking and concerns of Congress when it initially enacted this law.

#### NEED FOR LEGISLATION

In developing and enacting this legislation in 1913, the Congress recognized that the responsible regulatory commission must in many instances act in a judicial fashion, balancing in an independent manner the varying viewpoints of public groups appearing before it. This necessarily independent posture has inhibited the Commission from vigorously protecting the consumers' viewpoints and needs in rate proceedings. Their function has been rather to insure the development of a full and complete record which presents the facts and other rate-making considerations relative to a fair and meaningful determination of the complex issues involved. This is different from a conventional adversary position. As such, the 1926 amendment created a separate office, with legal counsel, to advocate the views and needs of local consumers with regard to utility rates, distribution of these rates, service levels, fuel costs, and other utility operations.

Most Americans must depend on a power company to provide them with electricity and a gas or oil company to provide them with home heating fuel. The consumer has virtually no opportunity to shop around for this basic commodity. As such, there is a need for close public vigilance of the utility industries and a requirement that we balance competing public interests in the regulatory process.

The local utility regulatory commission had served admirably in its role as the independent judicial body responsible for making comprehensive and detailed decisions on complex rate procedures. However, it has not been able to serve simultaneously as the vigorous defender of local consumer interests.

#### PRECEDENT STATE LEGISLATION

Five States provide for an independent counsel to represent the general public in such regulatory proceedings. These states are Vermont, Maryland, Indiana, Missouri, and Montana. Still other States, such as Kentucky, rely upon intervention through a separate office of the State Attorney General. The Committee recognizes that it is only by allowing the public to truly become a proper party in all such proceedings that the local regulatory commission will gain the breadth of information and viewpoints necessary to make the difficult decisions with which it is faced.

#### REASONS FOR IMMEDIATE CONGRESSIONAL ACTION

This Committee seriously considered whether in view of the Self-Government and Governmental Reorganization Act, Congress should be legislating in this area. It was determined that Congressional action at this time to authorize the establishment of a People's Counsel was both necessary and desirable for the following reasons:

1. Announcements by local District utilities, notably the Potomac Electric Power Company and C and P Telephone Company, indicate that they will be filing for major rate increases within the next three weeks. PEPCO announced on November 8 they will petition the PSC for a rate hike totaling \$51 million. The Washington Gas company already has a rate increase pending. The PSC in turn have indicated they hope to complete actions on these requests by early January, 1975, that is, before the new Home Rule government takes effect. Because of the immediate nature of these rate increases and their substantial potential impact on local residents, it is critical that a special office such as People's Counsel be established immediately to provide the necessary expertise for proper consumer representation.

2. The D.C. Government, the Public Service Commission, utility experts, Maryland's People's Counsel and citizens and residents have urged the Committee to establish such an office. They were particularly concerned that without this legislation small residential consumers would be unable to obtain legal assistance or the types of expert witnesses needed in these types of proceedings. The local electric power company voiced the hope that such an office could help expedite rate proceedings through its ability to consolidate and coordinate public witnesses.

3. There was expressed the concern that after the Home Rule government takes effect, it will be confronted with a myriad of major policy decisions, including the F.Y. 1976 budget. It will be understandably difficult for the new City Council to promptly enact legislation in this PSC area. In recognition of their initial major responsibilities, the Council presented written testimony welcoming the Congress' action at this time.

#### PRINCIPAL PROVISIONS OF THE BILL

The first section of the bill, as reported, provides for the appointment by the Commissioner of the District of Columbia (after January 2, 1975, the Mayor) with the advice and consent of the District of Columbia Council, a People's Counsel within the Public Service Commission.

The duties of the Counsel are set forth in this section. He shall represent and appear for the people of the District of Columbia at all hearings of the Commission and in all judicial proceedings involving the interests of users of the products or services furnished by public utilities within the PSC's jurisdiction. It is the Committee's understanding that "judicial proceedings" include appeals before appropriate courts which are brought by the PSC, the People's Counsel, the utility, or public intervenors in the proceeding under contention.

Secondly, he shall represent and appear before the Commission for the purpose of complaining in matters of rates and services.

Thirdly, the Counsel may investigate the service given by, the rates charged by, and the valuation of the properties of, the public utilities under the jurisdiction of the Commission. It was the intent and belief of the Committee that the local Public Service Commission and the Council of the District of Columbia working in conjunction with the People's Counsel established herein could most properly develop appropriate powers, procedures and regulations, necessary to carry out the responsibilities and duties described in Section 1 of this Act. The Committee fully notes that establishing a People's Counsel does not preclude intervention by private groups, classes of service or others who may desire to be parties to proceedings before the local Commission. Furthermore, nothing in this bill prohibits the Public Service Commission from carrying out its general responsibility to protect the public interest in its proceedings.

Section 2 of H.R. 17450 amends the D.C. Code to provide that the expenses of the People's Counsel in any investigation, valuation, revaluation litigation, appeal, or proceeding of the Public Service Commission concerning a public utility operating in the District of Columbia, shall be borne by the public utility involved. Subsection 2b states that these expenses must be certified prior to payment. Present law provides that the expenses of the Public Service Commission itself for investigations, valuations, revaluations or other proceedings of utilities shall be assessed against the utility involved. These include the costs of expert witnesses, special accountants, or other extra costs incurred as a result of that particular proceeding or investigation. The basic salaries and expenses of the Public Service Commission are paid through the standard appropriations process. The present

law limits these expenses to one-half of 1 percent of the existing valuation of the company investigated in rate and evaluation cases, and not more than 1/10 of 1 percent in all other investigations for any one year. In the case of the electric company, Potomac Electric Power Company, these limitations would equal \$6 million and \$1.3 million respectively. Normally, however, assessments are under \$100,000. The highest amount the PSC has ever assessed was \$224,500.

Under the provisions of Section 2, these same types of costs incurred by the People's Counsel as a result of investigative or rate casework could be assessed against the utility. The basic salaries and expenses of the People's Counsel Office would be covered by the current authorization for appropriations for the Public Service Commission. The Committee wishes to stress that the limitations on dollar totals for such assessments in the existing statute would remain the same.

#### HISTORY OF COMMITTEE ACTION

The Full Committee held two days of hearings on September 26 and 30, 1973 on H.R. 16782 and H.R. 16919, identical bills to establish a People's Counsel. These bills, cosponsored by eight Committee members, had been introduced earlier in the month in recognition of the fact that during the last six months small, large, residential, commercial, and governmental consumers had been confronted with rapidly rising utility bills. Utility increases in the Nation's Capital have a significant impact on the costs of government and on region-wide energy costs. For example, testimony last year by the Washington Metropolitan Area Transit Authority indicated that in 1980 when the subway system is operational, an increase of one mil per kilowatt hour of electricity will cost the area's subway riders \$710,000 annually. Further rate requests will be submitted before January 1.

In light of this serious situation the Committee received favorable testimony from representatives of the D.C. Government, the D.C. Public Service Commission, the Maryland State People's Counsel, utility experts, consumer groups, local citizens associations and the Potomac Electric Power Company. The purpose of these hearings was to assure that during the interim period prior to the Home Rule government taking office, there was an adequate and balanced investigation of the factors surrounding the current cost situation and complete consideration of consumer concerns prior to granting any future increases.

No testimony or statements in opposition to this legislation was presented at the hearings or received by the Committee.

Mark-up sessions were held by the Committee on October 19, and November 19 and 20, 1973, and the amendments adopted are set forth in the bill, H.R. 17450 as reported. The Committee amendment deletes the provision which would have authorized the Public Service Commission to reimburse expenses of private organizations intervening in the public interest. Although this clarifying provision was requested by the Commission to clearly delineate the Commission's existing authority to grant such reimbursements, the Committee felt it was both unnecessary and inappropriate to include this in the current legislation. The Committee understands that the D.C. Code, title 43, Sections 412 and 1003, provides the Commission with the authority to grant such reimbursements at their discretion.

It is the hope of the Committee that the Council will take prompt action to clarify whether the Commission can provide reimbursement for private parties who wish to intervene in actions before the Public Service Commission.

The Committee was unable to obtain estimates of the potential costs of reimbursing such private intervenors.

#### DISTRICT GOVERNMENT RECOMMENDATIONS

The prepared testimony of the District Government's representative in support of this 1974 legislation follows:

##### PREPARED STATEMENT OF C. FRANCIS MURPHY, D.C. CORPORATION COUNSEL

Mr. Chairman, thank you for the opportunity to appear today to express the views of the Government of the District of Columbia on a bill to establish a People's Counsel in the D.C. Public Service Commission.

The statement of the Chairman of the Public Service Commission gives you a comprehensive picture of the nature of the work of the Commission, its jurisdiction and its position with regard to the investigation of the increasing utility rates in the District of Columbia. As you are aware, Mayor Washington on August 26, 1974, requested the Public Service Commission to investigate the sharply rising utility rates. He stated the investigation should center on the adequacy of steps being taken to hold down the costs of service and to assure the adequacy of bills as well as ways to reduce costs and the adequacy of the Commission's monitoring procedures. Mr. Stratton has advised you of his response as Chairman of the Commission to Mayor Washington.

On behalf of Mayor Washington I want to assure this Committee that the Mayor remains committed in his concern for consumers to providing adequate support to the PSC so that it can do its job. Mr. Stratton has indicated that the Commission is prepared to undertake the investigation which Mayor Washington requested. The method by which the Commission proposes to conduct the investigation—by utilizing independent consultants—will insure that the Commission has before it all the relevant information it will need to reach a decision with regard to existing rates and any new requests by the utility company for rate increases.

The Government of the District of Columbia favors the establishment of a mechanism which will enable the views of the consumers to be represented adequately before the PSC. We favor the concept of having an attorney who would be available to represent consumer interests in proceedings before the PSC. We think that an attorney must be able to intervene in rate proceedings and to initiate proceedings on behalf of consumers interests. As you are aware, in the past there had been a People's Counsel involved in ratemaking matters. We think it would be appropriate to reestablish that

position, which was abolished in 1952, to provide today's consumers with a voice in utility ratesetting and regulatory proceedings.

We also foresee a role for the new Office of Consumer Affairs to work on behalf of consumers through the People's Counsel. We hope the Office of Consumer Affairs will be able to expand its work on behalf of consumers as the Office develops its programs and the People's Counsel would offer a new mechanism for the Office to use in further protection of consumer interest.

Thank you for this opportunity to testify. I will be happy to answer your questions.

##### LEGISLATIVE REPORT ON THE 1926 CREATION OF THE OFFICE OF PEOPLE'S COUNSEL

This Committee, by legislation which became law in the 69th Congress (H.R. 11119, approved December 15, 1926, 44 Stat. 920), created the Office of People's Counsel of the Public Utilities Commission, which was later redesignated the Public Service Commission (P.L. 88-503, approved August 30, 1964, 78 Stat. 634).

The Committee's report (H. Rept. 967) filed in the House on April 23, 1926, made this statement in support of the appointment at that time of the People's Counsel:

Believing that the corporation counsel of the District, who is the legal adviser of the District Commissioners, should not be called upon to present rate-making cases before either the commission or the courts, and that his duties are such that he is unable to give the proper time to coping with questions of rate making and valuation and to oppose the array of talent representing the corporations and public utilities, your committee has provided for the appointment of a people's counsel to present rate-making cases and other complaints of the people before the commission and in the courts. The officer to be appointed under the provisions of this bill will be called upon to negotiate proceedings looking to improved service and lower rates of fare and also lower rates of service, and your committee believes that he will be of material assistance to the public.

Your committee is of the opinion that these two changes will materially benefit the people of the District and will compensate a hundredfold for the small expense which will be incurred under the provisions of this measure.

##### COMMITTEE VOTE

H.R. 17450, as amended, was unanimously ordered reported by voice vote of the Full Committee on November 20, 1974.

##### COSTS OF BILL

The basic expenses of the Office of People's Counsel, including salaries, rent, supplies, telephones, and equipment, will be appropri-

ated by Congress under the present statutory authorization for the Public Service Commission (43 D.C. Code Section 206). The Chairman of the Commission estimated for FY 1976 a modest operating budget of \$100,000 for this office. This is in line with the operating costs of the Maryland State Office and in keeping with the allocation of money for this function in the states. A list of the expenses of five other states with similar offices is included herein:

COMPARISON OF EXPENSES WITH OTHER STATES

*Vermont*

There is no office of Consumer Counsel in Vermont within the Public Service Board; however an attorney is appointed, on a per case basis, to represent consumer interests. The attorney may hire outside consultants. Last year the Board spent \$66,000 on attorney fees and \$130,000 on consultant fees. Funds for these expenses are received from a special fund from the State, assessed from the gross revenues of utilities. There are no direct assessments of the utilities by the Board.

There is an Office of Consumer Affairs within the Board, but it is responsible for handling consumer complaints only.

*Wisconsin*

The Public Service Commission in Wisconsin is funded generally by assessments of utilities. It receives very few funds from the State. There are nearly 700 public utilities regulated in the state, and each is assessed 1/10th of 1% of their gross operating revenue. This is called a "remainder assessment" and totaled \$1.6 million for the fiscal year ended June, 1974. The Commission may make a "direct assessment" on a utility after a certain rate case, at the rate of 4/5 of 1% of the utility's gross operating revenue. This totaled about \$174,000 for the same period.

*Indiana*

The Commission in Indiana is not funded by the direct assessment of utilities, rather, each rural cooperative, and investor-owned utility pays a state fee, based on plant valuation. These funds are then appropriated to the Commission. The present budget totals about \$1 million. The State also collects fees from municipal or public power companies, based on expenses incurred from rate proceedings on a per case basis.

There is an Office of Public Counselor, independent of the Commission and funded by state appropriations only. This office represents consumer interest in all matters before the Commission. It is budgeted at about \$130,000 per year. Neither this office, nor the Commission, may assess utilities for outside consultant expenses, however the State made available \$50,000 to the Public Counselor in a recent case, for the hiring of outside consultants. This money came from the fees collected from utilities.

*Missouri*

Funding of this Commission in Missouri comes from two sources. Each year, the State Legislature approves an amount of revenues taken from the Highway Fund (i.e., licenses, taxes of vehicles, and motor carriers) and the Commission assesses "P.S.C." funds from the utilities, which are based on a percentage of their gross revenues. The Commission's current budget consists of \$1,876,670 assessed from utilities, and \$958,090 appropriated from the Highway Fund. This two to one ratio of funding is always maintained.

In Missouri, the office of Public Counsel is also independent of the Commission, and is funded by general revenues from the State at about \$30,000 per year. The Commission and the Public Counsel cannot assess utilities for the expense of hiring outside consultants.

*Montana*

The Public Service Commission in Montana is funded entirely through state appropriations, at a yearly budget of \$400,000. It may hire outside consultants from its own budget, but may not assess utilities for that purpose. They did not have the amount of that expense available.

The budget for the Office of Consumer Counsel was not available, but it is funded primarily by the direct assessment of utilities, based on a percentage of the gross revenues of each utility. It also receives some appropriations from the State's general fund.

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In addition to these basic expenses, the D.C. People's Counsel will be permitted to assess expenses incurred in specific utility proceedings against the company involved. These would include, for example, the costs of hiring expert witnesses, rate design economists, safety engineers and other specialized consultants in specific rate cases. The Public Service Commission has informed the Committee that such expenses range between \$75,000 and \$100,000 per proceeding for the entire Commission, which translates to about 50¢ every two years per utility customer in the District of Columbia. It is estimated that an additional \$25,000 to \$50,000 in assessments per year would be incurred by the People's Counsel.

The Committee wishes to stress that these amounts are well within the present statutory limitation for such assessments (the limitation is equal to 1/2 of 1% of the value of the company involved, in rate and valuation proceedings; for an electric company case the limitation would equal \$6 million).

CONCLUSION

Within the next month, the local utility regulatory body within the Nation's Capital will be confronted with requests for substantial increases in this area's utility rates. Rate hikes will have a further budgetary impact on the hard pressed residential consumer and will have a significant effect on the costs of operating the Federal Government within this city. It is thus imperative that the Congress take prompt

action to insure that the concerns and views of all affected parties are brought to bear in the Commission's determinations. To insure that there is an adequate, independent process for allowing the public and its interests to become a proper party in these proceedings, the Committee urges the adoption of this legislation to establish a People's Counsel within the District of Columbia Public Service Commission.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman).

#### PARAGRAPH 42 OF SECTION 8 OF THE ACT OF MARCH 4, 1913

PAR. 42. **[That the]** The expenses, *including the expenses of the People's Counsel*, of any investigation, valuation, revaluation, or proceeding of any nature by the Public **[Utilities]** Service Commission of or concerning any public utility operating in the District of Columbia, and all expenses of any litigation, including appeals, arising from any such investigation, valuation, revaluation, or proceeding, or from any order or action of the **[said]** Commission, shall be borne by the public utility investigated, valued, revalued, or otherwise affected as a special franchise tax in addition to all other taxes imposed by law, and such expenses with interest at 6 per centum per annum may be charged to operating expenses and amortized over such period as the **[Public Utilities]** Commission shall deem proper and be allowed for in the rates to be charged by such utility. When any such investigation, valuation, revaluation, or other proceeding is begun the said Public Utilities<sup>1</sup> Commission may call upon the utility in question for the deposit of such reasonable sum or sums as in the opinion of said Commission, it may deem necessary from time to time until the said proceeding or the litigation arising therefrom is completed, the money so paid to be deposited in the Treasury of the United States to the credit of the appropriation account known as "Miscellaneous trust fund deposit, District of Columbia" and to be disbursed in the manner provided for by law for other expenditures of the government of the District of Columbia, for such purposes as may be approved by the Public Utilities<sup>1</sup> Commission; *or certified by the People's Counsel with respect to his expenses*. Any unexpended balance of such sum or sums so deposited shall be returned to the utility depositing the same: *Provided*, That the amount expended by the Commission *and the People's Counsel, combined* in any valuation or rate case shall not exceed one-half of 1 per centum of the existing valuation of the company investigated, and that the amount expended in all other investigations shall not exceed one-tenth of 1 per centum of the existing valuation for any one company for any one year.

<sup>1</sup> Section 21 of the Act of August 30, 1964 (Pub. L. 88-503, 78 Stat. 634) declares that: ". . . Whenever reference is made to the Public Utilities Commission . . . such reference shall be held to be a reference to the Public Service Commission of the District of Columbia."

# Ninety-third Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the twenty-first day of January,  
one thousand nine hundred and seventy-four*

## An Act

To provide a People's Counsel for the Public Service Commission in the District of Columbia, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) there is hereby established within the Public Service Commission of the District of Columbia, established by section 8 of the Act of March 4, 1913, as amended (D.C. Code, sec. 43-201), an office to be known as the "Office of the People's Counsel".

(b) There shall be at the head of such office the People's Counsel who shall be appointed by the Commissioner of the District of Columbia, by and with the advice and consent of the District of Columbia Council, and who shall serve for a term of three years. Appointments to the position of People's Counsel shall be made without regard to the provisions of title 5 of the United States Code, governing appointments in the competitive service. The People's Counsel shall be entitled to receive compensation at the maximum rate as may be established from time to time for GS-16 of the General Schedule under section 5332 of title 5 of the United States Code. No person shall be appointed to the position of People's Counsel unless that person is admitted to practice before the District of Columbia Court of Appeals. Before entering upon the duties of such office, the People's Counsel shall take and subscribe the same oaths as that required by the Commissioners of the Commission, including an oath or affirmation before the Clerk of the Superior Court of the District of Columbia that he is ~~not pecuniarily~~ interested, voluntarily or involuntarily, directly or indirectly, in any public utility in the District of Columbia.

(c) The People's Counsel is authorized to employ and fix the compensation of such employees, including attorneys, as are necessary to perform the functions vested in him by this Act, and prescribe their authority and duties.

(d) The People's Counsel—

(1) shall represent and appeal for the people of the District of Columbia at hearings of the Commission and in judicial proceedings involving the interests of users of the products of or services furnished by public utilities under the jurisdiction of the Commission;

(2) may represent and appear for petitioners appearing before the Commission for the purpose of complaining in matters of rates or services;

(3) may investigate the services given by, the rates charged by, and the valuation of the properties of, the public utilities under the jurisdiction of the Commission; and

(4) is authorized to develop means to otherwise assure that the interests of users of the products of or services furnished by public utilities under the jurisdiction of the Commission are adequately represented in the course of proceedings before the Commission, including public information dissemination, consultative services, and technical assistance.

SEC. 2. Paragraph 42 of section 8 of the Act of March 4, 1913 (making appropriations for the government of the District of Columbia) (D.C. Code, sec. 43-412), is amended as follows:

(a) The first sentence of such paragraph 42 is amended to read as follows: "The expenses, including the expenses of the Office of the People's Counsel, of any investigation, valuation, revaluation, or

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proceeding of any nature by the Public Service Commission of or concerning any public utility operating in the District of Columbia, and all expenses of any litigation, including appeals, arising from any such investigation, valuation, revaluation, or proceeding, or from any order or action of the Commission, shall be borne by the public utility investigated, valued, revalued, or otherwise affected as a special franchise tax in addition to all other taxes imposed by law, and such expenses with interest at 6 per centum per annum may be charged to operating expenses and amortized over such period as the Commission shall deem proper and be allowed for in the rates to be charged by such utility.”

(b) The second sentence of such paragraph 42 is amended by inserting “; or certified by the People’s Counsel with respect to his expenses” immediately before the period at the end of that sentence.

(c) The third sentence of such paragraph 42 is amended by inserting “and the People’s Counsel, combined” immediately after “Commission”.

SEC. 3. For the fiscal year ending June 30, 1975, there is authorized to be appropriated such sum, not to exceed \$50,000, as may be necessary to carry out the purposes of this Act. For the fiscal year ending June 30, 1976, and each fiscal year thereafter, there are authorized to be appropriated such sums, not to exceed \$100,000 in any one fiscal year, as may be necessary to carry out the purposes of this Act.

*Speaker of the House of Representatives.*

*Vice President of the United States and  
President of the Senate.*

December 30, 1974

Dear Mr. Director:

The following bills were received at the White House on December 30th:

H.R. 510

H.R. 12860

✓ H.R. 17450 ✓

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder  
Chief Executive Clerk

The Honorable Roy L. Ash  
Director  
Office of Management and Budget  
Washington, D. C.