



COUNCIL OF THE DISTRICT OF COLUMBIA

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WASHINGTON, D.C. 20004

MEMORANDUM

TO: Chairman Phil Mendelson
FROM: Councilmembers Mary M. Cheh, Charles Allen, Brooke Pinto, Elissa Silverman, and Janeese Lewis George
DATE: September 30, 2021
SUBJECT: Requests for the October 5, 2021 Legislative Meeting

We request that the following emergency measures be agendized for the October 5, 2021 Legislative Meeting:

- Public Service Commission Member Qualifications Declaration Resolution of 2021
- Public Service Commission Member Qualifications Emergency Amendment Act of 2021
- Public Service Commission Member Qualifications Temporary Amendment Act of 2021

The Public Service Commission (“PSC”) was established by act of Congress in 1913, then called the Public Utilities Commission. The PSC is an independent body responsible for the oversight and regulation of electric, natural gas, and certain telephone companies serving District customers. In the years since the PSC was established, however, the role of the Commission—much like other similar bodies in jurisdictions across the nation—has expanded significantly.

With the advent of large-and-small scale solar systems, and the widespread growth of wind and other renewable energy resources, traditional public electric utilities no longer serve as the sole energy providers for retail consumers; in fact, the diversity of this industry will only continue to grow as this technology becomes more affordable and accessible to homeowners and investors. As energy resources, these entities also fall under the jurisdiction of the PSC, creating competition in a field that, for much of the last hundred years, had functionally operated under a monopoly. Thus, the PSC’s role has shifted from overseeing a handful of large, traditional utilities to, in many ways, overseeing the infancy of a rapidly developing competitive market, including developing rules for entry, interconnection, pricing, and fair competition. The PSC’s approach to overseeing and

regulating this marketplace is quite literally shaping the grid of the future. It is essential, then, that Commissioners have a working knowledge of the electric grid, distributed energy resources, and, more broadly, renewable energy technology.

Furthermore, under the Sustainable DC Plan, the District has set a goal of reducing greenhouse gas emissions by 50% by 2032, and reaching carbon neutrality by 2050. Under the CleanEnergy DC Amendment Act of 2018 and related legislation, the PSC is tasked with several mandates and provided extensive authority to advance policies and programs that will help the District meet these climate and resiliency goals. One of the District's primary tools in reaching these goals is the Renewable Portfolio Standard ("RPS"), which requires that a percentage of every unit of electricity supplied to the District come from wind, solar, or another renewable energy source, and includes a local solar carve-out. The PSC plays an essential role in overseeing this work, and has the authority to expand on the existing RPS program. Truly, as the primary entity responsible for oversight of our public electric and natural gas utilities—energy sources whose products have a direct impact on our carbon footprint—PSC can and should be a leader on reaching and exceeding the District's climate goals. The most recent report from the Intergovernmental Panel on Climate Change says that global warming of up to 2 degrees Celsius is likely without "deep reduction in CO₂ and other greenhouse gas emissions." As the PSC works with the Council and the Mayor to aggressively expand clean energy use in the District, it is essential that the Commission has a deep understanding and appreciation for the direct relationship between energy policy and the District's climate goals.

Lastly, as the regulator of the District's public utilities, the PSC also plays a key role in establishing and protecting the rights of utility customers. While this work most often takes the form of reviewing rate cases and other changes proposed by utilities, the PSC's authority as a steward of consumer rights is much broader. The PSC has established a Utility Consumer Bill of Rights, which enumerates general protections and rights for all customers of the District public utilities. The PSC also has the authority to take proactive, decisive action to protect utility customers. For example, a number of public service commissions across the nation acted in early 2020 to prohibit utilities from shutting of customer service for nonpayment during the public health emergency stemming from the COVID-19 pandemic; others established payment plan standards and other customer protections during that time. Although in the District those steps were taken by the Council, the District's PSC had the authority to implement those protections. The PSC's authority to protect utility customers is not merely reactive, responding to proposed rate changes, but proactive, laying out what utilities can and must do, and establishing protections against certain practices and policies that may negatively impact their customers. For example, on September 16, 2021, the PSC acted to prohibit the District's natural gas utility for disconnecting customers for non-payment until the utility came into compliance with the Commission's Natural Gas Quality of Service Standards. This authority is especially important for advancing the

District's racial equity goals, because we know that energy cost burdens disproportionately impact Black and Latinx District residents. Thus, Commissioners having an understanding of and proactive interest in addressing issues of consumer protection are essential to the proper functioning of the Commission.

Membership on the PSC is governed by D.C. Official Code § 34-801(a), which, among other provisions, lays out the term length and process for the nomination and approval of Commissioners. The statute, however, sets few eligibility requirements for serving as a Commissioner, which are limited to a residency requirement, a prohibition on serving on the Commission while holding a financial interest in a public utility or other entity that appears before the commission, and a required cooling off period for certain utility employees. While, importantly, this language safeguards against Commissioners having a conflict of interest while serving on the PSC, the statute does not require that nominees have any experience in the energy policy, grid modernization, customer service, the environment, or any of the matters over which the PSC exerts jurisdiction.

As noted, the PSC serves as the District's primary oversight body for its public utilities and other energy resources. The work of the PSC has a direct effect on the day-to-day lives of District residents, from shaping the rates they pay for utility service, to establishing protections against shut-offs, service disruptions, and other practices that can harm residents. More broadly, as noted, the PSC's role in shaping energy and environmental policy directly impacts when and how the District will meet its climate goals, which affects the lives of all residents and the future of the District. Given this tremendous responsibility, members of the Commission must be well-versed in these issues.

On September 9, 2021, President Biden nominated PSC Chairman Willie Phillips to be a commissioner at the Federal Energy Regulatory Commission, creating a potential vacancy at the Commission that the Council will likely need to fill with a first-time PSC commissioner this fall. During the debate on recent PSC nominations there have been questions about what expertise is most necessary for potential commissioners, given the scant guidance in the statute. Thus, this emergency legislation would provide additional guidance, reflective of the PSC's current mission, for coming appointment deliberations by setting qualifications for 2 of the 3 seats on of the Commission. Individuals appointed to one seat would need to have experience in electric grid modernization and renewable energy integration or technology and, where possible, issues affecting the environment; individuals appointed to the other seat would be required to have experience in consumer protection. Given the range of other expertise that could be relevant to the work of the Commission, this emergency legislation does not set a requirement for qualifications for the third Commissioner seat, leaving that to the discretion of the Mayor and the Council.

These new eligibility requirements would apply to nominations made after October 1, 2021, so would not affect current commissioners or the appointment of nominees already put forward by the Mayor. Specifically, the emergency legislation requires that the first individual that the Mayor nominates after October 1, 2021, for an open seat on the PSC would need to have experience in electric grid modernization and renewable energy integration or technology and, where possible, issues affecting the environment, and the second individual the Mayor nominates after October 1, 2021, would need to meet the requirement for experience in consumer protection. Importantly, this legislation will help ensure that membership on the Commission reflects the evolving purview of the PSC, and that the Commission is composed of subject matter experts with a diversity of relevant experience.

Please contact Michael Porcello at 724-8062 or mporcello@dccouncil.us if you have any questions.