



Office of the District of Columbia Auditor

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**AUDIT OF THE PUBLIC SERVICE COMMISSION
AGENCY FUND FOR FISCAL YEAR 2008
December 8, 2011**

Audit Team:

Hussein Aden, Senior Financial Auditor

Xian-Min Wu, Financial Auditor

Dexter Monroe, Financial Auditor

Yolanda Branche, District of Columbia Auditor

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EXECUTIVE SUMMARY

The District of Columbia Public Service Commission (PSC) is an independent agency of the District government established by Congress in 1913 to regulate electric, natural gas, and telephone companies in the District by functioning as a quasi-judicial agency. Today, the mission of the PSC is to serve the public interest by ensuring that financially sound electric, natural gas, and telecommunications companies provide safe, reliable, and quality utility services at reasonable rates to District of Columbia residential, business, and government consumers. The PSC has rate-making and other regulatory authority over electric, natural gas, and telecommunications companies. As required by law¹, the Office of the District of Columbia Auditor conducted an audit of the fiscal year 2008 financial activities of the Public Service Commission's Agency Fund.

The objectives of this audit were to:

1. verify public utility revenue deposits to and disbursements from the PSC's Agency Fund for fiscal year 2008;
2. examine expenses charged against the PSC's Agency Fund to determine whether expense vouchers were supported by adequate documentation and whether the expenses were reasonable and necessary;
3. determine whether expense vouchers were properly reviewed and approved by appropriate PSC officials before payment; and
4. determine the amount of refunds to public utilities that were processed against the PSC's Agency Fund.

The following are key findings from the Audit:

1. \$967,920 in public utility assessments were properly deposited into the PSC Agency Fund during FY 2008;
2. PSC processed 149 expense vouchers totaling \$831,558.40 against the PSC Agency Fund that were reasonable and necessary during FY 2008;
3. The Office of the Chief Financial Officer's Economic Development and Regulation Cluster (EDRC) Shared Service Center did not deposit fiscal year 2008 public utility assessment checks in a timely manner; and
4. Fiscal Year 2008 payments were not consistently processed in a timely manner.

¹ D.C. Code, Section 34-912(a)(6). A copy of D.C. Code Section 34-912(a)(6) is included at Appendix II.

To address the key findings, we recommend that:

1. The Economic Development and Regulation Cluster CFO and the PSC Agency Fiscal Officer (AFO) should take steps to ensure that all assessment checks are deposited in a timely manner in compliance with the District OCFO's Financial Policy and Procedures.
2. The PSC and the Office of the Agency Fiscal Officer (OAFO) take the necessary steps to comply with the District of Columbia's Quick Pay Act and make all payments no later than the required due date.
3. The PSC Agency Fiscal Officer and the Chairman of the PSC establish internal control procedures to ensure the timely payment of invoices.
4. The Office of the Agency Fiscal Officer take steps to ensure that all invoices and expense vouchers are stamped with the date the invoice was received in the OAFO.

CONCLUSION

The Auditor found that during fiscal year 2008, \$967,920 in public utility assessments were properly deposited into the PSC's Agency Fund and recorded in the District's System of Accounting and Reporting.

During fiscal year 2008, the PSC disbursed \$831,558.40 from the Agency Fund for reasonable and necessary expenses related to ongoing case activity. Refunds of unexpended assessment totaling \$164,299.48 were processed against the PSC Agency Fund during fiscal year 2008.

The PSC Office of the Agency Fiscal Officer and the Office of the Chief Financial Officer's Economic Development and Regulation Cluster Shared Service Center, provides accounting, budgeting, revenue management, and financial reporting for 17 agencies including PSC. We found that the PSC Office of the Agency Fiscal Officer and the Office of the Chief Financial Officer's Economic Development and Regulation Cluster Shared Service Center were not in compliance with the District OCFO's Financial Policies and Procedures regarding the timely deposit of the revenue receipts. Additionally, we found the PSC's Office of the Agency Fiscal Officer was not in compliance with the District's Quick Pay Act. One hundred and five (105) or 70% of the 149 FY 2008 expense vouchers and journal entries reviewed by the Auditor were not paid in a timely manner as required by the District's Quick Pay Act.

Acknowledgement

For their time, information, insight, and cooperation during the audit process, we want to thank the staff of the District of Columbia Public Service Commission and the Office of the Chief Financial Officer's Economic Development and Regulation Cluster (EDRC) Shared Service Center staff, including: Betty Ann Kane, Chairman, Public Service Commission; Gurmeet K. Scoggins, Agency Fiscal Officer for Public Service Commission/Office of the People's Counsel; and Jesse Clay, Jr., Deputy Executive Director for Administrative Matters Public Service Commission. We also want to thank Cyril Byron, Associate CFO EDRC; Bright Ahaiwe, EDRC Controller; Adolf Tengen, Financial Reporting Manager, EDRC Shared Service Center; and Roland McAllister, EDRC Revenue Manager.

Introduction

As required by law ¹, the Office of the District of Columbia Auditor conducted an audit of the fiscal year 2008 financial activities of the Public Service Commission's (PSC) Agency Fund.

Objectives, Scope, and Methodology

The objectives of the audit were to:

1. verify public utility revenue deposits to and disbursements from the PSC's Agency Fund for fiscal year 2008;
2. examine expenses charged against the PSC's Agency Fund to determine whether expense vouchers were supported by adequate documentation and whether the expenses were reasonable and necessary;
3. determine whether expense vouchers were properly reviewed and approved by appropriate PSC officials before payment; and
4. determine the amount of refunds to public utilities that were processed against the PSC's Agency Fund.

¹ D.C. Code, Section 34-912(a)(6). A copy of D.C. Code Section 34-912(a)(6) is included at Appendix II.

Audit Scope

The audit covered PSC's Agency Fund activities including receipts, disbursements, and refunds for fiscal year 2008.

The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In conducting the audit, the Auditor reviewed relevant D.C. Code provisions, public utility revenue deposits to and disbursements from the PSC's Agency Fund. The Auditor also reconciled the deposits to the District's System of Accounting and Reporting (SOAR) and the CFOSOLVE report. Both SOAR and CFOSOLVE reflect all financial activity processed against the PSC's Agency Fund during fiscal year 2008. The Auditor also reconciled deposits made to PSC's Agency Fund to confirm statements provided by Potomac Electric Power Company (PEPCO), Washington Gas, and Verizon.

Finally, the Auditor interviewed PSC's Agency Fiscal Officer (AFO) and Senior Accounting and Disbursing Analyst.

PSC Background

The District of Columbia Public Service Commission is an independent agency of the District government established by Congress in 1913 to regulate electric, natural gas, and telephone companies in the District by functioning as a quasi-judicial agency. Today, the mission of the PSC is to serve the public interest by ensuring that financially sound electric, natural gas, and telecommunications companies provide safe, reliable, and quality utility services at reasonable rates to District of Columbia residential, business, and government consumers. The PSC has rate-making and other regulatory authority over electric, natural gas, and telecommunications companies. The membership of the PSC is comprised of a chairman and two commissioners appointed by the Mayor with the advice and consent of the Council of the District of Columbia.

The PSC functions with two budgets: the agency's annual operating budget and the Miscellaneous Trust Fund budget (PSC's Agency Fund) for expenses related to specific utility cases. The annual operating budget covers the cost of staff

salaries, fringe benefits, rent, utilities, supplies, printing, equipment and maintenance, training, and professional publications. In carrying out its mission, the PSC may award contracts for legal, accounting, economic, engineering, court reporting, courier, and advertising services for its formal case proceedings.

Like other agencies, the PSC participates in the District's annual budgeting process. However, none of the monies expended by the PSC come from the District's general fund revenues. Instead, each public utility provider doing business in the District pays a pro rata share of the PSC's annual operating budget based on a reimbursement formula prescribed by law. The PSC assesses each public utility provider on an annual basis for reimbursement of PSC's operating expenses.

Utility companies must apply to the PSC for changes in rates or regulatory treatment. The PSC sets public utility rates and otherwise regulates utility services through a formal legal process in which the affected utility company, the Office of the People's Counsel (OPC), and other interested parties have an opportunity to present their positions. Each public utility is authorized to charge rates that will allow (not guarantee) the utility an opportunity to earn a fair rate of return (or profit) on its capital, in exchange for the right to conduct business in the District of Columbia.

D.C. Code, Section 34-912(a)(1) established the PSC's Agency Fund as a fiduciary fund in the District of Columbia Treasury. Section 34-912(a)(2) requires any public utility making application to the PSC for a rate or regulatory change to deposit sufficient dollars, as determined by the PSC, into the PSC's Agency Fund to cover PSC's and OPC's reasonable and necessary expenses pertaining to an application. Revenue deposits must be used exclusively for the payment of expenses arising from any investigation, valuation, re-valuation, or proceeding conducted by the PSC and all expenses of any litigation, including appeals arising from decisions, orders, or other actions of the PSC.

D.C. Code, Section 34-912(a)(7) requires the PSC to issue an annual report to the Mayor and Council of the District of Columbia. The annual report must detail the names of all hired contractors, their qualifications, a brief description of their work, the number of persons employed by each contractor, the hourly rate charged by each person employed by the contractor, and the estimated value of each contract. Each voucher for payment must include an affidavit signed by the Agency Fiscal Officer or his/her designee, stating that the voucher and supporting documentation were independently examined and the voucher was appropriate for payment in the stated amount.

D.C. Code, Section 34-912(a)(2), requires that any excess funds deposited by a public utility for a formal case that was closed shall be refunded to the utility.

PSC Agency Fund financial records must adequately reflect all refunds made to a utility and identify the formal case for which revenue deposits were refunded.

As of October 1, 2007, the beginning balance in the PSC's Agency Fund was \$2,725,924.14. Receipts of \$967,920, less expenditures of \$831,558.40, and \$164,299.48 in refunds to the public utility companies resulted in an Agency Fund balance of \$2,697,986.26. The ending balance is a reserve balance to be used for authorized expenses pertaining to ongoing case activity. Unexpended funds remaining after a formal case has been properly closed or terminated must be refunded to the appropriate public utility.

Findings

DEPOSITS TO AND EXPENDITURES AND REFUNDS FROM PUBLIC SERVICE COMMISSION AGENCY FUND FOR FISCAL YEAR 2008

D.C. Code, Section 34-912(a)(2) permits the PSC to assess utilities for regulatory and litigation expenses associated with retaining technical and legal consultants to perform work required by proceedings before the PSC. The utility assessments are deposited into the PSC Agency Fund. Additionally, D.C. Code, Section 34-912(a)(6) states that, the District of Columbia Auditor shall review the amounts deposited and disbursed by the PSC and the Office of the People's Counsel under this section and shall issue a report to the Mayor and the Council on each agency fund on a biennial basis.

Fiscal Year 2008 Public Utility Assessments Were Properly Deposited into PSC's Agency Fund

During fiscal year 2008, the PSC issued 10 Notice of Agency Fund Requirement Orders to Pepco, Verizon, and Washington Gas Light (WGL). Pepco, Verizon, and WGL responded by submitting 10 checks to the PSC totaling \$967,920. The Auditor confirmed through CFOSOLVE/SOAR, that the PSC received \$967,920 in utility assessments and deposited the funds into the PSC's Agency Fund as follows: \$562,920 from Pepco; \$350,000 from Verizon; and \$55,000 from WGL.

The Auditor reconciled the \$967,920 in utility assessments to District Treasury deposit tickets, SOAR financial reports, and utilities confirmation statements. The Auditor found that the PSC's fiscal year 2008 Trust Fund Reconciliation Report, which was submitted to the Mayor and Council of the District of Columbia, agreed with our finding that \$967,920 in utility assessments were deposited into the Agency Fund in FY 2008.

Table I presents fiscal year 2008 public utility assessment deposits made to the PSC's Agency Fund. (See Appendix I for a brief description of each formal case.)

TABLE I
Public Utility Assessments Deposited Into
The Public Service Commission's Agency Fund
During Fiscal Year 2008

Public Utility	Formal Case Number	Amount	Date PSC Received Check	Date of Deposit
<u>PEPCO</u>	712	\$ 50,000.00	12/12/2007	01/03/2008
	1050	\$ 70,000.00	12/28/2007	01/11/2008
	991	\$ 56,820.00	12/28/2007	01/11/2008
	1052E	\$ 5,000.00	01/04/2008	01/22/2008
	991	\$ 150,000.00	04/18/2008	04/29/2008
	991	\$ 231,100.00	07/24/2008	N/A
PEPCO TOTAL		\$ 562,920.00		
<u>VERIZON</u>	712	\$ 50,000.00	12/19/2007	01/11/2008
	1040	\$ 300,000.00	12/06/2007	01/11/2008
VERIZON TOTAL		\$ 350,000.00		
<u>WASHINGTON GAS</u>	712	\$ 50,000.00	12/19/2007	01/11/2008
	712	\$ 5,000.00	03/04/2008	04/10/2008
WASH. GAS TOTAL		\$ 55,000.00		
GRAND TOTAL DEPOSITS		<u>\$ 967,920.00</u>		

* N/A: Information Not Available

Source: SOAR/CFOSOLVE, Public Service Commission, and the Office of the D.C. Auditor

Fiscal Year 2008 Expenditures Processed Against PSC's Agency Fund Were Reasonable and Necessary

During fiscal year 2008, the PSC processed 149 expense vouchers and journal entries totaling \$831,558.40 against the PSC Agency Fund. The Auditor successfully reconciled the \$831,558.40 in expenditures to individual expense vouchers and SOAR.

Approximately ninety-nine percent, or \$823,081.46, of the total confirmed expenses paid by PSC during fiscal year 2008 were for professional services provided by attorneys, economists, engineer consultants, and certified public accountants. One percent or \$8,476.94, were for administrative costs including travel, copying, telecommunications, delivery, and transportation services. The PSC's Agency Fund expenditures were reasonable and necessary expenses as required by D.C. Code, Section 34-912. Further, each expense voucher was properly signed and approved for payment by an authorized PSC official.

Fiscal Year 2008 Refunds of Unexpended Assessments Processed Against PSC's Agency Fund

The Auditor found that during fiscal year 2008, the PSC processed 19 refund vouchers and journal entries totaling \$164,299.48 against the PSC Agency Fund. The Auditor successfully reconciled the \$164,299.48 in refunds of unexpended assessments to individual vouchers and the District's accounting system. These refunds included: \$150,000 to PEPCO, \$1,473.38 to Verizon, and \$12,826.10 to multi-company.

Table II presents fiscal year 2008 refunds of unexpended assessments to public utilities

TABLE II
Public Service Commission Agency Fund:
Fiscal Year 2008 Refunds to Public Utilities

VENDOR	REFUND AMOUNT
PEPCO	\$ 150,000.00
VERIZON	\$ 1,473.38
MULTI - COMPANY	\$ 12,826.10
TOTAL REFUNDS	\$ 164,299.48

Source: SOAR/CFOSOLVE Public Service Commission and the Office of the D.C.
Auditor

**INADEQUATE INTERNAL CONTROL OVER THE RECEIPT AND
DISBURSEMENT OF PUBLIC SERVICE COMMISSION AGENCY
FUND**

**The Economic Development and Regulation Cluster Shared Service Center
did not Deposit Fiscal Year 2008 Public Utility Assessment Checks in a
Timely Manner**

The Office of the District of Columbia Chief Financial Officer's Financial Policies and Procedures require that all financial transactions, including the receipt and disbursement of funds, must be recorded in a timely manner. Additionally, the policy requires that all cash receipts must be promptly recorded and controlled. The Office of the Chief Financial Officer's Economic Development and Regulation Cluster (EDRC) Shared Service Center which provides accounting, budgeting, revenue management, and financial reporting for 17 agencies including PSC, and PSC's Office of the Agency Fiscal Officer (OAFO) were not in compliance with the District OCFO's Financial Policies and Procedures regarding the timely deposit of the revenue receipts. Assessment checks received from utility companies were not deposited in a timely manner upon receipt. All ten (10), or 100%, of the checks for assessment revenue received from utility companies during FY 2008 were deposited to the District Treasury from ten (10) to thirty seven (37) days after collection. On average, it took approximately 20.8 days from the date the PSC's AFO received the checks to the date EDRC shared service center deposited the checks. Failure to promptly deposit funds when received places the agency funds at risk, in addition to the loss of interest that could have been earned if deposits were made in a timely manner.

FY 2008 payments were not Consistently Processed in a Timely Manner by PSC AFO

The District of Columbia's Quick Pay Act requires that agencies make payment as close as possible to, but no later than, the required payment date as detailed below:

1. If a contract specifies the date on which payment is due, the required payment date is the date specified in the contract.
2. If a contract does not specify the due date, then;
 - a) Meat and meat products - the seventh (7th) day after the date of delivery of the meat or meat product;
 - b) Perishable agricultural commodities – the tenth (10th) day after the date of delivery; or
 - c) All other goods and services – the thirtieth (30th) day after the receipt of a proper invoice by the designated payment officer.

The PSC and OAFO were not in compliance with the District's Quick Pay Act. One hundred and five (105) or 70% of the 149 FY 2008 expense vouchers reviewed by the Auditor were not paid in a timely manner as required by the District's Quick Pay Act. The 105 payments were processed one (1) to 139 days after the due date, with an average of payments being made 38.5 days after the required 30 day payment deadline. Additionally, nineteen (19) or 12.7% of the expense vouchers were missing the invoice received date stamp and we could not determine when the invoice was received to determine the number of past due days, if any.

Recommendations

1. The Economic Development and Regulation Cluster CFO and PSC Agency Fiscal Officer (AFO) should take steps to ensure that all assessments checks are deposited in a timely manner in compliance with the District OCFO's Financial Policy and Procedures.
2. The PSC and OAFO should take the necessary steps to comply with the District of Columbia's Quick Pay Act and make all payments no later than the required due date.
3. The PSC Agency Fiscal Officer and the Chairman of the PSC should establish internal control procedures to ensure the timely payment of invoices.
4. The OAFO should take steps to ensure that all invoices and expense vouchers are stamped with the date the invoice was received within the OAFO.

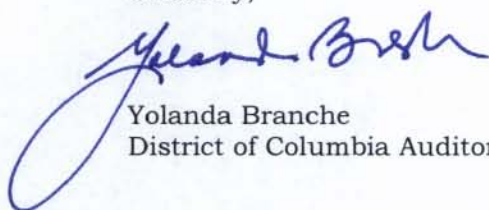
Conclusion

The Auditor found that during fiscal year 2008, \$967,920 in public utility assessments were properly deposited into the PSC's Agency Fund and recorded in the District's System of Accounting and Reporting (SOAR).

During fiscal year 2008, the PSC disbursed \$831,558.40 from the Agency Fund for reasonable and necessary expenses related to ongoing case activity. Refunds of unexpended assessment totaling \$164,299.48 were processed against the PSC Agency Fund during fiscal year 2008.

The PSC Office of the Agency Fiscal Officer and the Office of the Chief Financial Officer's Economic Development and Regulation Cluster Shared Service Center provides accounting, budgeting, revenue management, and financial reporting for 17 agencies including PSC. We found that the PSC Office of the Agency Fiscal Officer and the Office of the Chief Financial Officer's Economic Development and Regulation Cluster Shared Service Center were not in compliance with the District OCFO's Financial Policies and Procedures regarding the timely deposit of the revenue receipts. Additionally, we found the PSC's Office of the Agency Fiscal Officer was not in compliance with the District's Quick Pay Act. One hundred and five (105) or 70% of the 149 FY 2008 expense vouchers and journal entries reviewed by the Auditor were not paid in a timely manner as required by the District's Quick Pay Act.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Yolanda Branche', with a large, stylized loop at the bottom left.

Yolanda Branche
District of Columbia Auditor

Agency Comments

On September 16, 2011, the Office of the District of Columbia Auditor submitted this report in draft form for review and comment to the District of Columbia Chief Financial Officer and the Chairperson of the Public Service Commission.

Written comments were received from the Chairperson of the Public Service Commission (PSC) on September 30, 2011. Where appropriate, changes were made to the final report based upon the comments received. The written comments of PSC along with the Auditor's response to the comments are included, in their entirety, in this report.



Public Service Commission of the District of Columbia
1333 H Street, N.W., 2nd Floor, West Tower
Washington, D.C. 20005
(202) 626-5100
www.dcpssc.org

Betty Ann Kane
Chairman

September 29, 2011

Ms. Yolanda Branche
Office of the District of Columbia Auditor
717 14th Street, NW Suite 900
Washington DC 20005

Dear Ms. Branche:

We have reviewed the draft report of the D.C. Auditor entitled "Audit of the Public Service Commission Agency Fund from Fiscal Year (FY) 2006 to FY 2008" received at the agency on September 19, 2011.

We are pleased to know that your office has determined that the FY 2006 through FY 2008 expenditures and refunds processed against the PSC's Agency Fund were reasonable.

We are submitting with this letter several editorial corrections to indicate the responsible offices. Further, it is noted that there are four recommendations your office is making to improve the process. It is requested that recommendations #2 and #3 be combined to avoid repetition. Your office is making recommendation for two of the items that require actions by the Agency Fiscal Officer (AFO) to improve the processes. The AFO and the agency program staff will work together to comply with the Quick Payment Act.

Thank you for the opportunity to respond to the findings and recommendations in your draft report. Please do not hesitate to contact me on (202) 626-5125 or Cyril Byron, Jr. on (202) 442-9540 if you have any further questions or need additional information.

Sincerely,

Betty Ann Kane

Cyril Byron, Jr., Associate CFO

Attachments

cc: Phylicia Fauntleroy Bowman, Executive Director
Gurmeet Scoggins, Agency Fiscal Officer

Office of the District of Columbia Auditor
Audit of the Public Service Commission Agency Fund from
Fiscal Year (FY) 2006 to FY 2008
Audit Report Recommendations Summary

Recommendation	Agency Agrees Date Agency will Implement Recommendation	Agency Disagrees Alternative Recommendation
1. The Economic Development and Regulation Cluster CFO and the PSC's Agency Fiscal Officer (AFO) should take steps to ensure that all assessment checks are deposited in a timely manner in compliance with the District OCFO's financial policy and procedures.	EDRC OCFO and PSC Agency Fiscal Officer have already taken steps to ensure that all assessments checks are deposited in a timely manner. In fiscal year 2009, we instituted the use of a cashiering system (iNovah) where checks are processed and journal entries regarding the checks received are interfaced with SOAR. In addition, currently EDRC OCFO (at the Shared Services Center - SSC) is using a remote deposit equipment to remotely deposit the checks received at the SSC from PSC into the District's bank account (checks are also imaged and copies maintained). Using remote deposit assist in depositing checks in a timely manner. In FY 2012, we plan to make this technology (Remote Deposit) available to PSC's OCFO staff. This will result in a more timely deposit and recording process in compliance with the District OCFO's financial policy and procedures.	
2. The PSC and Office of the Agency Fiscal Officer (OAFO) shall take the necessary steps to comply with the District of Columbia's Quick Pay Act and make all payments no later than the required due date.	The PSC has written policies and procedures for processing invoices from the time they are received in the Office of the Commission Secretary to the time they are forwarded to the Office of the Agency Fiscal Officer (OAFO) for ultimate payment. In light of the finding, the PSC is reexamining its procedures in order to streamline the process. The OAFO reminds PSC program staff of delays in processing invoices and monitors the processing of invoices in a timely fashion at the Shared Services Center.	

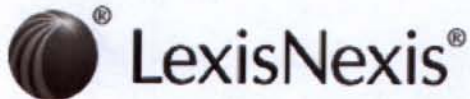
Recommendation	Agency Agrees Date Agency will Implement Recommendation	Agency Disagrees Alternative Recommendation
3. The PSC Agency Fiscal Officer and the Chairman of the PSC shall establish internal control procedures to ensure the timely payment of invoices.	The PSC believes this recommendation should be combined with item 2. The PSC's response is the same as in item 2 above.	
4. The Office of Agency Fiscal Officer (OAFO) shall take steps to ensure that all invoices are stamped with the date the invoice was received in the OAFO.	The OAFO has developed a system to ensure that all incoming invoices are stamped with the dates they are received.	

Appendix I

Description of Formal Cases in Which Utilities Made Deposits to the Public Service Commission's Agency Fund During Fiscal Year 2008

<u>FORMAL CASE NUMBER</u>	<u>DESCRIPTION OF CASE</u>
<u>PEPCO</u>	
712	In the Matter of the Investigation into the Public Service Commission's Rules of Practice and Procedure.
991	In the Matter of the Investigation into Explosions Occurring in or Around the Underground Distribution Systems of the Potomac Electric Power Company.
1050	In the Matter of the Investigation of Implementation of Interconnection Standards in the District of Columbia.
1052E	In the Matter of the Public Service Commission of the District of Columbia's Investigation of Pay Telephone Complaints.
<u>VERIZON WASHINGTON DC, INC.</u>	
712	In the Matter of the Investigation into the Public Service Commission's Rules of Practice and Procedure.
1040	In the Matter of the Investigation into Verizon, Washington, D.C. Inc's Universal Emergency Number 911 Services Rates in the District of Columbia.
<u>WASHINGTON GAS LIGHT COMPANY</u>	
712	In the Matter of the Investigation into the Public Service Commission's Rules of Practice and Procedure.
1052G	In the Matter of the Public Service Commission of the District of Columbia's Investigation of Pay Telephone Complaints.

Source: Report of the PSC of the District of Columbia for Fiscal Year 2008



1 of 1 DOCUMENT

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*** CURRENT THROUGH JULY 11, 2011 AND THROUGH D.C. ACT 19-97 ***

*** ANNOTATIONS CURRENT THROUGH JUNE 16, 2011 ***

DIVISION V. LOCAL BUSINESS AFFAIRS

TITLE 34. PUBLIC UTILITIES

SUBTITLE I. APPLICABLE PROVISIONS GENERALLY

CHAPTER 9. RATES, EXAMINATIONS, INVESTIGATIONS, AND HEARINGS

GO TO DISTRICT OF COLUMBIA CODE ARCHIVE DIRECTORY

D.C. Code § 34-912 (2011)

§ 34-912. Expenses of investigation to be borne by utility; deposit for costs; limitation of expenditures in hearings; reimbursement fee [Formerly § 43-612]

(a) (1) There are established within the District of Columbia treasury 2 fiduciary funds to be known as the "Public Service Commission Agency Fund" and the "Office of the People's Counsel Agency Fund". These funds shall be accounted for under procedures established pursuant to subchapter V of Chapter 3 of Title 47, or any other applicable law. The Public Service Commission Agency Fund shall be used exclusively by the Commission for the payment of its expenses and the Office of the People's Counsel Agency Fund shall be used exclusively by the Office for the payment of its expenses arising from any investigation, valuation, revaluation, or proceeding of any nature by the 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 other order or action of the Commission. Expenses shall be deemed to include, but not be limited to, the cost of independent contractors, such as attorneys. Funding for both funds shall be provided through a special franchise tax which shall be paid by each public utility being investigated, valued, revalued, or otherwise affected through a proceeding of the Commission, subject to the limitations enumerated in paragraph (3) of this subsection. Any deposits made through this special franchise tax to each agency fund by any public utility may be amortized over whatever period the Commission shall deem proper and shall be allowed for in the rates to be charged by each utility.

(2) When any such investigation, valuation, revaluation, or other proceeding of any nature is begun by the Commission or the Office of the People's Counsel, either the Commission or the Office of the People's Counsel shall, according to rules issued pursuant to paragraph (5) of this subsection, determine from time to time the reasonable and necessary expenditures required to fully carry out their respective statutory responsibilities with regard to such investigation, valuation, revaluation, or other proceeding. Once the Commission has determined its requirements, the Commission may call upon the utility in question from time to time for the prompt deposit of the special franchise tax deposit to the Public Service Commission Agency Fund determined by the Commission to be reasonable and necessary, subject to the limitations provided in paragraph (3) of this subsection. Once the Office of the People's Counsel has determined its requirements, the Office shall submit its determination for review by the Commission. Based on the record established by the Office's determination of its requirement for special franchise tax funds, the Commission shall review the Office's determination solely to determine whether it is consistent with the statutory authority of and rules issued by the Office, whether it is supported by findings, whether those findings are sustained

by substantial evidence in the record submitted to the Commission, and whether it is within the limitations enumerated in paragraph (3) of this subsection. The Commission shall complete its review within 10 days (excluding Saturdays, Sundays, and holidays) of receipt of the Office's determination. After completing its review, the Commission shall either call upon the utilities for the prompt deposit of the special franchise tax deposit to the Office of the People's Counsel Agency Fund or inform the Office in writing of any specific failures of the Office to meet the Commission's enumerated standard of review. Within 10 days (excluding Saturdays, Sundays, and holidays) of any resubmission by the Office, the Commission shall similarly act. If the Commission still notes a failure to meet its standard of review, the Office may appeal to the District of Columbia Court of Appeals under procedures enumerated in § 34-605. If the Commission fails to take action on any submission or resubmission by the Office within the required time frame, the submission or resubmission shall be deemed approved, and the Commission shall carry out its duty to obtain the requested deposit. All such sums shall be deposited in the District of Columbia Treasury. Those sums which are to be used by the Commission for its expenses shall be deposited in the Public Service Commission Agency Fund and those sums which are requested by the Commission on behalf of the Office shall be deposited in the Office of the People's Counsel Agency Fund, to be disbursed in the manner provided for by law for other expenditures of the government of the District of Columbia. The balance of any sums for a specific proceeding remaining in each fund after a 12-month period in which actual expenditures for that proceeding were 5% or less of the fund balance, shall be returned to the utility which made the deposit. The balance of any sums for a specific proceeding remaining after the final disposition of the proceeding or any litigation arising therefrom shall be returned promptly to the utility which made the deposit.

(3) In any valuation or rate case, neither the Commission nor the Office may individually seek special franchise tax deposits of more than one-quarter of one percent of the jurisdictional valuation of the public utility which is the subject of the proceeding. In all other investigations docketed as formal proceedings by the Commission, neither the Commission nor the Office shall individually seek special franchise tax deposits in any one year of more than one-twentieth of one percent of the jurisdictional valuation of each public utility which is the subject of one or more investigations during that year; provided, that the Office may seek special franchise tax deposits of not more than one-quarter of one percent of the jurisdictional valuation of the public utility which is the subject of the proceeding in any instance where the public utility alleges in a proceeding before a federal court or federal agency that the bankruptcy of a company with whom it has contracts may have adverse consequences to ratepayers of the District of Columbia. For the purposes of this paragraph, the Commission may determine the jurisdictional valuation of the public utility which is the subject of the formal proceeding whenever it deems necessary, in accordance with § 34-1106, based on the operations of the utility over whatever 12-month period it deems appropriate.

(4) Should any public utility fail to make any special franchise tax deposit ordered by the Commission pursuant to this section, the Commission shall certify this failure to the Mayor for collection pursuant to the provisions of subchapter XIII of Chapter 18 of Title 47.

(5) The Commission and the Office shall issue rules reasonable and necessary to provide procedures for the determination of their needs for funds from their respective agency funds. These rules shall include provisions for full disclosure of all special franchise tax deposits prior to the issuance of the deposit orders by the Commission on its own behalf and on behalf of the Office. Full disclosure shall include, but not be limited to, the name of each contractor to be hired, the qualifications of each contractor, a brief description of the work to be done by each contractor, the number of persons employed by each contractor and the hourly rate to be charged by each person thus employed, and the estimated value of each contract.

(6) The District of Columbia Auditor shall review the amounts deposited and disbursed by the Commission and the Office under this section and shall issue a report to the Mayor and the Council on each agency fund on a biennial basis.

(7) The Commission and the Office shall issue reports to the Mayor and the Council by February 15 of the succeeding fiscal year on deposits to and disbursements from their respective agency funds during each fiscal year. Copies of the reports shall be provided to each public utility.

(8) Neither the staff of the Commission nor any consultant hired by the Commission shall appear as a party to, advocate, or intervenor in any Commission proceeding. Individual staff members and consultants may appear on

behalf of the Commission as expert witnesses at the direction of the Commission to present testimony on selected issues after the Commission makes a finding of the issues to be decided in the proceeding and a determination that testimony in addition to that to be presented by the parties or intervenors is required by the Commission to develop a complete record. The staff members and consultants shall not advocate a position on the merits. Expert witnesses may be represented by counsel appointed by the Commission for this purpose. The General Counsel or the General Counsel's designee may, at the direction of the Commission and on behalf of the Commission, cross-examine any witness in any proceeding before the Commission.

(9) (A) Each public utility shall furnish the Commission a statement of all costs of participation to be incurred in each Commission and related court proceeding or in complying with the provisions of this title. The statement shall include, but is not limited to, the projected costs and expenses both direct and indirect, an allocation of all projected internal overhead, expenses, and salaries, the name of each contractor to be hired and the value of each contract. This statement shall be compiled and filed with the Commission, with a copy to the Office of People's Counsel, when filing a request for a change in rates or services with the Commission. Each public utility shall also file annually with the Commission, with a copy to the Office, a statement of costs for the previous fiscal year no later than 3 months after the completion of the fiscal year.

(B) The records to be kept and the information presented in the annual statement shall be by case, matter, investigation, or proceeding and shall describe all costs and expenses, external and internal, retained and employed, direct and indirect, including an allocation of all internal overhead, expenses, and employee salaries to each proceeding or matter. If an allocation of costs is made, the report shall fully explain the allocation method used. If any services were provided to the public utility by consultants or contractors, copies of the relevant contracts shall be provided with the annual statement. The Office of the People's Counsel may submit to the public utility a request for further information concerning the annual statement.

(b) (1) All amounts appropriated for the Public Service Commission and the Office of People's Counsel for each fiscal year, except for amounts appropriated for carrying out the Commission's duties under Chapter 36 [repealed] of Title 3, shall be repaid during such fiscal year by the natural gas suppliers, electricity suppliers and telecommunications services providers as a reimbursement fee.

(2) The amount of the reimbursement fee to be paid by each natural gas supplier, electricity supplier, and local exchange carrier, that is not the incumbent local exchange carrier as defined in this chapter, authorized to provide service in the District, and the formula through which such an amount shall be annually established, shall be determined by the Public Service Commission.

(3) The amount of the reimbursement fee to be paid by each public utility other than a local exchange carrier subject to paragraph (2) of this subsection shall be equal to the product of the amounts appropriated, less the amount to be reimbursed by the providers subject to paragraph (2) of this subsection, multiplied by the fraction, as determined by the Mayor, represented by the revenues of such public utility derived from utility operations in the District of Columbia that are regulated by the Public Service Commission during the immediately preceding fiscal year (or other 12-month period as the Mayor may designate), divided by the gross revenues of all public utilities from utility operations in the District of Columbia during such period. The fee shall be paid by the public utilities during such fiscal year to the Treasurer of the District of Columbia, at such time or times and in such manner as the Mayor by regulation may require. If the total amount paid or obligated by the Public Service Commission and the People's Counsel during such fiscal year pursuant to appropriations for such fiscal year is less than the amounts appropriated by more than 5%, the Mayor shall refund to or credit each public utility and electricity supplier with such part of the difference, rounded to the nearest dollar, as equals the product of the difference multiplied by the fraction, as set forth above, representing the gross revenue of the public utility or electricity supplier relative to the gross revenues of all public utilities, natural gas suppliers, and electricity suppliers.

(4) Notwithstanding the requirements of paragraph (2) of this subsection, in the case of a local exchange carrier that is not the incumbent local exchange carrier, the amount of the fee payable in the first year such service is provided shall be no less than \$ 25,000.

(5) The funding provisions of subsection (a) of this section shall not apply to local exchange carriers that are not the incumbent local exchange carrier; except, that such providers may be assessed for a proportionate share of the costs of the proceeding required under § 34-2002(k), up to a maximum amount of \$ 25,000 each.

(6) Repealed.

(7) (A) For any proceeding required to arbitrate disputes between carriers pursuant to the procedures established in this chapter, the Commission may assess, on a nondiscriminatory basis, each local exchange carrier who is a participant in any dispute, an amount equal to the actual cost to the Commission of conducting the arbitration, and the Commission shall present to the Council along with its annual budget request, an accounting of the expenditures of the PSC for each proceeding.

(B) For any proceeding, other than the proceeding called for in § 34-2002(k) and the proceedings referenced in subparagraph (A) of this paragraph, which the Commission may determine is necessary to carry out the purposes of this chapter, the Commission and, when appropriate to its mission, the Office of the People's Counsel, may assess, on a nondiscriminatory basis, the parties who are participants in the proceeding in an amount equal to the actual costs of the proceeding, and the Commission and the Office of the People's Counsel shall present to the Council along with each agency's annual budget request, an accounting of the expenditures of each agency for each proceeding.

(8) Five dollars of the license tax paid for each passenger vehicle for hire by common carriers under § 47-2829(d), shall be deemed the reimbursement fee payable by such common carriers under this subsection.

(9) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, may issue regulations to carry out this subsection, and may delegate all or any of the authority vested in the Mayor by this subsection to such agency or agencies, including the Public Service Commission and the Office of the People's Counsel, as the Mayor may deem appropriate.

(10) A public utility or service provider that fails to comply with a reimbursement order issued by the Commission pursuant to this paragraph shall be subject to the penalty provisions set forth in § 34-706.

(c) Nothing in this chapter shall be construed to prevent the Commission from using the Public Service Commission Agency Fund for the payment of any and all expenses that it incurs in the performance of its duties.

HISTORY: Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 42; Mar. 3, 1927, 44 Stat. 1351, ch. 304; Aug. 27, 1935, 49 Stat. 884, ch. 742, § 3; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21; 1973 Ed., § 43-412; Jan. 2, 1975, 88 Stat. 1976, Pub. L. 93-614, § 2; June 15, 1976, D.C. Law 1-70, title VI, § 606, 23 DCR 553; Sept. 13, 1980, D.C. Law 3-88, § 2, 27 DCR 3004; 1981 Ed., § 43-612; Aug. 10, 1984, D.C. Law 5-104, §§ 2, 3(b), 31 DCR 3037; Mar. 14, 1985, D.C. Law 5-153, § 3(e), 31 DCR 6440; July 17, 1985, D.C. Law 6-9, § 2(b), 32 DCR 2961; Aug. 1, 1996, D.C. Law 11-152, § 403, 43 DCR 2978; Sept. 9, 1996, D.C. Law 11-154, § 9, 43 DCR 3736; Apr. 20, 1999, D.C. Law 12-263, § 13(c)(1), 46 DCR 2111; May 9, 2000, D.C. Law 13-107, § 201(g), 47 DCR 1091; Mar. 16, 2005, D.C. Law 15-227, § 17(e), 51 DCR 10549; Apr. 12, 2005, D.C. Law 15-342, § 303(e), 52 DCR 2346; Oct. 20, 2005, D.C. Law 16-33, § 2002, 52 DCR 7503; Mar. 2, 2007, D.C. Law 16-191, §§ 5(j), 58(b), 53 DCR 6794; Sept. 24, 2010, D.C. Law 18-223, § 2222(a), 57 DCR 6242.

NOTES: SECTION REFERENCES. --This section is referenced in § 34-804, § 34-805, § 47-1317, and § 50-320.

EFFECT OF AMENDMENTS. --D.C. Law 13-107 substituted "public utility" for "company" in the first sentence of (a)(3); substituted "electricity suppliers" for "public utilities" in (b)(1); substituted "each electricity supplier and local" for "each local" in (b)(2); and rewrote the third sentence of (b)(3).

D.C. Law 15-227 inserted "natural gas suppliers" in (b)(1) and (b)(3); and inserted "natural gas supplier, and" in (b)(2).

D.C. Law 15-342 in (a)(2), deleted the former last sentence and added the present last two sentences; and rewrote (a)(7).

D.C. Law 16-33 added the proviso in the second sentence of (a)(3).

D.C. Law 16-191 amended the instructional language of D.C. Law 11-16, § 2002, which did not affect this section as codified; and made stylistic changes in (b).

The 2010 amendment by D.C. Law 18-223 deleted the former last sentence of (b)(5), which read: "Any such amount shall be credited against the reimbursement fee of any such LEC pursuant to paragraph (2) of this subsection, in subsequent years"; repealed (b)(6); and added (b)(10).

EMERGENCY LEGISLATION. --For temporary amendment of (a)(2) and (7), see § 303(e) of the Omnibus Utility Emergency Amendment Act of 2005 (D.C. Act 16-12, January 28, 2005, 52 DCR 2945).

For temporary amendment of (a)(3), see § 2002 of the Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary amendment of (b)(5), repeal of (b)(6), and addition of (b)(10), see § 2222(a) of the Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542), applicable as of October 1, 2010.

LEGISLATIVE HISTORY OF LAW 1-70. --Law 1-70 was introduced in Council and assigned Bill No. 1-229. The Bill was adopted on first and second readings and reconsiderations of final reading on Feb. 20, 1976, Mar. 11, 1976 and Apr. 6, 1976, respectively. Signed by the Mayor on Apr. 20, 1976, it was assigned Act No. 1-106 and transmitted to both Houses of Congress for its review.

LEGISLATIVE HISTORY OF LAW 3-88. --Law 3-88 was introduced in Council and assigned Bill No. 3-274. The Bill was adopted on first and second readings on June 3, 1980 and June 17, 1980, respectively. Signed by the Mayor on July 2, 1980, it was assigned Act No. 3-206 and transmitted to both Houses of Congress for its review.

LEGISLATIVE HISTORY OF LAW 5-104. --Law 5-104 was introduced in Council and assigned Bill No. 5-411. The Bill was adopted on first and second readings on Apr. 30, 1984, and May 15, 1984, respectively. Signed by the Mayor on June 6, 1984, it was assigned Act No. 5-145 and transmitted to both Houses of Congress for its review.

LEGISLATIVE HISTORY OF LAW 5-153. --See note to § 34-706.

LEGISLATIVE HISTORY OF LAW 6-9. --See note to § 34-909.

LEGISLATIVE HISTORY OF LAW 11-152. --Law 11-152, the "Fiscal Year 1996 Budget Support Act of 1996," was introduced in Council and assigned Bill No. 11-655. The Bill was adopted on first and second readings on Apr. 2, 1996, and May 7, 1996, respectively. Signed by the Mayor on May 28, 1996, it was assigned Act No. 11-279 and transmitted to both Houses of Congress for its review. D. C. Law 11-152 became effective on Aug. 1, 1996.

LEGISLATIVE HISTORY OF LAW 11-154. --Law 11-154, the "Telecommunications Competition Act of 1996," was introduced in Council and assigned Bill No. 11-258. The Bill was adopted on first and second readings on May 21, 1996, and June 4, 1996, respectively. Signed by the Mayor on June 25, 1996, it was assigned Act No. 11-300 and transmitted to Congress for its review. D.C. Law 11-154 became effective Sept. 9, 1996.

LEGISLATIVE HISTORY OF LAW 12-263. --Law 12-263, the "Residential Real Property Seller Disclosure, Funeral Services Date Change, and Public Service Commission Independent Procurement Authority Act of 1998," was introduced in Council and assigned Bill No. 12-648. The Bill was adopted on first and second readings on Oct. 6, 1998, and Nov. 10, 1998, respectively. Vetoed by the Mayor on Dec. 29, 1998, Council overrode the veto on Jan. 5, 1999, and the Bill was assigned Act No. 12-625 and transmitted to both Houses of Congress for its review. D.C. Law 12-263 became effective on Apr. 20, 1999.

LEGISLATIVE HISTORY OF LAW 13-107. --See note to § 34-908.

LEGISLATIVE HISTORY OF LAW 15-227. --Law 15-227, the "Retail Natural Gas Supplier Licensing and Consumer Protection Act of 2004," was introduced in Council and assigned Bill No. 15-679. The Bill was adopted on first and second readings on July 13, 2004, and Oct. 5, 2004, respectively. Signed by the Mayor on Nov. 1, 2004, it was assigned Act No. 15-567 and transmitted to Congress for its review. D.C. Law 15-227 became effective on Mar. 16, 2005.

LEGISLATIVE HISTORY OF LAW 15-342. --See note to § 34-909.

LEGISLATIVE HISTORY OF LAW 16-33. --D.C. Law 16-33, the "Fiscal Year 2006 Budget Support Act of 2005," was introduced in Council and assigned Bill No. 16-200. The Bill was adopted on first and second readings on May 10, 2005, and July 6, 2005, respectively. Signed by the Mayor on July 26, 2005, it was assigned Act No. 16-166 and transmitted to Congress for its review. D.C. Law 16-33 became effective on Oct. 20, 2005.

LEGISLATIVE HISTORY OF LAW 16-191. --Law 16-191, the "Technical Amendments Act of 2006," was introduced in Council and assigned Bill No. 16-760. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 31, 2006, it was assigned Act No. 16-475 and transmitted to Congress for its review. D.C. Law 16-191 became effective on Mar. 2, 2007.

LEGISLATIVE HISTORY OF LAW 18-223. --Law 18-223, the "Fiscal Year 2011 Budget Support Act of 2010," was introduced in Council and assigned Bill No. 18-731. The Bill was adopted on first and second readings on May 26, 2010, and June 15, 2010, respectively. Signed by the Mayor on July 2, 2010, it was assigned Act No. 18-462 and transmitted to Congress for its review. D.C. Law 18-223 became effective on Sept. 24, 2010.

EDITOR'S NOTES. --Section 9001 of D.C. Law 18-223 provided that, except as otherwise provided, this act shall apply as of October 1, 2010.

ANALYSIS Construction Attorney fees Expenses Fees. Final judgment Reasonableness of expenses

CONSTRUCTION.

Provision of *D.C. Code § 34-912(a)* allowing the assessment against a public utility in favor of the Office of the People's Counsel (OPC) for certain costs and expenses did not allow the OPC to seek assessments for reimbursement for legal fees incurred for private outside attorneys. The term "expenses", as used in the statute could not be interpreted to permit the OPC to recover the costs of hired attorneys because, under such a reading, all of the OPC's expenses might be charged directly to the utilities and the appropriations authorization in the statute would no longer be needed. *Office of People's Counsel v. Public Service Com., App. D.C., 477 A.2d 1079, 1984 D.C. App. LEXIS 384 (1984).*

In construing a statute, the reviewing court should resolve any ambiguities in favor of administrative construction, but only if such construction enhances the general purposes and policies underlying the statute; where the Commission construed the terms "valuation" and "rate case" as used in former D.C. Code § 43-612(a) in a manner contrary to the plain meaning of the statute and Congress' intention, reversal was warranted. *Washington Gas Light Co. v. Public Service Com., App. D.C., 455 A.2d 384, 1982 D.C. App. LEXIS 454 (1982).*

The term "existing valuation" as employed in former D.C. Code § 43-612(a) meant the value or number arrived at in a valuation proceeding of property belonging to the utility, wherever located, that was actually used and useful for the convenience of the public of the District of Columbia; "valuation" referred to a jurisdictional, not a system-wide valuation. *Washington Gas Light Co. v. Public Service Com., App. D.C., 455 A.2d 384, 1982 D.C. App. LEXIS 454 (1982).*

The term "rate case" as employed in former D.C. Code § 43-612 referred to any proceeding, including a formal hearing, that resulted in a Commission order fixing the rates of a utility; there was no support in the statute or in common usage that the term "rate case" was so broad as to encompass adjudicatory or rulemaking proceedings dealing only with ratemaking methodology or other proceedings which had some nexus to the setting of utility rates. *Washington Gas Light Co. v. Public Service Com., App. D.C., 455 A.2d 384, 1982 D.C. App. LEXIS 454 (1982).*

ATTORNEY FEES.

Commission was correct in ruling that it could assess independent attorneys' fees and other reasonable Office of People's Counsel expenses incurred in connection with a particular commission investigation or proceeding, unless they were already covered by an appropriation; assessable expenses were not otherwise confined to specific categories of items. *Washington Gas Light Co. v. Public Service Com., App. D.C., 477 A.2d 1093, 1982 D.C. App. LEXIS 452 (1982).*

EXPENSES.

Commission properly ruled that it, and not the Office of People's Counsel (OPC), had the sole statutory authority to order regulated utilities to make payments for the purpose of covering OPC expenses; in the course of making such assessments, the commission was required to review the reasonableness of OPC's requests for expense funds. *Washington Gas Light Co. v. Public Service Com.*, App. D.C., 477 A.2d 1093, 1982 D.C. App. LEXIS 452 (1982).

Commission properly ruled that reimbursement to the Office of People's Counsel (OPC) was limited to expenses incurred due to OPC's involvement in proceedings and investigations of the commission; accordingly, independent OPC investigations that had not ripened into action before the commission were to be funded out of OPC's budget appropriations. *Washington Gas Light Co. v. Public Service Com.*, App. D.C., 477 A.2d 1093, 1982 D.C. App. LEXIS 452 (1982).

Commission properly ruled that items potentially reimbursable to the Office of People's Counsel included the fees of private attorneys and "extraordinary incremental expenses," but not basic operating expenses. The fact that certain items were similar to other items that were funded by appropriation did not preclude the former from being assessable. *Washington Gas Light Co. v. Public Service Com.*, App. D.C., 477 A.2d 1093, 1982 D.C. App. LEXIS 452 (1982).

FEES.

D.C. Mun. Regs. tit. 15, § 1301.1, a revenue-based formula for reimbursement that assessed unregulated suppliers for their portion of the Public Service Commission's budget in the same manner as regulated utilities under *D.C. Code § 34-912*, was not arbitrary or capricious; there was reason not to use a cost-based distinction, and *D.C. Code § 34-912(b)* itself provided a key to a reasonable formula in the manner in which it computed refunds of excess reimbursements, based on gross revenues. *Wash. Gas Energy Servs., Petitioner v. D.C. PSC*, 924 A.2d 296, 2007 D.C. App. LEXIS 236 (2007).

D.C. Code § 34-912(b)(2) gives the District of Columbia Public Service Commission (PSC) the right to promulgate a formula (a rule) by which electricity suppliers will be assessed, but there is nothing in *D.C. Code § 34-912* that explicitly allows the PSC to engage in retroactive rulemaking; indeed, the statute suggests the contrary as it provides that all amounts appropriated for each fiscal year shall be repaid during such fiscal year, under *D.C. Code § 34-912(b)(1)*. *Wash. Gas Energy Servs. v. District of Columbia PSC*, 893 A.2d 981, 2006 D.C. App. LEXIS 94 (2006).

When the District of Columbia Public Service Commission (PSC) assessed two electricity suppliers for a portion of the Commission's budget for two fiscal years, under *§ 34-912(b)(1)*, the assessments were invalid because the formula used to arrive at it was invalid; while the PSC gave actual notice of this formula to the suppliers, it did not give notice as required by *§ 2-505(a)* to other affected parties, such as telecommunications providers, who were affected because any amount not collected from the suppliers had to be collected from other parties, such as the providers. *Wash. Gas Energy Servs. v. District of Columbia PSC*, 893 A.2d 981, 2006 D.C. App. LEXIS 94 (2006).

FINAL JUDGMENT.

Where Office of People's Counsel (OPC) filed a motion requesting the Public Service Commission (PSC) to convene a status conference concerning proposed regulations that would permit the OPC to assess outside counsel fees from public utilities and PSC denied that motion, the case fell within an exception to the final judgment rule that allows a court to review non-final agency action when such action is clearly beyond the agency's jurisdiction. *Office of People's Counsel v. Public Service Com.*, App. D.C., 477 A.2d 1079, 1984 D.C. App. LEXIS 384 (1984).

REASONABLENESS OF EXPENSES.

In consolidated appeals of assessment orders of the Public Service Commission (Commission), which directed utilities to pay expenses of the Office of People's Counsel (OPC), the Commission neglected its duty to properly determine the reasonableness of expenses at issue, where OPC hired lawyers to perform duplicative work, the submitted contracts between OPC and attorneys were boilerplate, and did not adequately describe services performed, and assessments appeared to include basic investigative and operating expenses outside the scope of Commission proceedings. *Potomac Electric Power Co. v. Public Service Com.*, App. D.C., 455 A.2d 374, 1982 D.C. App. LEXIS 453 (1982).