



**COUNCIL OF THE DISTRICT OF COLUMBIA**

THE JOHN A. WILSON BUILDING  
1350 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, D.C. 20004

**MEMORANDUM**

**TO:** Chairman Phil Mendelson  
**FROM:** Councilmembers Mary M. Cheh, Charles Allen, Elissa Silverman, Janeese Lewis George, and Brooke Pinto  
**DATE:** June 23, 2022  
**SUBJECT:** Requests for the June 28, 2022 Legislative Meeting

---

We request that the following emergency measures be agendized for the June 28, 2022 Legislative Meeting:

- Public Service Commission Member Qualifications Declaration Resolution of 2022
- Public Service Commission Member Qualifications Emergency Amendment Act of 2022
- Public Service Commission Member Qualifications Temporary Amendment Act of 2022

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.

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.

On December 3, 2021, former-PSC Chairman Willie Phillips was sworn in as a commissioner of the Federal Energy Regulatory Commission, creating a vacancy at the Public Service Commission. That vacancy, which the Mayor has yet to submit a nominee for, will need to be filled with a first-time commissioner. Over the past several years, the Council has raised concerns regarding the qualifications of certain Mayoral nominees to serve on the PSC, including questions about what expertise is most necessary for potential Commissioners, given the scant guidance in the statute. Thus, given the vacancy created by Chairman Phillips resignation, on October 4, 2021, the Council approved the Public Service Commission

Member Qualifications Emergency Amendment Act of 2021, effective November 1, 2021 (D.C. Act 24-203; 68 DCR 11648) (“emergency act”), which set requirements for service on the Commission. Specifically, that legislation required that the next 2 seats on the Commission be filled an individual with experience in electric grid modernization and renewable energy integration or technology and an individual with experience in consumer protection. On November 2, 2021, the Council approved the Public Service Commission Member Qualifications Temporary Amendment Act of 2021, effective February 18, 2022 (D.C. Law 24-64; 68 DCR 13507) (“temporary act”), which mirrored the emergency act.

On October 1, 2022, the temporary act will expire, and with it, the requirement that nominees to the Commission meet certain experiential qualifications. Thus, it is necessary that emergency legislation be moved to clarify for the Mayor and the Council the necessary qualifications for the next nominee to the PSC, given conflicting interpretations of the existing language, and to ensure there is no gap in the law after the current temporary act expires. This legislation is being moved in June, 3 months before the temporary act expires on October 1, because should the legislation be considered after the Council returns from recess in September, it might be not effective until after the temporary act’s expiration date, creating a gap in the law.

This legislation, however, differs somewhat from the emergency act and the temporary act. As laid out above, it is critical that the Commission include at least one member with prior experience and expertise in electric grid modernization and renewable energy integration or technology; this emergency legislation would make clear that the next person nominated by the Mayor to the serve on the Commission for the first time is to have this experience. However, unlike the prior emergency act, this legislation does not set qualifications for a second seat on the Commission. That is because, on June 7, 2022, the Council approved the Public Service Commission Emile Thompson Confirmation Resolution of 2022, effective June 7, 2022 (Res. 24-496; 69 DCR 7073) (“confirmation resolution”), which renominated Commissioner Emile Thompson to serve a second term and designated him as Chairperson of the Public Service Commission; thus, there is only one vacancy remaining on the Commission. Narrowing this legislation to apply only to current vacancies on the Commission will allow the Council to comprehensively consider, via permanent legislation currently before the Committee on Business and Economic Development, the appropriate qualifications for all Commissioners moving forward—which the Council will have ample time to consider, as the two current Commissioners’ terms will not expire until summer 2025 at the earliest.

Of note, the confirmation resolution approved by the Council at its June 7, 2022, legislative meeting designated Chairperson Thompson as the member with expertise in electric grid modernization and renewable energy integration or technology. At that meeting, however, several Councilmembers voted present on the confirmation resolution, expressing concerns that the resolution designated him as the member of the Commission with that

experience. These Councilmembers read the experiential requirements in the emergency act and temporary act to not apply to renominations of sitting commissioners, like Chairperson Thompson; nor, to be clear, did these members believe the experiential requirements in the emergency or temporary acts applied to designation by the Mayor that a sitting commissioner serve as Chairperson of the PSC. And some members noted that, in the version of the confirmation resolution introduced by the Chairman on behalf of the Mayor, the nominee was not designated as filling the electric grid modernization and renewable energy integration or technology seat, raising questions as to whether the Mayor intended to nominate him to fill that role. Given the importance of having a Commissioner with expertise in electric grid modernization and renewable energy integration or technology, this legislation would make clear the next new member appointed to the Commission after July 1, 2022 have that experience. 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](mailto:mporcello@dccouncil.us) if you have any questions.