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2 Councilmember Charles Allen

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Councilmember Mary. M Cheh

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6 Councilmember Janeese Lewis George

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Councilmember Elissa Silverman

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10 Councilmember Brooke Pinto

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13 A PROPOSED RESOLUTION

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17 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA  
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22 To declare the existence of an emergency with respect to the need to amend An Act Making  
23 appropriations to provide for the expenses of the government of the District of Columbia  
24 for the fiscal year ending June thirtieth, nineteen hundred and fourteen and for other  
25 purposes to set qualifications for the first member of the Public Service Commission  
26 nominated after July 1, 2022.

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28 RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this  
29 resolution may be cited as the “Public Service Commission Member Qualifications Emergency  
30 Declaration Resolution of 2022”.

31 Sec. 2. (a) The Public Service Commission (“PSC”) was established by Act of Congress  
32 in 1913, then called the Public Utilities Commission. The PSC is an independent body  
33 responsible for the oversight and regulation of electric, natural gas, and certain telephone  
34 companies serving District customers. In the years since the PSC was established, however, the  
35 role of the Commission—much like other similar bodies in jurisdictions across the nation—has  
36 expanded significantly.

37 (b) With the advent of large-and-small scale solar systems, and the widespread growth of  
38 wind and other renewable energy resources, traditional public electric utilities no longer serve as  
39 the sole energy providers for retail consumers; in fact, the diversity of this industry will only  
40 continue to grow as this technology becomes more affordable and accessible to homeowners and  
41 investors. As energy resources, these entities also fall under the jurisdiction of the PSC, creating  
42 competition in a field that, for much of the last hundred years, had functionally operated under a  
43 monopoly. Thus, the PSC’s role has shifted from overseeing a handful of large, traditional  
44 utilities to, in many ways, overseeing the infancy of a rapidly developing competitive market,  
45 including developing rules for entry, interconnection, pricing, and fair competition. The PSC’s  
46 approach to overseeing and regulating this marketplace is quite literally shaping the grid of the  
47 future. It is essential, then, that Commissioners have a working knowledge of the electric grid,  
48 distributed energy resources, and, more broadly, renewable energy technology.

49 (c) Furthermore, under the Sustainable DC Plan, the District has set a goal of reducing  
50 greenhouse gas emissions by 50% by 2032, and reaching carbon neutrality by 2050. Under the  
51 CleanEnergy DC Amendment Act of 2018 and related legislation, the PSC is tasked with several  
52 mandates and provided extensive authority to advance policies and programs that will help the  
53 District meet these climate and resiliency goals. One of the District’s primary tools in reaching  
54 these goals is the Renewable Portfolio Standard (“RPS”), which requires that a percentage of  
55 every unit of electricity supplied to the District come from wind, solar, or another renewable  
56 energy source, and includes a local solar carve-out. The PSC plays an essential role in overseeing  
57 this work, and has the authority to expand on the existing RPS program. Truly, as the primary  
58 entity responsible for oversight of our public electric and natural gas utilities—energy sources  
59 whose products have a direct impact on our carbon footprint—PSC can and should be a leader on

60 reaching and exceeding the District’s climate goals. The most recent report from the  
61 Intergovernmental Panel on Climate Change says that global warming of up to 2 degrees Celsius  
62 is likely without “deep reduction in CO<sub>2</sub> and other greenhouse gas emissions.” As the PSC works  
63 with the Council and the Mayor to aggressively expand clean energy use in the District, it is  
64 essential that the Commission has a deep understanding and appreciation for the direct  
65 relationship between energy policy and the District’s climate goals.

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

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

83 October 4, 2021, the Council approved the Public Service Commission Member Qualifications  
84 Emergency Amendment Act of 2021, effective November 1, 2021 (D.C. Act 24-203; 68 DCR  
85 11648) (“emergency act”), which set requirements for service on the Commission. Specifically,  
86 that legislation required that the next 2 seats on the Commission be filled an individual with  
87 experience in electric grid modernization and renewable energy integration or technology and an  
88 individual with experience in consumer protection. On November 2, 2021, the Council approved  
89 the Public Service Commission Member Qualifications Temporary Amendment Act of 2021,  
90 effective February 18, 2022 (D.C. Law 24-64; 68 DCR 13507) (“temporary act”), which  
91 mirrored the emergency act.

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

100 (h) This legislation, however, differs somewhat from the emergency act and the  
101 temporary act. As laid out above, it is critical that the Commission include at least one member  
102 with prior experience and expertise in electric grid modernization and renewable energy  
103 integration or technology; this emergency legislation would make clear that the next person  
104 nominated by the Mayor to the serve on the Commission for the first time is to have this  
105 experience. However, unlike the prior emergency act, this legislation does not set qualifications

106 for a second seat on the Commission. That is because, on June 7, 2022, the Council approved the  
107 Public Service Commission Emile Thompson Confirmation Resolution of 2022, effective June 7,  
108 2022 (Res. 24-496; 69 DCR 7073) (“confirmation resolution”), which renominated  
109 Commissioner Emile Thompson to serve a second term and designated him as Chairperson of the  
110 Public Service Commission; thus, there is only one vacancy remaining on the Commission.  
111 Narrowing this legislation to apply only to current vacancies on the Commission will allow the  
112 Council to comprehensively consider, via permanent legislation currently before the Committee  
113 on Business and Economic Development, the appropriate qualifications for all Commissioners  
114 moving forward—which the Council will have ample time to consider, as the two current  
115 Commissioners’ terms will not expire until summer 2025 at the earliest.

116 (i) Of note, the confirmation resolution approved by the Council at its June 7, 2022,  
117 legislative meeting designated Chairperson Thompson as the member with expertise in electric  
118 grid modernization and renewable energy integration or technology. At that meeting, however,  
119 several Councilmembers voted present on the confirmation resolution, expressing concerns that  
120 the resolution designated him as the member of the Commission with that experience. These  
121 Councilmembers read the experiential requirements in the emergency act and temporary act to  
122 not apply to *renominations* of sitting commissioners, like Chairperson Thompson; nor, to be  
123 clear, did these members believe the experiential requirements in the emergency or temporary  
124 acts applied to designation by the Mayor that a sitting commissioner serve as Chairperson of the  
125 PSC. And some members noted that, in the version of the confirmation resolution introduced by  
126 the Chairman on behalf of the Mayor, the nominee was not designated as filling the electric grid  
127 modernization and renewable energy integration or technology seat, raising questions as to  
128 whether the Mayor intended to nominate him to fill that role. Given the importance of having a

129 Commissioner with expertise in electric grid modernization and renewable energy integration or  
130 technology, this legislation would make clear the next new member appointed to the  
131 Commission after July 1, 2022 have that experience. Importantly, this legislation will help ensure  
132 that membership on the Commission reflects the evolving purview of the PSC, and that the  
133 Commission is composed of subject matter experts with a diversity of relevant experience.

134           Sec. 3. The Council of the District of Columbia determines that the circumstances  
135 enumerated in section 2 constitute emergency circumstances making it necessary that the Public  
136 Service Commission Member Qualifications Emergency Amendment Act of 2022 be adopted  
137 after a single reading.

138           Sec. 4. This resolution shall take effect immediately.