REPORT OF THE OFFICE OF PEOPLE’S COUNSEL
TO THE MARYLAND GENERAL ASSEMBLY
REGARDING OPC’S INDEPENDENT SALARY PLAN AUTHORITY

AUGUST 1, 2007
I. EXECUTIVE SUMMARY

In response to the 2007 Joint Chairmen’s Report, the Office of People’s Counsel submits this Report concerning the independent salary authority of the People’s Counsel, which was granted by the General Assembly in 2000. The Report reviews the circumstances leading to the enactment of House Bill 887 (Section 2, ch. 647, Acts 2000), the requirements of the law, and the actions taken by the People’s Counsel to comply with those requirements. Subsequent to the enactment of the legislation, the People’s Counsel submitted an initial proposed compensation plan for the covered positions to the Secretary of the Department of Budget & Management. After receipt of approval by the Secretary, the Office of People’s Counsel submitted the necessary personnel forms to DBM to carry out the plan. A review of personnel files shows that in subsequent years, and in FY2006 in particular, the Office complied with the requirements of both PUC Article, §2-203, pertaining to the independent salary authority, and the requirements of the State Personnel and Pensions Article, as they relate to all other positions that are not subject to the independent salary authority of the People’s Counsel. This review made clear that the problem with the FY 2006 over expenditure was a result of a failure to ensure that the fiscal impact of the personnel actions could be accommodated within the budget appropriation.

The Report also explains the steps taken to address the FY 2006 over expenditure and to avoid a re-occurrence of such over expenditures. As of the date of this Report, the over expenditure has been addressed fully.

Finally, the Report provides a justification for continuing the independent salary
authority of the People’s Counsel. The independent salary authority provides the
People’s Counsel with the flexibility to recruit and retain staff with the necessary
expertise to address critical issues affecting residential consumers in regulatory and
legislative proceedings. The importance of this statutory function has been highlighted
by the events of these past two years relating to energy prices and the impact of the
structure of the federal and state electricity markets. Ultimately, Maryland’s residential
customers would be adversely affected by limiting the ability of the People’s Counsel to
recruit and retain attorneys with the necessary expertise to address these highly
specialized issues.

II. LEGISLATIVE HISTORY: INDEPENDENT SALARY AUTHORITY

The Maryland Office of People’s Counsel (OPC) is an independent State agency
charged by law with protecting the interests of residential consumers of electric, gas,
telecommunications, water and some transportation services. See Public Utility
Companies Article, § 2-201 et seq. The State budget, approved by the Maryland General
Assembly, includes funds for the operation of OPC. The State is fully reimbursed for all
of OPC’s (and the Public Service Commission’s) expenses, including all personnel
expenses, by means of annual assessments paid by Maryland public utility companies and
energy suppliers. See PUC Article, § 2-110(b).

People’s Counsel is the statutory head of the agency, and is responsible for the
administration and operation of the Office. See PUC Article, §2-204(b). Until July 1,
2006, the People’s Counsel was appointed by the Governor, but now is appointed by the
Attorney General, with the advice and consent of the Senate. See PUC Article, §2-202. The People’s Counsel is in the Executive Service.

OPC is a small state agency, with less than 20 employees. The positions include the People’s Counsel, Deputy People’s Counsel, 7 Assistant People’s Counsels, an Administrator, and several administrative positions. Class Descriptions for the Deputy People’s Counsel and Assistant People’s Counsel (APC) positions were approved in December, 1996 as part of the 1996 Personnel Reform.¹ These positions were recognized as special appointments. In 2000, the General Assembly enacted legislation granting the People’s Counsel the authority to determine the compensation of certain OPC personnel, including:

1. The Deputy People’s Counsel;
2. Attorneys that are in the management service or special appointments; and
3. All positions in the management, professional, and technical classifications unique to the Office of People’s Counsel.

PUC Article, §2-203(c) (Section 2, ch. 647, Acts 2000). The legislation also applied to certain personnel within the Public Service Commission. PUC Article, §2-108I(e) and (f); (Section 2, ch. 647, Acts 2000). Compensation is to be determined “if possible, in accordance with the State Plan.” Id. The effective date of the legislation was July 1, 2000. This law remains in effect.

The General Assembly gave this authority to the People’s Counsel, and to the Public Service Commission, because of the documented difficulty in attracting and

keeping employees with the unique skills to perform the work of these agencies, given the competition from the energy and telecommunication industries, private law firms representing utilities and large industrial and commercial customers, and other government agencies.

Until the establishment of the independent salary authority of the People’s Counsel, all of the OPC personnel were subject to the grade and salary structure established for all other state employees. The new law provided that in order to implement any changes to OPC’s salary plan, at least 45 days before the effective date of the change, the People’s Counsel must submit to DBM “each change to salary plans that involves increases or decreases in salary ranges other than those associated with routine reclassifications and promotions or general salary increases approved by the General Assembly.” See PUC Article, §2-203(d). Specifically, the reportable changes include “creation or abolition of classes, regrading the classes from one established range to another, changes in salary guidelines to administer the pay schedules, or creation of new pay schedules or ranges.” Id. The Secretary of DBM is required to review the proposed changes, and at least 15 days before the effective date, advise the People’s Counsel “whether the changes would have an adverse effect on comparable State jobs.” PUC Article, §2-203(d) (3).

In the case of OPC, the independent salary plan authority applied to the following positions in FY2000: (1) Deputy People’s Counsel; (2) 7 Assistant People’s Counsels (Assistant People’s Counsels I, II and III); and (3) one Consumer Liaison position. Subsequent to the enactment of this legislation the People’s Counsel submitted a
proposed Compensation Plan for the Office of People’s Counsel, with supporting documentation, to the Secretary of the Department of Budget & Management (DBM) on November 3, 2000. That Compensation Plan proposed that the People’s Counsel be allowed to promote any of the eight incumbent attorneys up to a new Assistant People’s Counsel IV position and to “reclassify” the Consumer Liaison position to a grade up to two grades higher than the incumbent employee’s existing position, as long as special funds were available. The 7 APC positions qualified as special appointments. See PUC Article, §2-203(b) (2). In addition, the People’s Counsel proposed that the Consumer Liaison position be considered a position “unique to the Office of People’s Counsel,” and provided support in the proposed Plan. In addition to the change in salary range, People’s Counsel proposed that he be given the right to either (1) reward an employee with a one-time bonus or (2) increase the salary of an employee in any of these 9 positions “beyond the normal increase but within the position’s grade range.” Id.

In support of the salary plan proposal, the People’s Counsel provided data showing that the Assistant People’s Counsels I, II and II were significantly underpaid in comparison with government attorneys in Harford, Howard, St. Mary’s, Washington, Baltimore, Calvert, Carroll and Frederick Counties, Baltimore City, City of Frederick, consumer advocate offices in Pennsylvania and the District of Columbia, and in the federal government. In addition, the proposed grade and salary changes for incumbent OPC attorneys were consistent with grade and salary changes that took effect on July 1, 2000 for attorneys within the Office of Attorney General, while, the former People’s Counsel observed, the duties and responsibilities of APC positions are greater “because
of the extremely complicated and sophisticated nature of the work” and the need to assume greater responsibility and independence at a faster pace. On November 27, 2000, the Secretary for DBM confirmed that the proposed Compensation Plan was in compliance with the requirements of PUC Article, §2-203 (House Bill 887) and that DBM supported the OPC proposals.

On February 28, 2001, the Office of People’s Counsel submitted the MS-310 forms to DBM to implement the approved Compensation Plan. These MS-310s were for the positions of Deputy People’s Counsel, Assistant People’s Counsel (7) and Consumer Liaison. The personnel actions included Salary Plan adjustments and, in some instances, reclassifications of attorneys from APC III to APC IV positions. On March 1, 2001, DBM issued Salary Plan Personnel Guidelines for the positions of APC I through IV, Deputy People’s Counsel and the Consumer Liaison. At that time, DBM assigned the salary scale designation “9990” to all of these positions, with the salary range of Grades 20, 21, 22, 23, 25 and 20, respectively. DBM also approved the class descriptions for APC I through IV and Deputy People’s Counsel positions on May 20, 2001. The Compensation Plan at that time did not incorporate any other changes or reclassification for other OPC personnel, since the remaining positions are not subject to the independent salary plan authority of the People’s Counsel.

In effect, the Compensation Plan established the baseline for the positions and salary ranges for the Deputy People’s Counsel, Assistant People’s Counsels and Consumer Liaison. Thereafter, from early 2001 through the 3rd quarter of calendar year 2003, the only adjustments were for COLAs.
A new People’s Counsel was appointed in October 2003, and she served until January 5, 2007. During her tenure, there were a number of grade and salary adjustments, reclassifications and promotions. Some, but not all of these personnel actions were conducted in accordance with the independent salary authority of the People’s Counsel. With regard to positions subject to the independent salary authority of the People’s Counsel, some of the salary changes related to salary changes for new hires, while other changes were made pursuant to the independent salary authority, including the adjustment of salaries within the designated salary ranges for the position. In addition, in accordance with PUC Article, § 2-203(d), the People’s Counsel had submitted a request to DBM to adjust the salary for a position outside of the salary range initially specified in the initial compensation plan.

The remaining personnel actions for skilled service positions were carried out pursuant to the provisions of the State Personnel and Pensions Article regarding skilled service positions. See Sections 4-201 and 8-101; COMAR 17.04.02.09. In addition to independent salary plan authority established by HB877, the Secretary of DBM also has delegated authority to the People’s Counsel, as the appointing authority for the Office of People’s Counsel, along with all other state agencies, to make routine reclassifications of skilled service positions. See Section 4-203. In a memorandum dated April 6, 2001, the Executive Director of DBM’s Office of Personnel Services and Benefits stated that heads of agencies could classify individual positions in the following classes without prior authority: Administrative Officer I, II and III and Administrator I and II.
OPC also has an Administrator III position. The employee in this position has overall responsibility for administration of the office, including all personnel, budget, procurement, and other administrative matters related to the operation of the office. The appointment of the current employee to that position, which took place in October 2005, was submitted to DBM for approval.

III. SALARY RANGES FOR ALL POSITIONS WITHIN OPC

In the initial Compensation Plan submitted to the Secretary of DBM, the People’s Counsel had proposed that the salaries for the attorneys and the Consumer Liaison be paid in line with the following grade levels:

- Administrator V (Consumer Liaison)  Grade 20
- Assistant People’s Counsel I       Grade 20
- Assistant People’s Counsel II      Grade 21
- Assistant People’s Counsel III     Grade 22
- Assistant People’s Counsel IV (proposed)  Grade 23
- Deputy People’s Counsel           Grade 25

These proposed salary ranges for the attorney positions tracked the grade levels for Assistant Attorneys General IV, V, VI and VII, as well as the Grade Level 25 for Principal Counsel, and still do so. In FY2006 the salaries for all of the attorneys in the Office fell within the salary ranges for those grade levels, and thus, the salary ranges set forth in the approved Compensation Plan.

Effective July 1, 2007, the salary ranges for each current position within the Office of People’s Counsel are the following:

Office of People’s Counsel
6 St. Paul Street, Suite 2102
Baltimore, MD 21202
410-767-8150
<table>
<thead>
<tr>
<th>POSITION</th>
<th>SALARY RANGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. People’s Counsel</td>
<td>Determined by the Governor</td>
</tr>
<tr>
<td>2. Deputy People’s Counsel</td>
<td>$71,902 - $115,442</td>
</tr>
<tr>
<td>3. Assistant People’s Counsel III (vacant)</td>
<td>$59,107 - $94,909</td>
</tr>
<tr>
<td>4. Assistant People’s Counsel IV (7 positions)</td>
<td>$63,087 – $101,301²</td>
</tr>
<tr>
<td>5. Administrator V (Consumer Liaison)</td>
<td>$51,911 – $83,350</td>
</tr>
<tr>
<td>6. Administrator I</td>
<td>$40,268 – $64,282</td>
</tr>
<tr>
<td>7. Administrator II</td>
<td>$42,687 - $68,626</td>
</tr>
<tr>
<td>8. Administrator III</td>
<td>$45,650 - $73,259</td>
</tr>
<tr>
<td>9. Administrative Officer III</td>
<td>$37,837 - $60,222</td>
</tr>
<tr>
<td>10. Administrative Specialist I</td>
<td>$27,876 - $43,647</td>
</tr>
<tr>
<td>11. Management Associate (3 positions)</td>
<td>$33,444 – 52,886</td>
</tr>
</tbody>
</table>

The People’s Counsel has the authority to hire attorneys as Assistant People’s Counsels I, II, III or IV based upon the level of experience of the attorney, and at a salary within the designated salary range. Additionally, in accordance with the Independent Salary authority, set forth in PUC Article, §2-203, People’s Counsel is not required to submit reclassifications, promotions or salary increases to DBM for APC I, II, III and IV, Deputy People’s Counsel and Consumer Liaison positions that fall within the designated salary ranges. Subsequent to the approval of the initial Compensation Plan and the initial upgrades in FY2000, a former People’s Counsel authorized reclassifications of

² Pursuant to PUC Article, §2-203(d), People’s Counsel requested authorization from DBM to adjust the salary of a senior attorney, an APC IV, outside this salary range for FY2008. The request was approved.
experienced (greater than 10 years experience at OPC) attorneys, with promotions into APC IV and Deputy People’s Counsel positions, prior to FY2007.

IV. ROUTINE RECLASSIFICATIONS; GENERAL SALARY INCREASES

a. Definition of “routine reclassification”; general salary increase

The Public Utility Companies Article does not define “routine re-classification,” in relation to its grant of independent salary authority to the People’s Counsel. Furthermore, the phrase is not defined in the State Personnel and Pensions Article or in DBM’s regulations. A “class” is defined as “a category of one or more similar positions, as established by the Secretary” in accordance with the State Personnel and Pensions Article. See § 1-101(c). Pursuant to COMAR 17.04.02.09 (Standard Salary Pay Plan Actions), DBM issued Revised Salary Guidelines, effective July 1, 2001.3 These guidelines define reclassification (but not “routine reclassification”) as follows:

The change of a position from one classification to another classification and may be to a classification with a higher salary, lower salary, or the same salary.

Revised Salary Guidelines, Section 3(11)(emphasis added). However, “routine” is defined as a “set of customary and often mechanically performed procedures or activities.” Reclassification is distinct from a “promotion,” which means that the “employee is advanced from a position in one classification to a different position in a different classification with a higher maximum rate of pay.” Id., Section 3(10) (emphasis added). Finally a “general increase” means a cost of living increase or other salary increase.

3 While these Salary Guidelines apply to positions within the Standard Pay Plan, and thus do not include the positions of Assistant People’s Counsel I, II, III, and IV, Deputy People’s Counsel and Consumer Liaison, the definitions are relevant to the types of personnel actions taken with regard to those positions.
increase affecting all classifications in the Standard Salary Plan.” Id., Section 3(4), while a “salary adjustment” means a change of salary for all positions within a classification. Id., Section 3(15).

b. Positions subject to the independent salary plan authority

With regard to “general salary increases” and “reclassifications,” PUC Article, §2-203(d) expressly states that People’s Counsel only has to submit to the DBM Secretary for review those changes in salary plans that do not include increases or decreases “associated with routine reclassifications and promotions or general salary increases approved by the General Assembly.” Therefore, in cases of salary increases or routine reclassifications regarding positions governed by the independent salary plan authority, once the People’s Counsel approves the salary increase, reclassification, or promotion, OPC’s Administrator fills out the appropriate form, MS-310, and submits it to DBM so that the appropriate changes can be made in the personnel system. For example, these procedures would apply to an attorney in an APC III position which is reclassified to an APC IV position.

c. Positions governed by the State Personnel and Pensions Article

All positions other than the Deputy People’s Counsel, Assistant People’s Counsels and Consumer Liaison are subject to the requirements of the State Personnel and Pensions Article with regard to reclassifications and general salary increases. The Secretary of DBM has delegated authority to heads of State agencies, such as People’s Counsel, to reclassify personnel in a number of positions without the approval of DBM. These positions are identified in the State Salary Plan. In the case of OPC, except for the
Administrator III position, OPC personnel can be reclassified to all other existing positions without prior approval of DBM. The People’s Counsel’s exercise of this authority is no different than the exercise of such authority by any other head of a State agency. For example, the agency sought approval from DBM when an Administrator II (an attorney) was reclassified as an APC IV in April 2006, since this was not a “routine” reclassification.

V. PEOPLE’S COUNSEL SHOULD BE ALLOWED TO RETAIN INDEPENDENT SALARY AUTHORITY

Pursuant to PUC Article, §2-203, People’s Counsel was granted independent salary authority in 2000 to address the difficulty in recruiting and retaining attorneys who have specialized skills in the area of energy and telecommunications regulation. The General Assembly recognized this difficulty in 2000, when it enacted HB887 and granted this independent authority to the Office of People’s Counsel and the Public Service Commission. As the People’s Counsel noted in the initial proposed Salary Compensation Plan, the subject area of utility regulation is highly specialized, and it can take years to reach a high level of proficiency. At the time the independent plan was authorized, salaries for OPC attorneys lagged behind other government attorneys, local as well as federal, in addition to the salaries of private sector attorneys, in-house counsel and lobbyists representing utilities, suppliers and large industrial customers.

OPC is the advocate for all residential utility consumers in the State of Maryland, and must represent those consumers in all Public Service Commission, federal and court proceedings that affect the interests of residential consumers. As the events of the past
two years had made clear, it is critical that consumers have an effective advocate in regulatory proceedings involving rates, safety, and reliability of service, and in legislative proceedings. The independent salary authority provides the People’s Counsel with the flexibility to recruit and retain staff with the necessary expertise to address these critical issues on behalf of consumers.

This Office was notified of an over expenditure of its budget, in terms of personnel costs, for FY2006. This occurred prior to the start of the current People’s Counsel, who therefore cannot provide a full explanation for all of the personnel decisions that were made during that year, or the impact on the budget for that year. This includes decisions regarding the salaries for new hires. An examination of the personnel files, however, indicates that the salary decisions made pursuant to the former People’s Counsel’s exercise of the independent salary authority in FY2006 involved (1) new hires, to replace attorneys who had left; and (2) salary upgrades, but within the salary range designated in the independent salary plan, for a highly experienced senior attorney. In addition there was a reclassification of a position, from Administrator II to Assistant People’s Counsel IV, which was submitted to DBM for approval in FY2006.

The remaining personnel actions involved skilled positions, and included new hires, reclassification of certain positions and promotions, which were either approved by the People’s Counsel, pursuant to her delegated authority, or were submitted to DMB for approval (for example, a reclassification to an Administrator III position). In addition, there was a creation of a new position, Administrative Specialist I, during
FY2006, which apparently was not accounted for in the preparation of the FY2006 budget, or any amendment thereof.

Based on a review of the personnel files and personnel actions from FY2004 through FY2006, it would appear that the problem with the over-expenditure in personnel expenses in FY2006 resulted from a failure to track personnel and other expenses, so as to stay within the annual budget for FY2006. The agency has addressed this problem, and initiated internal changes to ensure that expenditures are properly tracked by the agency, by sub-object, on a real time, monthly and YTD basis, and that the appropriate accounting reports are requested on a regular basis. This will ensure that all personnel decisions, whether governed by the independent salary authority of the People’s Counsel or by the State Personnel and Pensions Article, are made in relation to the overall budgetary limits set for the agency.

It would be very unfortunate, and ultimately detrimental to residential consumers in Maryland, if the People’s Counsel’s hands were now tied in terms of recruiting and retaining skilled professionals, particularly since the problem has been addressed. Therefore, People’s Counsel urges the General Assembly to retain the independent salary authority granted to the People’s Counsel in 2000.
VI. OPC ABSORPTION OF THE FISCAL YEAR 2006 OVEREXPENDITURE

The FY2006 over expenditure of $120,457,000 has been addressed in full. According to the General Accounting Division, the entire amount was treated as an obligation to be paid from OPC’s FY2007 budget appropriation, although it was not included in OPC’s FY2007 budget proposal or the final FY2007 appropriation for the agency. The sum of $41,458.68, remaining from the FY2007 budget appropriation was applied towards the FY2006 over expenditure. The remaining over expenditure balance, in the amount of $78,998.41, was paid from FY2003 unspent special funds. The OPC Administrator worked closely with the General Accounting Division of the Comptroller’s Office to ensure that this FY2006 over expenditure obligation was reduced to $0 and to ensure that the agency has no further repayment obligation.

It must be kept in mind that the State is 100% reimbursed for the costs and expenses related to the operation of OPC from the Public Utility Regulation Fund. See PUC Article, §2-110. The Fund consists of assessments collected from utilities and suppliers by the Public Service Commission. Id. The statutory maximum assessment for OPC’s costs and expenses is equal to 0.05% of a utility’s or supplier’s gross operating revenues derived from intrastate operations in the prior fiscal year. For example, for FY2007, the maximum amount would have been $4,750,000.00.

On or before May 1 of each fiscal year, the Chairman of the Public Service Commission sends a bill to each public service company for its share of the estimated

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4 The FY2003 funds originally were encumbered for litigation-related purposes. The encumbrance subsequently was released, but the funds remained available to the Office, as special funds.
costs and expenses of the Public Service Commission and the Office of People’s Counsel. See PUC Article, §2-110(c) (1) and (2). During the following fiscal year, each public service company pays its bill, either in total by July 15, or in quarterly payments during the year. §2-110(c) (6). While the Chairman may change the estimate of costs and expenses for the Commission or, as changed by the People’s Counsel, for OPC. §2-110(c) (8), and bill each public service company accordingly, such a request was not made in FY2006.

Thus, the PSC collects payments from the public service companies for OPC’s costs and expenses. These payments are used to reimburse the State in full for OPC’s expense. The FY2003 funds, which had been encumbered originally but not used, were still available for use by OPC, since the funds were special funds and not general funds. These funds were applied to the remaining balance on the over expenditure to address the FY2006 over expenditure, without the need for the agency to either seek additional funds in future fiscal years to cover this obligation, or to diminish its ability to represent residential consumers in utility matters before the PSC and federal agencies.