

**IN THE CIRCUIT COURT
FOR FREDERICK COUNTY, MARYLAND**

Petition of THE POTOMAC EDISON COMPANY *

For Judicial Review of the *
DECISION OF THE BOARD OF APPEALS OF *
FREDERICK COUNTY, MARYLAND *

NO. C-11-0133

In the case of THE APPLICATION OF THE *
POTOMAC EDISON COMPANY *
(Special Exception) – File No. B-04-38 *

* * * * *

MEMORANDUM OF RESPONDENTS
BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY, MARYLAND
AND FREDERICK COUNTY BOARD OF APPEALS
PURSUANT TO MARYLAND RULE 7-202(C)

The Board of County Commissioners of Frederick County, Maryland (“BOCC”) and the Frederick County Board of Appeals (“BOA”) (sometimes hereinafter collectively referred to as the “County Respondents”) file this Memorandum of Respondents pursuant to Maryland Rule 7-207(c), and say:

I. Adoption and incorporation by reference memoranda filed by Respondents Citizens Against Kemptown Electric Substation and Sugarloaf Conservancy

The County Respondents hereby adopt the Memoranda filed by Respondents Citizens Against Kemptown Electric Substation (“C.A.K.E.S.”) and Respondent Sugarloaf Conservancy (“Sugarloaf”) and incorporates by reference those Memoranda as though more fully set out herein.

II. The facility proposed by Petitioner is not a “nongovernmental utility” within the scope of the Frederick County Code, Chapter 1-19.

Petitioner urges this Court to reverse the action of the BOA in denying a request for a special exception to use the property in question as a “nongovernmental utility.” Under Maryland law, a special exception use is a use which has been legislatively predetermined to be conditionally compatible with the uses permitted as of right in a particular zone, the condition being that a zoning body must, in each case, decide under specified statutory standards whether the presumptive compatibility in fact exists.

Creswell v. Baltimore Aviation Services, Inc., 257 Md. 712, 719, 264 A.2d 838, 842 (1970).

The Court of Appeals has gone to some pains to stress that the special exception is a valid zoning mechanism that delegates to an administrative board a limited authority to permit enumerated uses which the legislative body has determined can, *prima facie*, properly be allowed in a specified use district, absent any fact or circumstance in a particular case which would change this presumptive finding. *Rockville Fuel and Feed Co. v. Board of Appeals in the City of Gaithersburg*, 257 Md. 183, 188, 262 A.2d 499, 502 (1970).

A condition precedent, then, to the granting of the requested special exception in this case is whether the proposed development is a “nongovernmental utility” which the BOCC legislatively predetermined was appropriate for the Agricultural Zone.

The existence of this threshold question is consistent with the layer of analysis required under *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981). The Court of Appeals has explained that the *Schultz* test speaks in two different contexts, one by which the

legislature decides to classify a particular use as requiring approval of a special exception before it can be established in a given zone, and a second context by which individual applications are to be evaluated by the zoning body in accord with zoning ordinance criteria. *People’s Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54, 956 A.2d 166 (2008).

The Frederick County Zoning Ordinance is codified as Chapter 1-19 of the Frederick County Code (“F.C.C.”) F.C.C. Section 1-19-11.100 defines a “nongovernmental utility as

NONGOVERNMENTAL UTILITY. Any utility not owned by a governmental entity. Facilities include all buildings, structures, and land used to house the utility and equipment, including substations for transforming, boosting or switching purposes; regulators; stationary transformers and other such devices for supplying electric service; telephone offices; radio and television transmitter towers and stations; storage yards; and above ground pipelines.

F.C.C. Section 1-19-11.100 defines “utility” as

UTILITY. Any facility erected, constructed, altered or maintained as part of an integrated system or program designed to furnish necessary services for the public health, safety or convenience, including water, electric, gas, communication (cable, wireless, satellite, telephone), steam or sewer.

F.C.C. Section 1-19-5.310 (more commonly known as the “use table”) sets out what specific uses are allowed in specific zoning districts in Frederick County. A copy of F.C.C. Section 1-19-5.310 is attached as Exhibit 1 and incorporated by reference as though more fully set out herein. A review of the uses allowed in the Agricultural Zoning district (“A”) discloses that non-agricultural uses allowed as permitted (P),

permitted with site plan approval (PS) or allowed as special exception (E) are typically non-industrial in nature. The allowed uses are small and in many cases relate to agriculture or agricultural pursuits. None of the large, intensive use associated with industrial uses are allowed in the A zoning district -- with the singular exception of agricultural products processing, which relates directly to agricultural activity. Nevertheless, Petitioner bases its requested relief on the assumption that its proposed development is allowed in the A zoning district.

The proposed development was described during the hearing before the BOA as twice the size of Francis Scott Key Mall. As aptly characterized by Sugarloaf in its Memorandum, the proposed development is larger than the Pentagon. This proposed development in the A zone is to utilize steel towers taller than the Statue of Liberty. Indeed, Petitioner's own witnesses before the BOA acknowledged that the size and scope of the proposed development was unprecedented – there are only a few developments of this size and intensity in the world.

The size, scale and scope of the proposed development far, far exceed what F.C.C. Section 1-9-11.100 defines as a “utility” or “nongovernmental utility.” The cardinal rule and chief objective of statutory construction is to ascertain and effectuate the intent of the legislature. *Dove v. State*, 415 Md. 727, 4 A.3d 976 (2010). *See, Kortobi v. Kass*, 410 Md. 168, 978 A.2d 247 (2009) (A court's polar star in navigating the sometimes treacherous straits of statutory interpretation questions is to ascertain and effectuate the intent of the legislature). An interpretation should be given to statutory provisions that

does not lead to absurd consequences. *Anderson v. Council of Unit Owners of Gables on Tuckerman Condominium*, 404 Md. 560, 948 A.2d 11 (2008).

The proposed facility is unlike any nongovernmental utility previously requesting approval. It is gargantuan in size. It is not intended to bring electricity directly to citizens of Frederick County, but to provide electric service to distant northeast states. It would be an absurd result to conclude that the BOCC intended allow such a facility in the A zoning district as a permitted use, even with conditions, when the BOCC did not -- and could not -- have anticipated such a development, one which is different in kind (and not merely in degree) from the much smaller facilities previously requested and approved.

The proposed facility is industrial in size, scale and purpose. It should be located on land zoned for industrial use. Allowing this facility in the A zoning district -- particularly on a parcel surrounded by more than 1300 homes on low-density residential land -- would be to reach an absurd result.

The BOA rightly and appropriately denied the requested special exception. The decision of the BOA should be affirmed.

III. The Decision of the BOA was supported by substantial evidence and should be affirmed.

The Director of the Frederick County Division of Fire and Rescue Services, Thomas Owens, testified on the September 29, 2010 hearing date. Director Owens' testimony established the hazardous nature of the oils used in the transformers.

Transcript ("T") 9/28/10 at p. 40 - 43.

Director Owens further testified about the threat to nearby residents from the smoke plume in the event of a fire at such a facility -- noting that it might be necessary to evacuate nearby residents. T. 9/29/10 at p. 43 – 45. The BOA heard testimony from Director Owens that Frederick County currently is not equipped with either the foam distribution equipment or the quantity of foam necessary to deal with the risk posed by the proposed facility. T. 9/29/10 at p. 50 – 53. Director Owens testified that it would be necessary to request large airport crash fire rescue vehicles from BWI airport. T. 9/29/10 at p. 53 – 55. Such vehicles may or may not be available to immediately travel from the southeast side of Baltimore City to Frederick County. The toxic smoke and fumes from such a fire can be harmful; the toxic fumes can also complicate existing health problems. T. 9/29/10 at p. 59 – 61.

There was evidence before the BOA that the proposed special exception use posed a threat to the health, safety and welfare of the residents in the more than 1,300 homes surrounding the site in question. The Court of Appeals has recognized that the extent of any harm or disturbance to the neighboring area and uses is material. *Shultz v. Pritts, supra*, 291 Md. at 11, 432 A.2d. 1319.

The health and safety threat posed by the proposed special exception use was supported by substantial evidence. The decision of the BOA was proper and should be affirmed.

IV. The Petition for Judicial Review should be dismissed as moot.

In its presentation to the BOA, Petitioner represented that the requested special exception was necessary as part of the Potomac Allegheny Transmission Highline, a

multi-state project to bring power from the Midwest to New York and New Jersey (“PATH”). T. 9/29/10 at p. 93 – 102. Subsequent to the hearings before the BOA, however, Petitioner withdrew its application to the Maryland Public Service Commission (“PSC”) for a Certificate of Public Convenience and Necessity to construct the Maryland segments of the transmission line and the substation in Frederick County which is the subject of this proceeding. A copy of Petitioner’s filing with the PSC is attached as Exhibit 2 and incorporated by reference as though more fully set out herein.

The Maryland Court of Appeals has defined “mootness” as:

A case is moot when there is no longer any existing controversy between the parties at the time that the case is before the court, or when the court can no longer fashion an effective remedy.

Without a Certificate of Public Convenience and Necessity, Petitioner cannot construct the lines. Nor, if as Petitioner asserts, the PSC has authority over the substation (which these Respondents vehemently deny), can Petitioner build the facility in question without such a certificate.

As disclosed by Petitioner’s filing with the PSC, the forecast of need for PATH (including the facility at issue) on which the request for a special exception is based is flawed and requires “more rigorous analysis of the potential need for PATH.” Ex. 2 at pg. 2.

Under the circumstances, it appears that the need for the substation at the proposed location, on which Petitioner’s request for a special exception is founded, has ceased. As reflected in Petitioner’s filing, the PATH applications have also been withdrawn in West Virginia and Virginia. The route of the PATH project may be altered. The need for such

a giant facility in the A zoning district surrounded by over 1,300 residences may no longer exist.

In light of the fact that Petitioner has withdrawn its application from the PSC on which the need and request for the special exception exist, the matter has become moot and properly should be dismissed.

V. In the event the Court determines that the BOA did not provide in sufficient detail its basis for denying the requested special exception, then a remand -- and not reversal of the BOA -- is appropriate.

If an appellate court is in doubt as to why an administrative agency did what it did, it is appropriate to remand the case to the agency for a clarification of or amplification of its reasoning. *People's Counsel for Baltimore County v. Country Ridge Shopping Center, Inc.*, 144 Md. App. 580, 799 A.2d 425 (2002).

Where a court determines that an agency has decided a matter using the wrong legal standard, ordinarily the court will not decide the issue itself, but rather remands to the agency for reconsideration in light of the court's holding. *Baize v. City of College Park*, 192 Md. App. 321, 994 A.2d 495 (2010).

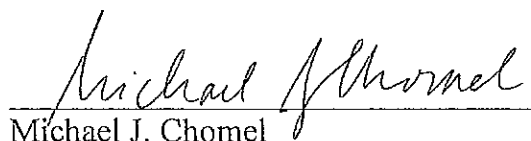
Once a court determines on appeal that an administrative board committed an error of law, the court should remand the matter to the board without modification because an administrative function remained. *O'Donnell v. Bassler*, 289 Md. 501, 425 A.2d 1003 (1981). Where a court modifies a board's decision, even pursuant to statutory authority to do so, it deprives the board of its right to exercise its expertise and judgment. *Id.*

The general rule is that if an administrative function remains to be performed after a reviewing court has determined that an agency has made an error of law, the court

ordinarily may not modify the agency's decision. *Id.* In such circumstances, the matter should be remanded to the administrative agency without modification unless the modification is so minor as to make remand inappropriate or if remand is otherwise futile. *Id.*

In the event the Court determines that the BOA failed sufficiently to set forth the basis of its decision, or made an error of law in denying the requested special exception, then a remand -- not a reversal of the BOA decision -- is the appropriate remedy.

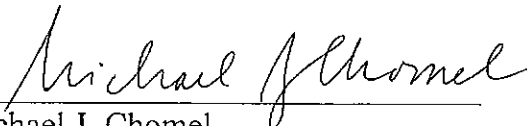
Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 13th day of September, 2011, a copy of the foregoing Memorandum of Respondents Board of County Commissioners of Frederick County, Maryland and Frederick County Board of Appeals Pursuant to Maryland Rule 7-207(c) was mailed first-class, postage prepaid, to Matthew B. Ruble, Esq., 131 West Patrick Street, Frederick, Maryland 21701 and to Robert W. Cannon, Esq., Gregory E. Rapisarda, Esq. and Francie C. Spahn, Esq., Saul Ewing, LLP, 500 East Pratt Street, Baltimore, Maryland 21202, attorneys for the Petitioner and to Scott D. Miller, Weinberg & Miller, LLC, 15 N. Court Street, Frederick, Maryland 21701, Attorney for Citizens Against Kempton Electric Substation, Inc.



Michael J. Chomel

§ 1-19-5.310. USE TABLE.

(A) Permitted uses and required development review.

P Principal permitted use subject to design regulations

PS Principal permitted use subject to site development plan approval. See §§ 1-19-2.160, and 1-19-3.300 through 1-19-3.300.4

E Principal permitted use as a special exception with site development plan approval. See §§ 1-19-8.320 and following

T Permitted as temporary use as a special exception. See § 1-19-8.300

X Permitted as temporary use only. See § 1-19-8.700

SW Solid Waste Floating Zone

A blank indicates that the use is not permitted under any situation

Uses	Zoning Districts													
	RC	A	R1	R3	R5	R8	R12	R16	VC	HS	GC	ORI	LI	GI
<i>Natural Resources Uses</i>														
Agricultural activities	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Agricultural value added processing	P ***	P ***												
Agritourism enterprise	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Nursery retail	PS	PS									PS		PS	PS
Nursery wholesale	P	P									P		P	P
Farm winery	P ***	P ***												
Farm winery tasting room		PS ***												
Farm brewery	P ***	P ***												
Farm brewery tasting room		PS ***												

Uses	Zoning Districts													
	RC	A	RI	R3	R5	R8	R12	R16	VC	HS	GC	ORI	LI	GI
<i>Natural Resources Uses (Cont'd)</i>														
Limited roadside stand	P	P	PS	PS					PS	PS	PS			
Commercial roadside stand	PS	PS	PS	PS					PS	PS	PS			
Forestry	P	P	P	P	P	P	P	P		P	P		P	P
Sawmill	E	E												PS
Mineral extraction														PS
Mineral processing														PS
Spring water harvesting and storage	E													
Intensive swine farm														
<i>Residential Uses</i>														
Single-family detached	P	P	P	P	P	P	P	P	P					
Duplex dwelling			P	P	P	P	P	P	P					
Two-family dwelling		P	P	P	P	P	P	P	P					
Townhouse				PS*	PS	PS	PS	PS	PS					
Multifamily dwellings						PS	PS	PS	PS					
Multifamily group developments						PS	PS	PS	PS					
Mobile homes	P	P												
Caretaker residence in conjunction with a permitted use	PS	PS							PS	P	P		P	P
Accessory apartment	E	E	E	E	E	E	E	E	E					
<i>Temporary Housing</i>														
Bed and breakfast	PS	PS							PS		PS			
Motel, hotel									PS	PS	PS	PS	PS	
Temporary mobile home	T	T	T											

Uses	Zoning Districts													
	RC	A	RI	R3	R5	R8	R12	R16	VC	HS	GC	ORI	LI	GI
<i>Commercial Uses - Retail</i>														
Antique, artisan and craft shops									PS	PS	PS			
Apparel store									PS		PS			
Appliance sales and service									PS		PS			
Auction house									PS		PS		PS	PS
Food stores									PS		PS			
Boats, sales and service											PS		PS	PS
Book and magazine									PS		PS			
Camera									PS		PS			
Convenience stores									PS	PS	PS			
Department store or variety store									PS		PS			
Farm equipment sales or service *****		E							PS		PS		PS	PS
Feed and grain mill		E											PS	PS
Retail sales and service														
Florist									PS		PS			
Furniture repair									PS		PS		PS	PS
Shopping center									PS		PS			
Gift/souvenir									PS	PS	PS			
Hardware/garden center									PS		PS			
Hobby shop									PS		PS			
Horse tack and saddlery shop									PS		PS			
Household furnishing									PS		PS			
Jewelry									PS		PS			
Lumber yard											PS		PS	PS
Mobile home sales											PS		PS	PS
Music and record shops									PS		PS			
Office equipment									PS		PS			
Paint store									PS		PS			

Uses	Zoning Districts													
	RC	A	R1	R3	R5	R8	R12	R16	VC	HS	GC	ORI	LI	GI
<i>Commercial Uses - Retail (Cont'd)</i>														
Pet store									PS		PS			
Pet training/day care/grooming facility									PS		PS			
Pharmacy									PS		PS			
Radio and TV sales and service									PS		PS			
Shoe store									PS		PS			
Sporting goods									PS		PS			
Stone monument sales									PS		PS		PS	PS
Tobacco store									PS		PS			
Toy store									PS		PS			
Liquor store									PS		PS			
<i>Commercial Business and Personal Services</i>														
Advertising agency									PS		PS			
Bank or savings and loan									PS		PS	PS		
Broadcasting studio									PS		PS	PS	PS	PS
Communication towers**	E	E								PS	PS	PS	PS	PS
Barber and beauty shops									PS		PS			
Bus depot										PS	PS		PS	PS
Carpentry, electrical, plumbing, welding, printing, upholstery									PS		PS		PS	PS
Contractors, fencing, pool and siding											PS		PS	PS
Commercial school or education program											PS	PS	PS	
Dance or music studio									PS		PS			
Dry cleaning and laundromat ****									PS		PS			
Funeral home											PS			
Fortuneteller									PS		PS			
Limited landscape contractor		PS												
Landscape contractor		E									PS		PS	PS

Uses	Zoning Districts													
	RC	A	RI	R3	R5	R8	RI2	R16	VC	HS	GC	ORI	LI	GI
<i>Commercial Business and Personal Services (Cont'd)</i>														
Medical clinic									PS		PS	PS	PS	PS
Office business									PS		PS	PS	PS	PS
Office professional					E	E	E	E	PS		PS	PS		
Pawn shop											PS			
Photography studio ****									PS		PS		PS	
Restaurant									PS	PS	PS	PS	PS	
Country inn	E	E												
<i>Wholesaling and Processing</i>														
Agricultural products processing	E	E									PS		PS	PS
Bottling plant											PS		PS	PS
Contractors, equipment and material storage yard														PS
Carpet or rug cleaning ****											PS		PS	PS
Contractors office and storage													PS	
Petroleum products storage ****													PS	PS
Laboratory research, experimental or testing											PS	PS	PS	PS
Industrial laundry and dry cleaning ****													PS	PS
Self-storage units											PS		PS	PS
Stone monument processing											PS		PS	PS
Wholesaling and/or warehouse											PS		PS	PS
Yard storage														PS
<i>Automobile and Related Services</i>														
Part sales and installation									PS		PS		PS	
Automobile filling and service station ****									PS	PS	PS		PS	PS
Carwash									PS	PS	PS		PS	
Automobile repair or service shop ****									E	PS	PS		E	PS

Uses	Zoning Districts													
	RC	A	RI	R3	R5	R8	R12	R16	VC	HS	GC	ORI	LI	GI
<i>Automobile and Related Services (Cont'd)</i>														
Sales and service center ****											PS		PS	PS
Salvage yard ****														PS
School bus parking	E	E							E	PS	PS		PS	PS
Truck stop and filling station service facility ****										E				PS
Motor freight terminal ****													PS	PS
<i>Animal Care and Service</i>														
Animal hospital or veterinary clinic		E							E		E			
Kennel		E							E		E			
Auction sales - animals		PS									PS		PS	PS
<i>Commercial Amusements</i>														
Bowling alley									PS		PS			
Carnival, circus		X	X						X	X	X		X	X
Race tracks											PS		PS	PS
Motorcycle hill climb														T
Health club, fitness center, vocational training facility									PS		PS		PS	
Tennis club				E	E	E	E	E			PS			
Golf course ****			PS	PS	PS	PS	PS	PS						
Skating rink											PS			
Swimming pool, commercial											PS			
Theater, drive-in or outdoor stage										PS	PS		PS	PS
Theater, indoor									PS		PS		PS	
Zoo/botanical garden/arboretum										PS	PS			
Museums/gallery									PS	PS	PS			
Night club, tavern, lounge										PS	PS		PS	
Outdoor sports recreation facility		PS									PS		PS	PS

Uses	Zoning Districts													
	RC	A	R1	R3	R5	R8	R12	R16	VC	HS	GC	ORI	LI	GI
<i>Commercial Amusements (Cont'd)</i>														
Rodeo		E												
Indoor sports recreation facility											PS		PS	
Video lottery facility														
<i>Industrial Uses</i>														
Limited manufacturing and assembly use												PS	PS	PS
General manufacturing														PS
<i>Open Space and Institutional</i>														
Airports, public ****													PS	PS
Cemetery/memorial gardens		PS	PS											
Fairground										PS	PS		PS	PS
Shooting range/club - trap, skeet, rifle, archery	E	E											PS	PS
Aircraft landing and storage areas, private		E											E	E
Tent campground	E	E												
Recreational vehicle campground										E				
Rustic retreat/camp/outdoor club	E	E												
<i>Institutional</i>														
Child care center/nursery school		E	E	E	E	E	PS	PS	PS		PS		E	
Civic community center		E	PS	PS	PS	PS	PS	PS	PS		PS			
Civic service clubs		E	P				PS	PS	PS		PS			
Comprehensive physical rehabilitation facility								PS	PS		PS	PS		
Group homes, small private	P	P	P	P	P	P	P	P	P					
Group home, large		PS	PS	PS	PS	PS	PS	PS	PS					
Hospital								PS	PS		PS			
Assisted living facility			PS	PS	PS	PS	PS	PS	PS		PS			

Uses	Zoning Districts													
	RC	A	RI	R3	R5	R8	R12	R16	VC	HS	GC	ORI	LI	GI
<i>Institutional (Cont'd)</i>														
Nursing home			PS	PS	PS	PS	PS	PS	PS					
Place of worship	E	PS	PS	E	PS	PS	PS	PS	PS		PS		PS	
Private school			PS	PS	PS	PS	PS	PS	PS		T	T	T	
Community fire and rescue service		PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS
<i>Governmental and Nongovernmental Utilities</i>														
Arena or stadium											PS		PS	PS
College or university			PS	PS	PS	PS	PS	PS	PS		PS			
Public school	-	-	PS	PS	PS	PS	PS	PS	PS	-	T	T	T	
Nongovernmental utility	E	E	E	E	E	E	E	E	E	PS	PS		PS	PS
<i>Solid Waste Operations</i>														
Borrow pit operations		PS											PS	PS
Industrial waste landfill ****		E												E
Rubble landfill		SW												SW
Recycling pickup and distribution centers													PS	PS
RRF (Resource Recovery Facility - Separated Recyclables)		SW											SW	SW
RRF (Resource Recovery Facility - Nonseparated Materials)														SW
Composting:														
Limited wood waste recycling facility		E												E
Unlimited wood waste recycling facility		SW												SW
Sludge amended yard waste		SW											SW	SW
Solid waste composting		SW											SW	SW
Sludge pit		E												

* Townhouses will be permitted only within MPDU developments; however, in no event shall the number of townhouses exceed 50% of the total number of units within the MPDU project.

** Communication towers not permitted in residential districts, PUD, PDR, residential MXD, and PDE Districts with a residential component

*** A zoning certificate is required to be obtained prior to the initiation of the processing operation and/or prior to any building construction related to farm winery, farm brewery, farm winery tasting room, or farm brewery tasting room.

**** These uses are prohibited within wellhead protection areas; outside of WHPA the location and containment of hazardous substance for these uses must meet the requirements of § 1-6-50.

(B) *Permitted uses and required development review for limited zoning districts.*

(1) *Euclidean Institutional Zoning District (Ie).* The following uses are permitted within the Euclidean Institutional Zoning District:

(a) College or university, public school, private school, private school in conjunction with a place of worship, or residential treatment center in conjunction with a private school, a continuing care retirement community (CCRC), and agricultural activities as defined in § 1-19-11.100, subject to all other requirements of this chapter. The continued or further application of this zoning district to land uses not meeting these standards is not permitted. Caretaker residence in conjunction with a permitted use is specifically allowed as an accessory use. (See also § 1-19-8.480.)

(Ord. 77-1-78, §40-61A, 1-24-1977; Ord. 79-5-131, 3-27-1979; Ord. 79-19-145, 8-7-1979; Ord. 80-24-176, 8-26-1980; Ord. 80-25-177, 8-26-1980; Ord. 80-31-183, 10-7-1980; Ord. 81-2-192, 1-27-1981; Ord. 81-29-219, 9-29-1981; Ord. 82-19-263, 9-7-1982; Ord. 83-15-282, 6-7-1983; Ord. 83-23-290, 10-11-1983; Ord. 83-29-296, 12-20-1983; Ord. 84-5-301, 4-3-1984; Ord. 84-34-331, 12-24-1984; Ord. 85-6-338, 1-8-1985; Ord. 85-34-366, 8-8-1985; Ord. 85-45-377, 12-3-1985; Ord. 86-5-382, 4-22-1986; Ord. 86-16-393, 5-13-1986; Ord. 86-37-414, 8-26-1986; Ord. 86-49-426, 9-23-86; Ord. 86-53-130, 10-28-1986; Ord. 88-12-489, 5-3-1988; Ord. 89-1-532, 1-3-1989; Ord. 89-14-545, 3-7-1989; Ord. 89-51-582, 8-15-1989; Ord. 90-03-601, 2-6-1990; Ord. 90-30-628, 6-19-1990; Ord. 90-44-642, 11-20-1990; Ord. 90-46-644, 11-20-1990; Ord. 91-02-002, 3-22-1991; Ord. 91-13-013, 6-4-1991; Ord. 91-32-032, 11-19-1991; Ord. 92-22-057, 10-06-1992; Ord. 92-23-058, 10-6-1992; Ord. 93-19-083, 9-13-1993; Ord. 93-28-092, 11-9-1993; Ord. 95-02-126, 3-2-1995; Ord. 95-28-152, 12-5-1995; Ord. 96-26-178, 12-17-1996; Ord. 97-17-195, 12-2-1997; Ord. 98-08-210, 4-21-1998; Ord. 99-02-229, 3-16-1999; Ord. 99-06-233, 5-18-1999; Ord. 99-14-241, 11-23-1999; Ord. 00-04-246, 4-4-2000; Ord. 00-28-270, 9-7-2000; Ord. 01-03-277, 3-6-2001; Ord. 03-09-332, 6-3-2003; Ord. 05-25-386, 9-27-2005; Ord. 05-29-390, 10-25-2005; Ord. 06-42-438, 11-30-2006; Ord. 07-16-456, 5-15-2007; Ord. 07-27-467, 6-19-2007; Ord. 07-31-471, 10-15-2007; Ord. 08-07-483, 4-10-2008; Ord. 08-26-502, 10-14-2008; Ord. 09-21-525, 6-4-2009; Ord. 09-22-526, 7-14-2009; Ord. 10-04-539, 3-11-2010; Ord. 10-18-533, 5-4-2010; Ord. 10-20-555, 8-24-2010; Ord. 10-26-561, 11-9-2010; Ord. 10-31-566, 12-21-2010; Ord. 11-06-572, 5-17-2011)

BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

IN THE MATTER OF THE APPLICATION *
OF THE POTOMAC EDISON COMPANY *
FOR A CERTIFICATE OF PUBLIC *
CONVENIENCE AND NECESSITY TO * Case No. 9223
CONSTRUCT THE MARYLAND *
SEGMENTS OF A 765 KV ELECTRIC *
TRANSMISSION LINE AND A SUBSTATION *
IN FREDERICK COUNTY, MARYLAND *
* * * * *

NOTICE OF WITHDRAWAL

The Potomac Edison Company (“Applicant”) submits this filing in the above-captioned matter to notify the Maryland Public Service Commission (“Commission”) that it is withdrawing its Application, effective immediately.

In its December 21, 2010 filing with the Commission, the Applicant advised that PJM’s 2011 Load Forecast Report included load projections different from those previously incorporated in PJM’s RTEP analyses. Because these differences, together with other factors, were expected to have an appreciable effect on the in-service date for the PATH Project, the Applicant filed a motion to toll the statutory decision due date and extend the procedural schedule to allow PJM to conduct a revised analysis in early 2011. This motion was granted by the Hearing Examiner on February 24, 2011.

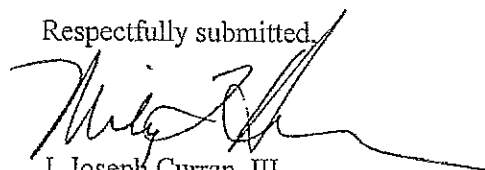
PJM has since advised the Applicant that, using the updated load forecast and current transmission topology, the projected appearance of violations of NERC Reliability Standards that the PATH Project was designed to resolve has advanced into the future. Consequently, the PJM Board of Managers has taken official action to hold the PATH Project in abeyance and has directed the Applicant to suspend work on the project subject to those activities necessary to

maintain the project in its current state while PJM conducts more rigorous analysis of the potential need for PATH as part of its continuing RTEP process. PJM's announcement is attached.

The Applicant still believes that underlying system weaknesses eventually will require backbone transmission projects to ensure the future stability of the regional transmission grid. Under the present circumstances, however, withdrawing the Application is in the public interest, and the PATH applicants in West Virginia and Virginia also will be taking steps today to withdraw the pending applications in those jurisdictions. The Applicant will await further instructions from PJM and will continue to fulfill its respective obligations under the PJM Tariff and the Consolidated Transmission Owners Agreement.

For the reasons stated above, the Applicant hereby withdraws its Application in the above-referenced matter.

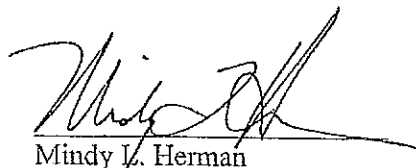
Respectfully submitted,



J. Joseph Curran, III
Mindy L. Herman
Robin D. Leone
Counsel to the Applicant

CERTIFICATE OF SERVICE

I, Mindy L. Herman, certify that on this 28th day of February, 2011, I mailed and sent electronic copies of the above Notice of Withdrawal to the service list in Maryland Public Service Commission Case No. 9223.



Mindy L. Herman

