

BOARD OF COUNTY COMMISSIONERS FREDERICK COUNTY, MARYLAND

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October 5, 2009

COMMISSIONERS

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Public Service Commission
c/o Terry Romine, Esquire
Executive Secretary
Public Service Commission of Maryland
William Donald Schaefer Tower
6 St. Paul Street, 16th Floor
Baltimore, MD 21202-6806

Re: Case 9198 – Application of Potomac Edison Company on Behalf of
PATH-Allegheny Transmission Company, LLC, for a CPCN to Construct
the Maryland Segment of a 765 kV Transmission Line and Substation in
Frederick County, Maryland

Commissioners:

I am writing on behalf of the Board of County Commissioners of Frederick County,
Maryland.

COUNTY MANAGER'S OFFICE

Ronald A. Hart
County Manager

Barry L. Stanton
Assistant County Manager

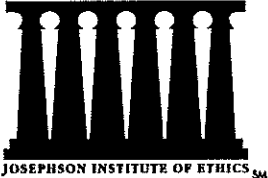
Joyce M. Grossnickle
Administrative Officer

Robin K. Santangelo
Public Information Officer

The Board of County Commissioners of Frederick County, Maryland, a body corporate and politic of the State of Maryland and political subdivision thereof, ("Board"), received a copy of Public Service Commission ("PSC") Order No. 82892 issued in the referenced proceeding. By this Order the PSC (1) denied Potomac Edison Company's motion for an expedited decision on the propriety of a requested application for a certificate of public convenience and necessity ("CPCN") on behalf of a non-electric company affiliate; (2) found that the application for the requested CPCN had not been properly filed; and (3) directed Potomac Edison to advise the PSC whether it intends to re-file an appropriate application. The basis for the PSC's determinations was its limited jurisdiction under the Annotated Code of Maryland, Public Utility Companies Article - the PSC does not have authority to award a CPCN to a non-electric company.

The PSC then, assuming that Potomac Edison would re-file a proper application, issued advisory guidance to the effect that when a proper CPCN application was filed, the PSC had jurisdiction over siting Potomac Edison's proposed electric substation if it constituted an integral part of the PATH project transmission line. The PSC also claimed that its authority over such electric substation superseded the Maryland General Assembly grant of land use authority to the Board to approve the location of electric substations in Frederick County. These comments were not necessary for the PSC's ultimate decisions with respect to Potomac Edison's motion and application. The Board does not agree with these comments and will continue to require that the proposed electric substation fully comply with all Frederick County laws.

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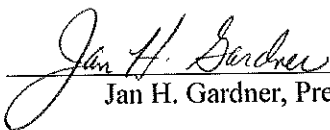
Furthermore, the PSC has no jurisdiction to determine the Board's authority, or that of local government in general, over the location of proposed electric substations, an issue fraught with local land use considerations; only the Maryland General Assembly or Maryland courts will determine the relative jurisdictions of Maryland local government, including the Board, and of the PSC over the location of electric substations.

The Maryland General Assembly has delegated authority to locate electric substations to Maryland local government. For example, Article 66B, Section 3.08, of the Annotated Code of Maryland, requires that Potomac Edison obtain a finding of consistency with Frederick County's Comprehensive Plan from the Frederick County Planning Commission (subject to appeal to the Board) before an electric substation may be built in Frederick County. Under the Board's Article 66B zoning authority, Potomac Edison must also obtain a special exception from Frederick County's Board of Appeals before a substation may be located on Agricultural zoned land in the County. Frederick County Government's authority over the location of electric substations - including General Assembly statutory grants of authority to local government, Maryland Court of Appeals' decisions and Maryland Attorney General opinions - was discussed in the Board's initial comments previously provided the PSC in this matter.

Regardless of the PSC's comments in Order No. 82892, Potomac Edison must obtain a finding of consistency and special exception from Frederick County Government before it may locate its proposed electric substation in Frederick County, Maryland.

If you have any questions concerning this matter, please contact Richard McCain, Assistant County Attorney, at 301-600-2613.

BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY, MARYLAND

By: 
Jan H. Gardner, President

JHG/kl/ds

pc: Board of County Commissioners
Ronald Hart, County Manager
Barry Stanton, Assistant County Manager
Joyce Grossnickle, Administrative Officer, Office of the County Manager
John Mathias, County Attorney
Richard McCain, Assistant County Attorney
Eric Soter, Director, Planning Division
Larry Smith, Zoning Administrator, Planning Division
Gary Hessong, Director, Permitting and Development Review Division
Mike Hosier, General Manager, Transmission Projects, Potomac Edison Company
David Kline, Manager, Local Affairs for MD, Potomac Edison Company
PSC Case 9198 Service List
Reading File