

March 4, 2011

Terry J. Romine, Executive Secretary  
Maryland Public Service Commission  
William Donald Schaefer Tower  
6 St. Paul Street  
Baltimore, Maryland 21202-6806

Re: Case No. 9223 – In the Matter of the Application of The Potomac Edison Company d/b/a Allegheny Power for a Certificate of Public Convenience and Necessity to Construct the Maryland Segments of a 765 kV Transmission Line and a Substation in Frederick County, Maryland

Dear Executive Secretary Romine:

The Potomac Edison Company (“Potomac Edison” or “the Company”), as a matter of right, formally withdrew its Application for a Certificate of Public Convenience and Necessity (“CPCN”) on Monday, February 28, 2011. Subsequently, intervenors the Sugarloaf Conservancy, Inc. (“Sugarloaf”), the Sierra Club (“Sierra”),<sup>1</sup> and John and Terri Armand submitted, respectively, a memorandum response and a letter to Public Service Commission Chairman Douglas R. M. Nazarian seeking to “condition” Potomac Edison’s Notice of Withdrawal (“Withdrawal”). Specifically, Sugarloaf and the Armands have sought to impose certain requirements on any future application for a CPCN made by the Applicant to construct the transmission line and substation described in the now-withdrawn Application (the “PATH Project”).<sup>2</sup> While the Withdrawal has effectively closed the docket in this proceeding, Potomac

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<sup>1</sup> Sierra makes two requests, including a request that the protective order in Case No. 9223 remain in place for at least two years to facilitate the parties’ future reliance on confidential data already produced. Potomac Edison does not oppose this request, but notes that the usefulness of information produced in this case may depreciate with time. *See* note 4, *supra*, for discussion of Sierra’s second request.

<sup>2</sup> The Armands also ask that the Commission require “proof” that any applicant requesting a future CPCN is an electric company as defined by the Maryland Code. Armand Letter at 2. As you are aware, the Commission has already ruled both that a CPCN for a transmission line may only be issued to electric companies and that Potomac Edison, an electric company, is a proper applicant for a CPCN. *See* Case No. 9198, Order No. 82892 at 5; Case No. 9223, Order No. 83469 at 9. Consequently, this requirement as proposed by the Armands is unnecessary.

Edison respectfully requests the opportunity to respond to the proposed re-application requirements.<sup>3</sup>

Sugarloaf seeks to require any future applicant to submit “a projection of peak power demand forecast of energy needs for 15 years,” as well as third party independent analyses of both the forecast and the project itself, together with alternatives evaluated.<sup>4</sup> Sugarloaf Response, ¶ 4. Additionally, the Armands seek a requirement that energy forecasts submitted with an initial application must be complete, up-to-date and accurate and that such forecasts must document “proof” to substantiate the need for the proposed project. Armand Letter at 2. The Armands also ask that any initial application be “full and complete.” *Id.*

As the Commission has explained, it is up to an applicant to file “the evidence on which it intends to rely to prove ‘the need for the project in meeting demands for service.’” Case No. 9223, Order No. 83322 at 9 (July 13, 2010). Consequently, while any party intervening in a future CPCN proceeding for this project could engage in discovery and file testimony on topics relevant to the application, the applicant has the burden of proof to ensure that its application meets the requirements established by statute and regulations. *See, e.g.*, COMAR 20.79.04. In this case, for example, after filing supplemental testimony based on revised regional transmission expansion planning data developed by PJM Interconnection, L.L.C., the Commission deemed Potomac Edison’s application complete and ready for evaluation. Case No. 9223, Order No. 83501 at 2 (July 28, 2010). Such determination was based upon the Applicant’s representation that it had filed testimony upon which it intended to rely to support the need for this project. *Id.* at 2.<sup>5</sup>

Moreover, inserting an ambiguous and novel requirement to submit specific data or to require that such data be independently evaluated before an application can be accepted would be outside of the existing statutory and regulatory requirements for CPCN applications and would create significant complications for filing any future application. Additionally, the proposed requirements to submit only a “full and complete” application could be construed to preclude any supplementation of the record, which would impede the Commission and the parties from

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<sup>3</sup> Potomac Edison notes that several of the proposed requirements are ambiguous, contradict established law, and/or overlap with existing application requirements.

<sup>4</sup> Sugarloaf also requests that, regardless of the fact that the Company has withdrawn its application, it must still produce results of the modeling runs the Virginia State Corporation Commission ordered in Case No. PUE-2010-00115. Sugarloaf Response, ¶ 5. Sierra echoes this request in its filing, suggesting that the requested modeling runs will somehow serve as a baseline from which any future application can be measured. First, as the application in the Virginia case has also been withdrawn, the need to prepare and file the modeling runs is moot. Second, it is unclear why the Commission would need to compare 2011 data with data compiled to support the need case in a future application. As such, Potomac Edison opposes this request.

<sup>5</sup> The Hearing Examiner subsequently reaffirmed that determination, when he recently denied motions to dismiss the application due, in part, to unsupported assertions of incompleteness. Case No. 9223, Hearing Examiner’s Ruling on Open Motions at 1 (Feb. 25, 2011).

reviewing a full record in a future proceeding. Given the nature of the transmission planning process, even if an initial application contains complete, up-to-date and accurate information, as requested, it is entirely possible that such information will require supplementation before the Commission is able to render a decision. The Commission should not place itself in the position of deciding "need" for a project based only on evidence reflecting demand and reliability as of the date of the application.

In addition to these re-application requirements concerning the need case, both Sugarloaf and the Armands request that an applicant must submit proof that it has worked with local government regarding planning and zoning related to the location of a substation. Sugarloaf Response at 4; Armand Letter at 2. Sugarloaf also seeks to require that an applicant include a description of all future plans, whether or not a component of the project, for any substation associated with the project. Sugarloaf Response at 4. The Armands seek to require that an applicant document that it has already received local government permits or exemptions related to both the location of a substation and the location and/or construction of any portion of the project for which a CPCN is sought. Armand Letter at 2. Further, the Armands seek to require proof that an applicant has engaged members of the public regarding their interests and concerns. Armand Letter at 2.

Certainly, the Commission must consider, as one of the evaluation criteria, the recommendations of local governing bodies. Md. Code Ann., PUA § 7-207(e)(1). However, the Court of Appeals has already ruled that the decision-making power of the Commission cannot be contravened by the actions of local governmental bodies. *Howard County v. Potomac Elec. Power Co.*, 319 Md. 511, 529 (1990). Pursuant to that ruling, the Commission subsequently concluded that its authority "encompasses all components of a project integral to the proposed transmission line, including, where appropriate, substations." Case No. 9198, Order No. 82892 at 2 (Sept. 9, 2009). Essentially, the proposed requirement would allow a local veto, effectively overruling the result in *Howard County*.

Moreover, § 7-207(d) provides direct opportunities for citizen and local government input by requiring that the public has the opportunity to comment on an application, including at a public hearing held jointly by the Commission and the county's governing body, unless the governing body declines. Meanwhile, in contrast, the statute and implementing regulations do not require any specific consultation between an applicant and local governments or members of the public, nor do they require an applicant to submit future plans for substations. It should be noted that, despite the lack of any such requirement, Potomac Edison did conduct extensive community outreach with respect to the PATH Project, and would expect to continue to provide outreach on future projects.

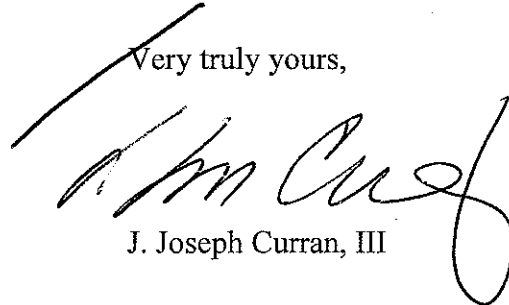
For all of the foregoing reasons, and particularly because the applicant has the burden of proving that its application meets the filing requirements of the PUA and COMAR, the Commission should not impose any conditions on re-application that are not applicable to other applicants seeking a transmission line CPCN. The Commission should not now make abstract judgments that would place uncertain constraints on and limit its discretion in hearing any future

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application. Potomac Edison, therefore, respectfully requests that the Commission deny the proposals to impose re-application requirements for the PATH Project beyond those required by the PUA and COMAR. Should a new application be filed, Potomac Edison will certainly follow the established statutory and regulatory requirements.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. Joseph Curran, III". The signature is written in a cursive style with a large, looping flourish at the end.

J. Joseph Curran, III

cc: The Honorable Douglas R. M. Nazarian  
The Honorable Dennis H. Sober  
Randall B. Palmer  
Jeffrey P. Trout  
Mindy L. Herman  
Service List