



**MARYLAND**  
DEPARTMENT OF  
NATURAL RESOURCES

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NONTIDAL WETLANDS & WATERWAYS  
WATER MANAGEMENT ADMIN., MDE

28 February 2011

To: Danielle Lange, Nontidal Wetlands and Waterways Division, MDE  
Woody Francis, U.S. Army Corps of Engineers

From: <sup>GG</sup>  
Greg Golden, Director, Environmental Review Unit, DNR

Subject: Tracking # 200960464, Corps Tracking # 2008-01304, Pepco Holdings, Inc./MAPP, southern Maryland portions of the Mid-Atlantic Power Pathway (MAPP), from Possum Point, Virginia to Chalk Point substation; multiple stream crossings Washington Metropolitan, Lower Potomac River, and Patuxent River Watersheds; Charles and Prince George's Counties

The above referenced project has been reviewed by the Department of Natural Resources (DNR) for associated ecological effects. The applicant proposes work, as described in the Corps of Engineers Public Notice, to install approximately 52 miles of 500 kV transmission line primarily on existing structures within an existing right of way (ROW) that varies in width from 187-feet to 400-feet wide. The work is proposed to complete installation of a second 500 kV circuit parallel to an existing circuit in the ROW. This existing line was previously approved by the Maryland Public Service Commission. However, as stated in the Corps Notice, the Commission will need to review the new structures required for the Potomac River Crossing.

In preparation of these public notice comments to Maryland Department of the Environment (MDE) and the U.S. Army Corps of Engineers (USACE), the DNR Environmental Review Unit review team coordinated directly with staff of DNR's Power Plant Assessment Division, and also with unit contacts for environmental review throughout the Department. The resulting comments are the coordinated Departmental response to the public notices. It is expected that additional details associated with these comments will need to be discussed in the interagency Joint Evaluation process with the applicant, to confirm existing documentation and pinpoint issues needing further documentation.

The Department has the following comments, questions and concerns:

1. OVERVIEW

As the permit agencies are well aware, the alignment of this project within southern Maryland crosses a landscape rich in a variety of natural resource values, ranging from important aquatic resources supported in both large rivers and small streams (with high ecological and /or recreational values); wide riparian wetlands and stream buffers; designated high ecological value and scenic waterways; large upland forest blocks; important hydrologic recharge areas; habitats for rare, threatened, and endangered species; and public lands under DNR management. While several of these values will be discussed further below, by extensive participation in the interagency review venue for many months, we also have to rely on the fact that the applicant and other review

agencies clearly understand the variety of important resources that are present in the study area, so that we can proceed with discussion of appropriate and specific impact avoidance, minimization, and compensatory mitigation measures. In order to conduct the appropriate sequence of impact avoidance, minimization, and compensatory mitigation, it is important to have specific and detailed justification of the project, a defined purpose and need that is accepted by the permit processes, and an appropriate selection of alternatives to consider. Based on public comments that have been viewed to date, our review team is not confident that the project purpose and need has been adequately conveyed for all interested parties. There is responsibility for the participating review agencies to be able to reflect confidence in the purpose and need documentation as well as alternatives considered when documenting our review. We recommend that this documentation be further discussed, and clarified as needed at an upcoming interagency meeting. Regarding alternatives, our past reviews have often found that existing ROW alignments are appropriate for impact minimization when energy transmission lines are upgraded. However, our observations on this review, based largely on ROW size, vegetation types, stream crossings, and overall impact numbers give importance to the careful documentation of alternatives consideration. The permit agencies should have comprehensive documentation of offsite alternatives in hand, prior to consideration of onsite Best Management Practices (BMPs) and design features. DNR's review team is available to help with further review of the offsite and onsite alternatives. Suggestions for onsite impact minimization are found in comments below, but those comments are contingent on permit agency findings that no viable alternative routes or transmission method are identified which would further avoid and minimize stream, wetland, and wetland buffer impacts.

## 2. AQUATIC RESOURCES, RIPARIAN BUFFERS, AND WATERSHED VALUES

The lower Potomac and Patuxent Rivers support important anadromous fish migration routes and spawning tributaries. Species include striped bass and shad in the larger rivers, and river herring, white perch, and yellow perch in the tributaries. Mattawoman Creek is especially well known for providing high value spawning habitat for anadromous fish. Many resident fish species are also supported in the regions waterways, including several rare and/or sensitive fish species in certain locations. Recreational fisheries are found in the Potomac, lower Mattawoman, and Patuxent Rivers, and prominently include tidal largemouth bass. The tidal bass fishery in the Potomac and Mattawoman systems draws economic resources (tourism) to the area, through fishing tournaments and nationally recognized sportsfishing opportunities. The Mattawoman Creek tidal estuary also supports significant beds of submerged aquatic vegetation (SAV). This estuary is documented to be among the very best and most productive estuarine fisheries and fish nursery areas in the entire State. There are several Tier II (High Quality) waters designated in the vicinity of the Southern Maryland portions of the MAPP project. These include Old Womans Run, reaches in Upper Zekiah Swamp, and the Patuxent River tributary Swanson Creek.

All of the referenced fisheries and aquatic values are dependant on watershed systems that maintain intact biological processes, related to hydrology, water quality, and maintenance of balanced communities of aquatic organisms. Therefore, we have strong concerns for activities within and near the upper Mattawoman Creek channel, riparian zone, and watershed, as well as the areas draining to the major rivers and other tributaries along the alignment. The Department has identified cumulative watershed impacts from development and other infrastructure in the Mattawoman watershed as a primary risk and concern for the continued maintenance of the system's high ecological value. Utility alignments should demonstrate efforts to protect naturally vegetated stream buffers (as optimally feasible), strict sediment and erosion control, and protection of hydrologic groundwater recharge areas. We have concern for the specific details of the proposed cutting of forest vegetation in this regard, within the riparian zone as well as other watershed areas. Additional concerns exist for

construction procedures such as access roadways, sediment and erosion control practices, and specific methods used to cross the unique wide riparian wetlands, floodplains and braided channels for which several of the regional streams are known. For long term maintenance, there is interest in the roadway maintenance and specific vegetation management procedures, including cutting procedures and use of herbicides.

As discussed above, valid avoidance and minimization measures may exist in the alternative alignment analyses. Any efforts that may avoid direct impacts to Mattawoman Creek and tributaries, Zekiah Swamp tributaries, and Patuxent River tributaries would be of specific interest for fisheries and aquatic resources protection. In the existing ROW, if permit agencies find this to be the most feasible and unavoidable alternative, we have the following specific comments:

If the clearing width of the existing ROW is expanded as proposed, it is very important for the wetland and waterways authorizations to be very specific in the required permit conditions and BMPs that are applied. The additional width of clearing should be strictly minimized, to reduce impacts to natural forest blocks, and maximize the preservation of forest functions and values to the watershed. Clearing width must be considered uniquely for the wetland, riparian area, and stream crossing areas (in other words, with site specific attention and BMPs that may differ from recommendations in upland areas). In addition, the riparian buffer should be maximized for scrub shrub vegetation (or species-selected low height native trees) that have limited height under the powerlines, yet can more closely yield the functions and values of riparian forests than would managed emergent vegetation. Specific measures to minimize invasive plant species entry into the ROW should be identified. As the applicant has indicated in their materials, ROW vegetative management procedures should be conducted with measures and materials that avoid toxicity risks to aquatic systems; details should be documented in permit conditions and BMPs. Roadways encroaching into the riparian zones and wetland crossings should be minimized, and those that are unavoidable for construction should be restored to natural conditions where feasible, or minimized in nature if also needed for future maintenance. Specific state of the art construction and maintenance measures should be discussed between the resource agencies and the applicant, and a comprehensive set of specific measures should be set into the requirements of any MDE authorization. Because of the high value resources involved, we recommend that monitoring and reporting protocols also be discussed for the construction period and long term maintenance of any newly authorized utility crossing disturbances in riparian zones. This can include reporting of the success of avoidance and minimization efforts, the status of site restoration and vegetation management, and needs for additional maintenance activities and disturbances in the long term.

Regarding tidal wetland and waterway impacts for the Potomac River crossing, it is important that the interagency review be able to conclude with confirmation that impact avoidance and minimization will succeed for SAV conservation, avoidance of fish passage hindrance or blockage, strict minimization of sediment suspension, and protection of fish populations and habitat. We are expectant that this can be accomplished through final detailing of the tidal wetlands permit conditions and BMPs. However, there may be need to have specific details of the package of protection measures discussed within the interagency arena before those protection measures are finalized.

Regarding mitigation, we note that forest vegetation loss is proposed within watersheds and riparian zones to high quality stream designations as well as designated waterways and tributaries in the State's Scenic and Wild Rivers Program. Our recommendation is that any jurisdictional tree removal should be compensated in amount

and function in the vicinities of the impacts (i.e. western side of the Patuxent River, Zekiah Swamp headwaters, Piscataway Creek, Mattawoman Creek, and Potomac River mainstem areas).

### 3. RARE, THREATENED, AND ENDANGERED SPECIES AND THEIR HABITATS

The Department's coordinated review in response to the permit agency public notices has confirmed that the applicant has conducted detailed coordination with the Department's Wildlife and Heritage Service (WHS) on the topic of rare, threatened, and endangered species. Further, we understand that the applicant has provided documentation of this coordination to MDE's Nontidal Wetlands and Waterways Division. In November 2010, email communication from WHS to Entrix indicated that "At this time, it appears that all our requests pertaining to RT&E species have been addressed for the sections of the project route 'Possum Point to Burches Hill' and 'Burches Hill to Chalk Point' as shown on recent mapping. Although survey work for these sections has been completed, the WHS would still like to emphasize the need to adhere strictly to all appropriate BMPs during work so that the resources we have mentioned in the past correspondence are less likely to be adversely impacted by secondary impacts associated with this project". WHS further clarified in their message that there are still outstanding RT&E issues with the sections from Chalk Point eastward.

### 4. FOREST RESOURCES

The Forest Conservation Act requires that before the issuance of a grading or sediment control permit, the applicant shall have an approved Forest Conservation Plan (FCP) and Forest Stand Delineation (FSD) (Nat. Res. Art. 5-1601-5-16122, Annotated Code of Maryland). The Maryland Forest Service requests that the FCP and FSD be submitted to Marian Honecny at MD Forest Service, 580 Taylor Ave. E-1, Annapolis, MD, 21401 for review and approval. The Act provides for the retention of forested areas in sensitive areas on the subject property as one method of mitigation.

Please note, for Maryland Forest Service to make any determination or status confirmation on project documentation related to the Forest Conservation Act, Forest Service staff must conduct a review of the referenced materials (FCP and FSD). Review questions and further coordination needs may be generated by that review.

### 5. PUBLIC LANDS

It is important to repeat our comments from the most recent Joint Evaluation meeting (February 16, 2011), because we have concern for any potential misunderstanding by applicants or consultants on the point that Public Lands access review and coordination for lands managed by DNR is not completed within the standard interagency environmental review for natural resource issues. Land access onto State owned and managed lands is a legal matter which must undergo a different review and authorization process. Certain access agreements involve detailed legal review, most or all will require detailed written documents, and some involve the necessity to go before the Board of Public Works. Therefore, no assumptions should be made regarding timelines, implied permission, nor exemptions related to public lands access. The applicant should be informed within the MDE and Corps review processes that access into or through DNR managed lands is not addressed in the interagency review process, and must be addressed directly by the applicant with DNR's Land Acquisition & Planning Unit. They should contact John F. Wilson at 410-260-8412 for further information.

### 6. SCENIC AND WILD RIVERS

The study area includes two designated rivers within the Maryland Scenic and Wild Rivers Program. These are the Wicomico River/Zekiah Swamp system, and Patuxent River. These designations include provisions for considering tributaries within the review of concerns and potential impacts. For both of these systems, the potential impacts from the current project alignment would affect small tributaries. Review concerns related to the Scenic and Wild Rivers designation involve not only visual effects, but are also associated with ecological issues such as instream disturbances, hydrology, riparian buffer characteristics, invasive species, sedimentation, and aquatic organism communities. Specific attention should be given to strict avoidance and minimization of impacts to riparian buffers and stream impacts within these designated stream systems. Typically, this review category is best addressed towards the later stages of MDE and Corps impact avoidance and minimization review for wetlands and waterways. At that point, our office will discuss the results of that review with the Department's coordinator for the Scenic and Wild Rivers Program. Documentation from the review should demonstrate the retention of naturally vegetated riparian buffers, avoidance or strict minimization of instream construction, soil stabilization and vegetation management plans in riparian buffers that prevent introduction of invasive species, avoidance of impact to natural hydrology, and protection measures for stream ecology during construction and project maintenance.

Note that the State Scenic and Wild Rivers Act requires, "every State unit shall recognize the intent of the Scenic and Wild Rivers Program and take whatever action is necessary to protect and enhance the scenic and wild qualities of the designated river" (Natural Resources Article 8-407). This is an important point, as one of several indications that the issues of forest vegetation conservation overall and especially conservation and mitigation of forested riparian buffer are related not only to the Forest Service review for the Forest Conservation Act, but also the Scenic and Wild Rivers review, and also the nontidal wetlands and waterways ecological review criteria.

## 7. DEPARTMENTAL COMMENTS RELATED TO PUBLIC SERVICE COMMISSION REVIEW

There are three sets of recommendations that DNR and other agencies have made through the Public Service Commission (PSC). The following list includes these.

Various conditions were attached to the Public service Commission Order, 59888, in Case # 6526, with which Pepco must comply.

In addition, when the project was brought before the Public Service Commission, Pepco made the following commitments:

- 1) Pepco will conduct all construction and maintenance activities associated with the installation of a second 500 kV circuit from Moss Point on the Maryland Shore of the Potomac River to the Chalk Point Generating Station in Prince George's County in compliance with all currently applicable laws and regulations.

Pepco will demonstrate compliance with all applicable laws and regulations prior to commencing the installation of the second circuit by sending copies of all required permits and authorizations to the Commission and PPRP.

2) Pepco agrees not to install the second circuit from Burches Hill to Moss Point before Pepco's request to add the second row of structures across the Potomac River from Moss Point to Possum Point on the Virginia shore is considered and approved by the Commission.

3) Pepco will continue to conduct community outreach efforts on an ongoing basis as the second circuit is installed, such as but not limited to, community meetings with appropriate notice to adjacent property owners.

Finally in Public Service Commission Case 9179, the Power Plant Research Program provided a set of recommended conditions that were approved by the Secretaries of the reviewing State agencies. Pepco should be required to commit to complying with these recommendations also.

#### 8. CRITICAL AREA COMMISSION

Portions of the project alignment are located within the designated Critical Area (tidal reaches and buffers). Coordination should continue with staff of the Critical Area Commission, which will make a determination of any authorizations or informational submissions which are required.

In summary for the above comprehensive DNR comments, the Department's review staff has developed the information provided in this memo to emphasize the important natural resources found in the region incorporating the subject project's study area, and to provide more specific requests and recommendations where appropriate. It is not yet clear from our own review that adequate confirmation and documentation has been completed in adequate detail for the wide range of project purpose, project alternative, and avoidance, minimization, and mitigation issues. We do understand that much information has already been exchanged with multiple agencies, and that interagency coordination will need to continue to reach final agreements on which informational needs and requests can be checked off by all the agencies. An important continuing review item must be the differentiation of general commitments for resource protection versus commitment to specific construction methods, vegetation management parameters and procedures, Best Management Practices, and potential permit conditions. Documentation and commitment to very specific details for natural resource protection are necessary for the Interagency review process to reach a conclusion. DNR review staff is also interested in discussing further specifics of the purpose and need and project alternatives review, to reach full understanding of the status of these review items. DNR review staff will be available to continue in interagency coordination and review; we look forward to participating in the process to avoid and then strictly minimize potential natural resource impacts to this ecologically rich, and sensitive, region. If you have questions concerning any of these comments or have additional information to provide, please forward to me at your convenience. I can be reached at 410-260-8331 or [ggolden@dnr.state.md.us](mailto:ggolden@dnr.state.md.us).