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September 26, 2012

Mr. David J. Collins
Executive Secretary
Maryland Public Service Commission
William Donald Schaefer Tower
6 Saint Paul Street, 16th Floor
Baltimore, Maryland 21202-6806

Re: Case No. 9290

Dear Mr. Collins:

Enclosed please find an original and seventeen (17) copies of the Agreement of Stipulation and Settlement (“Settlement Agreement”) between Delmarva Power & Light Company (“Delmarva Power”) and the Power Plant Research Program (“PPRP”) of the Maryland Department of Natural Resources. The Settlement Agreement resolves all disputed issues between Delmarva Power and PPRP in the above captioned proceeding, and represents a joint recommendation by Delmarva Power and PPRP that the Maryland Public Service Commission (“Commission”) accept the Settlement Agreement and grant Delmarva Power’s request in this proceeding for a Certificate of Public Convenience and Necessity.

Delmarva Power is filing the Settlement Agreement in lieu of rebuttal testimony.

Please feel free to contact me if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Segers".

Matthew K. Segers

MKS/pmh

Enclosure

cc: All Parties of Record

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND**

**IN THE MATTER OF THE APPLICATION)
OF DELMARVA POWER AND LIGHT COMPANY)
FOR A CERTIFICATE OF PUBLIC CONVENIENCE)
AND NECESSITY TO REBUILD AN EXISTING)
138 KV OVERHEAD TRANSMISSION LINE ON)
EXISTING RIGHT-OF-WAY FROM CHURCH)
SUBSTATION IN QUEEN ANNE’S COUNTY)
(MARYLAND) TO THE MARYLAND/DELAWARE)
STATE LINE)**

PSC Case No. 9290

**AGREEMENT OF
STIPULATION AND SETTLEMENT**

Delmarva Power and Light Company (“Delmarva Power”) and the Power Plant Research Program (“PPRP”) of the Maryland Department of Natural Resources, (the “Settling Parties”), by their undersigned counsel, agree as follows:

BACKGROUND

On March 30, 2012, Delmarva Power filed with the Public Service Commission of Maryland (the “Commission”), pursuant to Section 7-207 of the Public Utilities Article, an Application for a Certificate of Public Convenience and Necessity (“CPCN”) for Authority to rebuild the Maryland portion of an existing 138 kV overhead transmission line from Delmarva Power’s Church Substation in Queen Anne’s County, Maryland to Delmarva Power’s Townsend Substation in New Castle County, Delaware (the “Project”). The Application consisted of a legal application and an environmental review document. Also on March 30, 2012, Delmarva Power filed in support of its CPCN application the Direct Testimony and associated exhibits of William M. Gausman, Jaclyn R. Cantler, Raymond F. Rouault, Dana D. Small, and Dr. William Bailey.

PPRP, acting in cooperation with other interested State agencies,¹ conducted an environmental and socioeconomic review of the impacts of the proposed Project and developed a set of Initial Recommended Licensing Conditions in an effort to ensure the construction and operation of the proposed Project will meet the requirements of applicable environmental statutes and regulations, minimize impacts, and pose no undue detrimental impacts on the surrounding community. On September 10, 2012, PPRP filed the Direct Testimony of Susan T. Gray along with supporting documentation, as well as a set of Initial Recommended Licensing Conditions. Also on September 10, 2012, Commission Staff filed the Direct Testimony of Craig Taborsky. No other party filed testimony.

The Settling Parties have engaged in settlement negotiations to determine the final recommended licensing conditions. As a result of these settlement negotiations, the Settling Parties agreed to enter into this “Agreement of Stipulation and Settlement” (“Agreement”) and to incorporate the final recommended licensing conditions (“Final Recommended Conditions,” attached hereto as “Exhibit A”) into any CPCN that may be issued for the Project. Delmarva Power agrees to accept the Final Recommended Conditions if adopted in the form and substance attached, and the Settling Parties agree not to seek further Commission review of the Final Recommended Conditions. All of the Settling Parties are in agreement that the issuance of a CPCN for the Project, subject to the Final Recommended Conditions, will be in the public interest.

AGREEMENT

NOW, THEREFORE, the Settling Parties do hereby stipulate and agree as follows:

1. The Settling Parties recommend that the Commission issue a CPCN for the Project, subject to the Final Recommended Conditions set forth in Exhibit A. The Settling Parties stipulate

1. PPRP coordinates environmental and socioeconomic reviews with other units within DNR and other State agencies, including Maryland's Department of Agriculture, Environment, Business and Economic Development, Planning (including the Maryland Historic Trust), Transportation, and the Maryland Energy Administration.

and agree that the issuance of a CPCN that incorporates the Final Recommended Conditions will be in the public interest and will serve the public convenience and necessity. In making this recommendation, the Settling Parties have taken into account each and all of the factors and considerations listed in Section 7-207(e) of the Public Utilities Article of the Maryland Code and related laws and regulations.

2. The Settling Parties stipulate and agree that the construction and operation of the Project in accordance with the Final Recommended Conditions would meet or exceed the requirements of all currently applicable environmental laws and regulations.

3. The Settling Parties agree not to seek further review by the Commission if the Final Recommended Conditions are adopted as proposed herein as the conditions to the CPCN.

4. The Settling Parties recognize and agree that the provisions of the Final Recommended Conditions are interrelated and that those provisions, taken as a whole, constitute a comprehensive scheme for the mitigation of any adverse environmental effects and other adverse impacts that might otherwise result from the construction or operation of the Project. The provisions of the Final Recommended Conditions are interdependent, in that a change or addition made to address a concern in one aspect could well have an unanticipated adverse effect or other unintended consequence with respect to another aspect. The Settling Parties accordingly agree, and enter into this Agreement with the understanding that the Final Recommended Conditions should be accepted by the Commission without further change, addition, or other alteration of any kind.

5. The Settling Parties view the Final Recommended Conditions and this Agreement as a package, with all of the parts interrelating to each other. If the Final Recommended Conditions are materially changed, supplemented, or rejected by the Commission, this Agreement shall be deemed withdrawn and shall not constitute any part of the record in this proceeding or be used for any other purpose whatsoever. In the event the Commission determines not to accept and approve the Final

Recommended Conditions and this Agreement, the Settling Parties respectfully request that the Commission provide the Settling Parties an opportunity (i) to negotiate an alternative settlement agreement to address the Commission's concerns or a contested settlement agreement representing the terms of settlement that remain acceptable to some of the Parties, or (ii) to withdraw their support for this Agreement, to prepare and file briefs, and to proceed with further litigation of these issues.

6. This Agreement represents a compromise for the purposes of settlement and shall not be regarded as a precedent with respect to any future case. No Settling Party necessarily agrees or disagrees with the treatment of any particular item, any procedure followed, or the resolution of any particular issue in agreeing to this Agreement other than as specified herein, except that the Settling Parties agree that the resolution of the issues herein, taken as a whole, is in the public interest.

7. No Settling Party shall be deemed to have approved, accepted, agreed, or consented to any principle underlying or supposed to underlie any of the matters provided for in this Agreement, nor shall approval of this Agreement constitute in any respect a determination by the Commission as to the merits of any of the contentions or allegations which might be made by any of the Settling Parties in the absence of settlement.


8. The discussions that produced this Agreement have been conducted with the understanding that all offers of settlement and discussions relating thereto are and shall be privileged and confidential, shall be without prejudice to the position of any party or participant presenting any such offer or participating in any such discussions, and are not to be used in any manner in connection with this proceeding or otherwise.

9. This Agreement may be executed in any number of identical counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute but one and the same instrument. Delivery by any party or its respective representatives of telecopied (counterpart) signature pages shall be as binding an execution and delivery of this Agreement by such party as if the other parties had received the actual physical copy of the entire Agreement with an ink signature from such party.

WHEREFORE, the Settling Parties have caused their signatures to be affixed to this Agreement of Stipulation and Settlement through and by their respective counsel.

Respectfully submitted,

DELMARVA POWER AND LIGHT COMPANY

By: 
Matthew K. Segers
Assistant General Counsel

MARYLAND DEPARTMENT OF NATURAL RESOURCES
POWER PLANT RESEARCH PROGRAM

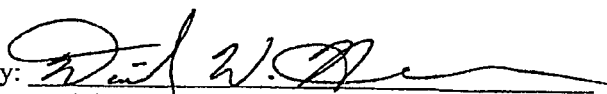
By: 
Daniel W. Hurson
Assistant Attorney General

EXHIBIT A

Final Recommended Licensing Conditions
PSC Case No. 9290
Delmarva Power & Light Company - Church Substation to Maryland/Delaware
State Line 138-kV Transmission Line Rebuild Project

1. Construction and operation of the transmission line shall be undertaken in accordance with this certificate and shall comply with all applicable local, State, and federal laws and regulations, including but not limited to the following:
 - a. Non-tidal Wetlands - COMAR 26.23.01 applies to activities conducted in non-tidal wetlands and wetlands buffer.
 - b. Waterway Construction - COMAR 26.17.04 applies to regulations governing construction activities in non-tidal waters and floodplains.
 - c. Water Quality and Water Pollution Control - COMAR 26.08.01 through COMAR 26.08.04 applies to discharges to surface water and maintenance of surface water quality.
 - d. Erosion and Sediment Control - COMAR 26.17.01 applies to the preparation, submittal, review, approval, and enforcement of erosion and sediment control plans.
 - e. Critical Area - COMAR 27.01.01 et seq. applies to construction within the Chesapeake Bay Critical Area. County laws and regulations applicable to construction within the Critical Area include (1) the Queen Anne's County Chesapeake Bay Critical Area Act, Chapter 14.1 of the Public Local Laws of Queen Anne's County; (2) the Kent County Maryland Land Use Ordinance; and (3) Chapter 248 of the Cecil County Code.
 - f. Forest Conservation - Maryland's Forest Conservation Act, Md. Code, Section 5- 1601 et seq. of the Natural Resources Article.
 - g. Particulate Matter from Materials Handling and Construction - COMAR 26.11.06.03D, applies to airborne particulate matter such that a person may not cause or permit any material to be handled, transported, or stored, or a building, its appurtenances, or a road to be used, constructed, altered, repaired, or demolished without taking reasonable precautions to prevent particulate matter from becoming airborne.
 - h. Nuisance - COMAR 26.11.06.08, applies to the creation of nuisance or air pollution such that an installation or premises may not be operated

or maintained in such a manner that a nuisance or air pollution is created. Nothing in this regulation relating to the control of emissions may in any manner be construed as authorizing or permitting the creation of, or maintenance of, a nuisance or air pollution.

- i. Odors - COMAR 26.11.06.09, applies to the discharge of air pollution such that a person may not cause or permit the discharge into the atmosphere of gases, vapors, or odors beyond the property line in such a manner that a nuisance or air pollution is created.
 - j. Noise - COMAR 26.02.03, applies to noise regulations whereby Delmarva Power & Light Company shall construct and operate the proposed Project in such a way that it complies with the Maryland noise regulations and with relevant county noise ordinances (if any).
2. Construction and operation of the transmission line must commence within three (3) years of receiving the Certificate of Public Convenience and Necessity (CPCN) and must be completed for operation prior to February 2014. If conditions warrant a change in this schedule, Delmarva Power & Light Company (Delmarva Power) must notify the Public Service Commission (PSC) and the Power Plant Research Program (PPRP).
3. Delmarva Power shall provide as-built details on the following to PPRP and the PSC in accordance with COMAR 20.79.04.02A: engineering and construction plans of the linear facilities, including right-of-way (ROW) width, length and total acreage of the ROW; transmission line structure and foundation types, dimensions and locations; transmission line conductor configuration; and nominal length of span between transmission line structures. Where the as-built details are identical to those submitted with the CPCN application, Delmarva Power should provide a statement to this effect and not resubmit the information. In addition, Delmarva Power shall provide engineering and construction plans for all new access roads and those modifications to existing access roads for which a construction drawing is required for permitting, as well as those final plans for roadway reclamation following construction of the proposed Project, if any.
4. All portions of the ROWs disturbed during construction shall be stabilized immediately after the cessation of construction activities within that portion of the ROW, followed by seed application, except in actively cultivated lands, in accordance with the best management practices (BMPs) presented in the Maryland Department of the Environment (MDE) document titled, *1994 Maryland Standards and Specifications for Soil Erosion and Sediment Control*, and as approved by Kent and Queen Anne's Counties.

5. Delmarva Power shall advise the PSC and PPRP that copies of contract specifications for clearing, construction, and rehabilitation of the ROW are available within thirty (30) days of preparing them, but prior to the beginning of construction, if contractors are engaged to perform such activities.
6. All impacts (temporary or permanent) to the following resources shall be quantified by Delmarva Power and provided to MDE to obtain authorization and to PPRP for reviewing the impacts prior to any construction activities.
 - a. Streams and 100-year floodplains, and
 - b. Non-tidal wetlands and their regulated buffers – impacts to non-tidal waters and floodplains shall follow Maryland guidelines for Waterway Construction, Detail 4.1.
7. Any impact to wetlands, including vernal pools within or abutting the Project site shall be mitigated if required by MDE Non-tidal Wetlands laws and regulations. Delmarva Power shall provide PPRP with a copy of any wetlands and waterways permit applications that may be filed in connection with this project.
8. Around all known tiger salamander breeding ponds and wetlands, Delmarva Power shall maintain a minimum 500-foot buffer. In the event a 500 foot buffer must be traversed by motorized machinery and/or temporary or permanent roads, Delmarva Power shall consult with MD DNR Wildlife and Heritage for appropriate routing within the buffer, and restrict construction and maintenance activities within this buffer area to periods outside of the November through April tiger salamander breeding period.
9. Delmarva Power shall notify and consult with MD DNR Wildlife and Heritage if additional rare, threatened, or endangered species are encountered during planning, construction, or maintenance of this facility to determine appropriate actions.
10. Delmarva Power shall (with appropriate land owner permission) employ the vegetative management measures specified in paragraphs (a) through (e) below utilizing wire zone/border zone designations to be consistent with *Best Management Practices: Integrated Vegetation Management (IVM) on Electric Utility Rights-of-Way* cultural control methods to conserve natural resources and preserve environmental quality. The wire zone is the section of a utility transmission ROW directly under the wires and extending outward 15 feet on each side of the outermost conductor. On each side of the ROW, the border zone begins at the edge of the ROW and ends 15 feet from the outermost conductor(s). It is understood that on the newly configured Townsend to Church ROW there will be no intermediate border zone in the ROW between adjacent circuits. The resulting vegetation clearances are to be compliant with NERC, and FERC rules, guidance, policies, procedures, and/or regulations.

- a. In the part of the ROW bisecting designated DNR Green Infrastructure and other forested parcels that are not under active cultivation, Delmarva Power shall (with appropriate landowner permission) maintain the ROW such that (1) the wire zone is a low growing plant community dominated by grasses, herbs, forbs, and small shrubs [under 3 feet in height at maturity] and (2) to the extent feasible, scattered, small native trees and woody shrubs are allowed to grow along the edges of the ROW using appropriate management techniques consistent with the wire zone/border zone model. This will provide connectivity of parcels of forest currently bisected by the ROW. Where topography allows additional vertical clearances under conductors, IVM protocols employed will enhance vegetative height and density. Any access tracks through these areas that require mowing shall follow mowing conditions noted in Licensing Condition 10(b) below. The ROW will be maintained as such while the ROW is in use by Delmarva Power and its successors or assignees.
- b. Delmarva Power, subject to landowner consent and local grass height ordinances, shall not mow areas within the ROW maintained as grasses and forbs during the breeding season for ground nesting birds from May through August of each year. All mowing outside of the May through August breeding season will be to a height of no less than 6 inches.
- c. Subject to applicable law and landowner requirements, herbicide application, hand-cutting, and mowing shall be performed in accordance with industry best practices and incorporated into the plans to target noxious and incompatible species in order to accomplish the desired habitat, described in Licensing Conditions 10(a) and 10(b) above, while allowing for adequate access by Delmarva Power.
- d. All stream and wetland buffers (as defined by MDE) shall have IVM protocols employed that enhance vegetative height and density. Where topography allows additional vertical clearances under conductors, IVM protocols employed shall enhance vegetative height and density. If Delmarva Power requires a mowed access track through any stream or wetland buffer, all mowing shall be restricted as described in Licensing Condition 10(b) above.
- e. Delmarva Power shall provide PPRP, both post-construction and in advance of the initial vegetation management, a copy of the proposed vegetation management plan for any section of the ROW that bisects DNR Green Infrastructure. These detailed vegetation management plans shall include a work plan for implementing the initial vegetation management for these segments of the ROW beginning after construction has concluded, and will consist of the following:

- i. Map(s) with locations of proposed vegetation management work by prescription (for example: hand cut and treat, bucket cut, tree removal, etc)
 - ii. Maps features include: pole locations, wetlands, water courses, roads, railroads, limits of right of way
 - iii. Detail reports that include: Property owner information, property owner special conditions remarks, access, treatment type, specific treatment details (for example, for tree removal, DHB measurement), comment section, and access obstructions (for example, water course).
 - iv. Summary reports that summarize in area or quantity the various vegetation management treatments.
11. Any tree clearing and disposal activities shall be conducted in accordance with the Revised Quarantine Order of the Secretary of Agriculture, State of Maryland, to prevent the spread of Emerald Ash Borer in this state; Plant Protection Order #11-02 dated July 21, 2011.
12. Delmarva Power shall mitigate disruptions to commuter traffic to the extent practicable by scheduling the transport of materials and equipment to staging areas and construction sites during non-peak hours.
13. Delmarva Power shall comply with all permit requirements for the use and/or crossing of State and county roads and obtain approvals as necessary.
14. If relics of unforeseen archeological sites are revealed and identified in the Project area during construction, Delmarva Power , in consultation with and as approved by the Maryland Historical Trust, shall develop and implement a plan for avoidance and protection, data recovery, or destruction without recovery of such relics or sites.
15. Prior to construction, DPL shall file a Notice of Proposed Construction or Alteration to the Federal Aviation Administration (FAA) and to the Maryland Aviation Administration (MAA) for a formal determination of the Project's effect on navigable airspace by aircraft in the vicinity of the Massey Aerodrome.
16. Within three months of energizing the transmission line, Delmarva Power shall submit to PPRP and PSC, actual electromagnetic field (EMF) values measured at the centerline and edge of the transmission line ROW, while transmission line is operating under typical loading conditions. In addition to the measurement data, Delmarva Power shall provide the following:

- a. A site drawing with the measurement locations, with the ROW and the center line of the transmission line identified,
 - b. The MVA load on the transmission line at the location where the magnetic field measurement were taken,
 - c. The date, time and temperature, and
 - d. The manufacturer and model of the instrument used to measure the electrical field level.
17. With respect to the location where the ROW splits into two legs (Site C-D in Exhibit STG-3), Delmarva Power shall develop an engineering solution to:
- a. locate the new 138-kV line adjacent to the existing 230-kV line within the eastern leg of the split, and
 - b. remove the current 138-kV structures from the western leg of the split and restore the area through natural re-vegetation to a forested/forested wetland state.

Subject to landowner permission or attaining of additional ROW easement, Delmarva Power shall implement the engineering solution during line reconstruction.

18. Informational copies of the required communications, reports or studies referenced in the recommended licensing conditions Nos. 1 through 17 shall be sent to PPRP by mail and e-mail at:
- Susan T. Gray
Power Plant Assessment Division
Department of Natural Resources
Tawes State Office Bldg., B-3
580 Taylor Avenue
Annapolis, Maryland 21401
[e-mail: sgray@dnr.state.md.us](mailto:sgray@dnr.state.md.us)

CERTIFICATE OF SERVICE

I hereby certify that on behalf of Delmarva Power & Light Company, a true copy of the Agreement of Stipulation and Settlement was served on the parties of record in Case No. 9290 by first class mail, postage prepaid, this 26th day of September 2012.

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