

**STATE OF MARYLAND
OFFICE OF PEOPLE'S COUNSEL**

**Paula M. Carmody, People's Counsel
6 St. Paul Street, Suite 2102
Baltimore, Maryland 21202
410-767-8150; 800-207-4055
www.opc.state.md.us**

BILL NO.: House Bill 1110
Electric Company Franchise—Abandonment and Transfer

COMMITTEE: Economic Matters

HEARING DATE: March 9, 2011

SPONSOR: Delegates Frick, *et al.*

POSITION: Informational

House Bill 1110 would establish an uncodified section to the franchise provisions of the Public Utilities Article (PUA). The bill requires the Public Service Commission to set up an investigation of the Potomac Electric Power Company (PEPCO), and decide whether PEPCO has abandoned or constructively abandoned its franchise as an electric company in the State. The Commission is required to make specific determinations, as to whether PEPCO:

- Has failed to comply with Section 5-303 of the PUA regarding the obligations of a public service company to provide safe, adequate, just, reasonable, economical and efficient service
- Has failed to provide a service that the PSC requires of a franchisee
- Is operating its franchise in a manner not consistent with the public convenience and necessity

Under the bill, PEPCO would be deemed to have abandoned its franchise if the Commission finds that it meets any of the above conditions. The Commission proceeding must be started on or before September 1, 2011 and the Commission must make its finding on or before December 1, 2011. If PEPCO is found to have abandoned (or constructively abandoned) its franchise, the Commission is required to take steps to transfer the franchise to another public service company.

The Commission already has the authority to revoke a franchise of a public service company under certain conditions. This bill would require the Commission to conduct an investigation of a specific company, PEPCO. While the bill does not make reference to any specific reasons for the investigation requirement, it is quite clear that the bill is a result of the series of extended storm outages sustained by PEPCO customers in February 2010, summer 2010 and January 2011, as well as the customer complaints about so-called blue sky outages. This investigation would be in addition to pending Commission proceedings to investigate PEPCO's service reliability in major storms and during normal weather, and a proceeding to consider service reliability standards for all electric companies.

The type of revocation, suspension or modification of the franchise contemplated by this Bill is an extraordinary remedy, rare, but not without precedent. In the case of an electric utility, if the franchise is revoked, particularly care must be taken by the Commission to ensure that the company it chooses to take over the franchise has the wherewithal (in terms of capital and human resources) to take on the extra burden of operations from a "failed" or "failing" utility. Additionally, the transfer of operations will take some time and the transition must be managed carefully to avoid further disruption to the customers. Finally, we can anticipate that there will be

immediate legal action taken by the “failed” or “failing” franchise to assert that revocation of its franchise is an unconstitutional taking of property.