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March 11, 2020

The Honorable Matthew Morgan  
310 House Office Building  
Annapolis, Maryland 21401-1991

Dear Delegate Morgan:

You have asked for advice concerning a proposed amendment to House Bill 1207, "Electric Companies - Conduit Installation - Single-Family Detached Developments." Specifically, you have asked whether the amendment, which would limit the application of the bill to the service area of the Southern Maryland Electric Co-op ("SMECO"), would violate the constitutional prohibition on special laws. While the matter is not free from doubt, it is my view that there is a fair argument that this is not a special law.

House Bill 1207 would prohibit an electric company from requiring a builder or developer to install conduit required for the electric company's proposed underground electric system anywhere within the development at the cost of the builder or developer. It would, however, allow an electric company to require a builder or developer to install conduit at crossings. The bill would take effect October 1, 2020 and would stay in effect until July 31, 2025. According to the Fiscal and Policy Note on the bill, it addresses a problem raised when SMECO suddenly began placing the responsibility for installation of conduit on builders and developers, after years of installing conduit itself with the exception of conduit in crossings.

As I understand it, the matter of responsibility and payment for conduit for electric systems in developments is typically set in the tariff of each electric company, though that may not be universal. The provisions vary from company to company, so setting a single rule statewide would likely be disruptive. The SMECO tariff has permitted the company to require installation by the builder or developer since 2006. Specifically, the SMECO tariff provides: "Subdivision Developers and Builders shall be responsible for the installation of ALL [emphasis in original] conduit that may be required for SMECO's proposed underground electrical system anywhere within the subdivision. This conduit shall be supplied by the Developer/Builder and shall be installed per SMECO's specifications and requirements." Thus, the recent change in SMECO's policy reflects what their tariff has permitted for years.

When SMECO changed its policy the Maryland Building Industry Association filed a petition with the Public Service Commission ("PSC") to prevent the change. PSC staff concluded that "SMECO's tariff gives them authority to require developers/builders to install conduits in new

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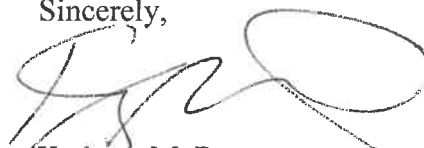
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single-family lot subdivisions, and does not explicitly limit SMECO's discretion." Staff also noted, however, that the "Petition raises sufficient issues of equity and the public interest that the Commission may wish to require SMECO to grandfather builders who made expenditures in reliance on SMECO's former policy." Because the tariff clearly permitted the new requirement, staff recommended that the petition be denied, and the PSC agreed.

It is my view that the delay in implementation, and the lack of notice to builders and developers who were operating in reliance on the customary practice of SMECO could be seen as making SMECO one of a kind with respect to this issue. In such cases, the Court of Appeals has held that there is no violation of the prohibition on special laws. *Jones v. House of Reformation*, 176 Md. 43 (1939) *M & CC of Baltimore v. U Rwy & E Co.*, 126 Md. 39 (1915).

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Rowe', with a large, stylized flourish extending to the right.

Kathryn M. Rowe  
Assistant Attorney General

KMR/kmr  
morgan03