October Term, 1947.

No. 202

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Christian H. Kahl, et al.,

vs.

Consolidated Gas Electric Light
and Power Company of Baltimore

W. Barry Cassell, et al.,

vs.

Consolidated Gas Electric Light
and Power Company of Baltimore

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Majority Opinion

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This is the latest of several cases resulting from the attempt of the appellee to construct an overhead power transmission line through Baltimore County to the Mount Washington substation. The purpose of the line is to provide additional electric power, said to be urgently needed, in the Baltimore area. The earlier cases, reaching this Court were Johnson vs. Consol. Gas, Elec. Lt. & Power Co., ______Md.______,50 A 2d, 918 (a condemnation case), an appeal from the dismissal of the original bill filed in the instant case, which on motion, agreed to by all parties, was remanded without affirmance or reversal and without opinion, and an appeal from an order refusing a preliminary injunction in this case which we held premature. Kahl vs. Consol. Gas, Elec. Lt. & Power Co., _____Md.______, 57 A 2d, 331. The present appeal is from orders dismissing the amended and supplemental bills of complaint, passed after extended hearings and the taking of voluminous testimony.

The proposed power line is to traverse the Metropolitan District of Baltimore County for a distance of about eight miles. It is to carry a load of 110,000 volts, and is to cross the Green Spring Valley in the vicinity of Rockland. It has been opposed from the beginning by a group of property owners who have contended that the overhead structures would destroy or impair the beauty of the countryside and would lower property values in a high class residential community. They suggest and offer competent testimony to show that the line can be placed underground at a cost not excessive in view of the circumstances. This question, however, we do not consider is properly one for the court to consider, at least in the present state of the record. The proposed construction, it may be added, has been approved, after protests and a subsequent investigation, by the Chief Engineer of the Public Service Commission, who said that the cost of underground construction would be prohibitive.

The original bill in this case was filed by the landowners. After amendment, to permit the raising of new issues in view

of the passage of certain amended Zoning Regulations in 1946, the trial was had on these issues, which were also raised by the bill filed by the County Commissioners of Baltimore County on February 10, 1947. The cases were heard together. As presented below, and to us, they raise a number of questions. The more important of these are the validity vel non of the Zoning Regulations as applied to the appellee, and the right of the court to pass upon the issues raised in advance of an application for a permit to the Zoning Commissioner.

The Zoning Regulations, first adopted January 2, 1945 (pursuant to a special enabling act, Acts of 1941, Ch. 247, amended Acts 1943, Ch. 877) and subsequently amended November 15, 1946, except electric light and power lines on public highways or lines carrying less than 5000 volts on poles. For other electric light and power lines special permits are required. Standards are made applicable to the grant of such special permits. Within the Metropolitan Zone, created to conform to the boundaries of the Metropolitan District, transmission lines, such as the one contemplated by the appellee, are required to be located underground, but the Zoning Commissioner is given power to make special exceptions "when convinced by affirmative testimony ** that such lines ** may be carried overhead ** without impairing the public health, safety or general welfare". In determining any special exception the Commissioner, or the Board of Zoning Appeals on appeal, shall be guided by certain factors enumerated, including the crossing of much travelled highways or streets, the proximity of the line to schools, churches, or other places where persons congregate, the probability of extensive flying over the area, and its nearness to airports, fire hazards or interference with firefighting equipment, and future conditions to be reasonably anticipated in view of the normal course of development. Comparative costs of overhead and underground construction may also be considered, but the excess in cost is not, of itself, to be deemed sufficient cause for the issuance of a permit for overhead construction. The

General Assembly confirmed and validated these provisions by the Act of 1947, Ch. 195, after the trials of the present cases began.

While the efforts of the landowners may have had much to do with the adoptions of these amended Zoning Regulations, that, of itself, does not invalidate them or make them inapplicable to the proposed line of the appellee. They are general in their nature, affect the entire Metropolitan District, and are not unreasonable or unduly oppressive. The Metropolitan District of Baltimore County is, except for its different form of government, in all respects a city. In many places it is impossible to determine where the City of Baltimore ends, and where the District begins. One of the great problems of all cities is to keep the streets free of structures, such as poles and the accompanying wires, which interfere with their free use and passage. Baltimore City had that problem, and its solution was one of the benefits of the fire of 1904. It is by no means too early for Baltimore County to start to clear the streets of its constantly growing and developing Metropolitan District. The Zoning Regulations are a natural and accepted method of making such a beginning, and they appear in general to be a valid exercise of the police power.

Public bodies such as legislatures or county commissioners are frequently and rightly responsive to public opinion. The fact (if we so assume) that these Zoning Regulations were passed under the urging of certain persons who were vitally affected by the proposed construction, does not render them void. The first zoning acts were the result of increasing public pressure to prevent encroachment, in residential areas, of structures which damaged and injured the properties of those living there. A restrictive act may not be passed or a permit refused merely because the community wants it. But even if the community wants it, that does not invalidate the action of the authorities, if such action is beneficial to the community at large, and prevents the erection of structures inimical to the public health, welfare or safety. In the recent case of Benner vs. Tribbitt, _____Md.______, 57 A 2d, 346, we said that a permit to build a filling

station could not be refused "by a plebiscite of neighbors". But in that case the granting authorities themselves said the construction of the filling station was not against the public health, welfare or safety, and it was plain that the denial of the permit was because, and solely because, the neighboring residents did not want it granted. That was an improper exercise of the police power. In the more recent case of Northwest Merchants' Terminal vs. O'Rourke, No. 176 this term, just decided, we held that an amendment to the zoning ordinance of Baltimore which prevented the obviously appropriate use, for commercial purposes, of property adjacent to a railroad track was void because it bore no relation to the facts, was passed because the neighboring residents asked for it, and prevented the owner from the proper use of its property. Here again was the police power improperly invoked. But in the case of Anne Arundel County vs. Snyder, 186 Md. 342, 46 A. 2d, 689, we upheld a zoning ordinance of Anne Arundel County, although it was obviously passed because adjacent property owners wanted to prevent a commercial boat plant with a marine railway and slips from being constructed in a section of the county, heretofore residential. We upheld that ordinance because it was passed for the benefit of the community as a whole, it was not apparent from the record that the action of the County Commissioners was arbitrary and they were acting within their authority, notwithstanding the impetus for that action came from interested parties. We look to the record to find whether the action taken is in the interest of the community as a whole. It is generally presumed that it is. The fact that the action is urged by a minority, by a majority, or by all of the community, neither brings the action within the police power, nor does it prevent it from being valid and constitutional.

The appellee contends that the area through which it proposes to construct its transmission line is rural and is not subject to the kind of regulation necessary in thickly settled communities. There is undoubtedly a difference, but it must be borne in mind that the Metropolitan District is a belt around the City of Baltimore, and the fact that this part of the belt is not yet as thickly settled as is the remainder does not prevent the Commissioners from anticipating

what may soon happen. Zoning looks to the future, and attempts to preserve, rather than to uproot. In the case of Gordon vs. Montgomery County, 164 Md. 210, the appellant owned 71 acres of land in Montgomery County, near the City of Washington, upon which he wished to start a cemetery. Under a local statute, the County Commissioners were required to issue permits for cemeteries. Gordon claimed the statute and the regulations of the Commissioners were void, because the territory in which his land was located was zoned as residential, and no burying ground was permitted there. He attempted to enjoin the Commissioners from interfering with him. This Court held that the statute was valid, the regulations of the Commissioners were reasonable, and within the police power, and that Gordon must obtain a permit before he could start his cemetery.

The last mentioned case has much similarity to the one presented here. If the Zoning Regulations are valid, then the properly constituted authorities of Baltimore County are the ones to determine whether or not a special permit should be granted. We cannot assume that they will act arbitrarily, and will refuse a permit for no reason at all or because the neighbors object. It is hardly likely that a needed public improvement will be held up by the authorities because of the opposition of a small group of citizens in one section of the county. It is not to be presumed that the standards set up in the regulations will be disregarded. Tighe vs. Osborne, 150 Md. 452, at page 459. Gordon vs. Montgomery County, supra, at page 214.

We have many times said that, where an administrative agency is given power to determine questions, such questions must, in the first instance, be submitted to it, and if a statutory method of appeal is provided, that must be, in general, followed. The courts do not favor the by-passing of administrative bodies, unless there is a clear necessity for a prior judicial decision. Where a constitutional question is involved, equity may, of course, intervene and act. The appellee here attempts to raise such a question. If its contention were upheld, action by the court would be entirely proper

and would not violate our conception of administrative procedure. But we are unable to find that the Zoning Regulations are unreasonable or without any real and substantial relation to the public health, safety or welfare. Since we find that they are a valid exercise of the police power, the appellee must proceed under them, and cannot invoke the aid of the courts, unless some improper, illegal or arbitrary action is taken by the zoning authorities.

The case of B. & O. R.R. Co. v. Waters, 105 Md. 396, presents a different picture. There the Legislature had passed an act, at the instance of various landowners, to prevent the construction of a steam railway in certain sections of Baltimore County. The Court held the act void because it was not passed in the interest of the public, but for the benefit of a particular class of people who lived near the proposed line of the railroad. When that case was decided the idea of zoning had been barely thought of, and the only question before the Court was whether the special act was a valid exercise of the police power. Here we have the exercise of that power in a way now well recognized, for the benefit of the entire community in the Metropolitan District, and not solely for the benefit of a particular class of land owners. The cases are readily distinguishable on this ground.

The appellee also contends, and the chancellor found, that it does not have to apply for a special permit because it has acquired a vested right (as distinguished from an existing use) in the construction of its overhead line. If this claim is substantiated, the taking of such a right is claimed to be in violation of due process.

The police power is not unlimited, and cannot be used to oppress. But it is one of the attributes of sovereignty, and will be upheld unless there is a clear violation of paramount rights. For example, this Court has sustained the right of the State, acting under such power, to nullify a contract for the labor of prisoners in the Penitentiary, when public policy made it necessary to employ them for other purposes, in spite of the interdiction in the Consti-

tution of the United States against the impairment of the obligation of contracts. Jones Walter Mfg. Co. vs. State Board of Prison Control, 134 Md. 103. In the instant case, the County Commissioners have not prohibited the construction of appellee's proposed overhead transmission line. They have only stipulated that any such line must be approved by the constituted authorities before it is built. Assuming, without deciding, that the franchise of appellee confers upon it a vested right to construct a transmission line where such construction is contemplated, the question is whether the appellee, under the circumstances of the case before us has extended that right to the construction of an overhead line without the necessity of a permit.

The basis of the contention that it has such an unfettered right is in the fact that it waited until the first zoning regulations were passed in 1945, before proceeding to acquire land and purchase materials. The 1945 regulations did not include any power over such lines as that proposed by appellee, and it, therefore, felt free to proceed. It acquired several rights of way for use of an overhead line, conducted condemnation proceedings for the purpose of acquiring others, and bought materials to be used in construction. The total expenditures made are said to total $137,000. The Commissioner's reply to those statements is, in effect, that the zoning regulations were subject to change, that the appellee knew that changes were being urged when it made its expenditures, that the 1945 regulations did not foreclose the matter, and that all of the operations of the appellee were at all times subject to the proper exercise of the police power, and were taken at appellee's risk.

Where such questions as these are raised, the facts in each case are controlling. In some cases, it has been held that vested rights have been acquired, which the exercise of the police power must not disturb by subsequent regulations. The difficulty arises when the power is invoked after the aggrieved party has been led to believe that the way is clear for it to proceed. Thus, the facts in each

case must be examined to find the correct answer.

In the leading case of Western Theological Seminary vs. Evanston, 325 Ill. 511, 156 N. E. 778, a college was held entitled to continue its construction, although after its acquisition of its property and the commencement of operations, the community was re-zoned in such a way as to make that construction a violation of the amended zoning laws. The Court in that case said "Neither the City Council nor the Legislature is authorized, under the power of the Constitution, to take away or limit the appellant's right to make any use of the property which was lawful at the time it acquired it, except in such ways as may be necessary for the public health, comfort or welfare". (Italics supplied).

In Robbins vs. Los Angeles, 195 U. S. 223, 49 L. Ed. 169, the Supreme Court said that the right to exercise the police power is a continuous one, although, in that case, it did not find the conditions justified re-zoning to prevent the construction of a gas plant, which was in the proper zoning area at the time it was commenced.

These cases resulted from conditions where the construction was absolutely stopped or prohibited after it had been started under zoning laws which permitted it. The courts held that under the circumstances in each case, the property of the constructing parties was being taken without due process of law. In the instant case, no property has been taken, no franchise right has been denied. The County has said only that it asserts its right to pass upon the proposed construction in the exercise of the police power. This Court has held that a telephone company with a franchise to use the state roads is not entitled to locate its conduits and manholes in such roads without first getting permits from the State Roads Commission. Chesapeake & Potomac Tel. Co. vs. State Roads Commission, 132 Md. 194 at page 202. The possession of a franchise does not prevent the public authorities from passing upon the manner of its use, where public rights make such action necessary. We cannot deny the county such rights in this case upon the facts presented, and we cannot assume

what the result of their exercise may be. The appellee may be granted a permit, but on the other hand, if it is found, upon an examination of the facts that the construction it proposes is in violation of the public welfare or safety, a proper use of the police power would forbid it. And we are unable to find that the appellee was not aware that some regulation of its activities was imminent, or at least was not improbable. It elected to proceed, but the caution displayed by it, shows that it anticipated or feared some further zoning which might affect it. We do not think it can invoke the protection of the due process clause, under the record in this case.

Another contention made by appellee is that the Code Art. 23, paragraphs 344 et seq places the entire control over its activities in the Public Service Commission, and as a result the authority given the County Commissioners to zone its lines and structures is contained in a special law prohibited by Article III, Sec. 33 of the Maryland Constitution. It is sufficient to say, in answer to this contention, that the Public Service Commission Law has nothing to do with zoning.

It is suggested that after a long trial, and the appeals here, it is a denial, or at least a delay, of justice to compel the appellee to start all over again by applying to the Zoning Commissioner for a permit. It may be observed that the appellee could have done this in the first instance, and these proceedings could have been obviated. However, proper procedure in initial stages is important where administrative bodies have authority. For example in the case of Balto. & Ohio R. R. Co. vs. United States, ex rel Pitcairn Coal Co., 215 U. S. 481, 54 L. Ed. 292, there had been in the District Court "voluminous testimony and a protracted trial". The Circuit Court of Appeals had affirmed the lower court. The Supreme Court did not hesitate to dismiss all these proceedings because it said "* * * the grievances complained of were primarily within the administrative

competency of the Interstate Commerce Commission, and not subject to be judicially enforced; at least until that body, clothed by the statute with authority on the subject, had been afforded, by a complaint made to it, the opportunity to exert its administrative functions". We think the action of the Supreme Court in that case is ample precedent for similar action in this case.

The orders of the Chancellor will be reversed, and the cases remanded for the passage of a decree enjoining the appellee from proceeding with the construction of its line, until it has obtained the necessary permits from the county zoning authorities. Since the two cases were tried together, we make no distinction between them, and no point of the right of the individual complainants to such a decree.

ORDER REVERSED WITH COSTS AND
CASES REMANDED FOR THE PASSAGE
OF A DECREE IN ACCORDANCE WITH
THIS OPINION.

WILLIAM FELL JOHNSON, et al., Plaintiffs.	*	IN THE CIRCUIT COURT
-vs-	*	FOR
BOARD OF ZONING APPEALS OF BALTIMORE COUNTY, and	*	BALTIMORE COUNTY
CONSOLIDATED GAS ELECTRIC LIGHT AND POWER COMPANY OF BALTIMORE, Defendant.	*	AT LAW

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The general history of this protracted litigation will be found in three cases considered by the Court of Appeals, JOHNSON vs. GAS COMPANY, 187 Md., 454; KAHL, et al., vs. GAS COMPANY, 57 A. (2nd) 331; and KAHL vs. GAS COMPANY, 60 A. (2nd) 754. It would be profitless to review the details of all this litigation, as they are readily obtainable from these cases.

On November 15, 1946, the zoning regulations as adopted on January 2, 1945, were amended to provide that within the Metropolitan area of the county, electric transmission lines such as are here involved were to be located underground, with authority to the Zoning Commissioner to make special exceptions from that requirement whenever he became convinced by affirmative testimony that such lines could be carried overhead without impairing the public health, safety, morals or general welfare. In passing on any request for a special exception from the underground requirement, certain standards were enumerated to be considered by the Zoning Commissioner and the Board of Zoning Appeals. Those standards are of the same general nature as are applicable to Zoning as such, and include the proximity of the line to schools, churches and other places of public assembly, its nearness to airports, air traffic, fire hazards and future conditions in the course of normal development. Likewise to be considered, but not determinative, is the question of

comparative costs of overhead and underground construction. By Chapter 195 of the Acts of 1947, the General Assembly confirmed the validity of this amendment, and the Court of Appeals in the second Kahl case sustained the amendment as a proper exercise of the police power and denied the company's contention that as applied to it, the amendment was a violation of due process.

After this decision the Company applied to the Zoning Commissioner for a special permit to permit it to construct its electric transmission line on overhead towers. The Commissioner, on December 1, 1948, granted the permit for overhead construction of the northern and southern portions of the line but refused the Company's application for such construction over the central portion thereof comprising about 2½ miles. On appeal to the Board of Zoning Appeals that Board on July 21, 1949, removed the Zoning Commissioner's action in refusing to permit overhead construction over the central portion, but required that such construction should not be on steel towers but on wood or steel poles, commenting:

> "The Board is convinced that their use for the contemplated line would be entirely satisfactory and would at the same time be much less objectionable to the protestants and other property owners in this vicinity."

All parties have appealed from that order to this Court. The record here contains some 1000 pages of testimony, exhibits of more than a foot in height and at the Court's request counsel have submitted briefs of approximately 100 pages in length. There is incorporated in the record by agreement all of the previous cases in this litigation, including the hearing in the last Kahl case, which itself consumed about 27 days of trial time.

As has been true of the other phases of the litigation, the present record contains more of volume than of substance.

To even briefly narrate the testimony taken before the Board of Zoning Appeals would be a useless undertaking.

The Court's inquiry is narrow. It is limited to determining whether or not the Board of Zoning Appeals acted arbitrarily, in a legal sense, buttressed with a presumption in favor of the Board's action and a requirement that the Court may not substitute its judgment for that of the Board, if the testimony supports the Board's conclusion, even though the Court itself independently might have reached a different conclusion.

Both sides concede that the portion of the Board's order requiring the overhead construction to be on steel or wood poles rather than on steel towers is unwarranted.

The transmission of high voltage on poles, rather than steel towers is not in general use and there is not any experience of much value upon which to base a conclusion as to the safety or efficiency of such a method. However, both sides here admit the relative unsafety thereof, as compared with either tower or underground construction, an opinion shared by the Court.

This comment is not intended as any criticism of the Board's action in this respect. In its various phases this litigation has been pending since 1945. In a commendable effort to reach an amicable solution and settlement of the differences between the Company and the protestants the Board attempted the compromise between underground construction and steel towers which the pole line would afford. It felt that this compromise would be acceptable to all parties, and if it were, the result would certainly have been desirable. It now develops that neither party is satisfied with the proposal.

The Board lacked the power to enforce the compromise that was possessed by an Ameer of Afghanistan as narrated in the third chapter of Radin's "Law as Logic and Experience."

The Court agrees with the unanimous contention that this part of the Order is invalid and completely lacks support for its passage in the testimony, and thus we are brought squarely to the real issue, does overhead steel tower construction of the portion of the line now involved infringe on the public health, safety, morals or general welfare? The Board found that it would not, in these excerpts from its opinion:

> "It is perfectly clear to this Board from a study of the voluminous testimony in this case that the erection of an overhead tower line on the proposed route will not affect the public safety * * * * While it is true that the line does traverse three fairly well travelled highways, it is a fact that many similar lines exist and have existed for many years over much more heavily travelled highways in this county without mishap and this Board does not feel that it could, without acting arbitrarily deny the petition on this ground alone. * * * * The Board finds no substantial evidence that there are any schools, churches or other places where persons congregate in the near vicinity of this proposed line. * * * * The Board finds no evidence of excessive flying over the area and certainly no more than over any other area of Baltimore County as there are no airports located in the immediate vicinity. * * * * Extensive testimony was offered by the parties as to whether or not the erection of an overhead line will adversely affect property values. That offered by the protestants was not based on study of or experience with existing lines in other parts of the country. On the other hand, there was competent and ample testimony offered by the applicant to prove that, in other locations, erection of overhead lines did not adversely affect existing values or interfere unduly with subsequent development. We refer specifically to the testimony regarding the development of Westchester Valley in New York, Chester Valley near Philadelphia and the Long Green and Caves Valley in Baltimore County. We therefore hold that an overhead

> line over the route in question will not so affect property values as to justify refusal of a permit for overhead lines across this area."

No contention manifestly is or could be made that an overhead line would affect the public morals or health, so that the only elements to be considered are those of the public safety, the general welfare and the effect on the future normal development of the area involved.

On all of those elements the Board found for the Company and against the protestants. The Court is required to determine whether these findings are supported by the evidence and if so, the legal effect thereof on the Company's application for a special permit for such construction.

The need for additional power by the defendant was recognized as early as 1941, at which time studies were begun to determine the method by which that need could be supplied. Late in that year the route now under construction was selected and right of way options were obtained. The opposition to the project was spearheaded by Mr. William Fell Johnson and it was largely through his influence that an association was organized to prevent an erection of the line. Many hearings, largely at Mr. Johnson's instigation, were held by various public bodies, including the County Commissioners of this County and the Public Service Commission. Beginning in 1945 several right of way purchases were made for the line and in October of that year condemnation proceedings were filed against certain properties and additional rights of way were purchased.

The properties immediately involved in this area are unquestionably located in a picturesque and beautiful setting in a section of Baltimore County long noted for these characteristics and are improved by substantial and even luxurious homes.

Mr. Johnson and his family own or control a large part of the property directly traversed by the proposed tower line.

It must always be remembered that the greater part of this line will be on steel towers, as it is only on the comparatively short section here involved that the underground construction is sought. The overhead line will cross the intersection of the Falls and Joppa Roads, a fact which leads the protestants to contend that the granting of the special exception violates the factor which the zoning amendment requires to be considered, "the crossing of such travelled highways or streets." There roads are reasonably heavily travelled. However, the overhead construction which is unopposed, for the northern and southern portions of the line also crosses two highways, which although not carrying a heavy traffic volume, are nevertheless fairly well travelled. It is a matter of general knowledge that a similar tower line crosses two very heavily travelled main thoroughfares in this County, the Belair and York Roads. It is equally a matter of general knowledge that this fact has not in the many years of the operation of these lines created any safety hazards or problems. The record in this case abundantly sustains the Board's finding that this line would not in any manner jeopardise the public safety because it crosses the several roads referred to.

At the intersection of the Falls and Joppa Roads there are several business establishments, including a substantially patronized supper club. Some distance to the east of that location there is a Church and School and generally to the north another church. Slightly to the west there is located the former Emerson Farms retail milkand ice cream parlor, a part of which property has recently been used as a summer theater.

from these facts the protestants assert that the erection of the line violates the element to be considered "the proximity of the line to any school, church, * * * * or other places where persons may congregate."

The Board found, and the record abundantly supports the finding, that the line will have no detrimental effect on the establishments and places of public assemblage located in the vicinity and the Court completely agrees with this finding by the Board. It may be noted in this respect that there is a church and school much closer to the portion of the line on which overhead construction has already been approved than to the portion now dealt with.

None of these businesses attract large crowds, and basically only represent the average establishment of the particular type, with no extraordinary or unusual volume of business or patrons. Such establishments have for years existed and prospered as close to other lines of this character as are the ones which are located in this vicinity without harmful or adverse results. This record discloses no reason or reasonable belief of any nature, for reaching a different conclusion here.

So far as the factor of extensive flying of the area and its general nearness to any airport, there is no evidence whatever in this record that there is any air activity of any nature which will be jeopardised by overhead construction. The closest airport is more than a mile away and is actually closer to the southern end of the line than to the portion under consideration.

It is not asserted that this fact requires that construction to be underground, and it is not possible to conclude that this portion should be so, on such a basis.

There is certainly no showing that any fire hazard

or interference with fire fighting equipment will be created by the proposed construction.

A futile effort was made by the protestants to show that overhead lines of themselves are hazardous and dangerous. There is no testimony at all in this record to support such a conclusion. In this respect the record here demonstrates conclusively, as it did in the second Kahl case, and as referred to in Judge Henderson's dissenting opinion there, that: "It is perfectly clear from the record that the erection of the power line on the route proposed will not effect the public safety. The appellants (meaning Johnson, et al) were unable to cite a single case, in Maryland or elsewhere, where a member of the public received a personal injury from a similar line."

In this respect, Judge Henderson's opinion was not in dissent from the majority, as this phase was not reached by the majority, which held that this question was not then before it.

To the same effect was Judge Contrum's finding in the second Kahl case. The testimony in this record is practically identical with the testimony in the record in the Kahl case and the similar finding here is not only justified, but required, by this record. Not only has no member of the public ever been injured on one of these lines, but not even an employee has been injured on the hundreds of miles of such lines which exist in Maryland, some of these as far back as 1910. The same thing is true of the electric lines of the Pennsylvania Railroad, which pass through and into Philadelphia, Baltimore and Washington. This line has been in existence for many years.

This record shows beyond virtually any doubt that the public safety, practically, is completely protected by such an overhead construction of transmission lines as is here sought, any conclusion which either the Board or this Court would reach

to the contrary would be fanciful and artificial, without factual support of any kind or degree. The Board's conclusion that the public safety is not impaired by the special permit sought for is clearly correct.

The remaining fact consideration is the effect the construction of the line will have on the general welfare and specifically its effect on the normal course of development in this territory.

In this case the "general welfare" relates solely to the damage or injury likely to be suffered by the properties directly involved, as well as those in view of the towers, if the overhead construction is permitted.

As is to be expected, the expert evidence on this subject runs the gauntlet of speculation, apprehension and prediction, and is entirely irreconcilable. The various experts naturally support the viewpoint of their sponsors. Their opinions are not to be disregarded, but the weight of their testimony and the value to be attached to it requires the exercise of discriminating judgment. One witness for the protestants at one time testified that the damage to the properties in question amounted to a half million dollars, and in this case set the damage at a million dollars. It is self evident that such testimony is entitled to but slight consideration.

Another witness testified that the line would result in complete destruction of this territory for development purposes and still another placed the damages occasioned thereby at over Six Hundred Thousand Dollars. In reaching these astounding conclusions these experts were virtually required to include every property which could be seen from the highest point traversed by the line.

A witness assessing the damage to be caused by the line at over Six Hundred Thousand Dollars included in that figure damages of Sixty Thousand Dollars which he contended the Emerson property would suffer. The record here shows however, that a tower line right of way across this property was purchased by the Company for $5250.00. It is extremely unlikely that these owners would have sold a right of way for such a sum if they entertained any belief that their property would be as extensively damaged as this witness indicated. In this connection it does not do to say that such a purchase was coerced by the threat of condemnation. The Johnson condemnation resulted in an award of Forty Thousand Dollars to the property owners. It is hardly likely that the Emerson owners felt a condemnation award to them would not be adequate. It is more reasonable to believe that they regarded the purchase price for their right of way, including the consequential damage to their remaining property, as entirely adequate and satisfactory.

This fact not only completely destroys the value of this testimony of the Emerson damage, but conclusively demonstrates the highly speculative nature of this evidence, and demolishes the reliability of this witness as to the damage to other properties.

The witness who assessed the damages at one million dollars included in his calculation three thousand acres, a goodly portion of which, except the twelve hundred seventy-one acres actually crossed, is substantially remote from both the right of way and the towers. These comments are made only for the purpose of illustrating the highly speculative nature of all of this testimony, and to point up the previous statement that it requires careful analysis and thought before it can

be even partially accepted at its face value.

Another witness who testified that property half a mile distant from the line would be damaged, when testifying as an expert for the condemning litigant in another suit, limited the damages to properties within 75' of that right of way, and denied that a house 250' from the easement would be damaged at all. In that case he also depreciated the damage suffered by the property owner by the factor that a purchaser from him would obtain the fee simple interest in the land under the line, but disregarded that consideration here.

Again it is not inappropriate to refer to other lines, already mentioned, which have existed in this county for many years and to take judicial notice of the fact, because everyone else knows it, that such properties have sold from purchaser to purchaser, at constantly increasing prices ever since the lines were constructed, and that while admittedly such lines do not increase the values of such properties, none the less neither do they decrease them. At the same time it is equally well known that those entitled to the properties at the time the rights of way are acquired, do receive adequate compensation therefor and actually in this manner, plus an increased sales price, obtain the same measure of the general real estate increase experienced by other properties which are not traversed by such rights of way. It is not true that all, or any substantial part of such increases, can be attributed to inflated real estate values, because many of the increased prices obtained were realised before the beginning of the wartime inflationary boom, and represented actual value increases, rather than artificial ones.

There is not one word in the record to support even a conjecture that properties not crossed by, but in plain sight

of and close proximity to tower lines, have thereby suffered any depreciation in value. Such testimony as is disclosed by this record in this connection, is entirely to the contrary.

As against the testimony of their experts and the protestants themselves, the Company submitted testimony from experts of equal professional standing which if believed, completely justified the Board's conclusion that no damage or injury of any reasonable nature could be anticipated as the result of this construction. This evidence was based on their experience with similar questions in other areas where such lines have been constructed as well as in this county itself. This testimony the Board was entitled to believe if it appealed to them as credible and reasonable. It certainly was not incredible or unreasonable and was to the Board, as it is to the Court, much more persuasive and convincing than the evidence produced in opposition.

The Board's conclusion adverse to the property owners on this issue is not only clearly erroneous, it is not even erroneous, but in the Court's judgment abundantly correct. Any other conclusion on this record would itself have been arbitrary and unreasonable. This being so, it follows that the Board's determination on this item requires affirmation.

The remaining factor of the effect the construction of this line will have on future conditions to be reasonably anticipated in this area as the result of the normal course of development falls in the same category.

It is undoubtedly beautiful country, characterized by large landholding estates, in the best tradition of that term's implications. The susceptibility however, of this area for development such as is generally known and understood, is rather nebulous. The Jones Falls drainage area, the engineering description of this territory, has a population of only

one person for every four acres, and studies indicate an estimated population therein fifty years hence of only 3½ persons per acre, as against over 14 persons per acre now in the Lundale area. The character of the land itself renders its availability for development quite uncertain and highly speculative. The specific use to which it is likely to be subjected in the foreseeable future is the same use now being made of it, country homes and estates. That it will not be damaged for these purposes is shown by the fact that a large mansion costing $60,000.00, was built on another property in plain and unobstructed view of the towers.

It must be reiterated that in dealing with all of the elements involved in this appeal, the entire length of this line crosses only nine properties, and that almost one-half of it is on properties owned or controlled by the Johnson interests. The other properties which are said to be damaged by it, are on ground higher than the line itself, and the average distance from the residences of the individual plaintiffs from the line is almost one-half mile. The line construction itself will actually be in the Jones Falls Valley which because of the manner in which it lies and the nature of the topography, has no development potentialities whatever. Such development possibilities as this territory might reasonably be anticipated to provide, will remain totally unaffected by the line. Already this area contains industrial and business structures, the Rockland Bleach and Dye Works, filling stations, repair shop, a milk bar, and the Inn previously mentioned, which of themselves would somewhat deter the usual type of development.

The very lay of the land itself virtually precludes its development, even in acreage lots. It is "rolling", "hilly", "rural". It lacks adequate public transportation. The Bare Hills area, between these properties and the City

limits, can never be developed.

It is clear from the record that the future development potentialities of this territory, are virtually nil.

No one contends that steel towers of the nature here considered are structures of beauty, but neither is that the test. If their construction does not infringe upon the elements of the police power upon which zoning is predicated, they cannot be prohibited on esthetic or sympathetic considerations.

Other territories in this county as picturesque and beautiful as the one here involved have been subjected to the construction of these lines without any impairment of the general welfare from either a property value standpoint or the availability of such territories for development purposes.

This record fails to show by even the merest inference that the normal course of development reasonably to be anticipated in this area will be jeopardized or depreciated in the slightest degree by this construction.

Judge Gontrum aptly summed up the situation on this score, on a virtually indistinguishable record, in these words:

> "To anyone at all familiar with this countryside, it is hard to see how any other section could have been selected where less damage, if any, would be done to the surrounding territory by a transmission line."

From these brief comments on the testimony it is apparent that the facts disclose no reason for denying the Company's application for the special permit applied for, from the factual standpoint.

There is now left for consideration only the legal significance of this factual condition.

Is it sufficient to justify a special exception from a valid zoning regulation, that no impairment will result to public safety or general welfare? If that were all that is required, our inquiry would be at an end.

However, other factors must exist before such an exception can be made.

In MAYOR AND CITY COUNCIL OF BALTIMORE -vs- BYRD, 62 A (2nd) 588, in dealing with the question of special exceptions, the Court of Appeals said:

> "* * * * exceptions should be allowed only in such cases as are clearly exceptions in fact to the purposes of the ordinance, and without which there would be imposed a burden upon the owner of the property not justified by consideration of the public health, safety or welfare."

Similarly, in HEATH -vs- MAYOR AND CITY COUNCIL OF BALTIMORE, 58 A (2nd) 896, the Court of Appeals said in dealing with exceptions:

> "* * * * the Board should carefully analyze the evidence before it to determine if there is a real and substantial need for the exception of such urgency that injustice will result if the exception to the rule is not applied. A provision of a zoning ordinance for an exception to the general rule therein should be strictly construed, since a broad interpretation of the exception could lead to an unequal administration of the ordinance and result in discrimination."

These are not only Maryland rules but rules of universal application. Many illustrative cases will be found in the Annotation in 168 A.L.R., 13, and also in 58 American Jurisprudence, page 1086.

From these authorities the rule undoubtedly is that the power to grant exceptions is to be strictly construed, the burden is on this applicant to show that the exception will not jeopardize the public safety or general welfare and that unless the exception is permitted, the applicant will suffer undue and unusual hardship. of a nature and degree different from that suffered by other members of the general public similarly situated.

The Company has sustained the burden of showing that the exception here applied for will not jeopardize the public safety or general welfare. A determination of the hardship

factor will now be undertaken.

Rights of way for overhead steel tower construction of the proposed line have already been obtained. These rights of way were obtained, in some instances, before the adoption of the 1946 Amendment and at a time when the Company had no reason to believe its legal right to such construction was in question. Unless it is now permitted such construction, these rights of way are valueless to it and additional rights of way must be obtained for the underground construction. The Company is already liable for the condemnation award in the Johnson case, which was condemned for overhead tower construction. Even if it cannot use that right of way for such a purpose, it may nevertheless still be liable to Mr. Johnson for the amount of the award. Certainly further litigation will ensue in that respect.

It is conceded that underground construction will be more expensive than overhead tower construction, the cost estimates ranging from approximately Six hundred thousand dollars by the Company to One hundred thousand dollars by the protestants. The determination of the cost of underground construction, and the necessary engineering problems thereby encountered is a highly technical question. Underground construction of the kind which would be required here is comparatively a new departure in the distribution of electrical energy of this volume. Terminal structures will be necessary at each end of the underground section where those circuits are to be connected to the overhead line, and circuit breakers will also be required. The cost estimates furnished by the Company have been prepared by experts who have dealt with electric energy in all of its forms for many years, while those now furnished by the protestants are generally the same as presented to Judge Gontrum in the trial resulting in the second Kahl appeal and are subject to the comments then made about them by Judge Gontrum. It is probably

true that the Company has not minimized the cost of underground construction and that the protestants have not exaggerated it, and that the actual additional cost may be somewhere between the extremes thus presented. However that may be, it is abundantly clear that the additional cost of underground construction will be substantial. It is equally clear that the requirement of underground construction will further delay the completion of this line, a project already pending for an inordinately long period and which both the Company and the Public Service Commission have determined to be necessary in the public interest. It is readily seen therefore that to deny the overhead tower construction will result in a hardship to the Company, and will quite possibly apart from all elements of delay, further litigation and the expense occasioned thereby, subject it to additional costs of from one-half million to a million dollars, without any corresponding benefits legal or factual, to anybody. On the other hand overhead tower construction will cause no such results, will harm or injure nobody and will save not only the additional expense referred to, but permit this much needed public improvement to be completed promptly and expeditiously.

The protestants contend that the Company will suffer no hardship by the additional costs of underground construction because being a public utility, it merely passes on its cost of construction and maintenance to the public and collects those charges from it in its rates of service. They then divide this increased cost into the total number of electric consumers and reach a figure of perhaps some few cents a year for each consumer which they say is fractional and infinitesimal and demonstrates the absence of hardship to anyone, Company or public, by virtue of the increased cost of underground construction. If this contention is the test by which hardship to a public utility

is to be determined, it is possible to say that no public utility could ever be caused a hardship by its construction costs, until such time as the additional costs of one form of construction over another, resulted in rates so high and exorbitant that the public changed to other forms of similar service. It is submitted that such a test is unreal and if carried to its logical extreme could result in virtual confiscation of a public utility's property and assets.

The cost of hardship is to be related to the particular project, not to the Company's whole financial structure. It is the hardship occasioned by requiring underground construction of this line, both financially and operatively, that is determinative, not the impact of those factors on its solvency or rate structure. Otherwise, the Company would lack incentive to progress it's construction, not only here but everywhere, in an economical manner, but could pursue any course it chooses, ignoring cost, and blandly assert its freedom from such mundane considerations because the liability therefor would be on the public, through increased rates, not on it.

The real test of course, is whether the increased cost is reasonable, not as reflected in the rates to be charged based on the Company's investment, but as determined by the efficiency, legality and feasability of the construction itself. It is not contended that overhead power construction is inefficient, the proof is entirely to the contrary. It has been decided here that neither is such construction illegal under zoning standards properly construed. It is admitted that underground construction is infinitely more expensive, admittedly no more efficient and possibly even less so, coming as it would between two sections of line on overhead construction.

At the outset of this hearing the Court announced its conclusion that under the decision of the Court of Appeals in the second Kahl case, the Company could not now contend that

a refusal to grant it the special exception applied for violated its rights under the new process clause. However, it does not follow that the fact that it acquired these properties before the 1946 amendment is not to be considered in determining whether or not a hardship will result if it is denied the right to overhead tower construction. It can only use the rights of way thus acquired for that construction. If it is denied that type of construction the property owners still are entitled to use those rights of way for all purposes except the erection of structures and the Company would probably be forced to surrender them to their owners without compensation at all, because the owners would be in the position to enforce their own terms as the Company could find no purchasers therefor except the previous owners, thereby causing the Company further loss.

On the construction cost element alone, it would be made to spend from half a million to a million dollars to build 2½ miles of line underground, probably more than the total cost, including everything, of the entire cost of the other portions, miles longer, of the same line.

Add to this further protracted litigation, its expense, the delay already mentioned and the distinct possibility that underground construction in this setting, may be a good deal less efficient and cause service interruptions not encountered in tower lines, and pose the question: If a "hardship" as legally defined is not thereby created, how could a public utility ever show one? The answer is obvious.

No case has ever attempted to catalogue the various elements legally necessary to create the hardship which the cases have decided must exist before a special exception is permitted. In this respect each case differs from all others and must be decided on its own peculiar facts.

The conclusion here is irresistible that from a legal standpoint, for the reasons briefly narrated, the Company will

sustain a hardship of the kind and quantity which under the decided cases justify the granting of the special exception applied for.

Accordingly, as it appears that such special exception does not violate any of the considerations herein dealt with from a zoning standpoint, and that a denial thereof will cause the Company the hardship contemplated by the cases as justification for such a permit, the Board's Order will be reversed insofar as it required the overhead construction here involved to be on steel or wood poles, and the case will be remanded to the the Board with directions to issue the special permit permitting the overhead construction on steel towers in accordance with the Company's application.

J. Howard Murray
J. Howard Murray, Judge

True Copy Test
F. Bradley Silcott
Clerk.

Filed January 17, 1950

W. BARRY CASSELL, et al : CIRCUIT COURT FOR

and : BALTIMORE COUNTY

COUNTY COMMISSIONERS of BALTIMORE COUNTY, et al : IN

VS : EQUITY

CONSOLIDATED GAS ELECTRIC LIGHT AND POWER COMPANY :

....

O P I N I O N

These are consolidated cases on two separate bills to enjoin the construction by the defendant of an electric transmission power line 7.17 miles in length from Texas to Mt. Washington sub-station at Bare Hills, Baltimore County. The plaintiffs in one of the cases consist of W. Barry Cassell and a number of other property owners and residents of an area of the Greenspring Valley of Baltimore County, generally known as the Rockland section. In the other case, the County Commissioners of Baltimore County appear together with the Taxpayers' League and the Relay Improvement Association.

The original bill in the Cassell case was filed March 7, 1946, and was dismissed by this Court on May 24, 1946. The appeal from the action of the Court, at the appellants' request, was remanded to this Court December 10, 1946, without affirmance or reversal, for trial under the new Baltimore County Zoning Amendments of November 15, 1946.

The Commissioners' bill, was filed February 10, 1947. On the petition of the Relay Improvement Association, an order was passed granting the Association permission to intervene in the Commissioners' case against the company as one of the plaintiffs. A similar order was passed on the petition of the Taxpayers' League of Baltimore County making the League a plaintiff in the same case.

Mr. Brune, one of the active counsel for the parties plaintiff, at one time was president of the Taxpayers' League. Mr. Louis Riehl, counsel for the Relay Improvement Association, is a law associate of Mr. Brune.

Both bills are for injunctions against the construction of the high tension electric power transmission line from a point near Padonia Road, Texas to the Mt. Washington sub-station.

The taking of the testimony and the arguments on the various legal

propositions presented to the Court have consumed in all approximately twenty-seven days. Although many legal issues have been raised and much testimony has been taken on the question of safety of power lines, the effect of a power line on the value of neighboring residences, and the relative costs of constructing an overhead line and an underground line, the real issue in these cases is whether or not this particular transmission line will detract from the scenic beauty of the so-called Rockland area of the Greenspring Valley within view of the Cassell complainants' estates. This involves approximately 3.27 miles of the proposed power line.

The plaintiffs have insisted that before the defendant's constitutional rights may be determined by this Court the defendant should be required to apply to the Zoning Commissioner for a special permit as provided by the amended zoning regulations.

The defendant has raised the following constitutional issues:

A. "Do the amendments of the zoning regulations on November 15, 1946, so as to require underground construction of all or a part of the transmission line (after the Company, in reliance on the affirmative provisions of the zoning regulations adopted January 2, 1946, had acquired substantially the entire right of way and all the materials for the tower line at an expenditure in excess of $137,000.00) take the Company's property without due process of law in contravention of Article XXIII of the Maryland Declaration of Rights and Article XIV of the Amendments to the Constitution of the United States?"

B. "Do the zoning amendments of November 15, 1946 (which superimpose (a) control by the Zoning Commissioner of Baltimore County of the type and construction of electric transmission lines upon (b) the control of the type and construction of such lines already vested in the Public Service Commission of Maryland by Code Article 23, Section 344, et seq.,) contravene the provisions of Maryland prohibiting a special law for a case for which provision has been made by an existing general law?"

C. "Are the new zoning regulations of November 15, 1946, as applied to the transmission line and the rural area traversed by it, unreasonable and invalid police regulations without a 'real and substantial' relation to the public health, safety, morals, and welfare in that rural area?"

The history of this litigation goes back a number of years. As early as 1941 the company states that its system studies showed the future necessity for a large amount of additional power at its Mt. Washington sub-station for the supply of ninety-four square miles of Baltimore County and eleven square miles of Baltimore City. The necessity for this power has been adjudicated by this Court in the trial of the

two condemnation cases, and affirmed by the Court of Appeals, in the opinion by Judge Collins, in Johnson vs Consolidated Gas Elect. Lt. and Power Company, 50 Atlantic Reporter, 2nd series, page 919.

The company, after a thorough study of the problem, decided that a 110 kv overhead transmission tower line extending from the sub-station on its Ring circuit tower line at Texas across country to Mt. Washington was the best solution. It decided that not only was the plan the best economically but it had many operating features in its favor.

The route extends through what is almost entirely rural territory. To anyone at all familiar with this countryside, it is hard to see how any other section could have been selected where less damage, if any, would be done to the surrounding territory by a transmission line.

As pointed out by the defendant, in the whole 7.17 mile length of the line, it crosses only twenty-three properties which have an average area of one hundred and twenty-seven acres. Twelve are farms, five are vacant and unimproved, two are commercial. Thirteen are not resided on by their owners. Fifty-eight percent of the line is through woodland, twenty-eight percent through uncultivated fields and fourteen percent through tilled fields. The average distance of the line from the houses on the properties crossed is nine hundred and fifty feet. The average distance of the houses of the Cassell complainants from the line is eighteen hundred and twenty-six feet.

A number of industrial and commercial activities are located along the route including a metal factory, garages, filling stations, quarries, the plant of the Rockland Bleach and Dye Works, Standard Foods, dairy and milk bar, stores, the Greenspring Branch of the Northern Central Railroad, freight siding, taverns, a night club and a dog race track. Smoke, and other signs of industrialism are frequently in evidence, although the area is predominantly rural.

The bleak and melancholy moorland of Bare Hills, through which the right of way extends, is one of the dreariest and most desolate sections of Baltimore County and could not conceivably be damaged by anything.

The area through which this proposed line will run is, at the present time, sparsely populated and, according to the testimony of the then County Metropolitan District Engineer, Mr. Andrews, a density of population was forecast for the year 2000 of only 3.26 persons per acre.

In the spring of 1942, the Falls Road and Greenspring Valley Association was organized by Mr. William Fell Johnson to prevent the erection of the proposed high tension power line from Texas to Mt. Washington sub-station.

Mr. Johnson was the first and only president of the Association. Both Mr. Johnson and Mr. Brune have devoted a great deal of energy to arousing popular opposition in the Rockland community to the proposed power line.

Apparently, every effort was made by the defendant to meet the objection of the property owners along the proposed route. Mr. Johnson retained Dr. John B. Whitehead, former dean of the Johns Hopkins School of Engineering, as scientific consultant. Mr. Johnson and Dr. Whitehead had many conferences with representatives of the company and suggested a number of alternative routes through densely populated areas for the overhead line. The routes suggested were rejected by the company as impractical and objectionable. Dr. Whitehead's memory concerning some of the suggestions appears uncertain.

Finally, after all efforts to persuade the company to run the overhead line elsewhere had failed, Mr. Johnson and Dr. Whitehead demanded the construction of a portion of the proposed power line underground.

Owing to the war, plans for the construction of the line were suspended although additional land for the enlargement of the Mt. Washington sub-station was purchased in April, 1942, and one right of way adjoining the Texas sub-station was purchased in December, 1942.

Conversations were had by the company's legal representative, the late Mr. Noah Offutt, member of the Towson bar, with Mr. Timanus, Zoning Commissioner. Mr. Timanus advised Mr. Offutt that the company should go ahead with its project as there was nothing at the time to stop it. The company, however, refrained from acquiring any rights of way between Texas and Mt. Washington until the final adoption of the zoning regulations on January 2, 1945, which specifically exempted the proposed line from zoning regulations.

Following the adoption of the regulations on January 2, 1945, the company proceeded with its plans, contracted for the purchase of properties for the right of way and purchased its materials for the construction of the line. It also cleared a portion of the right of way and put in some of the footings for the towers. Protest was made to the Public Service Commission which made a study of the location and the need for the line.

On June 28, 1945, the company's Board of Directors formally author-

ized the necessary condemnations for acquisition of the right of way. Formal notification of construction of the line was given to the Public Service Commission August 4, 1945.

On August 7, 1945, Mr. Holland submitted his report to the Commission and stated: "The proposed route is by far the best selection in the northwest quadrant of the City and adjacent territory. In fact there is no other feasible route north of Hollofield."

Mr. Holland recommended that the construction of the line as proposed be approved and stated on the stand that underground construction would be an "unjustifiable expense on the part of the utility".

The first condemnation petition was filed October 6, 1945, and the first of the cases was tried in the spring of 1946. In the condemnation cases tried before this Court, the whole question of the then zoning regulations was raised. On March 26, 1946 a Baltimore County building permit, approved by the Zoning Commissioner, was issued for the construction of the Texas-Mt. Washington line terminal facilities in Mt. Washington.

This Court, in an opinion filed May 24, 1946, dismissed the original Cassell bill of complaint holding that no zoning permit was required for the construction of the transmission line.

Of the large number of properties acquired for the right of way, most of them are easements limited solely to use for an overhead transmission line right of way. In addition to the acquisition of rights of way, the company spent large sums on materials and proceeded with the clearing of the right of way and placed much of the tower steel at tower sites along it. Property owners continued to oppose the line until it became a local political issue. Opposition to the project had been generated, to a considerable extent, through the activity of Mr. William Fell Johnson, who embarked upon the campaign against the power line with a truly missionary zeal, apparently being convinced that the line meant the ruin of the scenic beauty of his section of the Greenspring Valley and the consequent destruction of property values.

Hearings were held before the Zoning Commissioners at which Dr. Whitehead testified concerning the danger of overhead power lines. Some of his statements he subsequently repudiated.

Mr. Pinkard, a real estate expert retained by Mr. Johnson, testified

concerning the power line upon real estate values. His testimony was unsupported by any facts. He merely expressed his opinion.

Following the hearings and correspondence between Mr. Brune and the county authorities, the amended zoning regulations submitted by Mr. Brune requiring underground construction of the power line were approved. It is not contended that there was any change in conditions in the area affected, between the time of the approval of the original regulations and the date of the approval of the amendments.

Had the Zoning Commissioner and the County Commissioners the advantage of the testimony given in this case, it is probable that the regulations in question would not have been adopted. Mr. Whitehead's statements concerning danger must have had considerable effect upon the decision of both the Zoning Commissioner and the County Commissioners. As will be pointed out later, his apprehensions have been shown to be without any foundation whatsoever. The "potential danger" to which he refers has no basis in fact.

The Cassell plaintiffs have undertaken to draw a picture of themselves as the helpless victims of the rapacity of a great and ruthless corporation concerned with profits only. The picture presented is not correct and, of course, an appeal to the Court's sympathy has no place in this case. In simple justice, it must be said that in this instance the Company has acted with restraint, fairness and with an obvious desire to inflict as little hardship and inconvenience as possible.

The defendant is not a private corporation. It is a public service corporation enjoying a monopoly granted it by the state for the purpose of serving the public with gas and electricity. It has no right, morally or legally, to spend one cent more for capital improvements, maintenance or service than is necessary for efficient service and fair dealing and has no right to waste a penny. Its every action should and must be performed with its public obligations in view. The interests of the Cassell plaintiffs are of concern to the Court. On the other hand, we have the hundreds of thousands of consumers served by the company, and their interests must also be kept in mind and given due consideration.

The plaintiffs first insisted that, as the defendant had failed to appeal from either the recommendations of the Zoning Commissioner of July 24, 1946 or from the County Commissioners' zoning amendments of November 15, 1946, it had lost its right to judicial review of the validity of the new regulations.

There is clearly no merit to this contention and it seems to have been abandoned by the plaintiffs.

The plaintiffs also urge that this Court has no right to consider the constitu-

tionality of the regulations in this case because the defendant did not apply to the zoning commissioner for a special permit for the overhead construction of the transmission line.

The plaintiffs contend that as the permit has not been applied for and refused, the defendant has not been hurt and therefore is not entitled to assert its defense of the unconstitutionality of the regulations.

The defendant's contention that the regulations themselves constitute a present invasion of its property rights and a threat to continue it is sound and is supported by numerous authorities. Euclid Realty Co. v Ambler Realty Co. 272 U.S. 365, at page 386. Elliott v Baltimore, 180 Md. 176, at page 180. See also the long list of cases cited in the defendant's brief.

When the court of equity has jurisdiction over a cause for any purpose, it may retain the cause for all purposes, and proceed to a final determination and award the final equitable relief which is necessary to meet the ends of justice. See Pomeroy, Part 1, Chap. 2, Sec. 181 and 232 Miller on Equity.

The plaintiffs' position is a contradictory one, hard to understand. It seems clear to the Court that the defendant is entitled to defend itself in this action by setting up the unconstitutionality of the regulations. The plaintiffs, having come into this court and invoked the jurisdiction of equity, cannot at the same time insist that the defendant not be permitted to defend itself. Such a judicial course would be the negation of equity. A defendant may always raise the basic unconstitutionality of a law in defense of an action to enforce it.

The plaintiffs have cited a large number of cases in support of their proposition that the defendant must apply for a special permit from the Zoning Commissioner before the question of the validity of the regulations can be raised; that the statutory remedy first must be exhausted before the constitutionality of the regulations

can be questioned. The authorities are not in point. They all relate to an anticipated invalid exercise of discretion under valid police regulations. Where some administrative action has been taken, the courts require that the validity of such action, or even the law under which action was taken, be reviewed in accordance with the procedure set forth in the statute. Where, however, there has been no administrative action which could be reviewed, the validity of the law itself may properly be attacked in equity by a party either as complainant or as defendant.

The distinction is made clear by Chief Justice Hughes in Smith vs Cahoon, 283 U.S. 553, 75 L.Ed. 1264, and by Chief Judge Boyd in Bais vs Baltimore 133 Md. 284, at page 288.

The authorities hold that the rule that one must first exhaust the statutory administrative remedy is not applicable where a statute is invalid upon its face and an attempt is made to enforce the penalties and in violation of a constitutional right.

It would be opposed to fundamental principles of equity and against common sense to tell the defendant to go to the Zoning Commissioner, then to the Board of Zoning Appeals, and then back to this Court, consuming another year or so in determining a matter which has already been decided by this Court. The contention of the plaintiffs would place the Court on a futile, fantastic, time-consuming legal merry-go-round. The plaintiffs have come into equity and the jurisdiction of equity will continue until justice is done.

In deciding the constitutionality of the amended regulations, the question to be considered is: Are the new zoning regulations and the retroactive validating Act of 1947 unconstitutional as applied to this particular power line in this particular community?

It is clear to the Court that the Zoning regulations of November 15, 1946 amending the regulations of January 2, 1945 are unconstitutional as to the Texas-Mt. Washington power line in that they take the defendant's property without due process of law.

The defendant had the right to rely on the original regulations. They were passed after much discussion and attendant publicity. Relying upon these regulations, the defendant has expended a large sum of money, and has acquired substantial vested property rights which the amended regulations and the validating act would destroy.

The right of way is a narrow ribbon of land running through open coun-

tryside, many sections of which right of way are easements limited solely to use for an overhead line. It can have no value excepting for the special purpose for which it has been acquired - as a right of way for a power line. The money expended for clearing and footings for the towers will be wasted unless the line is installed. There is no testimony that the towers and other equipment could be utilized for any other purpose than that for which they were designed.

The plaintiffs have insisted, during the course of the trial and argument, that the expense which the defendant has already incurred is not great and is a trifling one for such a large corporation as the Gas Company. It amounts to approximately $137,000 for rights of way and materials alone. This is a sizeable sum. However, it is not the amount but the principle involved that is important. Whether the sum is great or small, the principle is the same. It seems hardly necessary to point out that the property rights of rich and well known corporations are as sacred under the constitution as those of poor and obscure individuals. The rules laid down for the great one day are the next applied to the little man. Property rights are property rights whoever owns them and the slightest discrimination would inevitably have a disastrous effect upon the rights of all.

The authorities are numerous holding that laws or ordinances may be amended, qualified or repealed, affecting all persons or properties which have not acquired rights vested in existing laws. Vested rights are always protected.

In the case of Del Haso vs County Commissioners 182 Md. 200, 206 ff; the Court said:"........ It is a general rule, subject to certain qualifications hereafter noted, that a Municipal Corporation has the right to reconsider its actions and ordinances, and adopt a measure or ordinance that has previously been defeated or rescind one that has been previously adopted before the rights of third parties have vested. Moreover, in the absence of statute or rule to the contrary, the Council may reconsider, adopt or rescind an ordinance at a meeting subsequent to that at which it was defeated or adopted, at least where conditions have not changed and no vested rights have intervened. ....The power to reopen should not be interpreted with too much refinement nor should it be hedged about with technicalities if, in the meantime, no rights have arisen which would be injured."

The plaintiffs insist that the vested rights defense is not involved in the case at bar since there is no actual existing non-conforming use. They rely upon a very narrow and what, to the Court, seems to be an unreasonable definition of "actual and existing non-conforming use".

In support of this contention, the plaintiffs place great reliance upon the case of Mayor and City Council vs Shapiro 51 A. 2nd, 273. Other cases quoted by the plaintiffs are Chayte v Board of Zoning Appeals 177 Md., 426; Knox vs Mayor and City Council, 180 Md. page 88; Board of County Commissioners v Snyder, 46 A. 2nd, 692.

The principle laid down in the quoted cases does not, in the judgment of this Court, prevent the defendant from relying upon its vested property rights defense. In none of these cases do the facts remotely resemble those of the case at bar.

In this case there was no mere intention but a known, well-advertised purpose on the part of the company to erect a power line. The purpose was not only announced but it was approved by the county authorities and the need for the construction of the power line was confirmed both by this Court and the Maryland Court of Appeals. A large sum of money was spent pursuant to that purpose.

The term "non-conforming use" always must be considered in connection with the facts. In all the cases referred to, the land involved could be utilized for other purposes.

In this instance, the right of way can be used for one purpose only. The materials purchased for the power line can be used for a power line only. The acquisition of the right of way, its partial clearing, the installation of footings, the condemnation proceedings - all were a part of the non-conforming use.

It is urged that unless an enterprise is in actual operation there can be no non-conforming use. To follow the plaintiffs' reasoning to its logical conclusion, even if the company had acquired the whole right of way, had erected the whole length of overhead power line, had installed all the terminal facilities, and had done everything necessary for the utilization of the right of way as a power line, but had failed to pull the necessary switches turning the current into the cables, there would be no non-conforming use. Such a conclusion would be a

violation of constitutional rights and a threat to the whole institution of private property.

The Court of Appeals, in my judgment, never intended to take, and did not express, the extreme view attributed to it by the complainants.

In any event a law or rule literally interpreted and applied, without regard to the facts, untempered by the spirit of justice and by common sense, can become an instrument of oppression and a menace to the liberties and rights of the very persons whom it was designed to protect. "The letter killeth but the spirit maketh alive".

The company has expended its money in good faith on the strength of the first regulations. There has been no suggestion of compensation to the company for the losses it would sustain under the new regulations. There is only one conclusion to be reached. The new regulations take the company's property without due process of law in contravention of Article XXIII of the Maryland Declaration of Rights and of Article XIV of the Amendments to the Constitution of the United States.

In so far as the proposed power line is concerned the regulations have no real and substantial relation to the public health, morals or welfare, and they are unreasonable. Mr. Bruno, particularly, has emphasized the purpose of the regulations. The Court is not bound by the professed concern to protect the public health, safety and morals set forth in the preamble. The Court must examine the facts and the law and ascertain whether or not the public health, safety and morals actually are involved. The preamble is merely window dressing. As stated, the Commissioners would hardly have passed the regulations if they had had before them the same facts that are now available to the Court. Looking behind the elaborate facade of law and ostensible public interest raised by the plaintiffs, and looking at this matter realistically and practically, we see that the only section of the public concerned is the little group of embattled Rockland estate owners and the only public matter involved is the view from their front porches.

The plaintiffs argue that in a constitutional dispute as to the reasonableness of a police power regulation, the issue, as stated in the Euclid case, is not whether the Court approves of

or would endorse the regulation, but whether opinions might reasonably differ as to its relation to the public safety and general welfare. If this is a question on which there may be a legitimate difference of opinion, then the regulations and act must be upheld. If the question is "fairly debatable", the zoning must stand.

An examination of the evidence in this case, leaves no room for "fair debate", or a legitimate difference of opinion. It is established beyond a doubt that there is no real and substantial hazard to public safety presented by the proposed tower line. There is no testimony that would justify a finding that overhead high voltage lines are dangerous, except to extraordinary foolhardly individuals, or that they depreciate property values materially. A fairminded person, reading the record, cannot - in the judgment of the Court - have any reasonable doubt concerning the issues involved, and consequently there can be no "fairly debatable" questions. The mere expression of opinion as against a solid array of uncontradicted facts and figures does not make a question "fairly debatable".

The testimony of Dr. Whitehead and Mr. Vannort for the plaintiffs concerning the relative safety of overhead and underground lines when analyzed is merely unsupported opinion. Dr. Whitehead continually referred to "potential danger" but when pressed for a basis for his apprehension he was unable to give any instance where anyone had been hurt because of the many miles of power lines in Maryland. Mr. Vannort's testimony is equally unsatisfactory, vague, and unsubstantiated.

One thing stands out on the reading of both the testimony of the plaintiffs and the defendants and that is the remarkable safety record of the high voltage power lines in this state and throughout the country.

The apprehensions of Dr. Whitehead concerning flash overs and atmospheric conditions have been shown to be without foundation even by the Doctor's own testimony.

In addition to the testimony of the very practical but highly trained engineers on behalf of the company, we have the tests made by Dr. Kouwenhoven, present Dean of the John Hopkins University School of Engineering, which proved that Dr. Whitehead's apprehensions concerning flash-overs from rain or sleet are without any foundation.

The power lines of the type proposed to be constructed from Texas to the Mt. Washington sub-station are apparently the safest of all public services in the United States. Their safety record is unparalleled and almost perfect.

The testimony of Mr. Pinkard, the real estate expert for the plaintiffs before the Zoning Board and this Court, that a power line "just blights the whole area

through which it goes" is unsupported by any facts. Mr. Pinkard merely expresses his unsubstantiated opinion.

Another real estate specialist, Mr. George V. Simmons, is as inconclusive and unenlightening as Mr. Pinkard in his estimates of any possible or probable damage to the property along the power line route.

Mr. Kearney, and Mr. Ferguson, the defendant's real estate experts testified that values of property in the neighborhood of other power lines throughout Maryland apparently, from the specific information that they had accumulated, have been unaffected by the construction of power lines such as the one proposed.

The cost of putting the line underground would be exorbitant and would place a huge and unnecessary burden in perpetuity upon the general public. The testimony of the plaintiffs' witnesses as to the comparative costs of the overhead and underground installation is unconvincing.

Dr. Whitehead, an elderly and eminent retired professor - Dean Emeritus of the Johns Hopkins University School of Engineering - is undoubtedly a scholar and scientist of note and a man of highest character, but his training and experience have not qualified him to pass upon the practical aspects of installing power lines, or in passing judgment on the relative merits of underground and overhead systems of electrical transmission. In addition, the Doctor's memory has been shown to be at fault in so many instances and his contradictions are so complete and irreconcilable that the Court is forced to the conclusion that the Doctor, a scholar, eminent and respected in his own particular field, is entirely out of his element in the matters involved in this suit. His estimates of costs, his unfounded apprehensions of danger from overhead construction, his faith in underground construction, have been completely refuted. Possibly, like many other distinguished theoretical thinkers, Dr. Whitehead has so divorced himself from realities that he has lost touch with practical things.

Mr. Vannort's amazing errors in the calculations of costs and his unexplained contradictions destroy whatever effect his testimony may have had.

On the other hand, the testimony of the defendant's technical witnesses as to comparative costs and the comparative practicality of underground and overhead lines is clear, highly intelligent, and convincing. Their qualifications as practical engineers are outstanding. Their estimates are accepted by the Court as correct and are summarized in the defendant's brief on pages ninety-one and ninety-two. It can be

seen that the cost of the underground compared to the overhead system is excessive and unreasonable.

The plaintiffs contend that the Zoning Commissioner can make an exception of all the line excepting that portion in which the plaintiffs are interested:- the 3.27 miles in the Rockland area. Then the costs of construction would be cut down.

The inconsistency of the Cassell plaintiffs' position is shown by their professed belief in the danger and value-destroying effects of the power line and their eagerness to have the line extended through sections much more densely populated than their own. They show no concern whatsoever for the welfare or safety of their neighbors, if their fears are genuine.

The plaintiffs assume, without any justification, that the Zoning Commissioner would favor their particular section and regard residents of other sections as less entitled to the protection of their safety and sensibilities.

The zoning officials are not compelled by law to make any exceptions or grant any indulgence but could stand on the wording of the regulations and force the defendant to put every foot of the whole line underground, including Bare Hills, which the plaintiffs themselves concede would be unnecessary. We cannot base conclusions upon wishful and unwarranted assumptions. Upon what basis the Zoning Commissioner could determine where the line should be overhead and where underground is hard to understand.

As stated, the real issue is the question of the protection of the scenic beauty of a small section of the Greenspring Valley. Would the public welfare be served by the imposition on a consuming public of an annual charge of anywhere between $102,000 and $190,000 to save the residents of a small community from seeing, at a considerable distance, the tower line? This Court believes that it would be against the public welfare. The whole public, not a small section of it, must be considered.

The Court sympathizes with the desire of the Cassell plaintiffs to preserve the scenic beauty of the Greenspring Valley. It must be pointed out, however, that the area through which this proposed tower line will be extended, although predominantly rural, does contain a number of industrial and business structures, and parts of it are anything but beautiful. It must be kept in mind that, desirable as it may be to preserve rural beauty, provision must be made for the utilization of the latest developments in science and industry. Probably every home in this whole area uses electricity. It has been definitely established that the practical and economical transmission of electrical power can be accomplished only by use of towers and overhead transmission lines. If a large part of the power lines in the country were

converted to underground lines the cost of electricity would be prohibitive. Reasonable concessions must be made by society to industry if we are to receive the benefits of science. One of the penalties we must pay for technological progress is the marring, to some extent, of natural beauty even in rural areas.

Those who desire to live among surroundings untouched and unmarred by technological progress must retreat further from the large centers of industry. If power lines are against the public welfare and safety of the rural Greenspring Valley section, then power lines would be likewise against the public welfare and safety in other rural sections of Baltimore County. Insofar as rural beauty is concerned, other valleys in Baltimore County - the Long Green Valley, the Worthington Valley, and the Dulaney Valley - have equal charm. If power lines should be extended through any of them, there would be then no reason why those lines should not be underground if the rural contention of the Cassell Plaintiffs is correct that scenic beauty must be preserved even at great expense to the public.

This Court agrees that a power line is not a thing of beauty, and not especially to be desired in a community. At the same time, it must be said in its favor that it is not nearly so dangerous, unsightly or disturbing as a railroad or even a public highway, which last is being planned through the Greenspring Valley at the present time, and to which, in the course of argument, several of the attorneys for the Cassell plaintiffs referred, and to which they seem to have no objection.

Our Court of Appeals has considered objections such as are raised to the proposed tower line in [illegible] vs B.&O. R.R. 105 Md., pages 414, 415 and 416. The Court quotes the bill and answer at length. This case is remarkably similar to the case at bar. Even the same general community is involved. The Court of Appeals held that the Act of 1906, which declared it to be unlawful for a person or corporation to lay any track for a steam railway through certain portions of Howard and Baltimore County, was unconstitutional; that there is a limit to the valid exercise of police power of the state.

The Court held that the facts in that case failed to show that the interests of the public generally required the enactment of the law but that it was enacted in the interests of a particular class, v.i.c. "the property owners nearest the line of the road, whose property will undoubtedly be rendered less desirable by the construction and operation of the road".

In Westchester County v. Westchester Lighting Co. (1932), P.U.R. 1932C, 503, 508-511, the New York Public Service Commission, in a tower line case

practically identical with that now before this Court, ruled that the provisions in the New York law gave that commission authority to determine whether transmission lines should be placed above or under the ground. There, certain property owners in Westchester County were opposing the construction of an overhead 132,000 volt transmission tower line through the County.

The complainants alleged that the new transmission line and towers would be a menace to the safety of persons using the public highways and parkways, and would depreciate the value of real estate in the vicinity of the line. The commission found that the expense of such underground construction was so excessive as to require overhead construction in the "public interest".

In R.B. Construction Company v Jackson, 152 Md. at page 676, Judge Urner, quoting with approval from Euclid v Ambler, 272 U.S. 365 said: "The ordinance now under review and all similar laws and regulations, must find their justification in some aspect of the police power, asserted for the public welfare. The line which in this field separates the legitimate from the illegitimate assumption of power is not capable of precise delimitation. It varies with circumstances and conditions. A regulatory zoning ordinance which would be clearly valid as applied to great cities might be clearly invalid as applied to rural communities."

Justice Sutherland, in the Euclid case, went on to say:

> "Thus, the question whether the power exists to forbid the erection of a building of a particular kind or for a particular use, like the question whether a particular thing is a nuisance, is to be determined, not by an abstract consideration of the building or thing, considered apart, but by considering it in connection with the circumstances and the locality."

Judge Offutt, in Pocomoke City v Standard Oil Co. 162 Md. 368, at page376, said:

> "It has ..... been consistently held that urban property may, under the police power, be lawfully subjected to restrictions which would not be tolerated with respect to rural property..."

See also Jack Lewis Inc. v Baltimore 164 Md. 146, at page 153.

Our Court of Appeals in Davis v State, 183 Md. at page 397 said:

> "If, therefore, a statute designed for the promotion of the public health, morals, or welfare has no real or substantial relation to these objects, or is a manifest invasion of rights secured by fundamental law, it is the duty of the Court to adjudge accordingly, and thereby give effect to the Constitution."

Upon the facts of this case, the Court finds that the regulations have no real or substantial relation to the public safety or welfare in so far as the proposed power line is concerned.

The Court finds that the regulations requiring underground construc-

tion through the area in question are unreasonable and against the public interest and welfare and invade the rights of the defendant secured by fundamental law. Underground construction would place an unreasonable burden upon the consumers of electricity in this State solely and entirely to gratify the tastes of a small segment of the population within sight of the power line. See Public Service Commission v P.R. and W.R. 155 Md. 104.

It is unnecessary to point out that if the regulations are unconstitutional, the act of 1947 Chapter 915 cannot make them constitutional and is of no effect.

There are other questions of interest raised in the voluminous briefs. The Court regrets that it has not sufficient time to consider them all. Counsel have displayed prodigious industry and a veritable deluge of authorities has descended upon the Court. However, having found the regulations unconstitutional on the grounds set forth above, it is unnecessary to discuss the merits of the other interesting propositions so fully and ably argued.

March 24, 1949 (Signed) Leon O. Shawkey, Judge
John N. Edmondson, Judge

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WILLIAM FELL JOHNSON, et al., Plaintiffs,	:	IN THE CIRCUIT COURT
vs.	:	FOR
BOARD OF ZONING APPEALS OF BALTIMORE COUNTY, and	:	BALTIMORE COUNTY
CONSOLIDATED GAS ELECTRIC LIGHT AND POWER COMPANY OF BALTIMORE, Defendants.	:	AT LAW

ORDER

In accordance with the Opinion filed in the above entitled case on the 18th day of January, 1950, it is this 24th day of January, 1950, by the Circuit Court for Baltimore County, ORDERED that the Order of the Board of Zoning Appeals of Baltimore County, filed July 21, 1949 in the above entitled case, be and the same is hereby reversed in so far as said Order required overhead construction on steel or wood poles of the electric transmission Line for which the Defendant Consolidated Gas Electric Light and Power Company of Baltimore applied for a Special Permit for construction on steel towers.

And it is further ORDERED that this case be and it is hereby remanded to the Board of Zoning Appeals fo Baltimore County for the issuance of a Special Permit to the said Defendant permitting the overhead construction on steel towers of said transmission line in accordance with the Defendant Company's application to the Zoning Commissioner of Baltimore County, filed October 26, 1948.

J. Howard Murray
J. Howard Murray
Judge

True Copy Test
T. Bowden Abbott
Clerk.

WILLIAM FELL JOHNSON, et al., Plaintiffs,	:	IN THE CIRCUIT COURT
vs.	:	FOR
BOARD OF ZONING APPEALS OF BALTIMORE COUNTY, and	:	BALTIMORE COUNTY
CONSOLIDATED GAS ELECTRIC LIGHT AND POWER COMPANY OF BALTIMORE, Defendants.	:	AT LAW

ORDER

In accordance with the Opinion filed in the above entitled case on the 18th day of January, 1950, it is this 24th day of January, 1950, by the Circuit Court for Baltimore County, ORDERED that the Order of the Board of Zoning Appeals of Baltimore County, filed July 21, 1949 in the above entitled case, be and the same is hereby reversed in so far as said Order required overhead construction on steel or wood poles of the electric transmission Line for which the Defendant Consolidated Gas Electric Light and Power Company of Baltimore applied for a Special Permit for construction on steel towers.

And it is further ORDERED that this case be and it is hereby remanded to the Board of Zoning Appeals fo Baltimore County for the issuance of a Special Permit to the said Defendant permitting the overhead construction on steel towers of said transmission line in accordance with the Defendant Company's application to the Zoning Commissioner of Baltimore County, filed October 26, 1948.

J. Howard Murray
J. Howard Murray
Judge

True Copy Test
T. Bowden Abbott
Clerk.

October Term, 1947.

No. 202

Christian H. Kahl, et al.,

vs.

Consolidated Gas Electric Light And Power Company of Baltimore

W. Barry Gaskell, et al.,

vs.

Consolidated Gas Electric Light and Power Company of Baltimore

Dissenting opinion by Henderson, J., in which Dobler, J. concurs.

Henderson, J. (dissenting):

I am unable to concur in the conclusion of a majority of the court, that the case should be remanded for further proceedings before the Zoning Commissioner. The appellants initiated these proceedings in March, 1946, to enjoin the construction of the overhead power line as proposed, and by amended and supplemental bills raised the issue of non-compliance with regulations adopted while the original suit was pending. Voluminous testimony was offered on both sides, and it is unlikely that any new light could be thrown on the problem in a new hearing. To hold that the defense on constitutional grounds, raised by the answers, is available at this stage of the case serves no useful purpose, and will unduly delay a final decision on the merits and the construction of a vital public facility. I think the authorities support the assumption of jurisdiction by the chancellor under the circumstances.

The doctrine that where a statutory remedy is provided, by way of appeal from the action of an administrative body, such remedy is exclusive, is essentially a doctrine of convenience. With due regard to the legislative prerogative of denying or limiting appeals to the courts, or to this court, we have held that the jurisdiction of equity to review arbitrary or illegal action is inherent. Hecht v. Crook, 183 Md. 271; Hoare v. Cobb, 185 Md. 372; Crawford v. Board of License Commissioners, ___ Md. ___, 58 A (2) 902. This is particularly true where property rights are involved, and there is a general attack upon the constitutionality of an Act (Jones v. Gordy, 169 Md. 173), or its constitutional validity as applied to a particular person or class. Buck Glass Co. v. Gordy, 170 Md. 605. See also Prince George's County v. Northeast Cemetery Co.,

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160 Md. 653; Maryland Theatrical Corp. v. Brennan, 180 Md. 377, and Anne Arundel County v. English, 182 Md. 511. If, however, the solution of the question depends, in whole or in part, upon findings within the expert knowledge of the administrative tribunal, relief in equity will be denied. Compare Cupular v. Turner, 178 Md. 471 and Tawes v. Williams, 179 Md. 224. Likewise, where a statutory remedy is invoked but not pursued as contemplated by statute, equity will not intervene. Stark v. Board of Registration, 179 Md. 276; Anne Arundel County v. Snyder, ___ Md. ___, 46 A (2) 689. In the instant case the contentions raised by the appellee challenge the constitutional validity of all the amendments to the existing regulations, adopted November 15, 1946, and assert a total lack of power in the Zoning Commissioner to refuse a special permit under the facts shown in the record. The amended regulations are directed solely at the appellee, and at no other utility. There is no suggestion that any other power line is in prospect. The regulations are carefully tailored to fit the particular case. No permit is required for the erection of power lines along public highways, or anywhere except on private rights of way in residential districts. Nor is a permit required for overhead lines of less than 5,000 volts. The whole record supports the chancellor's finding that "the real issue is the question of the protection of the scenic beauty of a small section of the Greenspring Valley."

It is quite true that zoning looks to the future, and has as one of its principal objects the preservation of property values in residential districts by prohibiting or restricting the establishment of new commercial or industrial enterprises in particular areas. The unsightliness of particular structures may also be considered as one of the factors affecting property values. But there is a vast difference between

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restrictions upon private undertakings and those which are clothed with a public interest and must have access to the centers of population if they are to perform their public function. In weighing the reasonableness of the particular restriction here in question, the harm to property owners in the immediate vicinity of the line must be balanced against the benefits to all the users of electric power in the whole urban area.

In Baltimore & Ohio R. Co. v. Rogers, 105 Md. 386, the legislature had passed an Act granting to the railroad company the right to build a connecting line through certain rural sections. In declaring the Act invalid, this court said: "The evidence in this case not only wholly fails to show that the interests of the public generally require the enactment of this law, but it satisfies us that it has been enacted in the interest of a particular class, viz., the property owners nearest the line of the road, whose property will undoubtedly be rendered less desirable by the construction and operation of the road ... ." In Public Service Commission v. Philadelphia, B. & W.R. Co., 155 Md. 104, it was held that the Public Service Commission exceeded its powers in annexing to its permit for the relocation of a railroad line a proviso that a particular grade be used, to avoid an embankment which would obstruct the view of property owners. See also Public Service Commission v. Williams, 166 Md. 277. It is suggested that these were not zoning cases, and that the zoning power is broader than that exercised by the Public Service Commission. However, the zoning power is only a special application of the police power, and its exercise can only be justified if, in fact, it promotes the public health, safety, convenience or general welfare, and not simply the interests of a particular class or group of property owners. Penner v. Tribbitt,

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___ Md. ___, 57 A (2) 346; Northeast Merchants' Terminal v. O'Rourke, ___ Md. no. 176 Oct. Term, 1947, decided this day. Compare Perullis v. Baltimore, ___ Md. ___, 57 A (2) 344, 346. Conceding the broad scope of the zoning power, as laid down in the leading case of Euclid v. Ambler Realty Co., 272 U.S. 365, the exercise of that power will always be scrutinized by the courts to determine its reasonableness in a particular case. Hector v. Cockrell, 277 U.S. 183; H. H. Construction Co. v. Jackson, 178 Md. 671. Compare Anne Arundel County v. Ward, ___ Md. ___, 46 A (2) 680. If the question is not "fairly debatable", the zoning cannot stand.

It is perfectly clear from the record that the erection of the power line on the route proposed will not affect the public safety. The appellants were unable to cite a single case, in Maryland or elsewhere, where a member of the public received a personal injury from a similar line. The chancellor found that the whole line of 7.17 miles would cross only 23 properties, which have an average area of 127 acres. Twelve are farms, five are vacant and unimproved, two are commercial. 58% of the line is through woodland, 20% through uncultivated fields, 14% through tilled fields. The average distance of the line from the houses on the properties crossed is 950 feet. The average distance of the houses of the Gaskell complainants is 1026 feet.

In his report to the Public Service Commission on August 7, 1945, the Chief Engineer of that body recommended approval of the project. He said: "The proposed route is by far the best selection in the Northwest quadrant of the City and adjacent territory. In fact, there is no other feasible route north of Hollefield." He also stated that the cost of underground construction would be "prohibitive". In the previous appeal

of the condemnation suit (Johnson v. Cons. G. E. L. & P. Co., _____ Md. _____, 50 A (2) 918, 923) we said that the company had not abused the discretion granted by its franchise "in determining the reasonable necessity of constructing the electric line * * * as an overhead line rather than underground", and pointed out that enhanced costs would "be reflected in higher electric rates to the public as consumers". The present record indicates, and the chancellor found as a fact, that the cost of placing underground the 3.27 miles of line across the Rockland area would be in excess of $700,000, as compared with an estimated cost of some $200,000 for the overhead line. The chancellor found that the additional annual charge to the consuming public would be "between $102,000 and $190,000." Cost is a necessary consideration in determing the reasonableness of an exercise of the police power (Lehigh Valley R. Co. v. Utility Commission, 278 U.S. 24) despite the provision in the regulations (4 F) that enhanced cost of underground construction "shall not in itself be deemed sufficient cause for the issuance of a permit for overhead construction." Moreover, practical and engineering difficulties were suggested, which might materially affect the quality of service. It was shown that underground transmission of electricity at the voltage required is a comparatively recent technical development, which has not been tried anywhere except in the vicinity of Detroit. The new line service New York, crossing the exclusive Westchester district, was erected overhead with the approval of the Public Service Commission, despite strenuous protest by property owners. The New York courts have also held that municipalities could not block the construction of overhead lines or gas holders, in the exercise of a franchise power, by an attempted exercise of the zoning

power. Long Island Lighting Co. v. Old Brookfield, 77 N.Y.S. (2) 143; Long Island Lighting Co. v. Griffin, 74 N.Y.S. (2) 348.

If the Zoning Commissioner, after remand in the instant case, should refuse a permit, or attach conditions that would compel underground construction, the result would be to deprive the utility of its right to use property acquired or condemned prior to the adoption of the present regulations, and would limit the exercise of its franchise power to select the best and cheapest method of serving its customers. The additional cost to the general public would be of no benefit to the community at large, but only benefit a small group of property owners in the vicinity of the line, to the extent that the value of their property would not be impaired by the presence of unsightly structures. I think the record shows no substantial basis for the exercise of such a power, and that the chancellor's action in striking down the amended regulations should be affirmed. The confirmatory Act of 1947 cannot have the effect of validating regulations which transcend the limits of the police power.

I am authorized to say that Judge Delaplaine concurs in this dissent.

Re: PETITION OF THE CONSOLIDATED GAS ELECTRIC LIGHT & POWER COMPANY OF BALTIMORE FOR A SPECIAL PERMIT TO CONSTRUCT AN OVERHEAD ELECTRIC LIGHT AND POWER TRANSMISSION LINE ON TOWERS EXTENDING ON A RIGHT OF WAY 66 FEET WIDE FROM THE COMPANY'S EXISTING RING BUS LINE ON THE TEXAS-PADONIA ROAD TO THE MT. WASHINGTON ELECTRIC SUBSTATION OF SAID COMPANY - APPEAL FROM THAT PORTION OF SAID ORDER OF ZONING COMMISSIONER DENYING A PERMIT FOR AN OVERHEAD LINE OVER A CERTAIN PART OF THE ROUTE COVERED BY THE PETITION	:	BEFORE THE BOARD OF ZONING APPEALS OF BALTIMORE COUNTY

ORDER

In accordance with the Order of the Circuit Court for Baltimore County filed in the above entitled case on the 24th day of January, 1950, reversing in part the Order of the Board of Zoning Appeals of Baltimore County filed July 21, 1949 and remanding the said case to the said Board with directions, it is this 26th day of January, 1950 ORDERED that the Order of the Zoning Commissioner of Baltimore County, entered in the above entitled case on December 1, 1948, be reversed as to that part thereof which denied a permit for an overhead line over a certain portion of the route designated by the petition of Consolidated Gas Electric Light and Power Company of Baltimore and that the said Zoning Commissioner issue forthwith a Special Permit authorizing the said Consolidated Gas Electric Light and Power Company of Baltimore to construct an overhead electric transmission line on steel towers over that portion of the route excepted from the aforesaid Order of December 1, 1948, to the end that the construction of the entire transmission line overhead on steel towers be authorized in accordance with the application therefor to the said Zoning Commissioner filed October 26, 1948.

Board of Zoning Appeals
of Baltimore County

RE: PETITION OF THE CONSOLIDATED GAS ELECTRIC LIGHT & POWER COMPANY OF BALTIMORE FOR A SPECIAL PERMIT TO CONSTRUCT AN OVERHEAD ELECTRIC LIGHT AND POWER TRANSMISSION LINE ON TOWERS EXTENDING ON A RIGHT-OF-WAY 66 feet WIDE FROM THE COMPAN&'S EXISTING RING BUS LINE ON THE TEXAS-PADONIA ROAD TO THE MT. WASHINGTON ELECTRIC SUB-STATION OF SAID COMPANY - APPEAL FROM THAT PORTION OF SAID ORDER OF ZONING COMMISSIONER DENYING A PERMIT FOR AN OVERHEAD LINE OVER A CERTAIN PART OF THE ROUTE COVERED BY THE PETITION

Appeal, in the above entitled matter, having come on for hearing before the Board of Zoning Appeals of Baltimore County from an Order of the Zoning Commissioner dated December 1, 1948:

It is this 21st day of July, 1949, ORDERED by the Board of Zoning Appeals of Baltimore County as follows:

That the Order of the Zoning Commissioner of Baltimore County entered December 1, 1948, be reversed as to that part thereof which denied a permit for an overhead line over a certain portion of the route covered by the petition and that the petitioner be authorized to construct an overhead line over said portion of the route, it being further ORDERED that the overhead line on said portion of said route shall be constructed on wooden poles and/or steel poles which will satisfactorily and adequately carry 110,000 volts; the steel towers as petitioned for are not to be used over said portion of said route, and, that the remaining part of the said order be and it is hereby affirmed.

Board of Zoning Appeals
of Baltimore County.

OPINION OF THE BOARD OF ZONING APPEALS OF BALTIMORE COUNTY

This is an appeal from the order of the Zoning Commissioner of Baltimore County dated December 1, 1948 granting in part the petition of the Consolidated Gas Electric Light and Power Company of Baltimore for a special permit to construct an overhead electric power transmission line on towers in the Metropolitan District of Baltimore County over certain lands in Baltimore County described in the petition and plat filed in these proceedings. The proposed power line would traverse the Metropolitan District of Baltimore County for a distance of 7. 17 miles. It would carry a load of 110,000 volts and cross that part of Baltimore County known as the Green Spring Valley in the vicinity of Rockland. The Order of the Zoning Commissioner appealed from found that the two following described portions of said transmission line constructed on towers as proposed by the petitioner would not be detrimental to the safety and general welfare of the communities through which they pass, viz:

First. All that part of said line extending from said Company's existing ring bus line and the Texas-Padonia Road, and following the courses and distances set forth in said petition and shown on the plat filed with the Zoning Department of Baltimore County to a point 2000 feet north of Seminary Avenue and at the base of a hill on the property of Albert Graham and wife.

Second. All that part of said line beginning at a point 1600 feet south of Ruxton Road on the property of William Fell Johnson and following the courses and distances shown in said petition and plat to the Mt. Washington Electric Sub-Station of said Company."

and the Zoning Commissioner as to said described parts of the line granted permission to construct the line on towers overhead.

As to the remaining portion or part of said line beginning 2,000 feet north of Seminary Avenue and at the base of a hill on the property of Albert Graham and extending southerly following the courses and distances described in the petition and shown on the plat filed to a point 1,600 feet south of Ruxton Road on the property of William Fell Johnson, the Zoning Commissioner denied the petitioner the right to construct said portion of the line on towers overhead and ordered that said portion shall be constructed underground. The appeal as aforesaid to this Board is from the part of the Zoning Commissioner's order which denies the petitioner the right to construct the line on towers overhead.

This proposed overhead line has been vigorously opposed by a group of property owners who contend among other things that the overhead structures would destroy or impair the beauty of the countryside and would lower property values in a high class residential community. These protestants suggested and offered testimony attempting to show that the line could be placed underground.

Under the present zoning regulations of Baltimore County, certain standards are made applicable to the granting of special permits. Within the Metropolitan Zone created to conform to the boundaries of the Metropolitan District, transmission lines such as the one contemplated by the petitioner are required to be located underground; but the Zoning Commissioner and/or the Board of Zoning Appeals of Baltimore County is given power to make special exceptions when convinced by affirmative testimony that such lines may be carried overhead without impairing the public health, safety or general welfare. In determining any special exception, the Commissioner, or the Board of Zoning Appeals,on appeal shall be guided by certain factors enumerated, including the crossing of much travelled highways or streets, the proximity of the line to schools, churches or other places where persons congregate, the probability of extensive flying over the area and its nearness to airports, fire hazards, or interference with fire fighting equipment and further conditions to be reasonably anticipated in viewof the normal course of development.

Testimony in this case has been taken over an extended period of time. The case was ably presented by eminent counsel on both sides, many witnesses and much expert testimony being heard in the case on behalf of the petitioner and protestants. This Board has given close attention and thorough consideration of all of the testimony and exhibits submitted. The Board realizes that it shall not act arbitrarily and cannot refuse a permit for no reason at all or because the neighbors and property owners object. It also realizes that this is a needed public improvement which cannot be held up by this Board because of the objection of a group of citizens in one section of the County. The Board, therefore, must abide by those standards set up in the zoning regulations of the County. While the desire on the part of the protestants to preserve their properties from the installation of overhead power lines is understandable and the Board has every sympathy with their honest and commendatory ideals and realizes that the unsightliness of particular structures may be considered as one of the factors affecting property values, the Board also must consider that in this case it is dealing with a public utility clothed with a public interest and this utility must have access to certain centers of population in order to perform its public function. It is true, too, that the Board is doubtful that the area in question here is or should be entitled to consideration superior to that of many other sections of the County and the harm to the property owners in this immediate vicinity must be balanced against the benefits to all of the users of electric power in the whole urban area.

It is perfectly clear to this Board from a study of the voluminous testimony in this case that the erection of an overhead tower line on the proportioned route will not affect the public safety. The Board finds no substantial evidence that there are any schools, churches or other places where persons congregate in the near vicinity of this proposed line and there also is no evidence of excessive flying over the area and certainly no more than over any other area of Baltimore County as there are no airports located in the immediate vicinity. While it is true that the line does traverse three fairly well-travelled highways, it is a fact that many similar lines exist and have existed for many years over much more heavily travelled highways in this county without mishaps and this Board does not feel that it could, without acting arbitratily, deny the petition on this ground alone.

The Board is very much impressed with the expert testimony to the effect that the placing of all or a part of this line underground would not at all lessen the danger to the public inasmuch as past experience has shown that the danger to the public of overhead power lines is almost infinitesimally small. On the other hand, the Board is further impressed by the testimony showing that running the line underground would greatly increase the danger of serious interruption to the line and consequently, greatly, interfere with the service which must be rendered by this public utility. This is particularly true in view of the uncontradicted testimony to the effect that underground transmission of electricity at the voltage required is a comparatively recent technical development. The Board gathers from the testimony that in many thriving communities in other jurisdictions - well developed and rapidly developing - the authorities have apparently found it either impossible or unwise to block the construction of these overhead lines that are necessary to give service to the public generally.

Extensive testimony was offered by the parties as to whether or not the erection of an overhead line will adversely affect property values. That offered by the protestants was not based on study of or experience with existing lines in other parts of the country. On the other hand, there was competent and ample testimony offered by the applicant to prove that, in other locations, erection of overhead lines did not adversely affect existing values or interfere unduly with subsequent development. We refer specifically to the testimony regarding the development of Westchester Valley in New York, Chester Valley near Philadelphia, and the Long Green and Caves Valley in Baltimore County. We, therefore, hold that an overhead line over the route in question will not

so affect property values as to justify refusal of a permit for overhead lines across this area.

While the Board does not mean to infer that it is basing this order on the increase in cost to the public utility and consequently to the users of electricity in general in this area, it cannot close its eyes to the obvious fact that the underground line not only would materially depreciate the quality of service, but would also be more costly and, therefore, increase the cost of service to the public generally. The Board, however, does not believe that cost is a necessary element to be considered; particularly where it is dealing with a case clothed with a public interest.

The Board accordingly is of the opinion that it would be acting arbitrarily if it required the petitioner to install this line underground. The Board has carefully considered the question of authorizing the petitioner to construct its overhead line on towers as originally applied for or restricting the lines to poles as described in the testimony of Mr. Penniman. The undisputed testimony clearly shows that it would be entirely practical to span the 2-5/8 miles covered in the present controversy by poles. It was shown that wood pole transmission lines are and have been operating satisfactorily carrying 110,000 volts in and near Baltimore County. These lines have been in satisfactory operation for periods that vary from 7 to 22 years. The Board is convinced that their use for the contemplated line would be entirely satisfactory and would at the same time be much less objectionable to the protestants and other property owners in this vicinity.

This Board, therefore, feels that the proper solution of this case is to reverse the order of the Zoning Commissioner of Baltimore County entered December 1, 1948, and enter an order conforming with this opinion authorizing that an overhead line be constructed for the distance of 2-5/8 miles involved in this controversy by further ordering that the overhead line shall be constructed on wooden poles or steel poles which would satisfactorily and adequately carry the required voltage over that portion of the route on which this appeal was taken. The Board finds from the evidence that both wooden poles and steel poles would be entirely adequate and practical, and, as stated, an order will be entered in conformance with this opinion.

Board of Zoning Appeals
of Baltimore County

IN RE: PETITION OF THE CONSOLIDATED GAS ELECTRIC LIGHT & POWER COMPANY OF BALTIMORE FOR A SPECIAL PERMIT TO CONSTRUCT AN OVERHEAD ELECTRIC LIGHT AND POWER TRANSMISSION LINE ON TOWERS IN METROPOLITAN ZONE AGREEABLE TO THE ZONING REGULATIONS AND AMENDMENTS THERETO FOR BALTIMORE COUNTY EXTENDING ON A RIGHT-OF-WAY 66' WIDE FROM THE COMPANY'S EXISTING RING BUS LINE ON THE TEXAS-PADONIA ROAD TO THE MT. WASHINGTON ELECTRIC SUB-STATION OF SAID COMPANY.

Hearing was had on the above petition on November 18, 19, 22 and 26, 1948, and it appearing from the evidence and data submitted that the two following described parts of said transmission line constructed on towers as proposed by said Company will not be detrimental to the safety and general welfare of the communities through which they pass, therefore as to said parts the petition is hereby granted and permission is hereby given to construct the hereinafter described parts of said line on towers over head:

First. All that part of said line extending from said Company's existing ring bus line and the Texas-Padonia Road, and following the courses and distances set forth in said petition and shown on the plat filed with the Zoning Department of Baltimore County to a point about 2000 feet north of Seminary Avenue and at the base of a hill on the property of Albert Graham and wife.

Second. All that part of said line beginning at a point 1600 feet south of Ruxton Road on the property of William Fell Johnson and following the courses and distances shown in said petition and plat to the Mt. Washington Electric Sub-Station of said Company.

As to the remaining portion or part of said line beginning 2000 feet north of Seminary Avenue and at the base of a hill on the property of Albert Graham and extending southerly following the courses and distances described in said petition and shown on said plat to a point 1600 feet south of Ruxton Road on the property of William Fell Johnson permission to construct said part on towers over head is hereby denied and said part shall be constructed underground as required

by the Zoning Regulations of Baltimore County relating thereto, no affirmative testimony having been presented by the applicant which convinces the undersigned, Zoning Commissioner of Baltimore County, that said transmission line constructed over head on towers will not impair the public safety, or general welfare of the community.

The undersigned, Zoning Commissioner of Baltimore County, being convinced by the testimony adduced at the hearing, his own investigation and experience that an overhead power transmission line on towers in said last mentioned area will be highly detrimental to the public welfare by stifling or retarding the future development of the community and by damaging depreciating adjacent and neighboring property, and thereby lowering the assessable value thereof.

Zoning Commissioner of Baltimore County

Dated:

December 1, 1948

IN RE: PETITION OF CONSOLIDATED GAS ELECTRIC LIGHT AND POWER COMPANY OF BALTIMORE FOR A SPECIAL PERMIT TO CONSTRUCT AN OVERHEAD ELECTRIC LIGHT AND POWER TRANSMISSION LINE ON TOWERS IN THE METROPOLITAN ZONE AGREEABLE TO THE ZONING REGULATIONS AND AMENDMENTS THERETO FOR BALTIMORE COUNTY EXTENDING ON A RIGHT OF WAY 66 FEET WIDE FROM THE COMPANY'S EXISTING RING BUS LINE ON THE TEXAS-PADONIA ROAD TO THE MT. WASHINGTON ELECTRIC SUBSTATION OF SAID COMPANY	: : : : :	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY

SPECIAL PERMIT

Pursuant to the Order of the Circuit Court for Baltimore County filed in the above entitled case on the 24th day of January, 1950, and pursuant to the Order of the Board of Zoning Appeals of Baltimore County filed on the 26th day of January, 1950 in the said case, a Special Permit is hereby issued to the said Consolidated Gas Electric Light and Power Company of Baltimore to construct an overhead electric transmission line on steel towers over that portion of the route thereof excepted from the Order of the Zoning Commissioner of Baltimore County in the above case of December 1, 1948, i.e., from a point about 2,000 feet north of Seminary Avenue and at the base of a hill on the property of Albert Graham and wife to a point 1,600 feet south of Ruxton Road on the property of William Fell Johnson, et al., to the end that the construction of the entire transmission line overhead on steel towers be authorized in accordance with the said Company's application therefor to the said Zoning Commissioner filed October 26, 1948.

Dated:

January 27, 1950

Zoning Commissioner of Baltimore County.

RECD OCT 26 1948 1324

#1324-S

PETITION FOR SPECIAL PERMIT

IN THE MATTER OF CONSOLIDATED GAS ELECTRIC LIGHT AND POWER COMPANY OF BALTIMORE	: : :	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY

For a Special Permit

To the Zoning Commissioner of Baltimore County:

Consolidated Gas Electric Light and Power Company of Baltimore hereby petitions for a Special Permit under the Zoning Regulations and Restrictions passed by the County Commissioners of Baltimore County, agreeable to Chapter 877 of the Acts of the General Assembly of Maryland of 1943, as amended November 15, 1946, for a certain permit and use, as provided under said Regulations as follows:

A Special Permit for the construction of an electric light and power transmission line erected on towers and extending on a right of way 66 feet wide from the intersection of the existing electric transmission tower line of Consolidated Gas Electric Light and Power Company of Baltimore and the Texas-Padonia Road, in the 8th Election District of Baltimore County, to the Mt. Washington electric substation of said Company at the intersection of the Falls Road and the Northern Central Railroad, near Bare Hills, in the 3rd Election District of Baltimore County, the location of the center line of said electric transmission tower line being more particularly described as follows:

Beginning at the center of a tower now situate at a point N. 31° 47' E. from a point in the center line of the Texas-Padonia Road, which latter point is N. 64° 35' W. 345.67 feet from the place of beginning of the land described in a deed from William H. H. Nolte, et al., to Talbot T. Speer, dated February 9, 1939 and recorded among the Land Records of Baltimore County in Liber C.W.B., Jr., No. 1055, folio 376; thence, extending S. 31° 47' W. 2,009.45 feet across the lands of Talbot T. Speer and wife, Malcolm Fishpaw and wife, and Mary Chiles Dennis, crossing the Texas-Padonia Road at a point 385.67 feet northeasterly from its intersection with the Jenifer Road; thence, S. 0° 50' E. 3,944.16 feet across the lands of Mary Chiles Dennis, George F. Sargent and wife, and the Baltimore Country Club of Baltimore City; thence, S. 35° 39' E. 1,900.30 feet across the land of the Baltimore Country Club of Baltimore City, the land formerly owned by Anne Preston Emerson, and the land of Albert Graham and wife; thence, S. 4° 40' E. 2,580 feet across the land of Albert Graham and wife; thence, S. 5° 42' 40" W. 3,558.80 feet across the lands of Albert Graham and wife, J. Hambleton Palmer, et al., the land formerly owned by Anne Preston Emerson, and the lands of Lillie McCaffrey, John T. McCaffrey, Consolidated Gas Electric

- 2 -

Light and Power Company of Baltimore, The Land Company, and Mabel F. Lee, crossing Seminary Avenue at a point 327.20 feet west of its intersection with Mays Chapel Road and crossing the Joppa Road at a point 710 feet southeast of its intersection with Falls Road; thence, S. 17° 17' 20" E. 2,374.55 feet across the lands of Mabel F. Lee and John A. Hatfield and wife; thence, S. 2° 11' 20" E. 3,382.93 feet across the lands of John A. Hatfield and wife and Robert W. Johnson, et al., crossing the Old Court Road 147 feet southwest of its intersection with the Greenspring branch of the Northern Central Railroad; thence, S. 2° 08' 20" W. 2,376.78 feet across the lands of Robert W. Johnson, et al., and William Fell Johnson, et al., crossing Ruxton Road 143 feet northeast of its intersection with the Greenspring branch of the Northern Central Railroad and crossing Falls Road 410 feet south of its intersection with the Ruxton Road; thence, S. 15° 51' 40" E. 6,625 feet across the lands of William Fell Johnson, et al., Edwin Griffith, Jr., and wife, Stanley H. Mash and wife, Charles C. McColgan, and Birdie C. Alley, et al., crossing Old Pimlico Road 950 feet southwest of its intersection with Falls Road; thence, S. 58° 20' 40" E. 1,150 feet across the lands of Birdie C. Alley, et al., and Consolidated Gas Electric Light and Power Company of Baltimore; thence, S. 59° 46' 50" E. 1143 feet across the land of Consolidated Gas Electric Light and Power Company of Baltimore to the terminal structure now located on said land on the north side of the Northern Central Railroad 300 feet, more or less, west of Falls Road, a total distance of 5.8 miles; all as shown on the plat marked Petitioner's Exhibit No. 1, attached hereto and made part hereof.

CONSOLIDATED GAS ELECTRIC LIGHT AND POWER COMPANY OF BALTIMORE

By ______
Vice President

1707 Lexington Bldg., Balto.-1, Md.
Address

1707 Lexington Bldg., Balto.-1, Md.

Duncan Bldg., Towson-4, Maryland

Attorneys for Petitioner

ORDERED by the Zoning Commissioner of Baltimore County this 26th day of October, 1948, that the subject matter of this petition be advertised in a newspaper of general circulation throughout Baltimore County and that the property be posted, as required by the Zoning Regulations and Act of Assembly aforesaid, and that a public hearing thereon be had in the office of the Zoning Commissioner of Baltimore County, Maryland, on the 17th day of November, 1948, at 10:00 o'clock A.M.

Zoning Commissioner
of Baltimore County

January 3, 1949

$22.00

RECEIVED of John Grason Turnbull, Attorney for the Gas & Electric Company, petitioner, the sum of Twenty Two ($22.00) Dollars, being cost of appeal to the Board of Zoning Appeals of Baltimore County from the decision of the Zoning Commissioner passed in the matter of petition for special permit for electric transmission line.

Zoning Commissioner

PAID
JAN 4) 1949
COUNTY COMMISSIONERS
OF BALTIMORE COUNTY
BY

C. Arthur Eby, Esquire,
1101 Fidelity Building,
Baltimore - 1, Maryland

to

Sept. 29,1949

County Commissioners of
Baltimore County
% Zoning Department
of Baltimore County,
Neckord Building,
Towson 4, Maryland

Certified copies of petition, orders, and other papers filed in the matter of Special Permit for Transmission Tower Line of the Gas & Electric Company - Texas Padonia Road to the Mt. Washington Elec. Sub-Station $14.20

10/7/49

October 7, 1949

$14.20

RECEIVED of William Fell Johnson, the sum of $14.20 being cost of certified copies of papers in the matter of petition for special permit for transmission power line, Gas & Electric Company, petitioner.

Zoning Commissioner

PAID
OCT 1 0 1949
COUNTY COMMISSIONERS
OF BALTIMORE COUNTY
BY

October 26, 1948

$100.00

RECEIVED of the Consolidated Gas Electric Light and Power Company of Baltimore, the sum of One Hundred ($100.00) Dollars, being cost of petition for Special Permit, advertising and posting of property.

Zoning Commissioner

Hearing dates:
Wednesday, Nov. 17, 1948, at 10:00 a.m.
Thursday, " 18, " at " "
Friday, " 19, " at " "

PAID
OCT 26 1948
COUNTY COMMISSIONERS
OF BALTIMORE COUNTY
BY

Rec'd

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

1324-S

District 3-8 Date of Posting Nov 5/48
Posted for: Electric Transmission Tower Line
Petitioner: Gas & Electric Co
Location of property: Padonia & Texas Road to Mt Washington
Location of Signs: 75 signs along the Electric Transmission Tower Line from Padonia & Texas Roads to
Remarks: Mt Washington
Posted by Harvey C. Fontrowitz (Signature) Date of return: Nov 5/48

True Copy-Test:

Zoning Commissioner

Johnson et al vs Board of Zoning Appeals
in Circuit Court for Baltimore County
Brief for Petitioners for Certiorari
(Protestants)

WILLIAM FELL JOHNSON, and others, Petitioners	:	
-vs-	:	In the
BOARD OF ZONING APPEALS OF BALTIMORE COUNTY,	:	CIRCUIT COURT for Baltimore County
-and-		
CONSOLIDATED GAS ELECTRIC LIGHT AND POWER COMPANY OF BALTIMORE, a public utility corporation, Respondents	:	Before the Court on Certiorari to Board of Zoning Appeals
	:	Miscellaneous Docket 4 - Folio 201
CONSOLIDATED GAS ELECTRIC LIGHT AND POWER COMPANY OF BALTIMORE, Cross-Petitioner	:	

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BRIEF ON BEHALF OF PETITIONERS

Statement of the Case

This case is before the Court on certiorari directed to the Board of Zoning Appeals of Baltimore County, hereinafter referred to as the "Board," on the petition of 55 individuals, in addition to the partners and owners of the Valley Inn and the Green Spring Inn, who conduct public restaurants, as well as the Ruxton Company, a corporation and land developer, all of whom are taxpayers and owners of valuable properties in the Green Spring Valley section of Baltimore County. The Falls Road and Green Spring Valley Association and the Taxpayers League for Baltimore County, unincorporated associations, representing numerous property owners

and taxpayers of Baltimore County, have likewise joined in the petition.

The petitioners seek a reversal by the Court of that portion of the decision and order of the Board, passed July 21, 1949, which authorizes the granting of a special permit for the construction of an overhead high-powered electric transmission line on wooden and/or steel poles over a part of the proposed route for such line in the Metropolitan Zone of Baltimore County.

The Consolidated Gas Electric Light and Power Company of Baltimore, hereinafter referred to as the "Gas Company," has likewise filed a cross-petition herein seeking a reversal of the Board's order of July 21, 1949, in so far as such order refused to grant it authority to make the construction applied for overhead on steel towers, and asking the Court to remand this case to the Board for the entry of an order authorizing such construction on steel towers. That petition, as is shown by the answer of these petitioners filed thereto, sets forth a great deal of irrelevant matters, and raises questions long since settled by Court decisions.

The Zoning Commissioner of Baltimore County, on the petition of the Gas Company for a special permit under the Zoning Regulations and Restrictions for Baltimore County -

> "for the construction of an electric light and power transmission line erected on towers and extending on a right of way sixty-six feet wide from the intersection of the existing electric transmission tower line of the Consolidated Gas Electric Light and Power Company of Baltimore and the Texas-Padonia Road, in the Eighth Election District of Baltimore County, to the Mount Washington Electric Substation of said Company at the intersection of the Falls Road and the Northern Central Railroad near Bare Hills in the Third Election District of Baltimore County,"

after a hearing, by his order, entered December 1, 1948, granted permission, without objection on the part of the petitioners, for the construction of said line on overhead towers along -

> "FIRST: All that part of the said line extending from said Company's existing ring bus line and the Texas-Padonia Road, and following the courses and distances set forth in said Petition and shown on the plat filed with the Zoning Department of Baltimore County to a point about 2,000 feet north of Seminary Avenue and at the base of the hill on the property of Albert Graham and wife.
>
> "SECOND: All that part of said line beginning at a point 1600 feet south of Ruxton Road on the property of William Fell Johnson and following the courses and distances shown in said Petition and plat to the Mt. Washington Electric Substation of said Company."

These portions of the line, although in the Metropolitan Zone, traverse an area not suitable for home sites, in the first instance, and of very rocky formation in the second instance.

But,

> "As to the remaining portion or part of said line beginning 2,000 feet north of Seminary Avenue and at the base of a hill on the property of Albert Graham and extending southerly following the courses and distances described in said Petition and shown on said plat to a point 1600 feet south of Ruxton Road on the property of William Fell Johnson,"

the Commissioner, by his said order, denied permission to construct said line on towers overhead, and ordered that, as to that part of the proposed route, the construction of said line shall be underground as required by the Zoning Regulations of Baltimore County, the Commissioner being convinced, as stated in his order, that no affirmative testimony had been presented by the applicant which convinced him that, as to that part of the

route, said transmission line constructed overhead on towers will not impair the public safety or general welfare of the community, and being further convinced by the testimony adduced at the hearing, and by his own investigation and experience, that an overhead power transmission line on towers in said area will be highly detrimental to the public welfare by stifling or retarding the future development of the community and by damaging and depreciating adjacent and neighboring property and thereby lowering the assessable value thereof.

Questions to be Decided

The Court is called upon to decide -

A. Whether or not the Board was in error, in making a special exception to the Zoning Regulations which require underground construction of high-powered electric transmission lines in the Metropolitan Zone of Baltimore County, by granting a special permit for overhead construction of said line along that part of the proposed route in question?

B. Assuming that the Board could rule that overhead construction of the transmission line was permissible along the portion of the route in question, whether or not the Board committed error by authorizing such construction <u>on poles</u> rather than <u>on towers</u> for which the application was made, the public notice given and the hearings were had in this case?

We contend that, under the Zoning Regulations (Section XIII, Sub-section 1 (c) 2,

I. The burden of proof was on the applicant to convince the Board by affirmative testimony that such transmission line could be carried overhead without impairing the public safety or general welfare, and that the applicant failed to meet such burden by affirmative testimony presented to the Board;

II. That, in determining the question of public safety and general welfare, the Board failed to be guided by those five guides, standards and factors required by Section XIII, Sub-section I (c)2, of the Zoning Regulations, set forth in sub-paragraph 5 of same, and especially those factors which relate to the crossing of much traveled highways or streets, and the future conditions to be reasonably anticipated in the area in question as the result of the normal course of development.

III. That, application having been made for a special permit for the construction of an overhead tower line, public notice as to such application having been given and posted, and the hearings before the Zoning Commissioner and the Board having been had on the application for an overhead <u>tower</u> line, the Board was without authority to authorize the construction of an overhead <u>pole</u> line through the area in question.

We submit, therefore, that the order of the Board as to that part thereof which authorizes the overhead construction of the line along the portion of the route in question, should be reversed, and that the case should be remanded to the Board for the entry of a proper order affirming the order of the Zoning Commissioner in its entirety, or for such further proceedings as may be necessary to carry into effect such order as this Court may pass in the premises.

Facts of the Case

The record before the Court in this case is most voluminous, the Court reporter's transcript of the testimony containing more than 1,000 pages, and numerous exhibits have been filed. We submit that much of the evidence in the case is irrelevant to the issues involved. The principal question for the decision of the Board was, whether or not it should make a special exception to underground requirement of the Zoning Regulations by authorizing an overhead tower line instead of requiring underground construction

through the area in question as directed by the Regulations. To justify such special exception to the Regulations requires convincing proof by affirmative testimony that overhead construction of the line would not impair the public health, safety or general welfare by not being in violation of the five specifically mentioned factors, standards and guides by which such question must be determined by the Board.

The Board apparently placed no limit on the introduction of testimony and evidence in the case, but the Court will confine its consideration to the evidence which deals solely with this question.

We submit that the evidence and exhibits in the case show the following facts to exist without any contradiction as to factors a, b, c, d and e hereinabove mentioned.

<u>Factor a.</u>

The crossing of much traveled highways or streets.

(1) Seminary Avenue near the Falls Road connecting Lutherville with the Falls Road.

(2) Joppa Road very near the Falls Road connecting Towson and Riderwood with the Reisterstown Road. Seventeen hundred vehicles pass daily at its intersection with the Old Court Road.

(3) The Old Court Road near the Falls Road connecting Towson and Riderwood with Pikesville.

(4) Ruxton Road very near the Falls Road connecting Ruxton with Pikesville.

(5) The Falls Road just south of the Ruxton Road with a daily taffic of 3200

vehicles in the Green Spring Valley.

(6) The planned Beltway just west of the Falls Road.

See Protestants' Exhibit No. 45.
Testimony --
Johnson,--
Book 6, pp. 1041,1082, 1089-96, 1160;
Whitehead--
Appellants' appx., Ct. of Apps. #202, last par. p. 218.

<u>Factor b.</u>

The proximity of the line to any school, church, theater, club, museum, fair ground, race track or other place where persons may congregate-

"The Cloisters" museum, within about 1400 feet.
The dog race track, within a couple hundred feet.
The Valley Inn, immediately adjacent to the dog race track.
The Hilltop Theatre, within about 1600 feet.
The Green Spring Inn on the east side of the Falls Road a couple hundred feet north of the Joppa Road where the transmission line crosses that road "at the south-east corner of the new filling station property put up at Joppa Road and Falls Road."
An ice cream parlor on the northeast corner of the Joppa and Falls Roads.

See Applicants' Exhibit No. 4.
Testimony --
Penniman,--
Book 2, pp. 390-3.

<u>Factor c.</u>

The probability of extensive flying over the area and its general nearness to any airport or airports.

The commercial flying zones of both the Harrisburg, Pa., and New York City routes cover this area. Future operation of the Curtis Wright airfield a couple of miles away would cause a return of the constant student flying over this area so prevalent in the past.
See Testimony--
Penniman--
Book 2, pp. 394-7.

Factor d.

Any fire hazard or interference with fire fighting equipment due to the location and construction of the proposed line.

The burning of anything coming in contact with a broken conductor or the molten metal released by a short circuit or flashover constitutes a fire hazard due to the line's near proximity to certain structures and its route through certain wooded areas all suitable for immediate development.

See Testimony--
Whitehead--
Appellants' appx.,
Ct. of Apps. #202,
pp. 219, 230, next to last par.

Johnson--
Book 6, p. 1039.

Penniman--
Book 2, pp. 383-6.

Factor e.

The future conditions to be reasonably anticipated in each such area as a result of the normal course of development.

Parts of this area are now being used for high-class residential home sites, and the whole area is suitable and "ripe" for such immediate development in small acreage lots.

The Zoning Commissioner found this to be the case, as stated in his order, from the testimony before him and from his own investigation and experience, and all the testimony produced by the applicant and by these petitioners shows that to be a fact.

See testimony of --

Kearney (applicant's witness,)
Book 1, pp. 163-4;
Pinkard--
Book 1, pp. 190-192,200-1, 209;
Simmons--
Book 2, p. 242;
Riepe--
Book 2, pp. 274, 291;

Mrs. Tubman--
Book 2, pp. 345-8;
Webb--
Book 5, p. 692;
Constable--
Book 5, p. 703;
Johnson--
Book 6, pp. 1009-10, 1012-16, 1018-19, 1030-4, 1039, 1041-5;
Protestants' Exhibits 10-38.

Factor f.

The said Commissioner or Board, on appeal, may also consider the comparative cost of underground and overhead construction, including not only reasonable estimates of right of way cost but also estimated damage to adjacent and neighboring property, whether or not the owners of such property would be legally entitled to compensation for such damage; but the fact that the total cost to the applicant of placing a line or any portion thereof underground would be greater than locating it overhead, in any given case, shall not in itself be deemed sufficient cause for the issuance of a permit for overhead construction.

This factor is unquestionably subservient to all the other factors and cannot interfere with their controlling effect, especially factor e which is the basic principle of all zoning and the underlying reason for the underground requirement and its restriction to the Metropolitan Zone. The difference between the applicant's construction cost, including right of way cost, and that of the Protestants is mostly made up of the cost of installing oil circuit breakers and lightning arresters, items chargeable against the overhead as well as the underground construction.

See testimony--
Moreland--
(Applicant's witness)
Appellant's appx.
Ct. of Apps. #202,pp.422-3.

Whitehead--
Book 5, p. 831.
Book 6, pp. 894-919,921-23,997.
Vannort--
Book 5, pp.712,723-7,739-40, 754-5,760-1,766-70,775-6.

Protestants' Exhibits 3 and 4.

Mr. Bertram O. Vannort, the above named witness, was in charge of construction of the Pennsylvania Railroad 132,000 volt underground line of 3 miles in Baltimore City in 1935.

Our testimony shows the estimated construction and right of way cost of an overhead line through the disputed area to be $225,600, and that of an underground line with 1800 foot overhead link to be $532,054, a difference of $306,454. Whereas, if the damage to the adjacent and neighboring properties by the overhead line in dispute is taken into the calculation as required, the cost of the underground line with 1800 foot overhead link is far less than that of the overhead method, the latter amounting to $938,600.

Protestants' Exhibit No. 1.

The problem of estimating the damage to this particular area was made easier by the condemnation awards to two very large tracts of land extending half a mile beyond the line and belonging to Robert W. Johnson, Jr., life tenant, et al., and William Fell Johnson, life tenant, et al., though in the latter case particularly the strict rule of condemnation damage limitation prevailed. There were also many incidents of individual and several incidents of developer sales resistance due to the proposed location of this line in this area.

See Testimony of --
Mrs. Tubman--
Book 2, p. 346.
Johnson--
Book 6, pp. 1015, 1032-4, 1035-7, 1043-5.

Though this Court could almost take judicial notice of serious damage to property values in an area of this classification, we will refer particularly to the testimony

of three real estate experts: Mr. Pinkard, who has had very wide experience with high-class residential home sites, Mr. Simmons, with the development of areas suitable to such homes, and Mr. Riepe, with cases of condemnation for power lines, Not to mention the Chairman of the Board himself, who, upon Mr. Constable's statement regarding general objectors to overhead high voltage transmission lines, said: "I am one of them."

See Testimony of --
Pinkard--
Book 1, pp. 190, 192, 198, 200-2, 207.
Simmons--
Book 2, pp. 235, 239-41.
Riepe--
Book 2, pp. 274-80, 290.
Webb--
Book 5, p. 692.
Constable--
Book 5, p. 703.
Chairman Hoover--
Book 5, p. 704.
Johnson--
Book 6, pp.1038-40, 1045-6, 1077-8.

It is important to note that all the local properties cited by the applicant's only real estate witness averaged twice the distance from Baltimore City as this area and are not suitable or ripe for immediate development in small acreage lots for high-class residential purposes, and that the properties with handsome homes are very large tracts of land used for stock raising purposes and will have to be so used for years to come.

See Testimony of--
Pinkard--
Book 1, pp.189-94,205-6.

It is also important to note that in an example given from another State, Pennsylvania, will be found an

example of not how little damage is done by an overhead power line to a development of land in small acreage lots, but rather an example of how great such damage can be. This example, applicant's Exhibit No. 6, is a tract of land called "Colonial Village," about seventeen miles from Philadelphia, containing a plat dated February 8th, 1928, showing seventy-eight lots from one to three acres in size, and the location of half a dozen or so homes of which pictures were taken in 1949. There are also two 1949 pictures taken from a bridge on the Warren Road running north and south bisecting the tract and crossing over the Pennsylvania Railroad, which railroad is very near and parallel to the Reading Railroad, between which railroads the power line runs, being put into operation March, 1928. One of these pictures from the bridge shows all the thirteen lots north of the tower line with only one house built on the northernmost boundary. The other picture from the bridge shows the area of thirty-five lots south of the tower line and west of the Warren Road with only half a dozen houses there, all the rest being fields. No picture was taken of the remaining twenty lots east of the Warren Road and south of the tower line as apparently only one house exists there. The unfortunate developer is not to blame as he had bought the tract prior to having to sell the right of way going through it for the tower line. This shows what can actually happen to a developer in sight of these power lines after more than a twenty year period and substantiates our real estate experts' opinions upon the bad effect of these lines on a development project.

No pictures were taken of the Westchester County areas and no actual sales figures given, but even the Public Service Commission in the Westchester County Transmission Line case, p. 512, col. 2, admits -

"It is probable that every transmission line has some effect upon the value of adjacent property, but the estimates given by the witnesses for the complainants are grotesque. In many instances, occupants of the land said to be damaged, over one mile away, cannot possibly see either the present or the proposed line."

Our witnesses have only assigned damages to properties within sight of the line and not more than two-thirds of a mile from it with exception of one property which was given only a 15% damage, although from it two miles of the line can be seen.

But even if the cost of overhead were less than that of underground construction the Zoning Regulations (Section XIII, Sub-section I (c) 5f) provide that "the fact that the total cost to the applicant of placing a line or any portion thereof underground would be greater than locating it overhead in any case, shall not in itself be deemed sufficient cause for the issuance of a permit for overhead construction."

The evidence before the Board also shows that the increased cost, if any, to the consumers of the electric power by reason of any greater cost of underground than overhead construction would be infinitesimal.

See Testimony of --
Holland--(Applicant's Witness)
P.S.C.Engineer-
Protestants' App.
Ct. of Apps. No.202, p. 330.
Whitehead--
Book 6, pp. 995-7.

Baltimore City has had underground construction of power lines since a short time following the Baltimore fire of 1904, and the Pennsylvania Railroad Company since 1935 uses this underground method for its three miles of 132,000 volt lines in the City of Baltimore. In fact there are over 900 miles of 66,000 volt cable and over in this country alone, more than 250 miles being 110,000 volts and over, including a number of installations beyond the city limits such as Boston, New York, Chester, Pennsylvania, and Alexandria, Virginia. Some have been in operation since 1927 and all successfully used.

See Testimony of --
Whitehead--
Book 5, pp. 809-14, 869-71.
Vannort--
Book 5, pp. 744-8, 785-6, 796.
Johnson--
Book 6, pp. 1046-77, 1081, 1098-9, 1100-5.
Protestants' Pictures-Exhibits No. 40A-J, 44A-J, Maps 39, 41A-B, 42, 43.

The Metropolitan Zone in which lies the Green Spring Valley in Baltimore County, one of the most beautiful and high class residential areas in the State of Maryland, or elsewhere, through which the Gas Company has been authorized by the Board to construct an overhead power line on poles and over which it now seeks to erect such line on towers, as pointed out by the Court of Appeals of Maryland (Kahl v. Consol. Gas Elec. Light & Power Co., 60 Atl. 2d, 754, 757-758), in upholding as valid the very Regulations under which the Board must act in the instant case, "is a belt around the City of Baltimore, and the fact that this part of the belt is not as thickly settled as is the remainder does not prevent the

Commissioners (County Commissioners) from anticipating what may soon happen. Zoning looks to the future, and attempts to preserve, rather than to uproot."

The towers in the proposed line average 91 feet in height. A steel fabricated pole line requires approximately twice the number of structures varying in height from 65 to 80 feet and a wooden pole line requires four times the number of structures necessitating a double line 24 feet center-to-center and varying in height from 52 to 70 feet, each structure having a number of wide cross arms with long suspended strings of insulators.

There was very brief testimony before the Zoning Commissioner and the Board of Zoning Appeals by the applicant's engineers of the existance of 110,000 volt lines on wooden poles in the outlying sections of its transmission system and their undesirability both as to maintenance and operation in comparison with tower lines. The only testimony on the comparative effect of tower and wooden pole lines on neighborhoods was very briefly given on cross examination of two of the protestant's real estate witnesses,neither of whom had ever seen a double 110,000 volt wooden pole line and one of whom had never seen a wooden pole line of more than 33,000 volts as exists on roadsides about 35 feet high.

The area in question is now ready for development in small acreage lots for high-class residential purposes, and the effect of an overhead power line, whether on poles or on towers, would be devastating, and would, no doubt, as the Zoning Commissioner points out in his order, stifle and retard, if not entirely prohibit, such a very desirable development, thereby lowering the assessable values of the properties adjacent to and in the neighborhood of such

line. The small additional cost of an underground power line over that of an overhead method of construction would be insignificant in comparison with the tremendous loss that would result in property damage by reason of an overhead line.

The question of danger from these lines can best be summarized by using Dr. Whitehead's language found on page 253 of the Protestants' Appx. in our Court of Appeals Case #202, as follows:

> "The whole import of my testimony has been to call attention to facts, and notwithstanding this very high degree of service, and which your Company is also rendering, notwithstanding those facts, these lines do have those hazards, and when these lines are brought into neighborhoods where people are moving about, and where there are residential areas, and particularly where the density of the population is increasing, that there is increasing danger of damage to both the persons and property from the inherent hazards of those lines."

Whereas, it is self evident there is no danger of any kind from an underground high voltage transmission line, it being placed where it cannot move or be affected by the elements.

See Testimony of -
Whitehead--
Book 5, pp. 861-68B;
Vannort--
Book 5, pp. 732-3, 797.

THE LAW APPLICABLE TO THE CASE

Baltimore County's Authority in Law for Zoning-

Baltimore County derives its lawful authority for zoning from the following Acts of the Maryland General Assembly:

1. The General Enabling Act of 1933, Ch. 599, Sec. 12, codified as Md. Code, P.G.L. (1939), Art. 66B, Secs. 21-23, applicable to all counties, cities and other incorporated areas in Maryland not excepted from its provisions. Baltimore County is not so excepted.

This Act was intended to apply to the counties, cities and incorporated towns of the State having less than 10,000 inhabitants. The State Enabling Act for cities and incorporated towns of the State having more than 10,000 inhabitants was passed by the Act of 1927, Ch. 705, Sec. 1, Code P.G.L., Art. 66B, Secs. 1-9.

2. The Special Enabling Act of 1945, Ch. 502, codified as Sec. 72-B of Art. 3, Code of P.L.L. of Md., (1930 ed.), title "Baltimore County," sub-title "Building Regulations."

So far as these two Acts may be in conflict the later one, that is, the Special Enabling Act, would prevail; to the extent that they are not inconsistent with one another they should be construed _in pari materia_.

Smith v. Higinbothom, (1946), 187 Md. 115;
48 Atl. 2d 754;
Hagerstown v. Littleton, 143 Md. 591, 599.

3. The Special Act of 1947, Ch. 915, codified as Sec. 72C of Art. 3, P.L.L. of Md., title "Baltimore County," sub-title "Building Regulations."

This Act of 1947 confers power and authority on the Baltimore County Commissioners, in addition to that conferred by the Special Act of 1945, to require in its Zoning Regulations special permits in certain uses of property which have a peculiar tendency to impair the health, safety and morals of the public, provided

that the issuance of such special permits shall be subject to appropriate principles, standards, rules, conditions and safeguards set forth in the Regulations, and the Act further provides that the uses for which special permits are required by Sec. XIII of the Zoning Regulations of Baltimore County, as adopted January 2, 1945, and as amended November 15, 1946, are declared to be within the authority and power conferred upon the County Commissioners by the Act. The Act also provides that it is the intention of the General Assembly to confirm and validate the requirement of special permits as set forth by Sec. XIII of the Zoning Regulations, as amended, and that the County Commissioners, in adopting and amending the Zoning Regulations for Baltimore County as aforesaid, shall be deemed to have and to have exercised the police power of the State of Maryland within the limits of Baltimore County to the fullest extent that such power could be granted or conferred upon said Commissioners by the General Assembly, and all of said Zoning Regulations for Baltimore County are declared by the Act to be confirmed and validated in their entirety.

Baltimore County's Zoning Regulations and Restrictions Approved by the Court of Appeals-

The validity of the Zoning Regulations and Restrictions under the authority of which the Board acted in the instant case has been approved by the Court of Appeals in the recent case of Kahl v. Consol. Gas Elec. Lt. & Power Co., _infra_, where the Court held that -

> Zoning regulations requiring electric power transmission lines within Baltimore, [illegible] metropolitan zone to be located underground, and authorizing the making of special exceptions when lines may be carried overhead, without impairing public health, safety or general welfare,

> are not unreasonable or unduly oppressive, and are a valid exercise of the police power.

Kahl v. Consol. Gas Elec. Lt. & Power Co., (1948), 60 Atl. 2d, 754.

In the Kahl case, _supra_, The Court further held that the fact that the adoption of the Regulations was suggested or initiated by the landowners whose properties would be affected did not invalidate them, and that the present Regulations were not unreasonable or unduly oppressive, the Court saying on this point -

> "While the efforts of the landowners may have had much to do with the adoptions of these amended Zoning Regulations, that, of itself, does not invalidate them or make them inapplicable to the proposed line of the appellee. They are general in their nature, affect the entire Metropolitan District, and are not unreasonable or unduly oppressive. The Metropolitan District of Baltimore County is, except for its different form of government, in all respects a city."

We quote further the following language of the Court, in upholding the action of the County Commissioners, as a valid exercise of the police power, in adopting the present Zoning Regulations:

> "We look to the record to find whether the action taken is in the interest of the community as a whole. It is generally presumed that it is. The fact that the action is urged by a minority, by a majority, or by all of the community, neither brings the action within the police power, nor does it prevent it from being valid and constitutional."

It is clear that the Court had in mind that the Zoning Regulations were adopted to fit and are applicable to the instant case. Judge Henderson, in his dissenting opinion in the case, stated:

> "The amended regulations are directed solely at the appellee, and at no other utility. There is no suggestion that any other power line is in prospect. The regulations are carefully tailored to fit the particular case."

It is seen, therefore, as we have shown, that the State Legislature, the Governor and the Court of Appeals of Maryland have authorized, approved and upheld as valid the Zoning Regulations now existing for Baltimore County and which are applicable to the case now before the Court.

No Vested Right in the Gas Company to Construct an Overhead Power Line-

The Kahl case, _supra_, likewise finally determined that the Gas Company has no vested right to construct an overhead power line as proposed in the present case, but must submit its application to the Zoning authorities for a special permit for such purpose. That question was directly raised and was disposed of by the Court in holding that -

> Where an electric pow[illegible] company (the Gas Company in this case) acquired several rights of way for use of an overhead electric power transmission line, instituted condemnation proceedings to acquire others, and bought materials to be used in construction, when zoning regulations did not require a special permit to construct overhead lines, the company did not acquire vested rights but the zoning authorities could pass upon the proposed erection of overhead lines under subsequently passed zoning regulations requiring a special permit for construction of overhead lines.

The Court finally settled the question of vested rights in the Kahl case, _supra_, so far as the same may be applicable to the instant case, by stating:

> "We do not think it (the Gas Company) can invoke the protection of the due process clause, under the record in this case."

See Answer to Cross-Petition of Applicant, Items 1,2,3,6 & 7, filed in this case.

Court Review of Decisions of Board of Zoning Appeals of Baltimore County-

The right to Court review of any decision of the Board of Zoning Appeals is allowed to "any person or persons, jointly or severally, aggrieved by any decision of the Board of Zoning Appeals, or any taxpayer, or any officer, department, board or bureau of the County," by petition to the Court for review, upon which the Court may allow a writ of certiorari. Upon review the Court shall have power to "affirm the decision of the Board of Zoning Appeals, or reverse the same, in whole or in part, and may remand any case for the entering of a proper order or for further proceedings, as the Court shall determine."

Special Enabling Act of 1945, Ch. 502;
Secs. 72B (f) and (g), Art. 3, Code
P.L.L. (1930 ed.), title "Baltimore
County, sub-title "Building Regulations."

It will be noted that no specific authority is given the Court by the Enabling Act to modify the decision or order of the Board, but the Court may reverse the decision and remand the case for the entry of a proper order to that effect, or may remand the case for further proceedings.

In thisrespect the Enabling Act under which Baltimore County is given zoning authority differs from the Zoning Enabling Act for Baltimore City (Acts 1927, Ch. 705, Sec. 7, as amended by Acts 1935, Ch. 448; Code, P.G.L. Art. 66B, Sec. 7), which specifically provides that the Court on review of a decision of the Board of Zoning Appeals "may reverse or affirm, wholly or partly, or may modify the decision brought up for review."

Power and Authority of the Board of Zoning Appeals in Appeals from the Zoning Commissioner-

While the Special Enabling Act of 1945, Ch. 502,

and the Special Act of 1947, Ch. 915, both of which authorize Zoning Regulations for Baltimore County, make no provision as to the authority of the Board of Zoning Appeals, in appeals to it from the Zoning Commissioner, the General Enabling Act of 1933, Ch. 599, Sec. 13,(Code, P.G.L., Art. 66B, Sec. 22), which is applicable to Baltimore County, does provide that the Board of Zoning Appeals, in exercising its powers, and in conformity with the provisions of the Act, may "reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the power of the officer from whom the appeal is taken."

While the Board of Zoning Appeals may annex conditions to the use permit which it may authorize, by way of modification of the Zoning Commissioner's order, in the interest of safety or for the public good, it has no authority to change the entire character of the use or structure for which application is made before the Zoning Commissioner and as to which notice has been given and posted and hearings had.

See discussion of the third point of our Argument on this question.

ARGUMENT

I.

The burden of proof was on the Gas Company as the applicant to convince the Board of Zoning Appeals by affirmative testimony that its proposed transmission power line through the portion of the route in question could be carried overhead without impairing the public safety or general welfare. The

applicant failed to meet that burden in this case as the evidence clearly shows.

The applicant seeking a variance (of a Zoning Ordinance or Regulations) has the burden of establishing that the application is fair and reasonable.

Zoning Law & Practice (1948), Par.59,
by E. C. Yokley.

The Board of Appeals must set forth grounds and reasons for variance.

The Law of Zoning, p. 268 (1930),
by James Metzenbaum.

It is well settled that the power of a Zoning Board of Adjustment under a Zoning Statute and Ordinance to authorize a variance from the letter of the ordinance must be exercised sparingly and only under exceptional circumstances.

Zoning Law & Practice (1948), Par.124,
by E. C. Yokley, citing numerous
cases.

Applicant for permission to erect building at variance with Zoning Ordinance had burden of establishing before the Board of Adjustment that application was fair and reasonable, and that the interest of the landowner, conditions in the neighborhood, and the public good, would be best served by allowance of the variance.

Montgomery Engineering Co., et al.,v.
Jersey City, et al., Sup.Ct.of N.J.
(1946) 48 Atl. 2d 643.

The Court of Appeals of Maryland has held, in a recent case which came before it for the second time, involving the Zoning Ordinance of Baltimore City, and its right to authorize an exception to the terms of the ordinance, that -

> In considering an application for an exception to the general rule as to garages in a residential use district, discretionary power to make which is conferred on the Board of Zoning Appeals, the Board should carefully analyze the evidence before it to determine if there is a real and substantial need for the exception of such urgency that injustice will result if the exception to the rule is not applied.
>
> A provision of a zoning ordinance for an exception to the general rule therein should be strictly construed, since a broad interpretation of the exception could lead to an unequal administration of the ordinance and result in discrimination.

Heath v. Mayor & City Council (1948),
58 Atl. 2d 896.

In the first Heath case before the Court of Appeals, which involved the question of an exception under the Baltimore City Zoning Ordinance, the Court held that -

> There must be supporting evidence upon which to base a rational judgment, and the record must show substantial evidence to sustain the Board's findings other than the mere statement that the Board "made a study of the premises and the neighborhood," in order to justify the granting of an exception.

Heath, et al., v. Mayor & City Council
of Balto., et al., (1946),
187 Md. 296; 49 Atl. 2d 799.

To refuse to consider evidence introduced or to make an essential finding without supporting evidence is arbitrary action.

Chicago Junction Case, 264 U.S.258,
cited by the Court of Appeals
of Md. in Heaps v. Cobb, 45 A 2d
73, 76.

The Court of Appeals has held that, the spirit of the Baltimore City Zoning Ordinance is against the extension of non-conforming uses.

Colati v. Jirout (1946) 186 Md. 652,
47 Ad 613.

The Court of Appeals in the Kahl case, supra, has made it clear that the Board of Zoning Appeals in acting upon an exception to the underground requirement for transmission lines must be guided by the five factors referred to in Section XIII, Subsection I (c) 2. In this connection the Court uses the following language:

> "Within the Metropolitan Zone, created to conform to the boundaries of the Metropolitan District, transmission lines, such as the one contemplated by the appellee, are required to be located underground, but the Zoning Commissioner is given power to make special exceptions 'when convinced by affirmative testimony * * * that such lines * * * may be carried overhead * * * without impairing the public health, safety or general welfare.' In determining any special exception the Commissioner, or the Board of Zoning Appeals on appeal, shall be guided by certain factors enumerated (underscoring ours), including the crossing of much travelled highways or streets, the proximity of the line to schools, churches, or other places where persons congregate, the probability of extensive flying over the area, and its nearness to airports, fire hazards or interference with fire-fighting equipment, and future conditions to be reasonably anticipated in view of the normal course of development. Comparative costs of overhead and underground construction may also be considered, but the excess in cost is not, of itself, to be deemed sufficient cause for the issuance of a permit for overhead construction. The General Assembly confirmed and validated these provisions by the Act of 1947, Ch. 912, after the trials of the present cases began."

In analyzing the Board's opinion, we find that -

> (a) lack of any danger, (b) lack of any damage in property values in other localities, and (c) underground unreliability constitute the main reasons for granting an exception in this case. These grounds for an exception to the underground requirement of the Regulations have been foreclosed by the action of our Legislative, Executive and Judicial tribunals after thorough and exhaustive controversial efforts.

We find that -

> (a) was determined in spite of the potential dangers testified to by the Protestants' witnesses, including the blowing down of one of the applicant's towers near Owings Mills, and the testimony of Mr. Moreland, a witness for the applicant in our Court of Appeals case #202, who testified as to the breakage of very high voltage lines and the falling of towers, on pp.294-5, of Protestants' Appx., and again on p. 298 cited four cases of electrocution of members of the general public on towers, (b) was determined in spite of the attitude of the general public to such overhead lines, and (c) was determined in spite of the fact of provision for a spare cable and uncontradicted evidence of large mileage and satisfactory operation of underground construction in this country alone since 1927, and in Baltimore City since 1935.

Incidentally, by referring to authorities allowing overhead lines in other jurisdictions, the Board had in mind the three opinions filed with it after the close of the hearing before the Board, namely, (1) the New York Westchester Public Service Commission Case of 1932, where the Commission in the last paragraph of its opinion said: "We have not been asked to rule as to specific parts of the line and we do not find that no part should be placed underground, but merely that conditions do not warrant underground construction of the entire line." The line in that case was 33 miles long, 21½ miles being the substitution of a 132,000

volt line for an existing 44,000 volt line; (2) the recent New York Long Island Public Service Commission case, where the Commission, at the beginning of its opinion, said: "It can be easily understood that objections are frequently made to power installations for purely aesthetic reasons. That is, of course, an element which this Commission may not consider;" and (3) the Massachusetts Public Service Commission Case, involving communities averaging more than 15 miles from Boston and having no zoning protection. These are all excellent examples of what was meant by our Court of Appeals in our Case #202 by its answer to the contention that the Public Service Commission already has jurisdiction, in which the Court stated: "It is sufficient to say, in answer to this contention, that the Public Service Commission Law has nothing to do with zoning."

II.

The Board failed to take into consideration in the instant case the five guides, standards and factors required by Section XIII, Sub-section I (c) 2 of the Zoning Regulations.

In this connection we would direct the Court's attention to the fact that the evidence shows, as pointed out in our Statement of the Facts, that the overhead power line would cross at least five much traveled public highways in addition to the proposed Beltway as planned and surveyed.

See Protestants' Exhibit No. 45.

The Board does not even mention in its opinion that it gave any consideration to the most important factor set out in the Regulations, which is the one relating to the conditions to be reasonably anticipated in the Metropolitan Zone

and the particular area in dispute as the result of the normal course of development, which factor was one on which the Court of Appeals laid much stress in upholding the validity of Baltimore County's Zoning Regulations in the Kahl case, supra, and which was the principal ground on which the Zoning Commissioner relied in this ruling in the instant case requiring underground construction through the disputed area.

The general rule seems to be that a Zoning Ordinance must prescribe a definite standard, and that neither the City Council nor the Board of Appeals created by ordinance or statute is properly vested with discretionary rights in granting building permits or variances in exception to the zoning ordinance unless there has been established a definite standard to guide the Board in the exercise of such powers.

Zoning Law & Practice (1948) par.59,
by E. C. Yokley.
Zoning (1940) p. 131, by E. M.
Bassett,
Tighe v. Osborne, 149 Md. 399, 360.

In passing upon an application for a permit for a special exception under the Baltimore City Zoning Ordinance in a Residential Use District, the Court of Appeals decided in the first Heath case that the Board of Zoning Appeals must take into consideration all pertinent factors enumerated in Section 1 of the Zoning Ordinance of Baltimore City, such as fire hazards, traffic problems, transportation requirements and facilities, streets and paving, and schools, parks and playgrounds, and its action must be reasonable in the light of these and all other pertinent facts.

Heath, et al., v. Mayor & City Council
of Balto., 187 Md. 296; 49 Atl.2d 799.

In Mayor and City Council of Baltimore vs. Byrd, 62 Atl. 2d, 588 (1948), which involved an exception to the Baltimore City Zoning Ordinance, the Court of Appeals in holding void an ordinance which undertook to make a special exception to the Zoning Ordinance for the allowance of a filling station, used the following language:

> "In the Baltimore City Zoning Ordinance are provisions for non-conforming uses which existed at the time of its passage, and there are also provisions for extension of these uses. We have held that these last provisions should be strictly construed, as the intention of the ordinance is not to allow them to multiply. Colati v. Jirout, _____ Md. ______, 47 A. 2d, 613. This conclusion is based upon the same general conclusion that has been present in all of the zoning cases decided by this Court, that is that when the legislative body of a municipality adopts a comprehensive zoning plan, exceptions should be allowed only in such cases as are clearly exceptions in fact to the purposes of the ordinance, and without which there would be imposed a burden upon the owner of the property not justified by consideration of the public health, safety or welfare. Sugar vs. North Baltimore Methodist Protestant Church, 164 Md. 487, at pages 493, 494. Ellicott vs. City of Baltimore, 180 Md. 176, at page 183. The appellants contend that the Mayor and City Council may, in a proper case, exercise the power of making exceptions, and we agree that they have the power, provided the conditions are such as would justify its exercise. Chayt vs. Maryland Jockey Club, 179 Md. 390. The appellants aptly compare to a safety valve the power of making exceptions which permits in exceptional or unusual cases, the avoidance of the arbitrary or unreasonable. When we adopt this metaphor, however, it must be borne in mind that the safety valve is an emergency outlet."

III.

The third point which we make, is that the Board had no legal right, under the evidence in this case, to authorize a special permit to the Gas Company for the construction of an overhead transmission line through the disputed area on poles.

The application made, the notice given, and the hearings had, all related to a tower line. To justify the granting of a special permit for a pole line, even though the Board may have concluded that the public safety and welfare would not be impaired by overhead construction, would require in this case a new application, a new notice and further hearing with particular reference to a pole line.

We have found one Maryland case only on this point to the effect that the Board of Zoning Appeals may not grant a permit for a use or structure entirely different from that for which the application was made to the Buildings Engineer, and that case related to the Baltimore City Zoning Ordinance.

Judge Smith, sitting in the Baltimore City Court, held that upon appeal to the Board of Zoning Appeals from a refusal by the Buildings Engineer, the Zoning Commissioner, to grant permission to erect a fence, hard surface lot and use for temporary storage of buses, it was beyond the power of the Board to grant a permit for the erection of a building for a trackless trolley terminal, and that in such a case, where the Board of Zoning Appeals had failed to dispose of the original application by granting or refusing it, it is proper for the reviewing Court, since a determination of the question involves the exercise of a discretion committed to the Zoning Board and not to the Court, to reverse and remand the

case to the Board for further proceedings.

Waclavski v. Mayor & City Council
of Balto., Balto. City Court-
Smith, C.J.
DR-12-10-43.

Judge Smith also decided in the Waclavski case, supra, that the provisions of the zoning law in regard to notice had not been satisfied, and that even if the proceedings were amended the failure of proper notice prior to the hearing would violate the Constitutional provisions as to due process, the Court in its opinion stating:

> "Even if the law permitted in explicit terms amendments which would change the entire character of the proceeding without the requirement of renewed notice, it would violate the constitutional requirement of due process of law, which has been interpreted to mean 'suitable notice and adequate opportunity to appear and be heard.'" (Blackmer v. United States, 284 U.S. 421, 440).

See also Matter of Hickox v.
Griffin, et al., Constituting
Board of Appeals of Town of
Oyster Bay, N.Y., Court of
Appeals of New York, decided
January 12, 1949, published
in Daily Record September 24,
1949, where the Court raises,
but does not decide, the
question as to whether the
Town Board of Appeals could
entertain an application for a
zoning variance in the first
instance without prior request
for a permit from Building
Inspector.

In Norwood Heights Improvement Association v. Mayor and City Council of Baltimore (1948), 60 Atl. 2d, 192, the same type of use but a different character of structure was found by the Court of Appeals to involve a new application for a permit, the Court, in passing upon this question, holding that -

-30-

An application for a permit to erect on a fifteen acre tract, ten apartment buildings made up of 34 units containing 168 suites and open parking spaces for 168 cars is not substantially the same as one application denied by the Superior Court of Baltimore City, within six months prior thereto, which application was for apartment buildings, for 179 families, 125 parking spaces and 26 garage buildings, and thus does not violate the provision of the zoning ordinance prohibiting another application for substantially the same proposal, on the same premises, which was disapproved, until six (6) months from the date of such last disapproval.

CONCLUSION

In conclusion, we submit that there is no evidence in the case now before the Court which would support a conclusion that the special exception to the underground requirement could be granted under the controlling guides of the Zoning Regulations in Section XI.7. The uncontradicted evidence is to the contrary. Therefore, the decision of the Board of Zoning Appeals is clearly erroneous and should be reversed and the case remanded to the Board for the entry of an order affirming the decision and order of the Zoning Commissioner in its entirety, and refusing a special permit to the applicant for the construction of an overhead power line through the area in dispute in this case.

RESPECTFULLY SUBMITTED,

William P. Bolton

C. Arthur Bly

Attorneys for Petitioners (Protestants)

Protestants' Ex No 2

STATEMENT & COSTS
Relative To
Overhead or Underground
Construction of Portion of
Texas-Mt. Washington
Transmission Line

R. O. VANNOTT
ENGINEER
519 WEST SECOND STREET
CHARLOTTE, N. C.

DATA PREPARED BY
MR. R. O. VANNOTT
IN THE MATTER OF THE
TEXAS-MT. WASHINGTON TRANSMISSION LINE

I have made an examination of the terrain from Graham's meadow north of Seminary Road to the lower extremity of the Johnson properties south of Burton Road, along the routes of the overhead transmission line as laid out by the Gas Company and the routes suggested for underground construction by the Gas Company. I have also made an examination of the terrain with the view of suggesting an underground route which I believe would eliminate construction difficulties which may be anticipated along the routes suggested by the Gas Company.

No issue is taken with the route selected by the Gas Company for the overhead line, and my estimates are based upon the use of this route. The underground cable route I would suggest is shown on the attached photostat. It is suggested to eliminate crossing the Falls at two places and to keep the route above the low ground to be encountered along the Railroad and in the vicinity of the stream crossings.

The estimate has been prepared for the construction of the cable on the route shown on the attached photostat; it provides a northern terminus on the Graham property 1600 feet north of Seminary Road, and a southern terminus on the Robert Johnson property south of the Falls in the bend between the Falls and Falls Road. Two three-phase 110 KV cable circuits are provided between the termini of 250,000 circular mil conductors capable of transmitting 67,000 to 75,000 KVA.

The estimates are based upon a quotation by the Okonite-Callender Cable Company dated June 18, 1947, for an Oilostatic cable of 3/0

conductors of sufficient size to transmit 49,000 KVA at 110,000 volts. The Okonite Company furnished a figure of $22,000 as the additional increment of cost for 250,000 CM instead of 168,000 CM or 3/0 conductors as provided in their quotation of June 18, 1947. The estimates have been prepared in detail for 1947 costs.

The route suggested was selected by inspection and not by engineering survey, and the distance of 2.65 miles or 14,000 feet used has been selected by scaling it from the attached photostat.

The estimate for 14,000 feet of double circuit 250,000 CM Oilostatic on the suggested route follows:

A.	Excavation and backfill	- $ 38,295
B.	Crossing Jones Fall at south end	- 2,000
C.	Manholes	- 15,680
D.	Cable, complete including conductors, pipe, pipe welding, pipe coating, splicing and terminal materials, pressure control equipment, oil, installation equipment, installation supervision and inspection, and freight allowed to nearest railroad delivery point	- 305,128
E.	Installing pipe	- 25,480
F.	Pulling cable	- 9,800
G.	Splicing cable	- 11,200
H.	Terminal structure	- 12,500
I.	Housing for pressure equipment and control	- 6,000

J.	Pressure alarms	- $ 2,550
		$425,693
Lead salvage from lead sheath		- 19,400
		$406,293
Engineering and Overhead 6%		- 24,400
		$430,693

In the spring of 1947 I testified in the Cassell case that the overhead transmission line, as planned by the Power Company, based upon 1947 prices, from the Ring bus to the Mt. Washington substation--a distance of 6.15 miles--would cost $393,076 without the cost of rights-of-way included, establishing the cost per mile of 2 circuit 110 KV overhead line at $31,400 per mile. Using this figure the construction cost of 2.65 miles of overhead line would be $83,210.

I am advised by counsel that the cost of rights-of-way will be the order of $12,000 if the line is constructed underground. A comparison of costs, including rights-of-way, as between underground and overhead construction between the suggested termini of the underground cable will be as follows, based upon 1947 prices:

	Underground Transmission	Overhead Transmission
Line Construction Cost	$430,693	$ 83,210
Right-of-Way Cost	12,000	130,000
	$442,693	$213,210

I have reviewed the testimony of Mr. Nolan of the Power Company regarding 2.71 miles of underground cable, given before the Zoning Commission during the Fall of 1948. I question the necessity for the

expense indicated in his estimate for the terminals at north and south end of the cables. I do not take issue with the Power Company because it wishes to install oil circuit breakers, lightning arrestors, etc., at the north terminal; however, I would contend that such installations should not enter into a comparison of the costs of underground and overhead construction. It is common practice to provide overload protection at all tap-off points, such as at the point where the line from Texas to Mt. Washington taps the Ring bus. Such circuit breakers would, therefore, be commonly installed items of equipment at the Texas station, whether the line is built overhead or underground. Without this protection at the tap-off point, any fault on the tap itself would require the Power Company to de-energize the Ring bus back at its source, thus de-energizing all other taps that may be served from the Ring bus.

In this connection I cite a local example in the 132 KV Oilostatic cables for the Pennsylvania Railroad, installed in 1935, through the Baltimore Station area. The north terminal of the cables is at the north portal of the New Union tunnel, while the southern cable terminal is at the south portal of the old Baltimore and Potomac tunnel. The terminals are approximately 3½ miles apart and the cables may be fed from either the north or the south. The cable comes directly out of the underground, connecting to the overhead transmission line at both ends without circuit breakers or switches of any kind. The same is true at the Baltimore Substation immediately south of the Baltimore Passenger Station. The nearest oil circuit breaker to the north is at North Point Substation, approximately 7 miles

from the north terminal. To the south the nearest circuit breaker is located at Loudon Park Substation, approximately 6 miles from the south terminal.

No lightning arrestors are provided at either terminal. The only provision for protection against line surges at the terminals is accomplished by eliminating several insulator units at the overhead dead-end structure and equipping the insulator string with arcing rings. I am informed that no difficulty in the operation of the cables has been encountered by the Railroad during the past 13 years on this account.

I do not believe these items of equipment are essential to the operation of the cables and, therefore, should not enter into any discussion for comparison purposes. I believe that a relatively simple structure to carry the potheads and the cable risers is all that is required.

I also question the item in Mr. Nolan's estimate of $165,000 for 12 potheads. The Okonite quotation of June 18, 1947 indicates a cost of $5,354 for the potheads, which I estimate can be installed for an amount not in excess of $4,800, making a total of $10,154.

The reliability of underground cables of high voltage has been amply demonstrated by the fact that new installations are currently under construction and that much new work is planned for the near future. A list of such installations was given by Mr. J. B. Whitehead in his testimony before the Zoning Commissioner.

The revised 1948 cost of the underground cables, using a multiplier of 205 furnished by the Okonite Company and adjusting other items to current costs, will be a total of $503,554.

The revised 1948 cost of overhead construction will be $35,300 per mile. Based upon 1948 prices, including the cost of rights-of-way and the damage to property estimated to be of the order of $700,000, according to the figures provided by Mr. Pinkard and Mr. Riese, a comparison of the costs of overhead and underground construction appears as follows for that portion of the line from the north terminal in Graham's meadow to the Johnson-Griffith property line:

	Underground Cable plus 1800 feet of Overhead	All Overhead Transmission
Line construction costs:		
Underground	$503,554	
Overhead	16,700	$ 98,600
Right-of-Way Cost	12,000	130,000
Damage to Property	-	330,000
	$532,054	$529,600

Underground lines are not subject to many of the hazards common to overhead lines. Overhead lines are subject to wind, sleet, lightning, airplane accidents, and automobile accidents if located near highways. Overhead conductors have also been burned down by birds getting between the phase wires. Constantly they must be patrolled at regular intervals to eliminate broken insulators and broken conductor strand. A broken conductor on the ground, even though de-energized by switches, can still endanger life from a static charge. I know of one death, as a result of such a circumstance, which involved an experienced line foreman. Underground lines are not subject to these hazards.

Any overhead line is a potential source of danger. Fatal accidents do not happen with any degree of regularity, nor often, but they do happen and I testified to several of such in the Cassell case. The more congested the area traversed by overhead lines, the greater the opportunity for such accidents. The press carries occasional items of airplanes striking overhead lines with unfortunate results. It is of no consequence to state that the pilot was foolish if he lost his life. Wires in the air are difficult to see, as are galvanized transmission towers , when looking toward the sky and moving at high speeds. A tree or a hillside come more quickly to view because of their contrasting color.

I am of the opinion that the provisions of the Zoning Law are fair and reasonable, and that the regulating body functioning thereunder should give due consideration to all of the matters stated therein. Overhead transmission lines do depreciate property values, as I can testify to on my own behalf.

COMPARISON OF CABLE ESTIMATES

	One Company in 1948				One Estimate, 2.65 Miles			
	2.71 Miles		Adjusted to 2.65 Miles		1947		1948	
Excavation, Backfill, Ducts Organic & Manholes	377,200	377,200	375,400	375,400	838,235 2,000 15,880	856,115	838,235 2,300 17,468	857,903
Cable & Terminal Pothends	251,583 165,4001	416,583	245,800 165,000	410,800	302,128	302,128	362,553	362,553
Installing Pipe, Pulling Cable & Splicing	65,800	65,800	64,400	64,400	25,450 9,800 11,200	46,450	51,095	51,095
Terminal Structures, Pressure Housing & Equipment, Pressure Alarms	128,800 50,000 31,700	210,500	210,500	210,500	12,500 6,000 2,500	21,000	13,500 6,400 3,000	22,900
		$770,083		$761,100		$425,693		$494,451
Less Load Salvage		-		-		19,400 $406,293		19,400 $475,051
Engineering & Supervision		25,417		24,850		24,400		28,503
		$795,500		$785,950		$430,693		$503,554

Applicant's Exhibit No. 1.

Before the Board of Zoning Appeals of Baltimore County

In the Matter of the Appeal

of

Consolidated Gas Electric Light and Power Company

of Baltimore

Data for

Board of Zoning Appeals

on

Texas-Mt. Washington Line

Cost studies, etc.

January 26, 1949

INDEX

Comparison of Overhead and Underground Costs

Costs incurred as result of 2.63 miles underground

Costs incurred by combined underground and overhead construction between proposed North (Graham) Terminal and south tower on Wm. Fell Johnson property, via proposed South (Robt. Johnson) Terminal (See Pg. 2 and supporting data)	$848,536
Cost of Overhead construction between North (Graham) Terminal and south tower on Wm. Fell Johnson property.	$226,846
Excess of underground costs	$621,690

Construction costs per mile

Overhead - $174,500 (total cost of overhead line) divided by 5.88 (its length in miles)	$ 29,676
Underground - excluding terminals Items A to E inclusive, plus Item I, Pg. 2, (construction cost items) divided by 2.63 (length of line in miles)	$211,676

Summary of Costs Incurred by

Underground Construction of 2.63 Miles

a. Excavate, sand bed and back fill trench, build 7 manholes, install, weld and test pipe (Cost of pipe, testing equipment, Somastic Supervision, material and equipment not included) Ligon - Pg 2A	$ 87,190.50
b. Pipe. Gas & Electric Co. Quotations - Pg 2B	56,842.48
c. Other items excluded from Ligon bid (a) G.& E. Co. (See pg. 2C)	15,000.00
d. Furnish, install and splice cable, "pothead to "pothead," including potheads, and install oil storage, pumping and control equipment (overheads not included). Ebasco-Pgs. 2D, 2D1 and 2D2	359,000.00
e. G.& E. Co. overheads to item d. (See Pg. 2E)	19,684.00
f. North Terminal	
1. Excavation, fill, concrete footings, retaining wall, road, fence, pumphouse, etc., Ligon - Pg. 2A	40,252.50
2. Terminal equipment installed. G. and E. Co. Pg. 2F	118,530.00
3. Electric service to Terminal (Pg. 2 F1)	1,180.00
g. South Terminal	
1. Grading, concrete footings, retaining wall, fence, service buildings, etc., Ligon Pg. 2A	18,667.50
2. Terminal equipment installed G.& E. Co.- Pg. 2G	22,750.00
h. Overhead tower line connection, South Terminal to south tower on Wm. Fell Johnson property	11,650.00
i. Control cable, Mt. Washington to North Terminal (Pg. 2I)	19,400.00
j. Rights of way (Inadequate estimate of objectors on page 8 of their Answer filed in this case before Zoning Commissioner).	12,000.00
k. Amounts already expended for overhead rights of way which would be rendered useless Pg. 2K	25,653.00
l. Payment required by Johnsons to obtain release of right of way condemnation judgments totaling $56,103 plus interest. Pgs. 2L(1-3); 2L1(1-8);2L2(1-4) Note 1.	40,738.51
TOTAL	$848,536.49

Note 1. This amount would be increased by Mr. Johnson's counsel and witness fees in hearings before Zoning Commissioner and on this appeal.

C
O
P
Y

LIGON & LIGON, INC.

3310 Ridgewood Avenue

Baltimore 15, Maryland

January 17, 1949

Consolidated Gas Electric Light & Power Company,
Lexington Building,
Baltimore-3, Maryland.

Att. Colonel L.G. Smith

Gentlemen:

I have gone over the proposed route for the steel pipe line which you propose to install from the proposed South Terminal Structure near the Dye works cross-country to the proposed Terminal Structure at the North End of the job at the edge of Graham's Woods. I have gone over this route carefully and submit herewith the cost of this work as follows:

Total distance of 13,910'. We will excavate ditch; haul, string, weld and test pipe as per your instructions and verbal information given me; install pipe under roads, across streams; do repaving and all work complete to your satisfaction for the lump Sum price of Eighty-seven Thousand One Hundred Ninety Dollars and Fifty Cents ($87,190.50). I have included in this price 400 Cubic Yards of rock.

We have included in the above route five (5) line manholes, 8'x12' [illegible] at a cost of Fifteen Hundred Dollars ($1,500.00) each and have also [illegible] Stop manholes 8'x18'x7' headroom at Twenty-Four Hundred Dollars ($2,[illegible])each. There are two (2) Stop Manholes included. Additions to or deductions from may be made on this basis.

It is understood that all testing equipment used in testing the welded pipe line will be furnished by the Consolidated Gas Electric Light & Power Company.

At the terminal Structure at Graham's Woods I propose to do all excavation and refill; make stream changes; construct pump house; widen road and change entrance; do all concrete work as shown on plans furnished by you for a lump sum price of Forty Thousand Two Hundred and Fifty-Two Dollars and Fifty Cents ($40,252.50). This work is intended to cover sub-surface work in connection with this installation. The items which go to make up this amount are as follows:

1. Retaining Wall	-	$11,557.50
2. Foundations:		
8 Type "A"	-	3,040.00
8 Type "B"	-	2,200.00
28 Type "C"	-	4,200.00
2 Type "D"	-	2,000.00
3. Pump House, complete	-	6,000.00
4. Backfill 1,550 C.Y. of fill	-	2,325.00
5. Stream Diversion	-	300.00
6. Stone Cover inside fence, 6" thick	-	2,700.00
7. 600' 6' Chain Fence, 1' Wire top, including 1 - 20' Double Gate and 1 - 3' Walk Gate	-	3,180.00
8. Widening Road and Changing Entrance into Falls Road	-	2,850.00

At the South Terminal Structure near the Dye works I propose to do all excavation

Consolidated Gas Electric Light & Power Company
Sheet No. 2.
January 17, 1949.

and refill; construct equipment house; widen road and change entrance; do all concrete work as shown on plans furnished by you for a lump sum price of Eighteen Thousand Six Hundred and Sixty-seven Dollars and Fifty cents ($18,667.50). This work is intended to cover sub-surface work in connection with this installation. The items which go to make up this amount are as follows:

1. Grade area 100'x85' to finished grade (Cut approximately balances fill)	-	$ 650.00
2. Prepare 12'0" width gravel road entering from Falls Road	-	1,262.50
3. All concrete footings	-	3,510.00
4. Approximately 400' linear feet 6' Chain Link Fence with one foot wire - 2 Gates	-	2,400.00
5. Equipment House - 15' Square 10' Headroom, 9" Wall Brick Exterior	-	2,700.00
6. Stone Cover - 6" Thick	-	975.00
7. Retaining Wall - 239'	-	7,170.00

Trusting that the above will give you the information desired, I am

Very truly yours,

LIGON & LIGON, INC.

(signed) F. G. Ligon
per Daniel Ligon

FGL:HEH

F. G. LIGON.

Gas and Electric Company Quotation on Cost of Pipe

Republic Steel Corp. electric resistance welded steel pipe, 5-9/16 inches o.d., .258 inches wall thickness

Pipe at mill per 100 feet	$ 79.55
Freight to Philadelphia	8.78
Somastic coating, interior cleaning, interior coating and fabricating of ends	107.10
Freight, Philadelphia to Baltimore	6.49
Per 100 feet	$201.92

Equals $2.02 per foot
(Two pipes per foot of trench.)

Pipe at mill quoted by Phelps Dodge Copper Corp.
Coating, cleaning and fabrication quoted by W. K. Mitchell & Co. - Philadelphia

Length of underground run	13,910 feet.
Length of pipe (2 pipes per foot)	27,820 feet
Allowance for wastage	330 feet
Total	28,150

28,150 feet at $201.92 per hundred feet $56,840.48

Gas and Electric Company Estimates

on Items Omitted from Ligon Bid

Somastic field material for coating welds	$1,400
Supervision by Somastic coating supplier	2,100
Rentals for Somastic molds, heating pots, electric holiday pipe testing equipment, etc.	8,500
Air compressor and air drying equipment	3,000
Total	$15,000

January 24, 1949

Mr A L Pomeroy Jr, Gen Supt Electric
Operations Department
Consolidated Gas Electric Light & Power Co of Baltimore
Baltimore, Maryland

CONSOLIDATED GAS ELECTRIC LIGHT & POWER CO OF BALTIMORE
HIGH-VOLTAGE UNDERGROUND CABLE COSTS
ORDER NO. 398-3459

Dear Mr Pomeroy

We have prepared and are forwarding herewith (6 copies) our estimate of cost of a double-circuit 120-kv pipe-type cable installation near Rockland, Baltimore County, Maryland, over a route designated by you, 13,910 horizontal feet long. This estimate is exclusive of main pipe conduits and their installation, but does include cable, potheads, pothead fittings and supports, cathodic protection of the pipe conduit lines, pressure maintenance equipment (exclusive of pump house), and initial filling of the installation with oil.

You will note that the estimate includes only specific construction costs with field supervision. Indirect charges including engineering have been omitted. These charges have been estimated by us to amount to an additional $53,000.

The estimate is based on: field inspection by us of the route, quotations on cable and equipment by manufacturers, and our experience in designing and installing pipe-type cable installations.

Very truly yours

W R Bullard

W R Bullard
Electrical Engineer

WRB/mm
Encl
cc- J F Ahearn
R E Pierce/ID File

EBASCO SERVICES INCORPORATED
ESTIMATE OF COST

251

PREPARED ORF-AFG
CHECKED JHM-EEC-WRB
APPROVED E-S-T-I-M-A-T-E WRB

120 KV UNDERGROUND CABLE (Exclusive of Main Conduit)
CONSOLIDATED GAS, ELECTRIC LIGHT & POWER CO OF BALTIMORE

DATE January 24, 1949
PLACE New York, N Y
ESTIMATE NO. 352 2 SHEETS NO. 1

ACCOUNT	DESCRIPTION	UNIT	QUANTITY	MATERIAL	LABOR	UNIT COSTS	AMOUNT	TOTALS	DESCRIPTION OF WORK
					SUMMARY				
	This estimate for a two circuit 120 kv three-phase underground pipe-type cable line (exclusive of main conduit) over a route surveyed as 13 910 horizontal feet, designated by Consolidated Gas, Electric Light and Power Co of Baltimore, and located near Rockland, Baltimore County, Maryland, includes the estimated cost of two circuits of three single conductor 4/0 AWG 120 kv pipe-type cables and potheads with supports. This estimate also includes the initial filling of conduits with oil, the complete pumping plant for maintaining oil pressure, exclusive of pump house.								
	No allowance has been made for unusual rainy or cold weather conditions. Material is estimated at present day cost. Labor is estimated on a straight-time basis at current labor rates. Escalation, price increases and overtime-premium pay may increase the estimated cost depending upon conditions and time of construction.								
	This estimate does not include cost of right-of-way or temporary crossings of property for construction purposes.								
347. .1	UNDERGROUND CONDUIT DUCT LINES (Accessories) Pothead Fittings, Supports and Cathodic Protection	job job		11 000	4 000 4 000		15 000	15 000	
348. .1 .2	UNDERGROUND FEEDERS POWER MAINS OIL AND PUMPING FACILITIES	3-ph ft 3-ph ft job	28 150 28 150	169 200 126 200 23 000	113 800 100 800 13 000	10.05 8.77	247 000 36 000	283 000	
397 & 398	PLANT AND FIELD SUPERVISION	3-ph ft	28 150			0.99		28 000	
	Omissions and Contingencies	3-ph ft	28 150			1.17		33 000	10.1% of $326 000
	Total Specific Construction Cost	3-ph ft	28 150			12.75		359 000	

This estimate representing the Total Specific Construction Cost (Material plus Installation cost) does not include the Overhead Construction Costs, such as engineering, supervision, general office salaries and expenses, construction engineering (fee) and (office) supervision by others than the accounting utility, law expenses, insurance, injuries and damages, relief and pensions, taxes, and interest. The Overhead Construction Costs for the above described work amounts to an estimated fifty three thousand dollars.

EBASCO SERVICES INCORPORATED
ESTIMATE OF COST

252

PREPARED ORF-AFG
CHECKED JHM-EEC-WRB
APPROVED E-S-T-I-M-A-T-E

120 KV UNDERGROUND CABLE (Exclusive of Main Conduit)
CONSOLIDATED GAS, ELECTRIC LIGHT & POWER CO OF BALTIMORE

DATE January 24, 1949
PLACE New York, N Y
ESTIMATE NO. 352 2 SHEETS NO. 2

ACCOUNT	DESCRIPTION	UNIT	QUANTITY	MATERIAL	LABOR	UNIT COSTS	AMOUNT	TOTALS	DESCRIPTION OF WORK
347.	UNDERGROUND CONDUIT	job		11 000	4 000			15 000	
347.1	DUCT LINES			11 000	4 000		15 000		
.11	Conduit (Accessories)	job		14 000	4 000		15 000		
	Cathodic Protection	job		600	1 300		1 900		Permanent Protection; Battery, Charger & Testing.
	Spreader Head & Riser Ass'by	each	4	8 100	1 000	2 275.	9 100		Copper pipe (cable installation at same time).
	Pothead Supporting Struct	each	4	2 300	1 700	1 000.	4 000		Steel structure including foundations.
348.	UNDERGROUND FEEDERS	3-ph ft	28 150	169 200	113 800	10.05		283 000	
348.1	POWER MAINS	3-ph ft	28 150	146 200	100 800	8.77		247 000	
	Cable	M ft	85.1	119 700	47 300	1 960.	167 000		4/0 AWG 120 kv 1/c pipe-type cable.
	Splice Joints	each	14	9 800	24 200	2 430.	34 000		4 seal-stop and 10 straight joints.
	Connector Presses	each	2	1 100	-	550.	1 100		Connector presses.
	Potheads	each	12	15 600	24 600	3 350.	40 200		Insulators 138 kv.
	Cable Wiprs Supervisor	mo	4		3 500	875.	3 500		Labor and expenses.
	Cable Pulling Equip & Rentals	mo	4		1 200	300.	1 200		Winch and accessories.
348.2	OIL AND PUMPING FACILITIES	job		23 000	13 000			36 000	
	Oil	gal	25 500	14 700	8 200	.87	22 200		Initial filling of lines.
	Storage Tanks	job							
	Pumps	each	2		4 800		13 800		Pumping station with dual pumps and control equipment.
	Piping	job							
	Control Equipment	each	2						

G. & E. Company Construction Overheads Approved by

Public Service Commission, Applied to Ebasco Bid.

3-1/2% stores Applied to materials only $11,200 + $169,800	$180,800	$6,307
1-1/2% tools - Applied to labor only $9,000 + $113,800	117,800	2,745
3-1/2% Engineering - Applied to total of above	298,600	10,430
Total		$19,482

ADDITION IV

BIRCH TUNNELS

(Estimate included in Cable Estimate)

Estimated cost for Birch Tunnels for the 120 kv. cable in the high tension transmission line from the city to Mt. Washington substation. Birch Tunnel adits to be located on the Jenkins property west of Lake Chapel road approximately 2,000 feet north of Seminary Avenue.

North Tunnel Station (Items - Approximate end)

2 - 150,000-with oil circuit breakers with adequate housing covered transformers	$50,000
2 - 115,000-with air break switches with two operating switches	8,000
2 - 150,000-with coupling capacitors	4,000
6 - 27,000-with lightning arresters	6,000
10 - 115,000-with bus supports	4,000
6 - 115,000-with station breaker connections	4,000
6 - capacitor protector tubes	1,000
29 - Tons galvanized fabricated structural steel	10,150
Structural relays and control equipment	1,000
Copper bidding, wire and connectors	1,000
Conduit and control cable	10,000
Station battery, charging equipment, electrical control and service equipment	2,500
Grounding	500
Outdoor lighting	500
Design and drawing	3,500
Shoring	3,500
Labor and hauling	10,000
	$120,150
Overhead	1,350
Total	$118,800

LINE ESTIMATE

Name: Power for Terminal Structure

Location: Hayes Chapel Rd. N. Seminary Ave. (North-Goshen) Terminal

Installation 1500 ± 4400 volt new pole line with lightning arresters, fuse boxes and installation of transformer	$	900
Value 10 kw, 1 ∅ transformer		225
3 wire loop		15
Meter installation costs		21
Value of meter		19
	$	1180

METER ESTIMATE

Location: Lutherville Requested by Mr. Hanson

Nature of Work: Meter Installation for 10 kw Demand

	Material & Meter	Labor-Hauling	OH Exp.	Totals
	$	$	$	$
- Meter Installation -				
1 - #1577 Outdoor Connection Box; Misc. Material, Lock, Bushing, Board, Etc.	7.81 1.20			11.00
4 - Man Hours Labor @ $1.022 2 - Hours Hauling @ $ .500		4.01 1.00		6.00
Meter & Installation Exp. 19% Labor			.92	1.00
Sub-Total				18.00
G. & S. Exp. 3-1/2% Sub-Total Stores Exp. 3-1/2% Material Tool Exp. 2-1/2% Labor			.70 .39 .37	1.00
Estimated Cost of Installation				21.00
* * * * * * * * * * * * * *				
1 - 50-210-3-60 Meter	16.91			17.00
Testing & Tagging Meter OH Exp. on Meter 7%		.45 1.37		2.00
Estimated Cost of Meter				19.00
* * * * * * * * * * * * * *				
Total Estimated Cost of Installation and Meter				40.00

Remarks: Confirming to Mr. Hanson

Date: 1-20-49

COPY

APPENDIX XVI

SOUTH TERMINAL
(Potomac Edison to Cable Estimate)

Estimated cost for South Terminal for the 120 kv cable in the high tension transmission line from the ring to Mount Washington Substation. South Terminal site to be located east of Falls Road approximately 1,600 feet south of Ruxton Road (site immediately south of where Jones Falls crosses Falls Road).

South Terminal Station (Mt. Washington end)

6 - 97,000-volt lightning arresters	$ 5,925
18 - 115,000-volt bus supports	1,225
6 - 115,000-volt strain insulator assemblies	300
21 - Tons galvanized fabricated structural steel	7,350
Copper tubing, wire and connectors	375
Electric service equipment	300
Grounding	500
Lighting	200
Design and drafting	500
Labor and hauling	3,775
	$21,250
Overhead	1,500
Total	$22,750

CONTROL CABLE FROM MT. WASHINGTON TO NORTH TERMINAL STRUCTURE

1. Overhead on existing pole line along Falls Road from Mt. Washington to south terminal.

7500' - 10 cond. control cable	$.071	$6,470	
7500' - 11/32" copperweld messenger	.08	700	
Miscellaneous material		550	
		$7,720	
Labor		800	
Transportation		100	
		$8,620	
Overhead charges (3-1/2 - 2-1/2 - 3-1/2)		680	
Cost of overhead portion			$9,300

2. Underground in trench from south structure to north terminal structure.

14,000' - 10 cond. control cable	$ .55	$7,700	
Miscellaneous material		400	
		$8,100	
Labor		1,200	
Transportation		150	
		$9,450	
Overhead charges (3-1/2 - 2-1/2 - 3-1/2)		650	
Cost of underground portion			$10,100
Total			$19,400

L.H.A. 1-20-49

Amounts Already Expended by Gas & Electric Company for overhead rights of way between North and South Terminals.
(See also Pp. 7A & 7B for greater detail)

Graham	$15,177
Emerson	5,166
Conway	1,740
Hatfield	3,521
Total	$25,603

COPY

CONSOLIDATED GAS ELECTRIC :
LIGHT AND POWER COMPANY OF : IN THE
BALTIMORE, : CIRCUIT COURT
Plaintiff : FOR
vs. : BALTIMORE COUNTY
WILLIAM FELL JOHNSON, : ——
et al., : AT LAW
Defendants :

OFFER BY DEFENDANTS TO RELEASE JUDGMENT

Judgment of condemnation of right of way for an overhead transmission line having been entered in favor of the plaintiff on the 27th day of June, 1946, and judgment for $16,303. in favor of the defendants having been entered on the same date, the said judgments having been affirmed on appeal to the Court of Appeals of Maryland, and being now subsisting, the defendants do hereby offer to release the said judgment for $16,303. in their favor, on the following terms and conditions:

1. The judgment of condemnation for the right of way for the overhead transmission line is to be simultaneously released by the plaintiff.

2. The named defendants will convey to the plaintiff by good and sufficient deed all their right, title and interest in and to a right of way for an underground transmission line through their property over any route selected by the plaintiff without any cost or charge.

3. The named defendants will convey to the plaintiff by good and sufficient deed, if requested by the plaintiff, all their right, title and interest in and to a lot to be used as a terminal structure adjoining the southern boundary line of the defendants' property at the point where

-2-

such line is intersected by the condemned right of way, without any cost or charge, such lot, however, to be not exceeding 100 feet by 100 feet in dimensions.

4. The named defendants will convey to the plaintiff, if requested, by good and sufficient deed all their right, title and interest in and to a right of way for an overhead transmission line extending along the southern boundary of the defendants' property, from the intersection with the boundary of the Robert W. Johnson property in the bed of Falls Road to the condemned right of way, where continuous connection may be made with the right of way heretofore purchased by plaintiff over the J. Edwin Griffith property.

5. The plaintiff is to pay all court costs and all reasonable expenses, fees of expert witnesses and counsel fees, paid or incurred by the defendants or any of them, individually and as contributors to the Falls Road and Green Spring Valley Association, in the above-entitled condemnation case in the Circuit Court and the Court of Appeals, in the case of F. Harry Cornell et al vs. Consolidated Gas Electric Light and Power Company of Baltimore, in the Circuit Court and the Court of Appeals, there having been three appeals in said case; and in proceedings before the Zoning Commissioner and/or the Board of Zoning Appeals and the Circuit Court in connection with the application of the plaintiff for a special permit for the overhead transmission line.

6. This offer is to be void unless accepted by the plaintiff by an appropriate paper filed in this case on or before March 1, 1949.

-3-

Edward H. Burke

Herbert R. Preston, Jr.

Arthur W. Machen

William Fell Johnson

R. Courtenay Jenifer

Attorneys for Defendants

C O P Y

CONSOLIDATED GAS ELECTRIC	:	
LIGHT AND POWER COMPANY OF	:	IN THE
BALTIMORE,	:	CIRCUIT COURT
Plaintiff	:	FOR
vs.	:	BALTIMORE COUNTY
ROBERT W. JOHNSON,	:	----
et al,	:	
Defendants	:	AT LAW

OFFER BY DEFENDANTS TO RELEASE JUDGMENT

Judgment of condemnation of a right of way for an overhead transmission line having been entered in favor of the plaintiff on March 25, 1946, and judgment for $40,000. in favor of the defendants having been entered on the same date, appeal having been taken by the defendants but subsequently dismissed, and the said judgments being now subsisting, the defendants do hereby offer to release the said judgment for $40,000. in their favor, on the following terms and conditions:

1. The judgment of condemnation for the right of way for the overhead transmission line is to be simultaneously released by the plaintiff.

2. The named defendants will convey to the plaintiff by good and sufficient deed all their right, title and interest in and to a right of way for an underground transmission line through their property over any route selected by the plaintiff without any cost or charge.

3. The named defendants will convey to the plaintiff, if requested, by good and sufficient deed all their right, title and interest in and to a lot to be used as a terminal structure, to be selected by joint agreement, to be located at least 1,400 feet south of Ruxton Road, and to be not exceeding 100 feet by 100 feet in dimensions, all without any cost or charge to the plaintiff.

4. The named defendants will convey to the plaintiff, if requested, by good and sufficient deed all their right, title and interest in and to a right of way for an overhead transmission line extending from said terminal structure, southward and generally parallel to Falls Road, to a point opposite the southern boundary of the William Fell Johnson property.

5. The Plaintiff is to pay all court costs and all reasonable expenses, fees of expert witnesses and counsel fees, paid or incurred by the defendants or any of them, individually and as contributors to the Falls Road and Green Spring Valley Association, in the above-entitled condemnation case in the Circuit Court and the Court of Appeals, in the case of W. Harry Cassell et al vs. Consolidated Gas Electric Light and Power Company of Baltimore, in the Circuit Court and the Court of Appeals, there having been three appeals in said case; and in proceedings before the Zoning Commissioner and/or the Board of Zoning Appeals and the Circuit Court in connection with the application of the plaintiff for a special permit for the overhead transmission line.

6. This offer is to be void unless accepted by the plaintiff by an appropriate paper filed in this case on or before March 1, 1949.

Edward H. [illegible]

Herbert R. [illegible], Jr.

[illegible] W. [illegible]

William Fell Johnson

W. [illegible]
Attorneys for Defendants

COPY

IN THE MATTER OF	:	BEFORE THE
CONSOLIDATED GAS, ELECTRIC LIGHT AND POWER COMPANY OF BALTIMORE	:	ZONING COMMISSIONER OF BALTIMORE COUNTY

THIS IS AN EXPLANATION OF THE OFFERS TO RELEASE CONDEMNATION JUDGMENTS AND IS FILED IN THE ABOVE ENTITLED MATTER UPON THE REQUEST OF COUNSEL FOR THE APPLICANT

1.- In the case of Consolidated Gas, Electric Light and Power Company of Baltimore, Plaintiff, vs. Robert W. Johnson et al., Defendants, in the Circuit Court for Baltimore County, judgment of condemnation of the right of way for an overhead transmission line was entered in favor of the Plaintiff on March 25, 1946, and judgment for $40,000. in favor of the Defendants against the Plaintiff was entered therein on the same date.

2.- In the case of Consolidated Gas, Electric Light and Power Company of Baltimore, Plaintiff, vs. William Fell Johnson et al., Defendants, judgment of condemnation of the right of way for an overhead transmission line was entered in favor of the Plaintiff on June 29, 1946, and judgment for $16,-103. was entered in favor of the Defendant against the Plaintiff on the same date.

3.- Each of said judgments bears interest at the rate of 6 per cent. per annum accounting from their respective dates, and the aggregate of the interest on said two judgments amounts to this date $8,700. The total of said judgments and interest is therefore in excess of $64,803.

4.- In each of the cases above mentioned the Defendants therein have filed an offer to release the judgments in their favor and to convey to the Applicant the right of way for an underground transmission line through their properties free of charge and to convey to the Applicant free of charge a lot for the necessary terminal structures in the event said transmission line be constructed underground, provided the Applicant will dismiss its judgments of condemnation for an overhead transmission line obtained by it in the above entitled cases and will make the payments provided in Paragraph 5 of each of said offers, Paragraph 5 of each of said offers reading as follows:

"5. The plaintiff is to pay all court costs and all reasonable expenses, fees of expert witnesses and counsel fees, paid or incurred by the defendants or any of them, individually and as contributors to the Falls Road and Green Spring Valley Association, in the above-entitled condemnation case in the Circuit Court and the Court of Appeals, in the case of W. Harry Cassell et al vs. Consolidated Gas, Electric Light and Power Company of Baltimore, in the Circuit Court and the Court of Appeals, there having been three appeals in said case; and in proceedings before the Zoning Commissioner and/or the Board of Zoning Appeals and the Circuit Court in connection with the application of the plaintiff for a special permit for the overhead transmission line."

5.- As will appear by said offers, each of them will remain open until March 1, 1949.

6.- Appended hereto are the items of costs and expenses referred to in Paragraph 5 of said offers, which have been thus far paid and incurred by William Fell Johnson and Robert W. Johnson reimbursement of which would be expected under said Paragraph 5. There may be additional costs but the items enumerated on the list attached hereto are believed to be reasonable.

7.- In addition to the costs and expenses referred to herein, the costs and expenses of the protestants in connection with the amendment of the Zoning Regulations and the costs and expenses of the protestants which have been incurred outside of the three cases referred to on said list are substantial, and the contributions to such expenses made by Robert W. Johnson and William Fell Johnson aggregate several thousand dollars and will not be recovered by them, or by any of the protestants. In addition to such costs and expenses, Robert W. Johnson and William Fell Johnson will give up the reasonable value of the required underground right of way through their respective properties and Robert W. Johnson or William Fell Johnson will further give up the reasonable value of the ground for terminal structures, if the line is placed underground.

8.- From the above it appears, and it is a fact, that the judgment creditors of the Applicant in the above two cases will not profit to any extent whatsoever by reason of their aforesaid offers, but on the contrary, in addition to the costs and expenses which they will not recover, will donate the necessary rights of way through their properties for the underground line and also the land necessary for the terminal structures.

9.- The facts and figures herein given demonstrate clearly that the aforesaid judgment creditors of the Applicant are sincere in their belief that the building of the proposed transmission line overhead through the Green Spring Valley will cause tremendous damages to their respective properties, as well as to the section of the Green Spring Valley through which the overhead line is proposed to be built.

Attorney for Protestants

STATEMENT OF EXPENSES PAID AND INCURRED BY ROBERT W. JOHNSON AND WILLIAM FELL JOHNSON TO NOVEMBER 18, 1948

R. W. Johnson Condemnation Case		
Counsel fees	$8,250.00	
Fees and expenses of expert witnesses and technical data	3,217.50	
Appeal costs	930.95	
Miscellaneous expense	6.59	$12,405.04
W. F. Johnson Condemnation Case		
Counsel fees	$3,775.75	
Fees and expenses of expert witnesses	2,210.00	
Appeal costs	1,077.85	
Miscellaneous expense	9.60	7,073.20
W. H. Cassell Equity Case		
Counsel fees paid by Mr. W. F. Johnson	$13,500.00	
Appeal costs, first appeal (No. 47, Oct. Term, 1946)	228.85	
Fees and expenses of expert witnesses	5,358.71	
Appeal costs, second appeal, including share of printing costs (No. 77, Oct. Term, 1947)	1,196.08	
Appeal costs, third appeal, less amount repaid by Gas Company (No. 208, Oct. Term, 1947)	881.96	
Miscellaneous expense	94.73	21,260.27
Total expenses paid and incurred in above three cases to November 18, 1948		$40,738.51

3.

[illegible] PIPE TYPE CABLE INSTALLATIONS [illegible]

Company	Year of Installation	Voltage	Conductor Size	Length of Line	No. of Circuits	Type of Cable	Total Cost	Cost Per Mile: Risers, Potheads & Pumps	Cost Per Mile: Incl. [illegible]
Detroit Edison	1941	120 kv	600 mcm	6.85 mi.	1 circuit-1 pipe	Gas	$521,184	-	$76,109
Cons. Edison	1947	138 kv	350 mcm	5.63 mi.	1 circuit-2 pipes	Oil	1,003,[illegible]	$178,[illegible]	-
"	1947	138 kv	1500 mcm	7.86 mi.	2 circuits-2 pipes	Oil	2,[illegible]	335,816	-
Long Island	1947	138 kv	350 mcm	2.5 mi.	1 circuit-2 pipes	Oil	158,297	-	103,300
Fla. Power & Lt. Co.	1947	69 kv	400 mcm	4.83 mi.	1 circuit-1 pipe	Oil	596,631	-	123,500
New Orleans Pub. Serv.	1947	115 kv	600 mcm	11 mi.	1 circuit-1 pipe	Oil	1,3[illegible],573	-	119,500
New Bedford	1948	120 kv	250 mcm	4.27 mi.	1 circuit-2 pipes	Gas	540,000	-	126,500
Philadelphia Elec. [illegible]-Westmoreland	1947	66 kv	1500 mcm	9.3 mi.	1 circuit-1 pipe	Oil	1,822,273	-	195,400
Richmond-[illegible]land	1950 Estimate	66 kv	1500 mcm	6.6 mi.	1 circuit-1 pipe	Oil	1,730,000	-	262,300
[illegible]-[illegible]land	1948	66 kv	2000 mcm	5.4 mi.	1 circuit-1 pipe	Gas	1,4[illegible],000	-	263,000

[illegible]
[illegible]

4.

Summary of Overhead Costs from North (Graham)
Terminal to South Tower on Wm. Full Johnson Property

Rights of Way (see also Pgs. 7A & 7B)

Graham (deed)	$ 15,177.00
Palmer (open offer by Owners)	4,000.00
Emerson (deed)	5,166.50
L. McCaffrey) agreement. Plus conveyance of J.T. McCaffrey) Tawney lot subject to right of way	10,000.00
Tawney (lot purchased in fee by G.& E. Co.)	1,749.60
Land Company (Only bed of highway affected—no charge)	
Lee. Agreement. Plus building alterations	40,000.00
Hatfield (deed)	3,561.60
Robert Johnson (condemnation)	40,000.00
Accrued interest claimed to 1/26/49	6,973.16
Wm. Full Johnson (condemnation)	16,303.00
Accrued interest claimed to 1/26/49	2,295.96
Total	$145,226.82
Cost of overhead line construction (see Pgs. 7 & 8)	81,620.00
Total	$226,846.82

5.

CONSOLIDATED GAS ELECTRIC LIGHT AND POWER COMPANY OF BALTIMORE

FIXED CHARGES APPLICABLE TO ELECTRIC PROPERTY IN BALTIMORE COUNTY

The minimum rate of fixed charges (including 1949 property and income taxes only), applicable to additional investment in electric properties in Baltimore County, is:

	Including Baltimore County Property-Tax Rate
Rate of Return	6 %
Depreciation	3
Property Taxes	2.2
Total Fixed Charges, including Property Taxes only	11.2%
* Income Tax needed to produce a 6% Rate of Return	2.8
Total Fixed Charges — at least	14.0%

* Based on currently effective rates. Any increase in the income tax rates for 1949 will increase this element of fixed charges proportionately.

1/19/49-H-9

6.

CONSOLIDATED GAS ELECTRIC LIGHT AND POWER COMPANY OF BALTIMORE

Electric Overhead Transmission and Distribution Systems (excluding meters, transformers, meter installations and transformer installations) located in Baltimore County Districts #3, 8, and 9 as at December 31, 1947.

	Book Amount
Towers, Poles and Wire, etc.	
Baltimore County District #3	$ 374,648.93
Baltimore County District #8	459,314.49
Baltimore County District #9	565,351.22
Total	$1,399,314.64

11-16-48-H-9

6a.

BALTIMORE COUNTY DECEMBER 31, 1947

	District #3 Quantity	District #3 Amount	District #8 Quantity	District #8 Amount	District #9 Quantity	District #9 Amount	Total Quantity	Total Amount
Overhead Transmission								
Towers & Foundations	4	$ 3,969.61	65	$ 59,219.61	-	$ -	69	$ 63,189.22
Wire and Insulators	13,452 ft.	1,677.92	282,523 ft.	33,128.92	-	-	295,975 ft.	34,806.84
Total		$ 5,647.53		$ 92,348.53		$ -		$ 97,996.06
Overhead Street Lighting								
Wire	318,953 ft.	$ 13,663.58	161,252 ft.	$ 6,769.84	661,735 ft.	$ 27,873.43	1,141,970 ft.	$ 48,306.85
Fixtures, brackets, mast arms switches, etc.		11,480.16		4,502.78		18,829.35		34,812.29
Total		$ 25,143.74		$ 11,272.62		$ 46,702.78		$ 83,119.14
Overhead Distribution								
Poles - Joint Ownership	389	$ 5,620.55	439	$ 5,982.46	1,662	$ 22,953.13	2,490	$ 34,556.14
Poles - Full Ownership	2,467	69,154.72	3,239	94,868.45	4,125	115,799.08	9,831	279,818.25
Towers	2	1,601.74	-	-	-	-	2	1,601.74
Guys, Crossarms, and Racks		66,618.10		66,700.60		106,923.95		240,242.65
Wire all sizes	2,358,028 ft.	146,210.92	2,604,063 ft.	151,303.77	3,082,140 ft.	183,748.55	8,044,231 ft.	481,263.24
Lightning Arresters, switches, fuse boxes, etc.		38,106.03		24,083.36		36,656.83		98,846.22
Total		$327,308.06		$342,938.64		$466,081.54		$1,136,328.24
Overhead Services	2,416	$ 16,549.60	1,862	$ 12,754.70	7,674	$ 52,566.90	11,952	$ 81,871.20
(Wire all sizes used in connection with services)	513,682 ft.	-	362,745 ft.	-	1,353,274 ft.	-	2,229,701 ft.	-
Total		$374,648.93		$459,314.49		$565,351.22		$1,399,314.64

Total Wire - 11,711,897 ft. (Dist. 3, 8 & 9)

11/15/48-H-9

7.

Expenditures Made on Texas-Mt. Washington Line from Padonia Road to Mt. Washington.

Materials			
Conductor cables	Ordered 9/7/45	$22,152.56	
Overhead ground wires	" 9/8/45	3,115.56	
Insulators	" 9/13/45	6,772.50	
Line hardware	" 9/13/45	880.20	
Buried ground wire	" 9/7/45	1,426.04	
Steel towers	" 8/31/45	27,200.53	
Delivery to sites		9,686.71	
Total			$70,233.12
Labor			
Erection of 1 tower; 70% of clearing; 25 tower footings (out of total of 45)			[illegible]
Total expenditures (actual)			$123,594.
Estimated cost (at present labor rates) to install remaining 20 tower footings, clear 30% balance of needed right of way, erect towers and wires and make building alterations on Lee property			150,916
			$274,500
Rights of Way			
Rights of Way (see Overhead Right of Way Data, Fishpaw to Mt. Washington Pgs.7A,B)			82,127
Total cost of line - 5.6 miles			$356,627

7A.

Overhead Rights of Way

Name	Length	Date Acquired	How Acquired	Cost
Texas to Padonia Rd.				
Campbell	2700 ft.	12/29/42	Deed	$2,358.30
Spear	3020 ft.	3/26/46	Deed	3,775.05
Kelly	228 ft.	1/10/46	Deed	282.75
Padonia Rd. to point 1800 feet north of Seminary Avenue				
Fishpaw	1704 ft.	6/5/46	Deed	7,622.83
Dennis	1297 ft.	1/10/46	Deed	1,093.85
Sargent	673 ft.	1/10/46	Deed	549.55
Balto. Country Club	2788 ft.	4/30/43	Comagrant	2,500.00
Emerson	603 ft.	10/9/45	Deed	200.00
Graham	1075 ft. (partial)	12/30/45	Deed	(see below)
Point 1800 feet north of Seminary Avenue to point 1600 feet south of Ruxton Road				
Graham	1830 ft. (partial)	12/30/45	Deed	15,177.00
Palmer	335 ft.	Open offer		
Emerson	1020 ft.	10/9/45	Deed	5,166.50
L. McCaffrey	617 ft.			
J.T. McCaffrey	167 ft.		Agreement	10,000.00 (plus portion Tawney lot)
Tawney	127 ft.	10/25/45	Deed	1,749.60
Land Company	-- -- (in road bed)		Agreement	None
Lee	2414 ft.		Agreement	40,000.00 (plus alterations to buildings)
Hatfield	1570 ft.	1/31/46	Deed	3,561.60
Robt. Johnson	3707 ft.	3/1/45	Condemned	40,000.00
		(claimed interest to 1/26/49)		6,973.16
Wm. Full Johnson	1110 ft. (partial)	6/26/46	Condemned	16,303.00
		(claimed interest to 1/26/49)		2,295.96

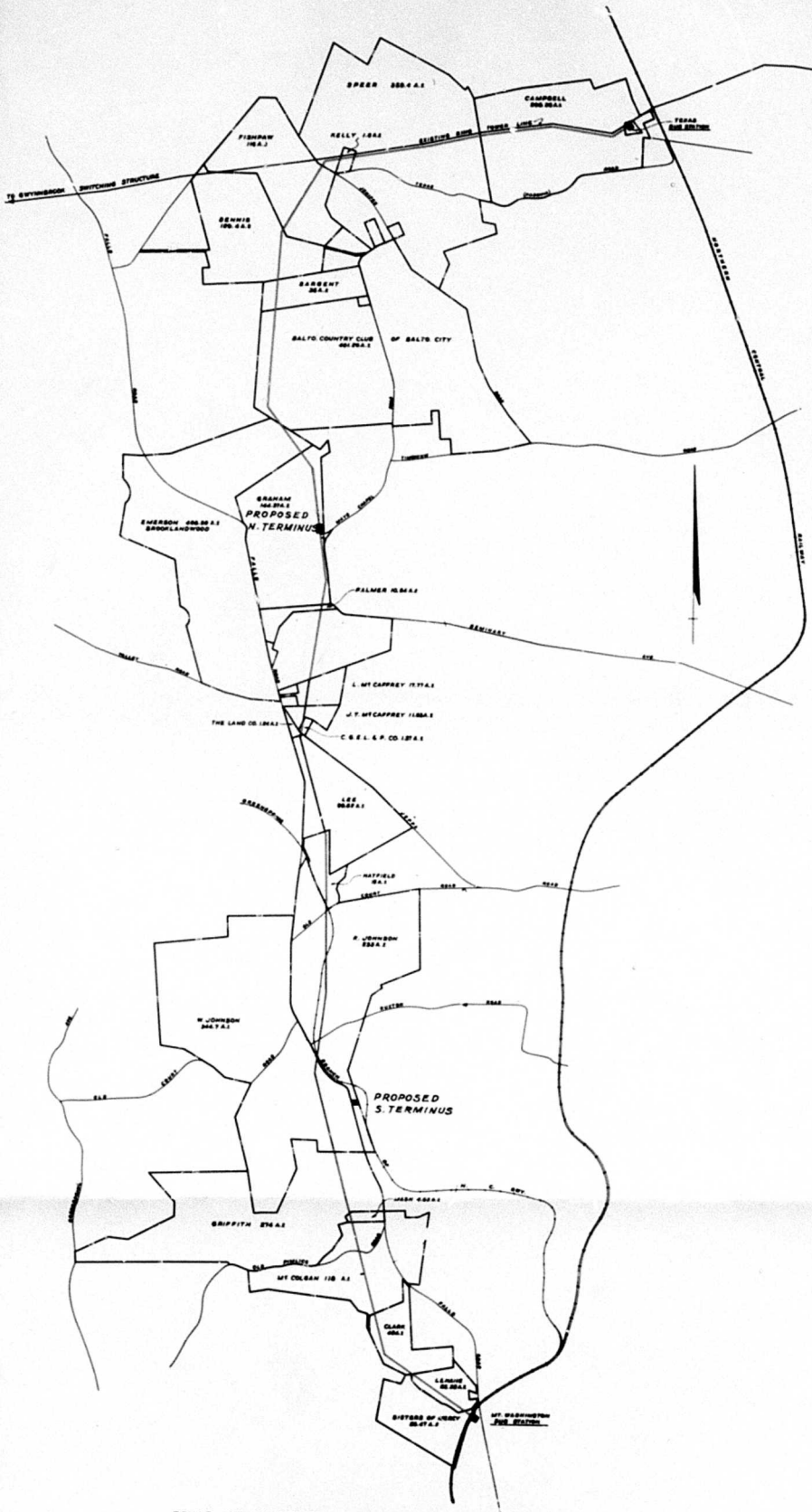
7B.

- 2 -

Name	Length	Date Acquired	How Acquired	Cost
Point 1600 feet south of Ruxton Road to Mt. Washington				
Wm. Full Johnson	1074 ft. (partial)			
Griffith	1560 ft.	5/29/46	Deed	$12,163.53
Nash	160 ft.	8/11/45	Deed	156.65
McColgan	2223 ft.	3/9/46	Deed	7,668.59
Clark	1905 ft.	10/19/45	Deed	2,000.20
Lohmre	fee parcel + 650 ft.	4/13/42	Deed	6,492.65
Sisters of Mercy	fee parcel	9/6/45	Deed	352.50

General Information

Length of entire overhead line, Texas to Mt. Washington	7.17 miles
Length of overhead line, Padonia Road to Mt. Washington (Portion of line for which Special Zoning Permit requested)	5.8 miles
Length of overhead line from point 2000 feet north of Seminary Ave. on Graham property to point 1600 feet south of Bunton Road on Wm. Pell Johnson property. (Portion of line for which Special Zoning Permit denied by Zoning Commissioner)	2.63 miles
Length of underground line from point on Graham property 1000 feet north of Seminary Avenue to point on Robert W. Johnson property about 1600 feet south of Bunton Road. (Termini selected by Mr. Wm. Pell Johnson and approved by the Zoning Commissioner. Route between termini selected by B. & R. Co. for cost estimating purposes) 13,910 feet or	2.63 miles
Number of properties crossed in 2.63 miles	9
Number of properties crossed in 5.8 miles	21
Cost to construct overhead line, using (a) actual cost of materials purchased for line (b) actual cost of clearings and footings completed and (c) present labor costs to complete.	
Padonia Road to North (Graham) Terminal	$51,031
North Terminal to south tower on Wm. Pell Johnson property	$82,620
South tower on Wm. Pell Johnson property to Mt. Washington	$41,849
Total construction cost	$174,500



TEXAS - MT. WASHINGTON TRANSMISSION LINE
RIGHT OF WAY

· KEY ·

— — — INDICATES ± 50' PROPOSED WILDER HALF MILE POWER LINE
——— RIGHTS OF WAY ACQUIRED
——— RIGHTS OF WAY CONDEMNED
——— RIGHTS OF WAY COVERED BY AGREEMENTS

SCALE : 0 1 MILE