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COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND

Legislative Session

1992

Resolution No. CR-75-

1992

Proposed by The Chairman (by request - County Executive)

Introduced by Council Members Bell, Casula and Del Giudice

Co-Sponsors

Date of Introduction June 23,

1992

RESOLUTION

A RESOLUTION concerning

Economic development Revenue Bonds

FOR the purpose of authorizing and providing for the issuance, sale and delivery by Prince George's County, Maryland (the "County") of its revenue refunding bonds in order to lend or otherwise make available the proceeds thereof to Potomac Electric Power Company for the purpose of refunding the outstanding aggregate principal amount of the Prince George's County, Maryland, Floating Rate Pollution Control Revenue Bonds, 1981 Series (Potomac Electric Project) and the Prince

George's County, Maryland, Pollution Control Revenue Bonds
(Potomac Electric Project), 1983 Series.

RECITALS

The Maryland Economic Development Revenue Bond Act, Sections 14-101 through 14-109, inclusive, of Article 41 of the Annotated Code of Maryland (1990 Replacement Volume, 1991 Supplement) (the "Act"), empowers the counties and municipalities of the State of Maryland to borrow money by issuing revenue bonds for the purpose of financing and refinancing the costs of "acquisition" of one or more "facilities" for one or more "facility users" or of refunding outstanding "bonds" (as such terms are defined in the Act). Among the declared legislative purposes of the Act are to relieve conditions of unemployment in the State of Maryland (the "State"), to encourage the increase of industry and commerce and a balanced economy in the State, to assist in the retention of existing industry and commerce and in the attraction of new industry and commerce in the State through, among other things, port development and the control, reduction, or abatement of pollution of the environment and the utilization and disposal of wastes, to promote economic development, to protect natural resources and encourage resource recovery, and generally to promote the health, welfare, and safety of the residents of each of the counties and municipalities of the State.

Potomac Electric Power Company, a District of Columbia and

Virginia corporation and a public service company within the meaning of Article 78 of the Annotated Code of Maryland (1991 Replacement Volume) (the "Borrower"), has submitted a letter of intent (the "Letter of Intent") dated June , 1992, a copy of which is attached hereto as Exhibit A, to Prince George's County, Maryland (the "County"), requesting the issuance of revenue bonds in a principal amount not exceeding \$67,000,000 and the loan of the proceeds to the Borrower for the purpose of refunding the outstanding aggregate principal amount of the \$30,000,000 Prince George's County, Maryland, Floating Rate Pollution Control Revenue Bonds, 1981 Series (Potomac Electric Project) (the "1981 Bonds") and the \$37,000,000 Prince George's County, Maryland, Pollution Control Revenue Bonds (Potomac Electric Project), 1983 Series (the "1983 Bonds") and thus refinancing the costs of acquisition (within the meaning of the Act) of certain pollution control facilities (the "Facilities") financed and refinanced by the 1981 Bonds and the 1983 Bonds and located in the County at Eagle Harbor Road, Aquasco, Maryland 20608, including the construction, acquisition and installation of pollution control facilities at the Chalk Point Generating Station of the Borrower in Prince George's County, Maryland, consisting of a particulate precipitator for Units Nos. 1 and 2 designed to remove particulates after the flue gases have passed through the existing precipitators, including induced draft fans, ash storage and unloading facilities, instrumentation, controls and related items, relocation of existing equipment necessitated by installation and location of

these facilities, and the construction, acquisition and installation of improvements, machinery and equipment necessary or useful in connection therewith.

The 1981 Bonds and the 1983 Bonds are collectively referred to herein as the "Outstanding Bonds".

The Borrower recognizes that any revenue bonds issued pursuant to this Resolution will be limited obligations of the County and will not be issued upon the County's faith and credit or taxing powers. The County has determined to authorize the issuance of such revenue bonds. The County intends that, because such revenue bonds will be used exclusively to refund the Outstanding Bonds and will be issued in an amount not in excess of the outstanding aggregate principal amount of the Outstanding Bonds, such revenue bonds will not be subject to any limit on the amount of "private activity bonds" that may be issued within the State of Maryland imposed by the Internal Revenue Code of 1986 or the Internal Revenue Code of 1954.

SECTION 1. NOW, THEREFORE, BE IT RESOLVED by the County Council of Prince George's County, Maryland, that, acting pursuant to the Act, it is hereby found and determined as follows:

(a) When used in this Resolution the following terms shall have the meanings given them by the Act: acquisition; bonds; facility or facilities; facility applicant; and facility user.

(b) When used in this Resolution the term "Authorized

Officer" shall mean the County Executive or, to the extent heretofore or hereafter provided by order of the County Executive or otherwise, the Chief Administrative Officer or any other duly authorized officer.

(c) The County intends to issue and sell its bonds (the "Bonds") in an aggregate principal amount not to exceed \$67,000,000 in order to lend or otherwise make available the proceeds thereof (the "Loan") to the Borrower, for the purpose of refunding the aggregate principal amount of the Outstanding Bonds. The Facilities shall include such land, interests in land, buildings, structures, machinery, equipment, furnishings and other real or personal property as may be necessary or desirable in connection with the construction, acquisition and installation of the Facilities and approved by the Authorized Officer as hereinafter provided.

(d) The Facilities constitute "facilities," and the Borrower constitutes a "facility applicant" and a "facility user," all as evidenced by the Letter of Intent. The Outstanding Bonds constitute "bonds".

(e) In order better to accomplish the public purposes of the Act it is important that the cost of financing the Facilities be stabilized and reduced insofar as practicable. The 1981 Bonds were issued at a floating rate in order to take advantage of the lower rate of interest then borne by floating rate obligations. Because long term fixed interest rates are currently low, refunding the 1981 Bonds with bonds bearing interest at a fixed rate will significantly reduce the risk of

high future interest costs relating to the Facilities resulting from future increases in the rate of interest borne by the 1981 Bonds. The 1983 Bonds were issued at a fixed interest rate of eight and three-quarters percent (8¾%). The current level of long term fixed interest rates is lower than the level that prevailed at the time when the 1983 Bonds were issued, and refunding the 1983 Bonds with bonds bearing interest at a lower fixed rate will significantly reduce the cost of financing the Facilities.

(f) The Act provides that bonds may be issued thereunder to refund outstanding bonds. The issuance of refunding bonds in order to refund the Outstanding Bonds is thus expected to result in the stabilization and reduction in the cost of financing the Facilities. Accordingly, the accomplishment of the transactions contemplated and authorized by this Resolution, including (without limitation) the refunding of the Outstanding Bonds, the acquisition of the Facilities and the financing and refinancing thereof, shall promote the declared legislative purposes of the Act by encouraging the increase of industry and commerce and a balanced economy in the County and the State, assisting in the retention of existing industry and commerce by enhancing the economic viability of the Borrower and in the attraction of new industry and commerce in the County and the State through, among other things, the control, reduction or abatement of pollution of the environment, promoting economic development, protecting natural resources, and generally promoting the health, welfare, and safety of the

residents of the County and the State.

(g) The issuance of bonds to refund the Outstanding Bonds will also promote the declared legislative purposes of Section 24 of Article 31 of the Annotated Code of Maryland (1990 Replacement Volume, 1991 Supplement) by achieving a debt restructuring that will be in the best interests of the Borrower and the County, be consistent with the long term financial goals of the Borrower and the County with respect to the financing of the acquisition of the Facilities, and realize financial objectives of the Borrower and the County with respect to the financing of the acquisition of the Facilities, including stabilization and reduction of the annual interest costs of such financing.

(h) The principal of and premium, if any, and interest on the Refunding Bonds shall never constitute an indebtedness or a charge against the full faith and credit or taxing powers of the County within the meaning of any constitutional or charter provision or statutory limitation and shall never constitute or give rise to any pecuniary liability of the County. The Refunding Bonds shall be limited obligations of the County, the principal of and premium, if any, and interest on which shall be payable solely from the revenues received in connection with the refinancing of the Facilities and from any other moneys made available to the County for such purpose.

(i) Neither the proceeds of the Refunding Bonds nor the payments on account of the principal of and premium, if any, and interest on the Refunding Bonds will be commingled with the

County's funds or will be subject to the absolute control of the County, but will be subject only to such limited supervision and checks as are deemed necessary or desirable to insure that the proceeds of the Refunding Bonds are used to accomplish the public purposes of the Act and this Resolution.

The transactions contemplated by this Resolution do not constitute the acquisition of any physical public betterment or improvement or of property for public use.

(j) The Borrower recognizes that the tax exempt status of the Refunding Bonds, if issued, will be determined under federal and State laws which are not subject to the County's control and which may be changed without the County's knowledge or consent and that, consequently, the County can give no assurance and makes no representation that the income from the Refunding Bonds, if issued, will be tax exempt.

SECTION 2. BE IT FURTHER RESOLVED that the County Executive of the County is hereby authorized to accept, on behalf of the County, the Letter of Intent to evidence the County's intent to issue the Refunding Bonds as provided in this Resolution.

SECTION 3. BE IT FURTHER RESOLVED that the County is hereby authorized to issue, sell and deliver the Refunding Bonds at any time and from time to time in one or more series, in the maximum aggregate principal amount of Sixty-seven Million Dollars (\$67,000,000), in order to lend or otherwise make available the proceeds thereof to the Borrower for the purpose of refunding all or a portion of the Outstanding Bonds.

The principal of and premium, if any, and interest on the Refunding Bonds shall be payable solely from the revenues to be received in connection with the financing and refinancing of the Facilities and from any other moneys made available to the County for such purpose--all as more particularly specified, prescribed and determined by the Authorized Officer in accordance with the provisions of this Resolution.

SECTION 4. BE IT FURTHER RESOLVED that the Authorized Officer is hereby authorized to specify, prescribe, determine, provide for and approve--all within the limitations of this Resolution and the Act--all matters, details, forms, documents and procedures pertaining to the sale, security, issuance, delivery and payment of or for the Refunding Bonds, including (without limitation):

(a) the principal amount of Refunding Bonds to be issued at any one time and from time to time; the rate or rates of interest thereon; the date or dates of maturity thereof; provisions for the payment, prepayment and redemption thereof; provisions for a sinking fund; the designation or designations of the Refunding Bonds and of any series; and the date or dates of issuance thereof;

(b) the form, tenor, terms and conditions of the Refunding Bonds and provisions for the registration and transfer of the Refunding Bonds;

(c) the form and contents of, and provisions for the execution and delivery of, such financing documents as the Authorized Officer shall deem necessary or desirable to

evidence, secure or effectuate the Loan and the issuance, sale and delivery of the Refunding Bonds, including (without limitation) any loan agreements, trust agreements or indentures, notes, mortgages, security agreements, assignments, guarantees, financing agreements or escrow agreements;

(d) provision for the payment directly by the Borrower, whether or not the proposed financing is consummated, of all expenses of preparing, printing and selling the Refunding Bonds (including, without limitation, any and all costs, fees and expenses incurred by or on behalf of the County in connection with the authorization, issuance, sale and delivery of the Refunding Bonds) and of all costs incurred in connection with the development of the appropriate legal documents (including the fees of counsel to the County and bond counsel and compensation to any persons, other than full-time employees of the County, or entities performing services for or on behalf of the County in connection therewith and in connection with all other transactions contemplated by this Resolution);

(e) the creation of security for the Refunding Bonds and provision for the administration of the Refunding Bonds, including (without limitation) the appointment of such trustees, escrow agents, paying agents, registrars or other agents as the Authorized Officer shall deem necessary or desirable to effectuate the transactions authorized hereby;

(f) the preparation and distribution, in conjunction with representatives of the Borrower and the prospective purchasers of or underwriters for the Refunding Bonds of any

series, of both preliminary and final official statements, placement memoranda or offering circulars in connection with the sale of the Refunding Bonds of any series, if such preliminary and final official statements, placement memoranda or offering circulars are determined to be necessary or desirable for the sale of the Refunding Bonds of such series;

(g) the form and contents of, and provisions for the execution and delivery of, a contract or contracts for the purchase and sale of the Refunding Bonds of any series (or any portion thereof); and

(h) such other matters in connection with the authorization, issuance, execution, sale, delivery and payment of the Refunding Bonds, the security for the Refunding Bonds and the Loan, and the consummation of the transactions contemplated by this Resolution as may be deemed appropriate and approved by the Authorized Officer, including (without limitation) establishing procedures for the execution, acknowledgment, sealing and delivery of such other and further agreements, documents and instruments, and the authorization of the officials of the County to take any and all actions, as may be necessary or appropriate to consummate the transactions contemplated by this Resolution in accordance with the Act and this Resolution.

The Authorized Officer is hereby authorized to prescribe procedures to facilitate the prompt determination and approval of one or more of the matters set forth above.

Such procedures may include telephonic approval and subsequent telegraphic or written confirmation of one or more of such matters by a designated officer of the County within guidelines or parameters prescribed by the Authorized Officer.

The Authorized Officer is further authorized (1) to establish procedures for the utilization of variable or floating rates of interest, (2) to enter into arrangements with a bank or other appropriate institution to facilitate the purchase, repurchase, sale, transfer or payment of Refunding Bonds, including (without limitation) the use of general or standby letters of credit, revolving credit facilities, repurchase agreements or other similar arrangements and (3) to take such actions as may be necessary to implement a program for the issuance of Refunding Bonds in the nature of commercial paper, demand notes or floating rate obligations.

Orders issued pursuant to this Resolution shall be deemed to be of an administrative nature and shall be effective upon the effective date specified therein.

SECTION 5. BE IT FURTHER RESOLVED that, as permitted by the Act, the Refunding Bonds of each series shall be sold at a private (negotiated) sale and at par, unless the Authorized Officer deems it to be in the best interests of the County to sell the Refunding Bonds of any series at a public sale or at above or below par, in which event the Bonds of such series shall be sold in such manner, at such price or prices and upon such terms as the Authorized Officer deems to be in the best interests of the County. The Refunding Bonds of each series

shall be sold at such times, on such dates and to such persons, firms or corporations (including, without limitation, banks or other financial institutions) as shall be determined by the Authorized Officer.

SECTION 6. BE IT FURTHER RESOLVED that the Refunding Bonds shall be executed in the name of the County and on its behalf by the manual or facsimile signature of the Authorized Officer and the manual or facsimile signature of the Clerk of the County Council or the acting Clerk of the County Council, and the seal of the County shall be affixed thereon.

The County Executive, the Chief Administrative Officer, the Clerk of the County Council and other officials of the County are hereby authorized and empowered to do all such acts and things and to execute, acknowledge, seal and deliver such documents and certificates as the Authorized Officer may determine to be necessary to consummate the transactions contemplated by this Resolution, subject to the limitations set forth in the Act and the provisions of this Resolution.

SECTION 7. BE IT FURTHER RESOLVED that the Refunding Bonds shall never constitute or give rise to any pecuniary liability of the County and, notwithstanding any provision of any agreement or document to which the County may become a party or may become subject in connection with the transactions contemplated by this Resolution, neither the Borrower nor the bondholders nor any other person shall have any claim against the County or any of its officers, officials, agents or employees for damages suffered as a result of the County's

failure to perform in any respect any covenant, undertaking or obligation under the Refunding Bonds or under any agreement, document, instrument or certificate executed, delivered or approved in connection with the issuance, sale and delivery of the Refunding Bonds of any series (collectively, the "Bond Documents") or as a result of the incorrectness of any representation in or any omission from any of the Bond Documents. Nothing contained in any of the Bond Documents shall be construed to preclude any action or proceeding (other than that element in any action or proceeding involving a claim for monetary damages) in any court or before any governmental body, agency or instrumentality against the County or any of its officers, officials, agents or employees to enforce the provisions of any of the Bond Documents.

SECTION 8. BE IT FURTHER RESOLVED that the provisions of this Resolution are severable, and if any provision, sentence, clause, section or part thereof shall be held to be illegal, invalid or unconstitutional or inapplicable to any person, entity or circumstances, such illegality, invalidity or unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Resolution or their application to other persons, entities or circumstances. It is hereby declared to be the legislative intent that this Resolution would have been adopted if such illegal, invalid or unconstitutional provision, sentence, clause, section or part had not been included herein and if the person, entity or

circumstances to which this Resolution or any part hereof is inapplicable had been specifically exempted herefrom; provided, however, that neither the principal of nor the premium, if any, or interest on the Refunding Bonds of any series shall ever constitute an indebtedness of the County or a charge against the general credit or taxing powers of the County within the meaning of any constitutional or charter provision or statutory limitation or shall ever constitute or give rise to any pecuniary liability of the County.

SECTION 9. BE IT FURTHER RESOLVED that in the event that no Refunding Bonds have been issued pursuant to this Resolution on or before December 31, 1993, the County's authorization under this Resolution shall terminate unless otherwise extended by Resolution of the County Council.

SECTION 10. BE IT FURTHER RESOLVED that this Resolution shall take effect upon its approval by the County Executive.

Adopted this 14th day of July, 1992.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY: _____
Richard J. Castaldi
Chairman

ATTEST:

Joyce T. Sweeney
Acting Clerk of the Council

APPROVED:

DATE: _____

BY: _____

Parris N. Glendening
County Executive

NOTE: The attached letter from PEPCO and "Exhibit A" are available in hard copy only.