

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Greenbelt Division**

DOMINION ENERGY COVE POINT LNG, LP.
2100 Cove Point Road
Lusby, Maryland 20657,

Plaintiff,

v.

CIVIL ACTION NO. _____

BOARD OF APPEALS OF
CHARLES COUNTY, MARYLAND
200 Baltimore Street
La Plata, Maryland 20646

Serve: Brendan Moon, Chairman
Board of Appeals of Charles
County, Maryland
7712 Chesterfield Ct.
White Plains, Maryland 20646,

CHARLES COUNTY, MARYLAND
200 Baltimore Street
La Plata, Maryland 20646

Serve: Peter F. Murphy, President
Board of County Commissioners of
Charles County, Maryland
200 Baltimore Street
La Plata, Maryland 20646,

-and-

BOARD OF COUNTY COMMISSIONERS OF
CHARLES COUNTY, MARYLAND
200 Baltimore Street
La Plata, Maryland 20646

Serve: Peter F. Murphy, President
Board of County Commissioners
of Charles County, Maryland
200 Baltimore Street
La Plata, Maryland 20646.

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Plaintiff, Dominion Energy Cove Point LNG, LP (“DECP”), by counsel and pursuant to 28 U.S.C. § 2201, 15 U.S.C. § 717u, and Fed. R. Civ. P. 3, respectfully files this complaint against Defendants the Board of Appeals of Charles County, Maryland (“Board of Appeals”), Charles County, Maryland (the “County”), and the Board of County Commissioners of Charles County, Maryland (“Board of Commissioners”).

In this Complaint, DECP respectfully requests a Declaratory Judgment that the Natural Gas Act, 15 U.S.C. § 717 *et. seq.*, and the Natural Gas Pipeline Safety Act, 49 U.S.C. §60101 *et seq.*, preempt the Defendants from requiring DECP to obtain a Special Exception from the Board of Appeals, or otherwise applying or enforcing Charles County’s Special Exception regulations (including its Board of Appeals’ March 13, 2018 denial of DECP’s Special Exception Application), or any other provisions of the Charles County Zoning Regulations or other local regulations, laws or ordinances with respect to the siting, construction, operation or safety of certain interstate natural gas pipeline facilities to be constructed by DECP in Charles County, Maryland pursuant to the Federal Energy Regulatory Commission’s (“FERC”) January 23, 2018 Order Issuing Certificate (the “FERC Certificate”), a true and accurate copy of which is attached as **Exhibit A**.

DECP also respectfully requests an order enjoining the Defendants and any of their agents and employees from enforcing or applying any of the preempted Special Exception or other provisions of the Charles County Zoning Ordinance with respect to the interstate gas facilities at issue. DECP reserves the right to seek leave to amend at an appropriate time to assert claims against the Defendants under 42 U.S.C. § 1983 as a result of their conduct that deprives DECP of its rights, privileges and immunities secured by the Constitution and laws of the United States. The grounds for DECP’s complaint and relief requested are as follows:

PARTIES

1. DECP is a limited partnership organized and existing under the laws of the State of Delaware. DECP's principal place of business is 2100 Cove Point Road, Lusby, Maryland 20657.

2. DECP is a natural gas company as defined in Section 2(6) of the Natural Gas Act of 1938, codified at 15 U.S.C. § 717 *et. seq.* DECP is engaged in the business of transporting natural gas in interstate commerce for customers principally located in the Northeast and Mid-Atlantic markets, including Maryland. DECP is registered to do business in the State of Maryland.

3. Defendant Board of Appeals is the County Board of Appeals for Charles County, Maryland pursuant to § 4-301 of the Land Use Article of the Annotated Code of Maryland, §10-305 of the Local Government Article of the Annotated Code of Maryland, and Chapter 150 of the Code of Ordinances and Resolutions of Charles County, Maryland. The Board of Appeals is the public body responsible for, among other things, hearing and deciding applications for Special Exceptions in Charles County, Maryland under Article XXV, § 297-415 of the Zoning Regulations of Charles County, Maryland.

4. Defendant Charles County is a Code County pursuant to Division III, Title 9, Subtitle 3 of the Annotated Code of Maryland and Article XI-F of the Maryland Constitution. The County, upon information and belief, is ultimately responsible for the financial operations and liabilities of the Board of Appeals.

5. Defendant Board of Commissioners is the governing body of the County and, among other things, is responsible for appointing the members of the Board of Appeals, as well

as adopting and enforcing the Zoning Regulations of Charles County, Maryland (either directly or through the actions of its Zoning Officer and the County Attorney).

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because DECP's causes of action arise under the Constitution and laws of the United States, including, but not limited to, the Supremacy Clause, U.S. Const. Art VI, cl. 2, the Natural Gas Act, 15 U.S.C. § 717 *et. seq.*, and the Natural Gas Pipeline Safety Act, 49 U.S.C. § 60101 *et seq.* In addition, 15 U.S.C. § 717u specifically provides that, "The District Courts of the United States . . . shall have exclusive jurisdiction of violations of this chapter [the Natural Gas Act] or the rules, regulations, and orders thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this chapter or any rule, regulation, or order thereunder."

7. This Court is empowered to provide declaratory and injunctive relief in this action pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, and Federal Rules of Civil Procedure 57 and 65.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b). The Defendants reside within this district and the events giving rise to this action also occurred in this district.

STATEMENT OF FACTS AND STATUTORY BACKGROUND

DECP SEEKS FERC APPROVAL FOR THE CHARLES STATION COMPRESSOR FACILITIES

9. On November 15, 2016, DECP filed an application (the "FERC Application") with the Federal Energy Regulatory Commission ("FERC") pursuant to Section 7(c) of the Natural Gas Act for a Certificate of Public Convenience and Necessity for the construction and operation of certain interstate natural gas facilities, including a new natural gas compressor

station and related facilities at DECP's existing Charles Station site located at 6855 Barrys Hill Road, Bryans Cove, Maryland ("Charles Station"), as well as significant additional related interstate natural gas transportation facilities located in Virginia and elsewhere in Maryland. The FERC Application was assigned FERC Docket No. CP17-15-000.

10. The facilities and improvements that are the subject of the FERC Application (and recently approved pursuant to the FERC Certificate) are all a part of DECP's nearly \$150 million interstate natural gas transmission project known as the Eastern Market Access Project. The Eastern Market Access Project is necessary to provide up to 294,000 dekatherms per day (Dth/d) of interstate natural gas transportation service required by two natural gas shippers, Washington Gas Light Company ("WGL") and Mattawoman Energy, LLC ("Mattawoman").

11. As noted by FERC in the FERC Certificate, WGL requires the increased natural gas capacity to be supplied by the Eastern Market Access Project for use by its Washington Gas subsidiary which provides natural gas utility service to more than one million residential commercial and industrial customers in the greater Washington D.C. metropolitan area, including Charles County. Mattawoman requires the increased natural gas capacity from the Eastern Market Access Project to fuel its new Mattawoman Energy Center facility in Prince Georges County, Maryland – a 990-megawatt gas-fired electric power generation facility which has been approved for construction by the Maryland Public Service Commission. This new electric power generation facility will provide much needed electric power to underserved areas of Southern Maryland.

12. As reflected in the FERC Certificate, the new interstate natural gas facilities to be constructed at the Charles Station site include two new natural gas compressors connecting to DECP's existing two interstate natural gas transmission pipelines (an 11,150 horsepower Solar

Taurus 70 natural gas turbine compressor unit, and a 13,220 horsepower Solar Mars 90 natural gas turbine compressor unit); exhaust silencers/Selective Catalytic Reduction systems and oxidation catalysts, gas coolers, suction filter/separators, blowdown separator/silencers for the two compressor units and station piping; one hot water boiler; a natural gas auxiliary generator; station ancillary equipment; supporting station tanks; yard piping; one compressor building; one auxiliary building; and one drum storage building (the “Charles Station Compressor Facilities”).

13. As explained in the FERC Certificate, the Charles Station Compressor Facilities will connect to DECP’s existing Cove Point Pipeline – an interstate pipeline that extends 88 miles from DECP’s Cove Point Liquefied Natural Gas Terminal in Calvert County, Maryland westward across the Potomac River through Fairfax and Loudoun Counties in Virginia, where it connects with other interstate gas pipeline facilities that are being constructed in those Virginia counties as part of the Eastern Market Access Project.

14. As discussed in the FERC Certificate, the new Virginia facilities include construction of new compressor and gas cooling facilities and structures in Fairfax County, Virginia, as well as new compression and gas metering facilities and structures in Loudoun County, Virginia. Natural gas from these other interstate facilities will be compressed at the Charles Station Compressor Facilities and moved downstream to DECP’s customers. As FERC determined in the FERC Certificate, the additional compressors and related facilities and improvements to be constructed as part of the Eastern Market Access Project are necessary in order to deliver the increased natural gas capacity required by WGL and Mattawoman.

THE CHARLES COUNTY ZONING REGULATIONS IMPOSE STRICT CRIMINAL AND CIVIL PENALTIES ON ANYONE WHO CONSTRUCTS OR OPERATES ANY BUILDINGS, STRUCTURES OR OTHER FACILITIES WITHOUT OBTAINING ALL NECESSARY APPROVALS OR PERMITS CALLED FOR BY THE ZONING REGULATIONS

15. The official policy of the County, the Board of Commissioners and the Board of Appeals regarding the permitted uses of land within Charles County, including the land comprising the Charles Station site, is reflected in the Zoning Regulations of Charles County, Maryland, adopted by the Board of Commissioners on August 31, 1992 by Ord. No. 92-62, and as amended by the Board of Commissioners through the present date, and codified in Chapter 297 of Division 2, Part I of the Charles County Code (“Zoning Regulations”).

16. The County’s Zoning Regulations have classified the land on which DECP’s Charles Station site is located to be within the County’s Rural Conservation (“RC”) zoning district, Resource Protection Zone (“RPZ”) overlay district, and the Rural Conservation Comprehensive Planning district.

17. Under Article XIII, Section 297-212, Use #4.06.200 of the Charles County Zoning Regulations, uses and facilities like those comprising the Charles Station Compressor Facilities purport to be among the types of “[e]lectric power, gas transmission and telecommunications building and structures not associated with a tower” that are allowed in the RC zoning district only pursuant to a Special Exception approved by the Board of Appeals in accordance with the criteria and conditions set forth in the County’s Zoning Regulations, including those set forth in §297-415(H), (I) and Section 297-212, Use # 4.06.200 of the Zoning Regulations.

18. Charles County’s Zoning Regulations specifically state that full compliance with any and all aspects of the Zoning Regulations is mandatory in order for any building or structure to be constructed or used in any way.

19. In particular, § 297-6 of the Zoning Regulations of Charles County, Maryland provides, in pertinent part, that “[l]and can only be used and a building or other structure can only be erected, moved, structurally altered, added to, enlarged, used or otherwise modified in accordance with the uses and development standards prescribed by the zone in which the building or land is located.” Similarly, Section 297-430(A) provides that, “No building or other structure shall be erected, nor shall any existing building or structure be moved, added to, enlarged or structurally altered and no excavation for any building or other structure shall begin until a zoning permit certifying compliance with these regulations has been issued.” Section 297-430(B) further provides, “No building, other structure or land shall be used, nor shall any building, structure or land be converted, wholly or in part, to any other use, except for agricultural uses permitted by right under the provisions of this chapter, until a use occupancy permit, certifying compliance with these regulations, has been issued.”

20. Anyone who may violate the Charles County Zoning Regulations is faced with substantial criminal penalties and civil liability. Under Section 297-4(A) of the Zoning Regulations, any violation of any Zoning Regulation provision is deemed to be a misdemeanor criminal offense punishable by a fine and/or up to 90 days imprisonment in the County jail, and will subject the putative violator to civil penalties of up to \$500 per day. Section 297-4(B) further authorizes the Board of Commissioners and the County Zoning Officer to institute an injunction suit or other proceeding to “compel compliance with the provisions of” the Zoning Regulations.

THE BOARD OF APPEALS UNREASONABLY DELAYS CONSIDERATION OF DECP’S SPEX APPLICATION AND PURPORTS TO REQUIRE COMPLIANCE WITH ZONING ORDINANCE CRITERIA THAT ARE PREEMPTED BY THE NATURAL GAS ACT AND PIPELINE SAFETY ACT

21. Because FERC had not yet approved the FERC Application, and as advised by the

County Attorney for Charles County, on or about January 17, 2017, DECP filed a Special Exception Application with the Charles County Board of Appeals (the “SPEX Application”). A true and accurate copy of the SPEX Application (less the voluminous attachments to the original) is attached as **Exhibit B**. To help ensure that DECP’s project would not be unreasonably delayed, on May 2, 2017, FERC issued a Notice of Schedule for Environmental Review of the Eastern Market Access Project which ordered all federal agencies issuing permits associated with the project to reach a decision by no later than September 25, 2017. See FERC Dkt. CP17-15-000, Submittal 20170502-3012.

22. Aware of the project’s urgent schedule, DECP tried to obtain a prompt decision from the Board of Appeals on the SPEX Application. The Board of Appeals, however, repeatedly subjected the SPEX Application to inordinate delays and numerous public hearings and discussions of matters and considerations that are subject to the exclusive regulation and jurisdiction of FERC.

23. For example, the SPEX Application was first scheduled for consideration by the Board of Appeals at its July 11, 2017 meeting. Prior to, and in connection with, that meeting, the County’s Department of Planning and Growth Management (“Planning Department”), an agency or instrumentality of the County and the Board of Commissioners, issued a Staff Report (the “Staff Report”) discussing its analysis of and recommendations for the Board of Appeals’ consideration of the SPEX Application. A true and accurate copy of the Staff Report is attached as **Exhibit C**.

24. The Staff Report stated that the SPEX would be necessary for construction of DECP’s facilities, but recommended approval of the SPEX Application subject only to five conditions. *See* Staff Report at pg. 9, Section IV.

25. Despite the Staff Report's strong recommendations for approval subject only to the five conditions stated in the report, and despite a favorable Environmental Assessment of the Eastern Market Access Project issued by FERC two weeks earlier, the Board of Appeals declined to act on the SPEX Application and continued the matter for consideration at future meetings.

26. Over the next four months, the Board of Appeals held several more meetings to consider the SPEX Application, but, each time, failed to make a decision and otherwise unreasonably delayed the process.

27. At its December 12, 2017 public hearing and meeting, the Board of Appeals resumed consideration of the SPEX Application and again failed to act. At that meeting, however, Board of Appeals Chairman Brendan Moon raised numerous technical and other questions regarding the siting, construction, operation and safety of the Charles Station Compressor Facilities and safety issues – issues and concerns that are subject to the exclusive jurisdiction of FERC. Later that month, Board member Martin also issued a set of written questions raising similar issues and purported concerns.

**THE ISSUANCE OF THE FERC CERTIFICATE AND FEDERAL PREEMPTION UNDER THE
NATURAL GAS ACT AND PIPELINE SAFETY ACT**

28. On January 23, 2018, while the SPEX Application was still pending before the Board of Appeals, FERC issued the FERC Certificate approving the construction of the Charles Station Compressor Facilities proposed in the FERC Application (**Exhibit A**).

29. In the FERC Certificate, FERC concluded that, after more than a year of study, public input and an extensive Environmental Assessment completed by the agency, “the public convenience and necessity requires approval of” the Charles Station Compressor Facilities and the other interstate gas facilities that are part of the Eastern Market Access Project. FERC

Certificate, ¶ 21. The FERC Certificate requires DECP to complete construction of all facilities for the Eastern Market Access Project, and to put those facilities into service, by no later than two years from the January 23, 2018 date of the Certificate. FERC Certificate, ¶ 143(B)(1).

30. Among other things, FERC found that if DECP “constructs and operates the proposed facilities in accordance with its application, its supplements, and Commission staff’s recommended mitigation measures, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.” FERC Certificate, ¶ 31.

31. For example, FERC analyzed and addressed a variety of safety concerns raised during the agency’s comment and review process, and found there to be no substantial risk or danger from the project. Specifically, FERC observed that, under its regulations, DECP must “certify that it will design, install, inspect, test, construct, operate, replace, and maintain proposed facilities in accordance with safety standards from the U.S. Department of Transportation’s Pipeline and Hazardous Materials Safety Administration (PHMSA) and other federal safety standards and plans for maintenance and inspection. PHMSA regulations require that operators such as Cove Point LNG establish and maintain a written emergency and response plan. This plan will include provisions for receiving, identifying, and classifying emergency events, gas leakage, fires, explosions, and natural disasters.” FERC Certificate, ¶ 126. FERC specifically found that these “existing legal requirements,” including the “emergency and response plan required by PHMSA,” are adequate to prepare an effective response to emergencies such as fire or explosion” at the Charles Station site. FERC Certificate, ¶ 127. FERC further noted that “PHMSA regulations establish requirements for fire protection equipment at compressor stations . . . [and that] Cove Point LNG will have firefighting

equipment on site, including dry chemical fire extinguishers and will work closely with local first responders to ensure they have the resources and information to assist in potential emergency situations involving the pipeline.” FERC Certificate, ¶ 128. Accordingly, FERC concluded that, in view of DECP’s required compliance with the mandatory “federal design and safety standards,” and that “the likelihood of an incident at the Charles Station or any other compressor station is low,” the Charles Station Compressor Facilities did not pose an unreasonable risk to the public. FERC Certificate, ¶ 129.

32. FERC also reviewed and ultimately rejected arguments that the Charles Station Compressor Facilities would adversely affect property values in the surrounding areas. *See* FERC Certificate, ¶ 101 (“Commission staff conducted independent research and identified two recent studies that assessed the effects of natural gas pipeline compressor stations on property values. These studies determined that the presence of similar “compressor stations generally did not affect property values, noting that compressor stations are typically in rural areas (away from high-density development) and are situated on large parcels with adequate buffers. The Charles Station site shares these traits.”).

33. Additionally, FERC found that “no evaluated alternative would provide a significant environmental advantage over the proposed Eastern Market Access Project, as modified by Commission staff’s recommended mitigation measures.” FERC Certificate, ¶ 64.

34. Notably, the FERC Certificate observed that “[a]ny state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate,” and specifically admonished all state and municipal governmental bodies not to “prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.” *See* FERC Certificate, ¶ 142. Citing the Natural Gas Act and case law

from the United States Supreme Court and the United States Court of Appeals for the District of Columbia Circuit, FERC further noted that “a state or federal agency’s failure to act on a permit [is] considered to be inconsistent with Federal Law” and that “state and local regulation is preempted by the NGA to the extent it conflicts with federal regulation, or would delay the construction and operation of facilities approved by the Commission.” *Id.* at n. 267.

35. The Baltimore division of this Court has specifically recognized the broad scope of NGA preemption with respect to similar FERC-certificated interstate natural gas compressor station facilities under construction by a DECP affiliate in the Town of Myersville. *Dominion Transmission v. Town of Myersville*, 982 F. Supp. 2d 570, 577 (D. Md. 2013) (holding that, subject to limited exceptions, “the NGA and the federal regulations promulgated pursuant to that Act occupy the field with respect to siting, construction, or operation of natural gas facilities like Dominion's Compressor Station.”). Based on that holding, the Court declared the town’s ordinances “null and void” to the extent they attempted to regulate the “siting, construction or operation” of the FERC-certificated compressor facilities. *Id.* at 581-82.

36. In addition to the broad preemption of local regulation under the NGA, the Natural Gas Pipeline Safety Act expressly preempts any attempts of states or localities to regulate the safety of interstate natural gas facilities. *E.g.*, 49 U.S.C. § 60104(c) (“A State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation.”)

THE BOARD OF APPEALS PUBLICLY DISREGARDS THE FERC CERTIFICATE AND THE ADVICE OF ITS COUNSEL ON PREEMPTION AND INSISTS ON REGULATING AND IMPOSING CONDITIONS THAT ARE PREEMPTED BY THE NATURAL GAS ACT AND PIPELINE SAFETY ACT

37. On February 2, 2018, DECP, through its counsel, submitted to the Board of Appeals a copy of the FERC Certificate, together with a memorandum explaining the principles of federal preemption under the Natural Gas Act, and which included charts showing where each

of the issues raised during the consideration of the SPEX Application, as well as the specific questions raised by the Board of Appeals in December 2017, were directly evaluated by FERC and addressed in the FERC Certificate. A true and accurate copy of that February 2, 2018 memorandum and the two charts referenced therein are attached as **Exhibit D**.

38. To assist with its review of DECP's SPEX Application, the Board of Appeals retained legal counsel, Thomas M. Meachum, Esq., of Carney, Kelehan, Bresler, Bennett & Scherr, LLP.

39. During its February 13, 2018 public meeting, the Board of Appeals requested legal advice from Mr. Meachum as to how federal preemption might affect its consideration of the SPEX Application. In response, citing precedent from the Supreme Court of the United States Supreme Court, the U.S. Court of Appeals for the D.C. Circuit, and this Court's 2013 decision in *Town of Myersville*, Mr. Meachum publicly advised the Board that federal preemption prohibited it from doing anything that would deny or unreasonably delay DECP's FERC-approved interstate natural gas facilities proposed for the Charles Station site. *See, e.g.*, Video of 2/13/18 Board of Appeals Hearing¹ at 21:14 ("it's clear that this subject matter of natural gas transmission is one that Congress has preempted any local zoning authorities from denying or unreasonably delaying. . . ."); at 22:21 ("And so even if the [County zoning] regulation were explicit that compressor stations for any gas transmission lines above or below [ground] are prohibited, the board would not be able to enforce that. . . ."); and at 24:34 ("Once

¹ Charles County's official website makes video recordings of the Board of Appeals' hearings publicly available. The video recording of the February 13, 2018 public meeting of the Board of Appeals is available at:

http://openstream.charlescounty.org/mediaVideoExternal.jsp?&file=/meetings/board_of_appeals/2018/BOA_021318.mp4&title=Charles County Board of Appeals

the [Federal Energy Regulatory] Commission makes a decision on the site location and the manner of construction, this Board has no authority to say anything contrary or decide contrary to that. . . .”).

40. Mr. Mechum provided similar advice in response to Board members’ questions about their desire to regulate the safety of the Charles Station Compressor Facilities. *E.g.*, 2/13/18 Video at 30:54 (“The Commission did deal with the safety and health of the residents nearby . . . but what we’re talking about is the authority and jurisdiction of the Board to in effect override the Commission’s findings. And, when the Supreme Court says that that’s not really something that’s available to zoning authorities – or other federal courts say that – whatever disagreement or reluctance that people may have about that, that’s really something that the Board does not have the authority to override – or because it’s not thought to be the best way of looking at the public interest – [and to] disregard that and make a contrary decision to what the FERC has decided.”)

41. Despite Mr. Meachum’s clear and explicit advice, a majority of the Board of Appeals members remained defiant and insisted that they would decide the fate of DECP’s SPEX Application as they deemed appropriate in their judgment, without any regard for governing federal law and federal preemption. Board member Johnson, in particular, stated on the record in response to Mr. Meachum’s legal advice that he (“Johnston”) did not care at all what federal law required, and that he would prefer to flout federal law and preemption than to approve DECP’s application. *See* 2/18/18 Video at 34:14 (“With my vote, I’m not making a decision to lay down for the feds or anyone if our local law says do it, I’m doing it and if they want to override us they are more than welcome to. So, I’m appreciative of your thought and argument but I don’t find it persuasive, frankly.”).

42. Near the conclusion of the meeting, Board of Appeals Chairman Moon proposed a series of new conditions that the Board would insist upon before even considering a possible approval of the SPEX Application. These conditions went far beyond those recommended in the Staff Report and specifically addressed matters of siting, construction, operation and safety of interstate natural gas transportation facilities that are within the exclusive jurisdiction of FERC under the Natural Gas Act and subject to the exclusive regulation of the U.S. Department of Transportation and PHMSA under the Natural Gas Pipeline Safety Act and accompanying federal regulations. The Board members voted to direct Planning Staff to put these “conditions” in a written memorandum to be presented at the Board’s March 13, 2018 meeting.

43. The County’s representative from the Planning Department advised Chairman Moon that, under the Board of Appeals customary practice, Planning Staff would provide its recommendations in advance of the March 13, 2018 meeting. Chairman Moon, however, insisted on departing from the normal practice, and directed Planning Staff to keep the list of “conditions” confidential until released by the Board at its March 13, 2018 meeting.

FERC AUTHORIZES DECP TO BEGIN WITH THE FIRST PHASES OF THE EASTERN MARKET ACCESS PROJECT, INCLUDING CERTAIN WORK ON THE CHARLES STATION SITE

44. On February 23, 2018, FERC authorized DECP to proceed with certain construction activities for the Eastern Market Access Project, including various activities at the Charles Station site (the “Limited Notice to Proceed”). A true and accurate copy of the Limited Notice to Proceed is attached as **Exhibit E**. DECP, therefore, must proceed with and continue that work in order to comply with FERC’s requirements under the FERC Certificate and otherwise meet necessary project deadlines.

THE COUNTY AND COUNTY ATTORNEY DECLINE TO TAKE ACTION TO AVOID PREEMPTION LITIGATION OVER THE BOARD OF APPEALS' ACTIONS

45. On March 2, 2018, DECP delivered to County Attorney Rhonda L. Weaver and County Administrator Michael D. Mallinoff a letter requesting action on behalf of the County and the Board of Commissioners to acknowledge that federal preemption eliminated any need to obtain approval of the SPEX Application by the Board of Appeals. The letter also included a chart showing in detail how all of the relevant issues and criteria under the Charles County Zoning Ordinance, including those applicable to the Board of Appeals' determination of the SPEX Application, were specifically evaluated and addressed by FERC in the FERC Certificate. A true and accurate copy of DECP's March 2, 2018 letter, including the chart referenced therein, is attached as attached as **Exhibit F**.

46. To date, however, neither the County Administrator, the County Attorney, nor anyone else on behalf of the County or the Board of Commissioners has taken any action in response to DECP's March 2, 2018 letter.

THE BOARD OF APPEALS IGNORES AND FLOUTS ITS ATTORNEY'S LEGAL ADVICE ON PREEMPTION AND ILLEGALLY DENIES DECP'S SPEX APPLICATION

47. At the start of the March 13, 2018 meeting, the County's Deputy Director of Planning and Growth Management, Cristina R. Pompa, outlined the various conditions that she and Planning Department Staff had developed in response to the Board of Appeal's request at the February 13, 2018 meeting. She specifically recognized at the outset that the Board of Appeals' authority was circumscribed by federal preemption, and the conditions she and Staff developed were largely the same as previously recommended in the Staff Report over eight months earlier.

48. Despite County staff's recommendations and Mr. Meachum's explicit advice on preemption during the previous meeting, Board member, James Martin, then made a lengthy

statement explaining why he was voting to deny the SPEX Application, citing his personal disagreement with FERC's findings of public convenience and necessity of the Charles Station Compressor Facilities as well as the Commission's conclusions about the appropriateness of the siting, construction, operation and safety of those facilities. *E.g.*, 3/13/18 Video² at 26:38 ("The FERC approved an Order issuing a certificate in January of 2018. Dominion Cove Point, as well as FERC, has stated emphatically that we cannot make any ruling contrary to the certificate. I take issue to this certificate being the primary reason for this Board to acquiesce in our responsibility to decide this application."). Mr. Martin even tried to interpret the preemption case law cited in the FERC Certificate contrary to how FERC had applied it in the FERC Certificate.

49. Mr. Meachum, who also attended the March 13, 2018 meeting, publicly attempted to correct Mr. Martin's incorrect reading of the governing law. *E.g.*, 3/13/18 Video at 38:10 ("In that case it was determined that local zoning regulations cannot be a basis for . . . denying an air quality permit."). Citing the *Town of Myersville* decision and other case law, Mr. Meachum, again reiterated that federal preemption prohibited the Board of Appeals from denying DECP's SPEX Application. *E.g.*, 3/13/18 Video at 38:47 ("I think the *Town of Myersville* case said the same thing and the case out of D.C. all said the same thing dealing with zoning regulations – they cannot be used to deny or unreasonably delay a project like this [I]t could be said to be clear that that's the reason for the preemption, so that you don't have individual counties influencing whether there might be an interstate energy system.") Mr. Meachum concluded by reminding the Board members of their responsibility to follow the governing law in deciding

² Available on the Charles County, Maryland website at: [http://openstream.charlescounty.org/mediaVideoExternal.jsp?&file=/meetings/board_of_appeals/2018/BOA_031318.mp4&title=Charles County Board of Appeals](http://openstream.charlescounty.org/mediaVideoExternal.jsp?&file=/meetings/board_of_appeals/2018/BOA_031318.mp4&title=Charles%20County%20Board%20of%20Appeals).

DECP's SPEX Application. 3/13/18 Video at 40:16 ("The Board doesn't have the luxury of making decisions that ignore the law."). And he specifically advised them that the governing law prohibited the Board from second guessing or interfering with the judgment and authority of FERC in approving DECP's facilities at issue. 3/13/18 Video at 41:00 ("But a federal commission making a decision, that's not really something that's within this Board's authority to judge the merits of.")

50. Ignoring Mr. Meachum's advice, Board member Martin continued to take issue with FERC's findings on public convenience and necessity, adequacy of fire suppression and other safety measures, and stated that he was voting to deny the SPEX Application. A majority of the other members either agreed with or elaborated on Mr. Martin's lengthy remarks and, in disregard of Mr. Meachum's explicit legal advice on preemption, voted on the record (4-1) to deny DECP's SPEX Application.

COUNT I
(Declaratory Judgment Against All Defendants)

51. DECP realleges and incorporates by reference the allegations in Paragraphs 1 through 50 of this Complaint as though fully set forth in this Count.

52. DECP's Charles Station Compressor Facilities approved in the FERC Certificate and the Limited Notice to Proceed, and that are the subject of DECP's SPEX Application denied by the Board of Appeals, are natural gas facilities to be used in the transportation of natural gas in interstate commerce. As such, and as noted in the FERC Certificate, those facilities are subject to the exclusive jurisdiction of FERC pursuant to the Natural Gas Act, 15 U.S.C. § 717 *et. seq.*, and any attempt by any of the Defendants to regulate the siting, construction, operation or safety of those facilities, or to impose conditions or requirements beyond those imposed by the FERC Certificate, are preempted and illegal.

53. In addition, the Natural Gas Pipeline Safety Act, 49 U.S.C. § 60101 *et seq.* provides for the exclusive regulation of the safety of interstate natural gas facilities such as the Charles Station Compressor Facilities approved in the FERC Certificate. The Pipeline Safety Act also expressly preempts any and all attempts by state or local governmental bodies to regulate the safety of such interstate gas facilities. *See* 49 U.S.C. § 60104(c) (“A State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation.”)

54. By purporting to require DECP to comply with the requirements of the Charles County Zoning Regulations, including the requirements for Special Exceptions under Article XIII Sections 297-212 and Use #4.06.200 and Section 297-415 of the Charles County Zoning Regulations – which plainly address the siting, construction, operation and safety of the Charles Station Compressor Facilities evaluated and approved by FERC in the FERC Certificate – the County, the Board of Commissioners and the Board of Appeals have unlawfully claimed to have the jurisdiction and authority to regulate the FERC-approved Charles Station Compressor Facilities, and to do so in ways that are inconsistent with FERC’s exclusive jurisdiction over such matters and the conditions of the FERC Certificate. Such unlawful regulation also would prevent, or otherwise impose unreasonable delays of, the construction and operation of those facilities if DECP were forced to comply with those local regulations. Such attempted local regulation of the Charles Station Compressor Facilities by the Defendants is preempted by the Natural Gas Act and the Pipeline Safety Act, and, therefore, illegal. DECP requests a declaratory judgment from this Court that all such provisions of the Zoning Regulations, or other Charles County laws, ordinances or regulations that purport to regulate, control or condition the

siting, construction, operation and safety of the Charles Station Compressor Facilities, are preempted by the NGA, the Pipeline Safety Act and are, therefore, illegal and null and void.

55. DECP further seeks a declaratory judgment from this Court that the the Natural Gas Act and the Natural Gas Pipeline Safety Act preempt the Board of Appeals, the County and the Board of Commissioners from purporting or attempting to regulate, control or condition the FERC-approved Charles Station Compressor Facilities, including any construction, siting, operation or safety of those facilities, whether pursuant to the Charles County Zoning Regulations or otherwise under local law or regulation.

56. In addition, by unreasonably delaying the consideration of, and ultimately denying DECP's SPEX Application, the Board of Appeals' acts and omissions at issue purport to regulate and directly conflict with FERC's approval of the Eastern Market Access Project in the FERC Certificate. Accordingly, DECP, seeks a declaratory judgment from this Court that the Board of Appeals' denial of the SPEX Application is preempted by the Natural Gas Act and the Pipeline Safety Act, and, therefore, illegal and null and void.

57. The County and the Board of Commissioners, through the County Zoning Regulations and by the various acts and conduct of the County's employees and agents referenced elsewhere in this Complaint, have put, and continue to put, DECP at risk of criminal and civil penalties, such as those specified in Charles County Zoning Regulations, Section 297-4. Section 297-4(B) of the Zoning Regulations also puts DECP at constant risk of an injunction proceeding by the Board of Commissioners, or its agent, the County Zoning Officer, if DECP proceeds with construction and operation of the Charles Station Compressor Facilities as required by the FERC Certificate. Unless this Court declares that the Board of Appeals' denial of the SPEX Application is illegal and null and void, together with any other provisions of the

Charles County Zoning Regulations or other local laws, ordinances or regulations that purport to regulate the Charles Station Compressor Facilities, or otherwise conflict with the FERC Certificate, DECP will remain at risk of such criminal and civil penalties and an injunction proceeding that would prevent it from completing the Eastern Market Access Project as required by the FERC Certificate.

58. DECP has no adequate remedy at law.

COUNT II
(Preliminary and Permanent Injunctive Relief Against All Defendants)

59. DECP realleges and incorporates by reference the allegations in Paragraphs 1 through 58 of this Complaint as though fully set forth in this Count.

60. The Defendants' acts and omissions described above in this Complaint, which illegally purport to regulate and interfere with DECP's FERC-approved right to construct and operate the Charles Station Compressor Facilities, including, but not limited to, the Board of Appeals' denial of DECP's SPEX Application, unlawfully interfere with DECP's rights and obligations to construct and operate those interstate natural gas transportation facilities pursuant to the FERC Certificate and FERC's exclusive jurisdiction over them – facilities that FERC has expressly found, in the FERC Certificate, to be required to serve the public convenience and necessity.

61. If the Defendants are not enjoined preliminarily and permanently from such interference, as well as from any further interference or illegal attempted regulation, control or conditioning of the Charles Station Compressor Facilities – whether pursuant to the Charles County Zoning Regulations or other local law, ordinance or regulation – DECP will be irreparably harmed. Such interference threatens to prohibit DECP, or unreasonably delay it, from constructing and operating the Charles Station Compressor Facilities as required by the

FERC Certificate. Any such interference would, among other things, unreasonably delay or prevent DECP from providing the necessary natural gas supplies needed by its customers to supply the heating and electric power generation needs of the citizens of Southern Maryland and the greater Washington, D.C. Metropolitan area. Such interference and delays would also cause irreparable injury to DECP's reputation and goodwill as a reliable transporter of natural gas in interstate commerce. The full extent of DECP's reputation and goodwill injuries and losses resulting from the Defendants' unlawful acts and omissions as alleged in this Complaint are significant, but incalculable, and therefore no adequate legal remedy exists.

62. In addition, unless enjoined from enforcing the Board of Appeals' denial of the SPEX Application or other provisions of the Zoning Regulations of Charles County or other local laws, regulations or ordinances, DECP remains subject to continuing threat of substantial civil and criminal penalties prescribed by §297-4 of the Zoning Regulations of Charles County, Maryland, as well as an injunction proceeding that could illegally stop or hinder the Eastern Market Access Project.

63. DECP is likely to succeed on the merits because the Natural Gas Act and the Pipeline Safety Act preempt the enforcement of the Board of Appeals' denial of the SPEX Application, or any other provisions of the Charles County Zoning Regulations or other local laws, ordinances or regulations that purport to regulate the siting, construction, operation or safety of the FERC-approved Charles Station Compressor Facilities, or that would prohibit or unreasonably delay the construction or operation of those facilities.

64. The extent and degree of injuries that DECP will suffer if an injunction is refused far outweigh any conceivable injury to the Defendants if they are enjoined as requested by DECP in this Complaint. The County, the Board of Commissioners and the Board of Appeals face no

risk of injury if the injunction is granted, as construction and operation of the Charles Station Compressor Facilities have been found by FERC to be necessary for the public convenience and necessity, and present no substantial dangers to the citizens of Charles County or the environment. Under the governing law, neither the County, the Board of Commissioners, nor this Court can lawfully second guess or disregard FERC's findings and conclusions on those matters.

65. DECP's requested injunctive relief, if granted, will also further the public interest by allowing the timely completion of the Eastern Market Access Project which FERC has found to be in the public interest, and enable DECP to supply the natural gas needed by WGL and Mattawoman to serve the energy needs of the greater Washington D.C. metropolitan area.

WHEREFORE, DECP respectfully requests that this Court:

(1) Enter a judgment pursuant to 28 U.S.C. §§ 2201 and 2202 declaring that the Board of Appeals' denial of DECP's SPEX Application, as well as any and all Charles County Zoning Regulations or other local laws, regulations or ordinances relating to the siting, construction, operation or safety of the Charles Station Compressor Facilities approved by the FERC Certificate, or that otherwise conflict with the FERC Certificate in any way, are preempted by federal law in their entirety and, therefore, are null and void; and

(2) Enter a judgment pursuant to 28 U.S.C. §§ 2201 and 2202 declaring that DECP is not required to pursue, obtain or otherwise prosecute any Special Exception or other approvals, reviews, permits or other actions or purported requirements under the Charles County Zoning Regulations or other local laws, regulations or ordinances in order to construct and operate the Charles Station Compressor Facilities approved by the FERC Certificate; and

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