Agenda Item 6
May 19, 2010
Action

MEMORANDUM

TO: County Council

FROM: Michael Faden, Senior Legislative Attorney

SUBJECT: **Action:** Expedited Bill 29-10, Taxes - Excise Tax – Carbon Dioxide Emissions

Management and Fiscal Policy Committee/Transportation, Infrastructure, Energy and Environment Committee recommendation: enact with amendments.

Expedited Bill 29-10, Taxes - Excise Tax – Carbon Dioxide Emissions, sponsored by Councilmembers Berliner, Leventhal, Elrich, Andrews and Trachtenberg, was introduced on April 27, 2010. An initial Management and Fiscal Policy/ Transportation, Infrastructure, Energy & Environment Committee worksession was held on April 29, at which Committee members discussed the Bill and related questions but took no action. A public hearing was held on May 18 and a second joint Committee worksession was held after the hearing.

Summary of Bill 29-10. The major provisions in Bill 29-10 include:

1) *Tax levied.* Bill 29-10 would require a major emitter of carbon dioxide to pay an excise tax of $5 per ton of carbon dioxide (see ©2, lines 17-19; 23-24). A "major emitter of carbon dioxide" would be defined as a person who owns or operates a stationary source of carbon dioxide that emits more than 1 million tons of carbon dioxide in a calendar year (see ©2, lines 20-22). The Council could increase or decrease the rate by resolution (see ©2, lines 25-27). The tax would be payable monthly, unless the Director establishes an alternate payment system (see ©4, lines 53-59).
2) *Interest and penalties.* If a person does not pay the tax due, the person would be liable for:
   - 1% interest on the unpaid tax per month for each month or part month after the tax is due; and
   - 5% of the amount of tax per month or part of a month after the tax is due, not to exceed 25% of the tax (see ©4, lines 61-67).
3) *Unpaid taxes.* If a person does not pay the tax when due, the Director of Finance could obtain sufficient information to calculate the tax due and assess the tax and penalties against the person by mailing a notice of the tax due (along with interest and penalties) to

the person's last known address. The tax would be due within 10 days after the notice (see ©4-4A, lines 69-81).

4) *Allocation of revenue.* Except during the first fiscal year the tax is collected, Bill 29-10 would require 50% of the revenue generated from the tax to be used to fund County greenhouse gas reduction programs (see ©4A, lines 91-93, 97-100).
5) *Other provisions.* Other provisions in Bill 29-10, which are similar to other County excise taxes, would:
   - allow the Executive to issue Method (2) regulations to administer the tax (see ©3, lines 36-40);
   - require persons liable for the tax to preserve suitable records necessary to determine the tax for 3 years and allow the Director of Finance to inspect and audit the records (see ©4A, lines 82-84); and
   - make a failure to pay the tax when due a Class A violation (see ©5, lines 85-88).

Pre-introduction materials from Councilmember Berliner are attached at ©6-14. The pro's and con's of this proposal are well articulated in these materials and the opposition letters on ©19-26 and in testimony submitted at the hearing.

Fiscal and economic impact Annual revenue range: $11.7-17.6 million. See OMB fiscal impact statement on ©15. Council staff concurs with OMB that "**the eventual impact of this tax increase on Montgomery County consumers is likely to be negligible**."

Legal issue Council staff has not received any legal memorandum challenging the validity of this tax under federal or state law. Our research and that of the County Attorney (see County Attorney memo, ©16) have not found any legal reason not to enact this tax. This tax would be an exercise of the County's excise tax authority under state law, codified as County Code §52-17, much like the energy tax. That authority has been upheld at least twice by the Maryland Court of Appeals in decisions approving the former beverage container tax and the transportation impact tax. As far as we have seen, nothing in the federal Clean Air Act or other federal environmental laws, nor in the state air quality laws, would preclude the Council from enacting this tax.[1] We believe, based on the caselaw referred to above, the Maryland courts would treat this tax as a revenue measure, rather than a regulatory measure, because it simply imposes a tax on a specific activity (emission of carbon dioxide) and does not otherwise regulate the amount of or impose any sanction on that activity.

However, Council staff has been informed by a representative of Mirant Corporation, currently the only likely taxpayer for this tax, that they expect to take legal action if this Bill is enacted. As the fiscal impact statement noted, "a legal challenge could delay the implementation of the tax and receipt of the associated revenue for up to two years." In our view, if legal action is indeed filed, the County will know fairly quickly if a Maryland court has enjoined collection of the tax; thus the period of any initial revenue uncertainty would be more limited.

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[1]This conclusion could change if Congress enacts a federal climate change law that pre-empts various state and local actions, as at least one pending proposal would. At the first Committee worksession, Councilmember Berliner noted that he prefers a national regulatory/tax structure and of course would reexamine the County's authority if federal legislation actually passes. Council staff concludes that enactment of any federal law beyond the Clean Air Act is too hypothetical at this point to warrant County action or lack thereof.

Committee amendments The Committees accepted amendments offered by Councilmember Berliner, lead sponsor of this Bill, that would:

1) allow a credit against the tax for any reduction in carbon dioxide emissions in the County which can be attributed to carbon dioxide reduction programs funded by revenue from this tax (see ©3, lines 41-51);
2) specify further the sources of any emissions data on which the tax would be based (see ©3, lines 38-40); and
3) defer the allocation of revenue to greenhouse gas reduction programs during the first fiscal year the tax is in effect (see ©4A, lines 97-100).

Technical amendments The County Attorney suggested technical amendments (see ©16), which Council staff concurred with and the Committees also recommended (see ©4, lines 54-55, 69-72).

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Expedited Bill No. 29-10
Concerning: Taxes- Excise Tax – Carbon Dioxide Emissions
Revised: 5-18-10 Draft No. 5
Introduced: April 27, 2010
Expires: October 27, 2011
Enacted: ______
Executive: ______
Effective: ______
Sunset Date: None
Ch. ____, Laws of Mont. Co. ______

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Berliner, Leventhal, Elrich, Andrews and Trachtenberg

AN EXPEDITED ACT to:

(1) establish a reliable funding source for greenhouse gas reduction programs in the form of an excise tax on major emitters of carbon dioxide;
(2) set the rate of the tax and authorize the County Council to increase or decrease the rate each year by resolution;
(3) define certain terms, and authorize the County Executive to issue certain regulations;
(4) provide for collection of the tax and payment of interest and penalties, set the effective date of the tax, and apply certain provisions of law to this tax;
(5) require part of the revenue from this tax to be used for certain greenhouse gas reduction programs; and
(6) generally amend the County laws governing excise taxation.

By adding
Montgomery County Code
Chapter 52, Taxation
Article XIII, Excise Tax on Major Emitters of Carbon Dioxide
Sections 52-95 through 52-99

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets**]**	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets**]]**	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Chapter 52 is amended by adding Article XIII, Excise Tax on Major Emitters of Carbon Dioxide:

Article XIII. Excise Tax on Major Emitters of Carbon Dioxide.

52-95. Findings.

The County Council finds that:

(a) In December, 2009 the US Environmental Protection Agency found that greenhouse gases in the atmosphere endanger both the public health and the environment for current and future generations.

(b) Montgomery County has embraced an 80% reduction in greenhouse gas emissions by 2050 and has begun to engage in programmatic efforts to reduce these emissions. These efforts constitute a significant investment by the County and its constituents and cover both stationary sources (County owned and otherwise) and mobile sources.

(c) It is appropriate that the largest emitters of carbon dioxide in the County contribute to paying for these greenhouse gas reduction programs.

52-96. Tax levied; rates.

(a) Any major emitter of carbon dioxide, as defined in subsection (b), must file a tax return and pay an excise tax each year on the privilege of emitting carbon dioxide into the County airshed.

(b) A major emitter of carbon dioxide is any person who owns or operates any stationary source of carbon dioxide located in the County that emits more than 1 million tons of carbon dioxide in any calendar year.

(c) The rate of the tax established under subsection (a) is $5 per ton of carbon dioxide emitted.

(d) The County Council by resolution, after a public hearing advertised under Section 52-17(c), may increase or decrease the rate set in subsection (c).

(e) As used in this Article:

(1) *Ton*, when applies to carbon dioxide in gaseous form, means the amount of gas in cubic feet which is the equivalent of 2000 pounds on a molecular weight basis.

(2) *Director* means the Director of Finance.

(3) *Person* includes any individual, business, corporation, association, firm, partnership, group of individuals acting as a unit, trustee, receiver, assignee, or personal representative.

(f) By regulations issued under method (2) that are consistent with this Article, the County Executive may further specify the administration of this tax. These regulations must identify the source of verifiable and measurable emissions data, which must be a federal or state air pollution control agency, on which the Director must base the amount of tax due

52-97. Credit.

(a) The Director must allow a credit against any tax due in an amount that reflects the proportionate reduction in carbon dioxide emitted from any source in the County if that reduction is attributable to any County greenhouse gas reduction program funded by revenue from this tax that is allocated under Section 52-100, compared to the amount of carbon dioxide emitted in the previous calendar year by each major emitter of carbon dioxide.

(b) The Executive by regulation must further define which reductions in emissions are considered in calculating this credit and how those reductions are measured.

[[52-97]] 52-98. Due date.

(a) The tax levied under Section 52-96 is due and payable for each month on the last day of the next month. Each person subject to this tax must file a report each month on a form supplied by the Director.

(b) The Director may establish an alternative payment system. If an alternative payment system is established, the Director must require a pro-rated payment for any taxable period that ends before the system takes effect.

[[52-98]] 52-99. Collection; interest and penalties; violation; lien.

(a) If any person does not pay the Director the tax due under Section 52-96, that person is liable for:

(1) interest on the unpaid tax at the rate of one percent per month for each month or part of a month after the tax is due; and

(2) a penalty of 5 percent of the amount of the tax per month or part of a month after the tax is due, not to exceed 25 percent of the tax.

The Director must collect any interest and penalty as part of the tax.

(b) If any person does not file a report or pay the tax when due, the Director must obtain information on which to calculate the tax due and may estimate the tax due based on the previous month's tax or any other reasonable basis. As soon as the Director obtains sufficient information on which to calculate any tax due, the Director must assess the tax and penalties against the person. The Director must notify the person of the total amount of the tax, interest, and penalties by mail sent to the person's last known address. This notice is prima facie evidence of the tax due; entitles the County to judgment for the amount of the tax, penalty, and interest listed in the notice; and gives the taxpayer the burden of proving that the tax has been paid or any other sufficient defense to the action. The total amount due must be paid within 10 days after the date of the notice.

(c) Every person liable for any tax under Section 52-96 must preserve for 3 years suitable records necessary to determine the amount of the tax. The Director may inspect and audit the records at any reasonable time.

(d) Any failure to pay the tax when due under Section 52-97, and any violation of Section 52-97 or this Section, is a Class A violation. Each violation is a separate offense. A conviction under this subsection does not relieve any person from paying the tax.

(e) Section 52-18D applies to this tax.

[[52-99]] 52-100. Allocation of Revenue.

Of the revenue from the tax levied under Section 52-96, 50% must be reserved for and allocated in the annual operating budget to funding for County greenhouse gas reduction programs, including mass transit.

Sec. 2. Expedited Effective Date.

The Council declares that this Act is necessary for the immediate protection of the public interest. This Act takes effect on the date when it becomes law.

Sec. 3. Revenue Allocation Suspended.

Notwithstanding County Code Section 52-100, as enacted by Section 1 of this Act, the revenue received from the tax levied under County Code Section 52-96 in the first full fiscal year the tax collected must be held in a special reserve account.

Approved:

Nancy Floreen, President, County Council — Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 29-10
Taxes- Excise Tax – Carbon Dioxide Emissions

DESCRIPTION:	Implement an excise tax on major emitters of carbon dioxide
PROBLEM:	The Environmental Protection Agency has found that greenhouse gases in the atmosphere endanger both the public health and the environment for current and future generations. County programs to reduce greenhouse gases have suffered from lack of funds.
GOALS AND OBJECTIVES:	To find a steady source of funds for programs to reduce greenhouse gas emissions by taxing the major producers of those emissions.
COORDINATION:	Finance Department, Department of Environmental Protection
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Michael Faden, Senior Legislative Attorney, 240-777-7905
APPLICATION WITHIN MUNICIPALITIES:	Taxes apply County-wide.
PENALTIES:	See proposed §52-98.

MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

ROGER BERLINER
COUNCILMEMBER
DISTRICT 1

Good day to you all and Happy Earth Day.

I can not think of a better way to honor Earth Day than by taxing the single biggest threat to our earth – the burning of coal in power plants.

In Montgomery County, the Mirant coal fired power plant is by far and away the single largest emitter of greenhouse gases. It's CO2 emissions alone represent approximately 25% of the total amount of greenhouse gas emissions in the County.

At the same time, our County is struggling to make ends meet, and we need new sources of revenues.

My proposed carbon tax is a responsible approach to addressing both our environmental and fiscal imperatives. It will generate between $10 and $15 million a year in new revenues and it will incentivize Mirant to reduce its emissions. These dollars will provide just a portion of the resources necessary to pay for the carbon reducing programs our County and our citizens support. It is only right that Mirant should pay its fair share of those costs.

And unlike every other tax we are considering, this tax will not be felt by Montgomery County residents. Why? Because our power is bought on a competitive basis, and if Mirant's power is not priced competitively, it will not be bought. Plain and simple.

I am sure that Mirant will fight this tax. They have fought their own shareholders who have argued that Mirant should be doing more to reduce their emissions. But I did not proceed with this proposal without first having our lawyers review it. They concluded, as have I, that we have the legal authority to impose this tax.

While all of us here would prefer for there to be strong regional or federal standards, the truth is we don't today. And it is also true that local governments often take the lead on this issues, and as result of those initiatives, there is a greater push for federal legislation. That would be a good outcome. But until then, we have the authority and we must use that authority on behalf of our taxpayers and the health and wellbeing of our residents.

I am pleased that within a span of hours, two of my colleagues immediately asked to join as co-sponsors. Councilmember Leventhal, who himself has been a strong champion for the environment for many years, and Councilmember Elrich.

Let me ask them if they would like to say a few words now before turning to two of the leading environmental advocates in our community.

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MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

ROGER BERLINER
COUNCILMEMBER
DISTRICT 1

A CARBON TAX FOR MONTGOMERY COUNTY

SPONSORED BY COUNCILMEMBER ROGER BERLINER
CO-SPONSORED BY COUNCILMEMBERS ELRICH AND LEVENTHAL

This legislation will establish an excise tax on major emitters of carbon dioxide that do business in Montgomery County. The County has been working diligently to reduce its green house gas inventories and shrink its carbon footprint. It is time for those who contribute to this pollution to pay their fair share.

- EPA and the State of Maryland have determined that carbon dioxide emissions pose an unacceptable risk to public health and our environment.
- Montgomery County is committed to reducing green house gas emissions by 80% by 2050.
- Carbon Dioxide is a greenhouse gas.
- It is appropriate, fair, and good public policy for those contributing to the County's greenhouse gas emissions inventory to also contribute to help finance its reduction programs, including the Home Energy Loan Program, Clean Energy Rewards, and transit.
- This proposal calls for a tax on any carbon emitter who pollutes over one million tons of carbon dioxide in a calendar year.
- The Mirant power plant emits over 3 million tons of carbon dioxide a year at its Dickerson, Maryland location, by far the largest single source of greenhouse gas emissions in the County.
- At $5 per ton this tax will generate more than $15 million a year for the County and create an additional economic incentive for Mirant and any others to reduce emissions.
- A $5 per ton tax on Mirant will have **NO DISCERNABLE** impact on PEPCO ratepayers according to Pepco officials who have analyzed the proposed tax. PEPCO buys its power in an auction; if Mirant's power is not competitive, it will not be purchased; and Mirant does not have enough "market power" to raise the price of power unilaterally.
- At the end of 2009, Mirant had approximately $2 billion in cash and power plants throughout the mid-Atlantic & Northeast, and in California. In its 10-K filing with the SEC, Mirant observed that "[f]uture *local*, state and federal regulation of greenhouse gases is likely to create substantial environmental costs for us in the form of *taxes* or purchases of emissions allowances and/or new equipment."
- A $5 per ton tax complements the existing Regional Greenhouse Gas Initiative (RGGI), a regional cap-and-trade program.
- According to the state's leading experts, a $5 tax is equivalent to the estimated value of allowances under RGGI if Mirant's allocation were reduced by 10% from the current, steady-state levels permitted through 2014.
- The County has the legal authority to impose an excise tax on carbon.
- In the absence of a strong national program, local governments must continue to lead.
- If adopted, Montgomery County will be the first county in the country to impose a carbon tax on major emitters.

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SIERRA CLUB
FOUNDED 1892

Montgomery County Group

April 21, 2010

Contact: David Hauck
Chair
Sierra Club, Montgomery County Group
(301)-270-5826
Hauck_d@msn.com

The Montgomery County Sierra Club strongly supports Councilmember Berliner's bill that would impose a fee on major emitters of carbon dioxide within the county. Carbon dioxide emissions are the primary cause of global climate change and steps must be taken now to reduce this carbon pollution. For too long there have been no costs associated with releasing greenhouse gases into the atmosphere. For too long major producers and users of fossil fuels have said we can't afford to put a price on carbon emissions. The truth is that the costs of global climate change far outweigh the costs of reducing greenhouse gas emissions.

This bill recognizes that truth and includes two key provisions:

- it places a specific price on carbon dioxide--$5.00 a ton—that lets large emitters know exactly how much their contribution to global climate change will cost them in the future, as well as how much reducing their carbon emissions can save them.

- it dedicates half of the money raised by the fee to the county's greenhouse gas reduction programs which help homeowners, renters and businesses save energy, reduce their carbon emissions and lower their utility bills.

The Montgomery County Sierra Club recognizes the hard work and creative thought Councilmember Berliner has demonstrated in finding ways for Montgomery County to have an impact on reducing greenhouse gas emissions. This bill is the next step in that effort and we look forward to its being enacted.

Statement from the Chesapeake Climate Action Network:

Montgomery County "Carbon Tax" on Big Polluters is a Key Step Toward Protecting Kids and Our Climate

Earth Day, April 22, 2010

From CCAN Director Mike Tidwell:

"On Earth Day 2010, I salute Councilmember Roger Berliner for proposing one of America's first county-based carbon taxes on major polluters. The County Council should pass this bill as soon as possible. This much-needed legislation will apply to only one company: The Mirant Corporation, owner of the massive, coal-fired power plant in Dickerson, Maryland. The Dickerson plant is by far the largest carbon polluter in the county, and Mirant is one of the largest carbon polluters in America. Unfortunately the company has a long history of contaminating our air and our watersheds in Maryland without voluntarily acting to protect the public from its pollution. In 2006 alone, Mirant's Chalk Point plant in Prince George's County, Maryland, recorded 1400 violations of the Federal Clean Air Act for burning dirty "bunker oil" without a permit. Mirant fought tenaciously against Maryland's landmark Healthy Air Act passed by the General Assembly in 2007. And just last month, the Maryland Department of the Environment filed a lawsuit alleging Mirant violated federal Clean Water Act regulations at its coal waste landfill in Prince George's County. And in 2006, CCAN raised serious concerns about the Dickerson plant's continual violation of the state's nitrous oxide standard during summer months.

"The Montgomery County carbon tax is a wise and much-needed response to Mirant's long-established pattern of serious pollution. The bill would not discernibly affect ratepayers. It would, however, generate much-needed funding for county-sponsored greenhouse gas reduction efforts. Until Congress finally acts to generate a nation cap on carbon pollution, every county in Maryland and every county in the country should follow Roger Berliner's lead today."

Statement of DR. MATTHIAS RUTH

Roy F. Weston Chair in Natural Economics
Director, Center for Integrative Environmental Research,
Division of Research
Director and Professor, Environmental Policy Program,
School of Public Policy
Co-Director, Engineering and Public Policy Program,
A. James Clark School of Engineering and School of Public Policy
University of Maryland

The State of Maryland and Montgomery County have begun to establish themselves as leaders in the Nation in dealing with the global challenge of climate change. Maryland has signed on to the Regional Greenhouse Gas Initiative (RGGI) - a cap and trade system in which the state sets upper limits on greenhouse gas emissions and auctions off permits to utilities. Through the auction process, a price for carbon and other greenhouse gases gets established, incentives are provided to utilities to reduce the costs of purchasing permits, and revenues are generated to the state. In essence, the state sets emissions targets, and the market determines the price of emissions. Recent experiences with cap and trade in the state suggest that the emissions targets are not particularly ambitious. As a result low prices for carbon and comparatively low state revenues result.

With the introduction of the carbon dioxide tax proposed in Councilmember Berliner's bill, the county recognizes that there is considerable room to improve on RGGI. The tax will live up to our expectations to really be environmental leaders by doing what is needed to cut greenhouse gas emissions. In doing so, the county will provide the right incentives to cut emissions, generate revenue to foster efficiency improvements, and break out of the ideological logjam that has, to date, prevented taxes from being used as means to guide action: RGGI has been an important step in promoting smaller carbon footprints, but the cumbersome constraints put on it actually do not lead the market to reign freely. The tax proposed here, instead, helps set the price of carbon dioxide directly at a more meaningful level, and then lets the market sort out optimal emission quantities. Introducing this tax is a clever way of leveraging the innovative capacity of power generators, and stimulating markets for clean technology and efficiency improvements.

Gino Renne
President
Municipal and County Government
Employees Organization

My name is Gino Renne; I am President of Local 1994. Our union represents 10,000 workers throughout the state of Maryland.

Before I begin, I want to take the opportunity to thank Roger for taking the lead on this and his two colleagues George and Marc for signing on. I urge the County Council to unanimously adopt this initiative as soon as possible. I also want to thank the other esteemed leaders for their support as well.

I'm going to speak to two points: the fiscal piece first. Our local union's position throughout these deliberations has been that we need to find a fair and balanced approach to sustaining the public services that our workers deliver. And this fulfills that request. The entire community has to come together and we all have to do our fair share to make sure we sustain the public services that this community demands.

On the environmental issue, this is a much-needed, as I see it, public health and safety initiative. The entire state of Maryland will benefit from it, and adjoining states as well. As you well know, depending on the wind flows and what have you, surrounding states are impacted by the emissions up in Dickerson as well.

So this is a public safety and public heath initiative as well and I applaud Roger and his colleagues for moving it ahead.

MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

OFFICE OF COUNCILMEMBER
ROGER BERLINER

April 14, 2010

Mr. Thomas Graham
President
Pepco Region
701 Ninth Street, NW
Washington, DC

Dear Tom:

I want to express my appreciation to you and your senior staff for taking the time to review my proposed legislation that would impose a $5 per ton carbon tax on the County's major emitters of greenhouse gas emissions.

In particular, your staff's expertise with respect to the operation of the Mirant power plant at Dickerson, a plant that had been owned and operated by PEPCO, and the potential impact of this legislation on Montgomery County ratepayers was extremely valuable. As you appreciate, that power plant all by itself contributes approximately 25% of the County's total greenhouse gas emissions, and almost 40% of the emissions from all stationary sources within the County.

One of the first questions I am asked about this legislation is the potential impact on ratepayers. Your staff's bottom line conclusion that the bill will have "***no discernable***" impact on ratepayers is a major consideration.

As we discussed, this conclusion was based on the fact that PEPCO buys its long-term power for its residential customers at auction, and at auction, PEPCO buys the least expensive power. Accordingly, your staff has concluded that if Mirant's power is priced competitively with other base load power from plants that do not pay a carbon tax, you will buy it. If Mirant's power is not competitively priced, you will not.

To the extent that PEPCO buys power on the spot market, and to the extent to which the Mirant power plant sells power on the spot market, Mirant's power would never affect the price of spot market supplies in the PJM power pool except on those occasions when the plant is literally the "marginal cost" supplier. As your staff explained, this would be a most

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"uncommon" situation, perhaps happening for a few hours, given that natural gas and other more expensive supplies typically establish the marginal, peak price.

While there are many public policy reasons why a carbon tax on the County's major emitters is sound public policy, PEPCO's conclusion that the legislation will not have any discernable impact on ratepayers is itself a significant plus. Your analysis in this regard is quite similar to the analysis of Dr. Mathias Ruth at the University of Maryland, a recognized state expert and authority, who also has stated that any impact would be "quite minimal."

I understand that you will be testifying on this legislation after it is introduced, and I look forward to you assuring my colleagues and our community that should we decide to adopt this revenue raising legislation, we can do so confident that our County ratepayers will not experience any "discernable" effects – other than the positive effect of having $15 million more dollars to deal with our budget crisis.

Sincerely,

Roger Berliner
Councilmember
District 1

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Vice President -Maryland Affairs

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April 28, 2010

The Honorable Roger Berliner
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Dear Councilmember Berliner:

I am writing to provide clarity with respect to Pepco's analysis of the impact of the $5-per-ton carbon tax recently proposed by your office. Pepco is unable to quantify what, if any, impact the tax would have on ratepayers, if passed into law.

Because of the confidential nature of the bids at the power auctions and several other unknown variables, Pepco is not in a position to opine on any impact of various financial obligations of any of the bidding companies (including Mirant). By extension, the Company cannot discern how the financial obligations of any individual bidder will impact ratepayers. For that reason, it is important to clarify the Company's position and make clear that no conclusion with respect to ratepayer impact can be made by the Company.

Please contact my office if you have any questions regarding this matter.

Sincerely,

Kim Watson

Kim Watson

b29-10

MF
cc
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OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

RECEIVED
MONTGOMERY COUNTY
COUNCIL
2010 MAY 13 PM 3:21

MEMORANDUM

May 13, 2010

TO: Nancy Floreen, President, County Council

FROM: Joseph F. Beach, Director

SUBJECT: Expedited Bill 29-10, Taxes-Excise Tax-Carbon Dioxide Emissions

The purpose of this memorandum is to transmit a fiscal and economic impact statement to the Council on the subject legislation.

LEGISLATION SUMMARY

This bill will establish an annual excise tax of $5 per ton for major emitters of carbon dioxide in the County. A "major emitter" is defined as any entity that owns or operates a stationary source of carbon dioxide located in the County that emits more than 1 million tons of carbon dioxide in any calendar year. The bill provides for the monthly collection of the tax, as well as penalties if the tax liability is not paid. At least 50% of the revenue from this tax must be used to fund the annual operating budget that supports the County's greenhouse gas reduction programs, including mass transit.

FISCAL AND ECONOMIC SUMMARY

It is estimated that this tax will produce annual revenue of $11.7 – $17.6 million, based on available estimates of CO2 emissions from major emitters located in the County. (The higher figure is based on EPA's 2005 EGrid estimate of CO2 emissions from major emitters located in Montgomery County and is the most authoritative figure available.)

This bill is not expected to impose significant additional costs on the County, either for administration of the tax or for defending possible legal challenges to the tax. However, a legal challenge could delay the implementation of the tax and receipt of the associated revenue for up to two years.

Based on the EGrid report cited above, major emitters located in the County would need to receive an additional $0.00487 per kilowatt-hour for power generation to offset the impact of the tax. However, wholesale electricity markets are regional, and the eventual impact of the tax increase on Montgomery County consumers is likely to be negligible.

The following contributed to and concurred with this analysis: John Greiner, Office of Management and Budget; Eric Coffman, Department of Environmental Protection; Robert Hagedoorn, Department of Finance; and Marc Hansen, Office of the County Attorney.

JFB:jg

OFFICE OF THE COUNTY ATTORNEY

Isiah Leggett
County Executive

Marc P. Hansen
Acting County Attorney

MEMORANDUM

TO: Stan Edwards, Division Chief
Department of Environmental Protection

FROM: Scott R. Foncannon
Associate County Attorney

VIA: Marc P. Hansen Marc Hansen
Acting County Attorney

DATE: May 5, 2010

RE: Expedited Bill 29-10, Taxes-Excise Tax-Carbon Dioxide Emissions

---

I have had an opportunity to review Expedited Bill No. 29-10, Taxes-Excise Tax-Carbon Dioxide Emissions. In my opinion the bill is within the authority of the County Council and the bill is legally sufficient.

I have the following additional comments concerning the bill. Section 52-98 requires any person subject to the tax to pay the tax which is due to the Director. I would recommend that this provision be amended to require any person that is required to pay the tax to pay the tax and file monthly reports on such forms as the Director of Finance may require. With these types of excise taxes it's the regular procedure for the Director of Finance to develop a report form for the taxpayer that is in a format easily recognizable and understandable by the Department of Finance. This tax return or report should accompany the payment made to the County.

In addition, Section 52-98(b) should authorize the Director to estimate the tax if the taxpayer fails to pay the tax or file the report when it is due. For ease of administration it would be appropriate to authorize the Director to use the previous months report and payment as a basis for calculating the tax for the next month or in the alternative to use the best available information rather than requiring the Director to obtain information. There is a similar provision in Section 52-15(c) and (d) of the telephone excise tax and 52-14(c) and (d) of the fuel energy tax.

101 Monroe Street, Rockville, Maryland 20850-2580
(240) 777-6795 TTD (240) 777-2545 • FAX (240) 777-6705 • scott.foncannon@montgomerycountymd.gov

I have no further comments on this bill.

cc: Kathleen Boucher, Assistant Chief Administrative Officer
Office of the County Executive

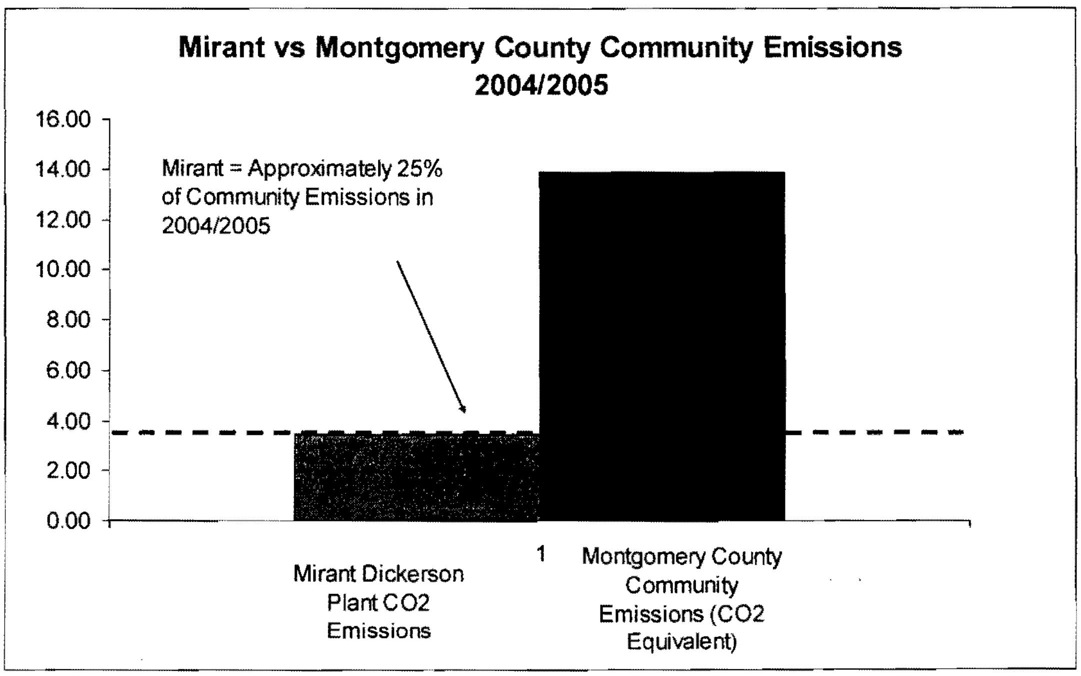
SRF:jq
A10-00774 – Memo re: Expedited Bill 29-10
M:\Cycom\Wpdocs\D004\P009\00139460.DOC

Mirant Dickerson Plant Carbon Dioxide Emissions (CO_2)

Source: United States Environmental Protection Agency, Egrid 2007 (2004 plant data)

Mirant Plant Emissions in Comparison to the Montgomery County Community		
Mirant 2004 Emissions	3.47	Million Tons CO2
Montgomery County Community Emissions (FY2005)	13.85	Million Tons CO2 (Equivalent)
Total Stationary (Buildings)	8.90	Million Tons CO2 (Equivalent)
Total Mobile	4.77	Million Tons CO2 (Equivalent)
Other	0.18	Million Tons CO2 (Equivalent)

Approximate Percentage of Community Emissions Mirant is Equivalent To (2004/2005)		
Mirant 2004 Emissions	25%	Million Tons CO2



MIRANT

May 10, 2010

Chevy Chase, MD 20815-3102

Re: Potential Electric Cost Hike in Montgomery County

Dear :

This letter is to share news about the potential of a $15 million increase to electricity prices. I write to ask for your help to stop this unnecessary increase that could be passed along to consumers.

You're probably asking yourself, "Who is Mirant and why are they writing me?" We generate electricity. In fact, our Dickerson Power Generating Station is the only major power producer in Montgomery County. Our facility generates 843 megawatts of power, enough to supply every home and most businesses in the county.

Yet when you flip on a switch and the lights go on, or your air conditioner hums as it cools a hot and humid Maryland summer night, or your office buzzes with technology, you don't think of us.

That is because all we do is generate electricity. We don't sell our power directly to customers. All the power we produce is sold on the wholesale market where your utility purchases it and charges you for delivering it to your home.

Now some members of the Montgomery County Council propose to increase electricity costs by an additional $15 million. Join us so we can defeat this increase, right now.

We know that with every dollar electric bills go up, businesses and families feel the pain.

Apparently not everyone understands that pain. Some on the County Council are attempting to sneak through a new $15 million fee on generating electricity. If approved, this purported "carbon tax" would increase the cost to make electricity to power homes and businesses.

19

Clearly, Mirant has a vested interest in fighting this carbon bill. It would hurt us, especially the employees who work at the Dickerson Generating Station and their families. But this bill will hurt many more people and business, too.

You know that this bill will make the price of electricity go up. It is simple economics: if you make it more costly to produce electricity, it in turn costs more for consumers to buy electricity.

The scheme will also result in the importation of "dirty" power from West Virginia, Ohio, and Pennsylvania, creating more emissions from power plants in states with less stringent environmental regulations. This imported power could necessitate building more high voltage transmission lines that cut through forests and farmland.

Maryland's air is already polluted from these plants, because air pollution doesn't respect borders. The Maryland Department of the Environment says 70 percent of the air pollutants in Maryland come from out-of-state airflows from the west. Montgomery County, unfortunately, is a collecting point for the dirty air from the Ohio River Valley.

Today we produce cleaner energy at a lower cost.

Maryland has the toughest emission standards on the East Coast. To meet those emission standards, Mirant just spent nearly half-a-billion dollars to install clean air scrubbers at the Dickerson Station. The benefit of this major air improvement will be lost if our cleaner electricity is no longer economically viable.

This bill fails on every level. Its sponsors argue it's for the sake of the environment, but in reality it makes matters worse, simply shifting CO_2 emissions to dirty plants in other states and increasing other air pollutants in Maryland. The Montgomery County carbon bill is bad policy. That is probably why NO other county, city, or town in the country has created a similar tax. Join us in fighting this increase to electricity prices by joining our effort at www.NoMoCoTaxHike.com and or call us at (301) 560-6335.

With your help, we can stop this scheme.

Sincerely,

Misty M Allen

Misty Allen
Director External Affairs
Mirant Mid-Atlantic, LLC

P.S. If you do not speak out, this measure will pass, prices will increase and air quality will decrease.

BILL 29-10

MF
CC

Guthrie, Lynn

From: Floreen's Office, Councilmember
Sent: Friday, April 30, 2010 2:05 PM
To: Montgomery County Council
Subject: FW: Carbon Tax Opposition Letter

056500

-----Original Message-----
From: John Shelk [mailto:JShelk@epsa.org]
Sent: Friday, April 30, 2010 10:41 AM
To: Andrew's Office, Councilmember; Elrich's Office, Councilmember; Ervin's Office, Councilmember; Floreen's Office, Councilmember; Knapp's Office, Councilmember; Leventhal's Office, Councilmember; Navarro's Office, Councilmember; Trachtenberg's Office, Councilmember
Subject: Carbon Tax Opposition Letter

Attached please find a letter in opposition to the proposed county carbon tax.

For the reasons outlined in the letter, the proposal will not accomplish the claimed objectives. It is both bad environmental and fiscal policy.

John E. Shelk
President & CEO
Electric Power Supply Association (EPSA)
1401 New York Avenue, N.W., 11th Floor
Washington, D.C. 20005
202-628-8200 (main)
202-349-0154 (direct)
703-472-8660 (cell phone)
202-628-8260 (fax)
www.epsa.org

Electric Power Supply Association
*Advocating the **power** of competition*

1401 New York Avenue, NW
11th Floor
Washington, DC 20005
202/628.8200
202/628.8260 fax
www.epsa.org

John E. Shelk
President and CEO

April 30, 2010

Honorable Roger Berliner
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850-2322

Dear Councilmember Berliner:

This letter is prompted by your proposal to impose a $5 per ton carbon tax in Montgomery County. The Electric Power Supply Association (EPSA) does not normally comment on county legislation. However, as your news release stated, this is an unprecedented, and we believe, unfortunate proposal. For the reasons stated below, the proposal is neither good environmental policy nor a stable source of county revenue.

EPSA is the national trade association for competitive wholesale suppliers, including those who provide the electricity in the regional PJM Interconnection that serves Maryland. EPSA seeks to bring the benefits of competition and environmental stewardship to all power customers.

It is important to know that in January 2007 EPSA became the first national multi-fuel electricity trade association to call for a uniform federal program to substantially reduce national economy-wide carbon emissions. The EPSA Board of Directors adopted these climate change principles unanimously, including with the support of Mirant, the owner of the only power plant in the county.

In addition, Maryland has joined the Regional Greenhouse Gas Initiative (RGGI), which includes ten states in a regional cap and trade system. This system already charges generation resources for carbon emission allowances, as would your proposed county legislation, but RGGI addresses all generation resources in its region. In effect, your proposal would operate to the disadvantage of the existing program, which addresses greenhouse gases on a regional basis rather than a local basis. Your proposal works only to single out one generation resource.

The proposal is internally inconsistent on its face. At a minimum it could not simultaneously achieve both the fiscal and environmental objectives claimed, and in fact would not likely achieve either one of them to the extent claimed.

With regard to fiscal policy, the description claims that it would raise at least $15 million per year. This erroneously assumes that the current level of emissions subject to the tax would continue to occur. Despite a headline in the news release suggesting that the proposal would apply to multiple "major emitters" the proposed tax would actually apply to only one facility, the county's sole power plant. However, your materials on the proposal correctly acknowledge that PEPCO and competitive retail suppliers purchase the power supplied to county residents, businesses, government agencies and others through PJM. The proposal also notes that when the price bid into PJM by the plant is not competitive, it will not run. A $5 per ton carbon tax that would only apply to a single power plant out of over 1,200 generating plants in PJM would increase the likelihood that such a single plant would run less often. When not operating, or when running less often than currently, the plant would not have any or fewer emissions subject to the tax and thus the tax would not generate any revenue or much less revenue than claimed.

As to environmental policy, the proposal concedes that the power needed to keep the lights on in the county would come from somewhere else in PJM. Given the fuel mix in PJM, much of the time this replacement power will come from power plants with carbon dioxide emissions equal to if not greater than the county's sole power plant. As a result, no net carbon reductions would occur and in fact carbon emissions associated with electricity consumed in the county may actually increase. As you are well aware, the environmental impact of a ton of carbon emissions from sources outside the county has as great an impact on the environment as a ton of carbon emissions from inside the county.

Furthermore, Maryland has a state law on non-carbon emissions that is substantially more stringent than other states in PJM. As a result, to the extent that replacement power comes from outside of Maryland (which is a net importer of electricity) it is likely that the emissions of pollutants such as SOx, NOx and mercury will <u>increase</u> as a result of your proposal, circumventing Maryland's state efforts. Mirant and other power plant operators in Maryland have spent <u>billions</u> of dollars to comply with this recent state law. Far from being an incentive to reduce carbon emissions, as your proposal claims, the proposed tax would be a disincentive because plants could not recoup the costs of doing so. This is in part why a national carbon reduction policy is by far the preferred approach along with similar efforts internationally.

Thank you for the opportunity to provide these comments on your proposal.

Sincerely,

John Shelk

John E. Shelk
President and CEO
Electric Power Supply Association

CC: Montgomery County Council

B 29-10

HF
cc

Local Union 1900
Of The
International Brotherhood Of Electrical Workers

1400 Mercantile Lane – Suite 208 – Largo, Maryland 20774
Office: (301) 322-6030 Fax: (301) 322-6181

Representing the Employees of
Potomac Electric Power Co., Mirant Mid-Atlantic and Frederick Gas Co.

Proudly Serving Our Nation's Capital

John L. Holt
President/Financial Secretary
Business Manager

Greg Waller
Vice President
Executive Board Chairman

Karl Furbush
Recording Secretary
Business Representative

Ernest Harrison
Treasurer

April 29, 2010

056499

The Honorable Nancy Floreen
President, Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Re: Expedited Bill 29-10, Taxes – Excise Tax – Carbon Dioxide Emissions

Dear Ms Floreen:

I am writing as President of the IBEW Local 1900 representing more than 1700 members and our 97 members at Mirant's Dickerson Generating station. IBEW strongly opposes to EB 29-10 the local electrcity gereration tax.

We appreciate your support for labor issues but this bill will discourage job creation and jeopardize current union jobs. Our members recently helped complete Mirant's nearly $400 million environmental upgrade at its Dickerson facility. This upgrade significantly reduces air pollution emissions in compliance with Maryland's Healthy Air Act.

This new tax will have the direct effect of making the Montgomery County facility less competitive in the electricity market resulting in less operating time of the facility. This has both economic and environmental consequences to the residents and businesses of Montgomery County and the region. First, the potential expansion and future investment in the facility to grow the already $4 million a year tax base is jeopardized, risking existing and future jobs. Secondly, with respect to the environment, when the Dickerson station is running less, the demand for power must be satisfied elsewhere. And, given the way the electricity grid operates, that power will be imported from power plants outside the state of Maryland with less stringent environmental standards.

On behalf of the approximate 150 employees of the Mirant Dickerson station and 1200 members of the IBEW Local 1900 in Maryland, we are very concerned that this tax sends the wrong message about the future growth and job creation on the part of Mirant and other businesses in Montgomery County.

We urge you to oppose EB 29-10 and to support economic expansion and job creation.

Sincerely,

John Holt

John L. Holt, President/
Business Manager/Financial Secretary
I.B.E.W. Local Union 1900

RECEIVED
MONTGOMERY COUNTY
COUNCIL
2010 MAY -3 AM 9:46

24

B29-10

MF
CC
SBF
LL
MD

UPPER MONTGOMERY COUNTY VOLUNTEER FIRE DEPARTMENT, INC.

19801 BEALLSVILLE ROAD
P.O. BOX 8
BEALLSVILLE, MARYLAND 20839
(301) 972-8888 • FAX (301) 407-0453
www.umcvfd.org

2010 MAY 14 AM 9:56
RECEIVED
MONTGOMERY COUNTY
COUNCIL

May 12, 2010
Nancy Floreen, President
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

056888

Re: Expedited Bill 29-10, Taxes – Excise Tax, Carbon Dioxide Emissions

Dear Ms. Floreen:

I am representing the Board of Directors of the Upper Montgomery County Volunteer Fire Department which serves approximately 12,000 citizens in an 80 square mile first due area in the Western Montgomery County. The Mirant Mid-Atlantic (Mirant) Dickerson power generating station is located in this area. The members of the Board of UMCVFD wish to go on record as strongly opposing EB29-10, the local electricity generation tax, for a number of reasons.

For many years, the Mirant Mid-Atlantic Organization has been known to be a safety-conscious community centered organization. The Mirant Organization has spent $400 million dollars to upgrade their generating station to meet stringent Federal and State mandates. The Mirant Organization has also been an active supporter of Community events here in Western Montgomery County. Mirant has funded efforts of the local schools to make the area a greener, healthier place to live. Local towns have also received support from Mirant for a number of projects and ongoing celebrations such as the Annual Poolesville Day that is enjoyed by thousands each year. Mirant has supported swift water rescue training opportunities for MCDFRS employees, provided equipment and funding for cave in disaster preparation and training, and has supported Wilderness Medical Training by donating the use of their site to the classes each year.

While the County's need to generate revenue is not in question, the UMCVFD objects to a bill that affects a single private business entity in one geographic area of the county. Bill EB29-10 would negatively impact the citizens of the Western Montgomery County area in a number of ways. All the surrounding jurisdictions of Boyds, Barnesville, Poolesville & Dickerson would feel the impact due to the fact that Mirant would have no recourse except to withdraw support from the many community activities they now willingly fund. There is also the very real possibility that generation rates would increase to all electric customers in this area of the county. At a time when up county citizens are already affected by decreasing property values, job loss, reductions in force, furloughs and increased property taxes, this is just adding insult to injury.

For a county in deep financial trouble that is trying to encourage businesses to locate to this area, a bill such as this is also counter-productive and sets a bad precedent. What company wants to do business in a location where it could be easily singled out this way?

We at the UMCVFD are concerned not only about the effect this bill would have on our first due area, but on the County's long range ability to attract private businesses. Enacting this bill would negatively impact future growth potential and job creation for the entire county. Please do not pass EB29-10.

Respectfully Submitted,

Ross L. Meem

Ross L. Meem, President
UMCVFD