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**CONGRESSIONAL MANAGEMENT OF THE
DISTRICT OF COLUMBIA PRIOR TO HOME RULE:
THE STRUGGLE TO UNDERGROUND POWER
LINES IN THE NATION'S CAPITAL**

James W. Moeller*

INTRODUCTION

Article I, Section 8 of the U.S. Constitution authorizes the U.S. Congress to establish a federal capital and “[t]o exercise exclusive Legislation in all Cases whatsoever, over such District.”¹ For this reason, Congress has exclusive jurisdiction over the District of Columbia (“District”), which has neither statehood nor voting representation in Congress.

In 1973, Congress enacted the District of Columbia Home Rule Act, which delegated some measure of local self-governance to the District.² Since 1973, District residents have elected their own mayor and city council. Council legislation, however, is still subject to review by Congress, which also approves the annual budget for the District.

Home Rule notwithstanding, District politicians and residents continue to seek additional local self-governance as well as voting representation in Congress. For example, in April 2013, residents approved an amendment to the District Charter on Local Budget Autonomy.³ The amendment gave the District exclusive control over its budget to the extent that local taxes fund the budget. The amendment

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¹ U.S. CONST. art. I, § 8.

² District of Columbia Self-Government and Governmental Re-organization Act, Pub. L. No. 93-198, 87 Stat. 777 (1973).

³ Local Budget Autonomy Act, D.C. Law 19-321, 60 D.C. Reg. 1724 (Feb. 15, 2013).

survived Congressional review. In May 2014, a federal court ruled that the amendment violated the Home Rule Act.⁴ The U.S. Court of Appeals vacated that judgment in May 2015,⁵ and, in March 2016, the Superior Court for the District of Columbia upheld the District Charter amendment.⁶

Before Home Rule, Congress was the legislature for the District, and a board of three Commissioners, appointed by the President, was the chief executive.⁷ One of the Commissioners was an officer in the U.S. Army Corps of Engineers, the so-called Engineer Commissioner. Under the 1878 statute that established the board, Congress also provided that the federal government would appropriate funds to meet half of the annual budget for the District; the other half would be met through local taxes.

Prior to Home Rule, Congressional management of District affairs could mean micromanagement that could frustrate and exasperate municipal government and actually delay progress in the development of a livable federal capital. For example, in the late 19th century, Congressional micromanagement of street lighting for the District ultimately delayed the placement of overhead wires for electric street lighting underground.

I. UNDERGROUNDING POWER LINES: THEN AND NOW

In May 2013, the Power Line Undergrounding Task Force for the District proposed to spend up to \$1 billion to place sixty high-voltage overhead power lines underground.⁸ In January 2014, the city council approved legislation to finance the proposal. The legislation survived Congressional review, and Congress appears to have no interest whatsoever in the undergrounding proposal.

In stark contrast, Congress micromanaged efforts in the late 19th century to underground power lines for the District's budding electric service. Congress imposed a prospective prohibition on overhead wires

⁴ Council of the District of Columbia v. Gray, 42 F. Supp. 3d (D.D.C. 2014).

⁵ Council of the District of Columbia v. Bowser, No. 14-7067 (D.C. Cir. May 27, 2015).

⁶ Council of the District of Columbia v. DeWitt, No. 14-CA-2371, slip op. (D.C. Super. Ct. March 18, 2016).

⁷ An act providing a permanent form of government for the District of Columbia, June 11, 1878, ch.180, 20 Stat. 102.

⁸ Government of the District of Columbia, Executive Office of the Mayor, Mayor's Power Line Undergrounding Task Force: Findings and Recommendations (May 2013).

for street lighting in 1888, but until 1900 did not clearly authorize the District to permit the undergrounding of overhead wires installed prior to 1888.⁹ In the twelve-year interim, the Commissioners agonized over their authority to permit the District's first electric company, U.S. Electric Lighting Company ("U.S. Lighting"), to underground pre-prohibition overhead wires. The interpretation of unclear federal law on the subject was "a source of great trouble" to the District.¹⁰

The lack of a clear Congressional authorization for the Commissioners to permit undergrounding resulted in the arrest of the president of U.S. Lighting for installing overhead wires.¹¹ It also resulted in a District lawsuit to force the company to pull down wires that had replaced pre-prohibition wires.¹² Ultimately, and by the turn of the century, Congress clarified the authority of the Commissioners to permit undergrounding.

II. DISTRICT BUDGETS FOR STREET LIGHTING

Each year, prior to Home Rule, Congress prepared and approved, in an appropriations act, a budget for the District. In the late 19th century, those budgets included funds for street and park lighting. In 1878, when Congress established the board of Commissioners,¹³ Washington Gas Light Company ("Washington Gas") provided such lighting. Electric street lighting was not yet available. Within four years, however, that would change. U.S. Lighting, the District's first electric company, was organized in November 1882.¹⁴ The company held patents for arc lighting, invented by Mr. Weston and suited to outdoor lighting, as well as for incandescent lighting, invented by Mr. Maxim and suited for indoor lighting.¹⁵ Upon the organization of U.S. Lighting, the *Washington Post* reported that "it is expected most of our principal

⁹ Act of March 3, 1899, ch. 422, 30 Stat. 1045.

¹⁰ Ann. Rep. of the Commissioners of the District of Columbia for the Year Ended June 30, 1897, H.R. DOC. NO. 7, 55th Cong., 2d Sess. 28.

¹¹ *Tread By the Police; All Day They Waited on the Linemen to Come Down; Arrested and Taken to Court*, WASH. POST, March 7, 1896, at 12.

¹² *District Goes to Law; Suit to Compel Electric Company to Remove Wires*, WASH. POST, Jan. 23, 1897, at 12.

¹³ An act providing a permanent form of government for the District of Columbia, June 11, 1878, ch.180, 20 Stat. 102.

¹⁴ *The Electric Light; A New Company Formed - Its Plans and Prospects*, WASH. POST, Nov. 10, 1882, at 4.

¹⁵ The United States Electric Lighting Company and the Maxim Electric Light and Power Company, Arc and Incandescent Systems, Illustrated Catalogue (1882), at 4.

stores and thoroughfares will be brilliantly illuminated.”¹⁶

The *Post* welcomed the prospect of outdoor arc lighting, which already was available in several major U.S. cities. “The United States arc light has been adopted for street illumination in New York, Philadelphia, Boston, Chicago and nearly all other important cities except Washington, which alone adheres to the Rip Van Winkle system of poor street lamps.”¹⁷

U.S. Lighting proposed to provide arc lighting along Pennsylvania Avenue, but in May 1884 the Commissioners rejected the proposal and advised the company that the price was “about double that of gas.”¹⁸ The following October, U.S. Lighting proposed to replace 100 gas lights with 20 electric lights and to provide arc lighting along Pennsylvania Avenue for free.¹⁹

The company explained that the limited District budget for street lighting “from a commercial point of view would render street lighting by electricity an impossibility.”²⁰ The stockholders of U.S. Lighting, however, were “among the largest real estate owners” in the District.²¹ The company reasoned that free street lighting would “improve and beautify the city and enhance the value of real estate.”²² Surprisingly, the Commissioners rejected the offer.

III. OVERHEAD VS. UNDERGROUND WIRES

Annual congressional appropriations for the District appeared to reflect a gradual acceptance of electric street lighting. This apparent acceptance, however, was accompanied by a general concern with the safety of overhead wires and poles. Eventually, Congress imposed a prohibition on overhead wires.²³ It also directed the Commissioners to investigate the possibility of undergrounding overhead wires installed prior to the prohibition.

¹⁶ WASH. POST, Nov. 10, 1882, *supra* note 14, at 4.

¹⁷ *Electric Lighting; Abolishing Gas in The Post and Republican Offices*, WASH. POST, July 13, 1883, at 4.

¹⁸ *City News in Brief*, WASH. POST, May 17, 1884, at 4.

¹⁹ *Street Lighting by Electricity; The United States Company Submit a Proposition to the Commissioners*, WASH. POST, Oct. 24, 1884, at 1.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Act of July 18, 1888, ch. 676, 25 Stat. 314 (making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1889, and for other purposes).

The District budget for street lighting for (fiscal year) 1887 was \$100,000,²⁴ but the appropriations act provided that up to \$10,000 could be used for electric lighting. For 1888, Congress approved a District budget for street lighting of \$120,000 but allowed up to \$20,000 to be used for electric lighting.²⁵

The appropriations act for 1889, for the first time, included a specific budget of \$30,000 for electric street lighting.²⁶ The budget for gas street lighting, however, was \$105,000.²⁷ The act also established a price cap for electric street lighting of fifty cents per electric light per night.²⁸

Finally, the appropriations act imposed a prohibition on the installation of overhead wires effective September 15, 1888. Congress authorized the Commissioners, through March 1889, to permit overhead wires installed prior to September 15, 1888 to be undergrounded.

The specific budget for electric street lighting included a directive for the Commissioners to report to Congress on the “best method” of undergrounding pre-prohibition overhead wires. The report was to include a discussion of underground conduit within which to place those electric wires.²⁹

In December 1888, the Commissioners submitted to Congress the report of the Engineer Commissioner on the undergrounding of overhead wires.³⁰ The report surveyed the state of the art for undergrounding wires used for telegraphs, for telephones, for arc lighting, for incandescent lighting, and for electric streetcars. The Engineer Commissioner concluded that “there is, in my opinion, no reason why every electric-light current in Washington should not be conducted under ground within a year from the present time.”³¹

The report discussed the advantages and disadvantages of various underground conduits for electric wires. It also explained that the conduit could be constructed by the District and rented to electric

²⁴ Act of July 9, 1886, ch. 757, 24 Stat. 130 (making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1887, and for other purposes).

²⁵ Act of Mar. 3, 1887, ch. 389, 24 Stat. 571 (making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1888, and for other purposes).

²⁶ Act of July 18, 1888, *supra* note 23, 25 Stat. at 320.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Report of the Engineer Commissioner of the District of Columbia on the Subject of Removing Electric Wires From the Air or Surface of the Streets and Placing the Same Underground, S. MISC. DOC. NO. 15, 50th Cong., 2d Sess. (1889).

³¹ *Id.* at 10.

companies, constructed by a private company and rented to electric companies, or constructed by the electric companies themselves. The report concluded that “each electrical company should be authorized or required to construct and maintain its own underground system” subject to various conditions imposed by the Commissioners.³²

By this time, U.S. Lighting already had undertaken efforts to underground overhead wires for street lighting. In its annual report to Congress for (fiscal year) 1889, the Commissioners reported that U.S. Lighting had undergrounded fourteen miles of overhead wires for arc lighting.³³

For 1890, Congress raised the District budget for electric street lighting to \$40,000.³⁴ Congress also revised the price cap. Finally, Congress again imposed a prospective prohibition on the installation of overhead wires and authorized the Commissioners, through March 1891, to permit pre-prohibition overhead wires to be undergrounded “whenever in their judgment the public interest may require the exercise of such authority.”³⁵

In its report to Congress for 1890, the Commissioners observed “there has been considerable activity in getting overhead wires underground in the streets and avenues.”³⁶

IV. D.C. ELECTRICAL COMMISSION

For 1891, Congress approved a District budget of \$46,000 for electric street lighting, maintained the price cap, and prohibited overhead wires.³⁷ Conspicuously absent was an authorization for the Commissioners to permit the undergrounding of pre-prohibition overhead wires.³⁸

Congress also authorized the President to appoint a commission of

³² *Id.* at 20.

³³ Ann. Rep. of the Commissioners of the District of Columbia for the Year Ended June 30, 1889, H.R. EXEC. DOC. NO. 1, PT. 6, 51ST Cong., 1st Sess. 21 (1889).

³⁴ Act of Mar. 2, 1889, ch. 370, 25 Stat. 793 (making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1890, and for other purposes).

³⁵ 25 Stat. at 804.

³⁶ Ann. Rep. of the Commissioners of the District of Columbia for the Year Ended June 30, 1890, H.R. EXEC. DOC. NO. 1, PT. 7, 51ST Cong., 2d Sess. 18 (1890).

³⁷ Act of Aug. 6, 1890, ch. 724, 26 Stat. 293 (making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1891, and for other purposes).

³⁸ *See generally id.*

electrical engineers, including an engineer from the Army Corps of Engineers, to “consider the location, arrangement and operation of electrical wires in the District of Columbia, whether used, or to be used, for electric lighting, transmission of power, telegraphy, telephony, or signaling, with a view to securing, as soon as practicable, the construction of a safe and convenient system of conduits or subways, the placing therein of all necessary electrical wires along the streets, avenues and other public spaces, and the removal of all unused overhead wires and their supports.”³⁹

The commission was to report to Congress, by December 1, 1891, with recommendations for (i) a system of underground conduit for electrical wires; (ii) private or public ownership of the conduit; (iii) the construction, location, operation and maintenance of underground electrical wires; (iv) restrictions on currents carried by the electrical wires; and (v) the use of overhead wires.⁴⁰ Congress appropriated \$10,000 for the work of the electrical commission.⁴¹

In its report to Congress for 1890, the Commissioners observed that the electrical commission had been formed and stated that “the results of its deliberations are awaited by the Commissioners in the hope that this important issue may be satisfactorily settled.”⁴²

The appropriations act for fiscal year 1892 included an increase in the budget for electric street lighting to \$59,500, revised the price cap, and again prohibited overhead wires.”⁴³ The appropriations act also directed the electrical commission to include in its report recommendations for “the safe and efficient wiring of public and private buildings, for all electrical purposes.”⁴⁴

Finally, the appropriations act provided that, until Congress acted on the final report of the electrical commission (or until April 1, 1892), the Commissioners could permit up to five miles of overhead wires to be undergrounded.⁴⁵

The electrical commission submitted its report in October 1891.⁴⁶

³⁹ 26 Stat. at 304.

⁴⁰ 26 Stat. at 304-305.

⁴¹ 26 Stat. at 305.

⁴² Ann. Rep. of the Commissioners of the District of Columbia for the Year Ended June 30, 1890, H.R. EXEC. DOC. NO. 1, PT. 7, 51st Cong., 2d Sess. 18 (1890).

⁴³ Act of Mar. 3, 1891, ch. 546, 26 Stat. 1062, 1069 (making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1892, and for other purposes).

⁴⁴ 26 Stat. at 1073.

⁴⁵ 26 Stat. at 1073.

⁴⁶ Report of the Electrical Commissioners Appointed to Consider the

The commission concluded, in particular, that overhead electric wires in cities are “objectionable” and that underground wires are practicable.⁴⁷ The commission observed that U.S. Lighting “from being a strenuous opponent, has become a strong advocate of underground wiring.”⁴⁸ The commission also recommended that the District establish a permanent electric bureau to supervise all electric work and to enforce rules and regulations for the construction and use of electric wires, poles and underground conduit.⁴⁹

Though New York City used wrought-iron or cast-iron conduit, the electrical commission concluded that glazed vitrified clay conduit, with multiple (four to sixteen) ducts for different types of wires, would be appropriate for the District.⁵⁰ The commission recommended municipal ownership of the conduit, which would be leased to electric, telegraph, and telephone companies and used for police and fire alarms.⁵¹

A map prepared by the Engineering Commissioner in September 1891 indicated that the District had 5291 gas lamps and 321 electric lights for street lighting. The federal government also maintained 316 gas lamps and 434 oil lamps.⁵²

In its report to Congress for 1891, the Commissioners reported that “the dangerous condition of many . . . poles of the various electric systems in the District, in which wooden poles are used, emphasize the importance of placing all wires so supported under ground.”⁵³ The report made no specific recommendation, however, “as the subject of adopting a permanent policy with regard to the arrangement . . . of electric wires and their supports in the public places has been referred by Congress to a special commission.”⁵⁴

The report observed that the electrical commission had submitted its report to Congress but that Congress had not acted on that report. However, “the need of an extensive increase in the electric wires of the city, and the necessity of removing the same from poles on highways,

Location, Arrangement and Operation of Electric Wires in the District of Columbia, H.R. EXEC. DOC. NO. 15, 52nd Cong., 1st Sess. (1892).

⁴⁷ *Id.* at 19.

⁴⁸ *Id.* at 7.

⁴⁹ *Id.* at 19.

⁵⁰ *Id.* at 13, 20.

⁵¹ *Id.* at 19-20.

⁵² Ann. Rep. of the Commissioners of the District of Columbia for the Year Ended June 30, 1891, H.R. EXEC. DOC. NO. 1, PT. 7, 52nd Cong., 1st Sess., Statistical Map No. 7 Showing the Location of Street Lamps (1891).

⁵³ *Id.* at 9.

⁵⁴ *Id.*

needs only to be mentioned to show that early action in the matter is called for.”⁵⁵

V. AUTHORIZATIONS FOR UNDERGROUNDING

In its annual appropriations acts for the District, Congressional permission for the Commissioners to permit undergrounding of overhead wires installed prior to September 15, 1888 became unclear over time.

For 1889 and 1890, Congress prohibited the installation of overhead wires but authorized the Commissioners, for limited periods of time, to permit pre-prohibition wires to be undergrounded. For 1891, Congress prohibited overhead wires, but did not specifically authorize the Commissioners to permit undergrounding. In effect, Congress for 1891 thus appeared to impose a moratorium on undergrounding.⁵⁶ For 1892, Congress again prohibited overhead wires but authorized the Commission, until Congress acted on the final report of the Electrical Commission, to permit up to five miles of overhead wires to be undergrounded. Thus, Congress appeared to partially lift the moratorium on undergrounding.

Thereafter, Congress continued to prohibit overhead wires but did not authorize the Commissioners to permit undergrounding of pre-prohibition overhead wires.⁵⁷ Whether by oversight or deliberate omission, the absence of such authorizations in the annual appropriations acts appeared to generate considerable doubt and confusion over the authority of the District to permit undergrounding of such wires. Indeed, the absence of such authorizations appeared to raise a presumption that Congress again had imposed a moratorium on undergrounding.

After April 1892, the Commissioners hesitated to authorize undergrounding of pre-prohibition overhead wires until Congress acted on the final report of the Electrical Commission.⁵⁸ However, a legal

⁵⁵ *Id.* at 17.

⁵⁶ *The District Rulers; Some of the Matters Brought Before the Commissioners Yesterday*, WASH. POST, Jan. 25, 1891, at 3.

⁵⁷ *See, e.g.*, Act of July 14, 1892, ch.171, 27 Stat. 150 (making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1893, and for other purposes); Act of Mar. 3, 1893, ch.199, 27 Stat. 537 (making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1894, and for other purposes).

⁵⁸ *Capt. Lusk's Opinion; The United States Electric Light Company Cannot*

opinion prepared for the Commissioners by the Attorney for the District in July 1892 concluded that the Commissioners could in fact authorize undergrounding without a Congressional authorization.⁵⁹

To resolve the confusion, Congressman William H. Crain (D-TX), in May 1892, introduced a bill to authorize the Commissioners to permit undergrounding.⁶⁰ The bill, H.R. 8504,⁶¹ was never enacted. The House Committee on the District of Columbia, however, issued a report on the bill and urged its enactment.

The act of March 3, 1891 . . . authorized the Commissioners, after the 1st day of April, 1892, to grant permits for the additional construction of conduits, at least to the extent of all overhead wires owned by [U.S. Lighting]. But inasmuch as the Commissioners appear to have refused permits to place said wires underground, and inasmuch as without further legislation any additional extension of the system of electric lighting seems impossible, your committee recommend the passage of House bill No. 8504.⁶²

In its report to Congress for 1892, the Commissioners reported that Congress had not yet taken action “for the further placing of electric wires underground.”⁶³ The Commissioners recommended the enactment of a law that would require all pre-prohibition overhead electric wires to be placed underground.⁶⁴

In 1893, the Commissioners continued to doubt their authority to permit undergrounding.⁶⁵ Thus, the Commissioners invited legal briefs on the subject. A legal opinion prepared for the Commissioners by the Attorney for the District concluded that it could authorize

Lay Conduits; Pending Action by Congress, WASH. POST, March 2, 1891, at 3; *District Government Notes*, WASH. POST, May 24, 1892, at 2.

⁵⁹ *Turn on the Light, The U.S. Electric Lighting Company Likely to Win in Its Contest*, WASH. POST, July 2, 1892, at 5.

⁶⁰ *Overhead Wires Must Go*, WASH. POST, May 3, 1892, at 8.

⁶¹ H.R. 8504, 52nd Cong., 1st Sess. (1892).

⁶² H.R. REP. NO. 1629, 52nd Cong., 1st Sess. 2 (1892).

⁶³ Ann. Rep. of the Commissioners of the District of Columbia for the Year Ended June 30, 1892, H.R. EXEC. DOC. NO. 1, PT. 7, 52nd Cong., 2d Sess. 13 (1892).

⁶⁴ *Id.*

⁶⁵ *Anent Underground Wires; The Commissioners Doubtful of Their Power to Grant Permits Under the Law*, WASH. POST, March 17, 1893, at 2.

undergrounding if required in the public interest.⁶⁶ The opinion reviewed the District appropriations acts for the last several years and observed that “it thus appears to be the unmistakable policy of Congress that electric wires shall go underground.”⁶⁷

The Attorney further concluded that “I do not believe it was the intention of Congress to delay the extension of wires for electric lighting beyond the time the electrical commission should report, or at most beyond April 1, 1892.”⁶⁸

In their report to Congress for 1893, the Commissioners reported that U.S. Lighting utilized underground wires as well as overhead wires.⁶⁹ “The Commissioners believe that all wires should go underground.”⁷⁰ The Commissioners also reported that the District had approximately 3,000 gaslights and 300 electric arc lights.⁷¹

VI. PRE-PROHIBITION OVERHEAD WIRES

Despite two separate legal opinions prepared by the Attorney for the District, the Commissioners continued to doubt their authority to permit undergrounding of overhead wires installed prior to September 15, 1888. Prior to that date, U.S. Lighting had 50 miles of overhead wires. By 1892, it had undergrounded 35 miles but still had 15 miles of overhead wires.⁷²

In 1893, U.S. Lighting requested from the Commissioners a permit to replace aging poles for overhead wires along a District thoroughfare. A legal opinion on the request recommended that the permit be denied and that the company be required to underground those wires.⁷³ The opinion stated that overhead wires are unsightly and a menace to life and property and “contrary to the policy of Congress that [electric wires] should be placed underground.”⁷⁴ The *Post* observed that the opinion “might be considered as an indication that the system of stretching wires

⁶⁶ *Electricity Versus Gas; Attorney Thomas Says Electric Wires May Be Extended; What Congress Intended*, WASH. POST, June 2, 1893at 5.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Ann. Rep. of the Commissioners of the District of Columbia for the Year Ended June 30, 1893, H.R. EXEC. DOC. NO. 1, PT. 7, 53rd Cong., 1st Sess. 11 (1893).

⁷⁰ *Id.*

⁷¹ *Id.* at 12.

⁷² H.R. REP. NO. 1629, *supra* note 62, at 2.

⁷³ *Poles Are Dangerous: A Long-Standing Menace to Safety in a Fair Way to Be Removed*, WASH. POST, Dec. 13, 1893, at 8.

⁷⁴ *Id.*

overhead for lighting and power purposes will soon be relegated to a position among the ‘has-beens’ as far as the city of Washington is concerned.”⁷⁵

In its report to Congress for 1894, the Commissioners reported that U.S. Lighting had replaced aging poles for pre-prohibition overhead wires with “new, stronger and longer poles” and had undertaken to make those wires “more permanent.”⁷⁶ Recognizing that aging poles for pre-prohibition overhead wires posed a hazard, the Commissioners requested that Congress expand the police powers of the District to control the maintenance and erection of such poles.⁷⁷

For 1895, Congress reduced the District budget for electric street lighting to \$47,600 and reduced the price cap.⁷⁸ Like the appropriations acts for 1893 and 1894, Congress did not – whether by oversight or deliberate omission – authorize the Commissioners to permit undergrounding of pre-prohibition wires. In their report to Congress for 1895, the Commissioners reported that the District had 338 arc lights.⁷⁹

For 1896, Congress appropriated a District budget for electric street lighting of \$47,600 and maintained the price cap.⁸⁰ Again, Congress did not authorize the Commissioners to permit undergrounding.

In their report to Congress for 1896, the Commissioners observed that “the difficulty and delay encountered in carrying on the arc-lighting service accentuate the necessity of a comprehensive system of public subways for [underground] electric wires.”⁸¹ The report also stated that “the necessity for burying wires was made still more evident by the severe storm of September last year that completely disabled the entire system of overhead wires for longer or shorter periods.”⁸²

⁷⁵ *Id.*

⁷⁶ Ann. Rep. of the Commissioners of the District of Columbia for the Year Ending June 30, 1894, H.R. EXEC. DOC. NO. 1, PT. 7, 53rd Cong., 2d Sess. 16 (1894).

⁷⁷ *Id.*

⁷⁸ Act of Aug. 7 1894, ch. 232, 28 Stat. 243 (making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1895, and for other purposes).

⁷⁹ Annual Report of the Commissioners of the District of Columbia for the Year Ended June 30, 1895, H.R. DOC. NO. 7, 54th Cong., 1st Sess. 16 (1895).

⁸⁰ Act of Mar. 2, 1895, ch. 176, 28 Stat. 744 (making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1896, and for other purposes).

⁸¹ Ann. Rep. of the Commissioners of the District of Columbia for the Year Ending June 30, 1896, H.R. DOC. NO. 7, 54th Cong., 2d Sess. 22 (1896).

⁸² *Id.*

VII. ARREST AND LAWSUIT

The drama over street lighting and overhead wires culminated in an arrest and lawsuit in the Spring of 1896. On May 6, under cover of darkness, U.S. Lighting erected a new pole along a District thoroughfare. That morning, linemen for the company climbed the pole to transfer pre-prohibition wires from an old pole. "The police wanted the men to come down and be arrested, but the men couldn't see it that way, so they remained on the cross-arms, forty feet in the air, from early in the morning until the middle of the afternoon. At noon dinners were sent to the men along a telephone wire from the Corcoran Building."⁸³

The president of U.S. Lighting, A.A. Thomas, directed the men to not obey the police. Thereupon the police arrested Mr. Thomas and charged him with installing overhead wires in violation of the Congressional prohibition on such wires. The linemen transferred the wires to the new pole and when they came down the pole, were arrested.

The *Post* explained that "the law against putting up new wires and new poles is planned to eventually drive all of the wires under ground, and much depends on the outcome of the present case."⁸⁴

The Commissioners were intent on criminal prosecution of Mr. Thomas.⁸⁵ That prosecution, however, went "way beyond the question of the right to replace poles, and has gone into a general discussion of the rights of the electric light companies to branch out in various directions."⁸⁶

In addition to the criminal prosecution of Mr. Thomas, the Commissioners directed the police to order U.S. Lighting to stop placing overhead wires in underground conduit without a District permit.⁸⁷ U.S. Lighting prepared to contest the police order in court and filed for an injunction to prevent police interference with work to provide the Bureau of Engraving and Printing with electric service for 602 lights.⁸⁸ The Commissioners rescinded the police order, however, to the extent

⁸³ *Treed By the Police; All Day They Waited on the Linemen to Come Down; Arrested and Taken to Court*, WASH. POST, March 7, 1896, at 12.

⁸⁴ *Id.*

⁸⁵ *Thomas Must Suffer; Commissioners Bent Upon Securing His Conviction*, WASH. POST, March 8, 1896, at 12.

⁸⁶ *Conduits Against the Law; Maj. Powell Says Permits Were Issued Improperly*, WASH. POST, March 19, 1896, at 2.

⁸⁷ *Now Watching the Wires; Police Have Orders to Prevent Putting Them Through Conduits*, WASH. POST, March 10, 1896, at 10.

⁸⁸ *Right to Lay Wires; The Electric Company Wins Its Claim In a Walk*, WASH. POST, March 7, 1896, at 10.

required to permit the company to provide electric service to the Bureau. Thus, the suit for an injunction was dismissed.⁸⁹

In the meantime, U.S. Lighting complained to Congress that the Commissioners enforced the prohibition on overhead wires but appeared reluctant to permit the company to underground pre-prohibition overhead wires. For example, in a hearing before a Senate Committee on the District's electric service, U.S. Lighting reported that it had 44 miles of underground wires and just 4 miles of overhead wires.⁹⁰ It claimed that, since Congress imposed the prohibition on the installation of overhead wires in 1888, U.S. Lighting "was the first in the whole United States to voluntarily put its wires underground."⁹¹

VIII. LIMITED AUTHORIZATION FOR UNDERGROUNDING

In the District appropriations act for 1897, Congress authorized the Commissioners to permit limited undergrounding. The limited undergrounding, however, frustrated efforts to underground all remaining pre-prohibition overhead wires.

Congress approved a District budget of \$50,000 for electric street lighting and revised the price cap.⁹² Congress again prohibited overhead wires. Finally, Congress authorized the Commissioners to permit U.S. Lighting to underground new wires in three specific District neighborhoods. Those neighborhoods, however, did not include F Street, "one of the most congested business thoroughfares of the city."⁹³

In October, U.S. Lighting advised the Commissioners that it was anxious to underground pre-prohibition overhead wires along F Street.⁹⁴ The 1897 appropriations act, however, had authorized the Commissioners to permit undergrounding in three District neighborhoods but not along F Street. In a legal opinion, the Attorney for the District thus concluded that the Commissioners were not authorized to permit F Street undergrounding without a Congressional

⁸⁹ *District Pays the Cost; The Electric Light Company's Injunction Suit Formally Dismissed*, WASH. POST, March 13, 1896, at 7.

⁹⁰ *Rival Light Venders; Electric Companies Argue Before Senate Committee*, WASH. POST, April 9, 1896, at 9.

⁹¹ *Id.*

⁹² Act of June 11, 1896, ch. 419, 29 Stat. 393 (making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1897, and for other purposes).

⁹³ *All Wires Under Ground; United States Electric Company Asks Privilege of Completing Work*, WASH. POST, Oct. 17, 1896, at 12.

⁹⁴ *Id.*

authorization.⁹⁵ The opinion reasoned that, although Congress consistently had prohibited overhead wires, the Commissioners could not permit the undergrounding of all remaining pre-prohibition overhead wires until Congress “formulated and adopted” a plan in response to the October 1891 final report of the Electrical Commission.⁹⁶

In March 1897, the Commissioners filed a lawsuit against U.S. Lighting to compel the company to pull down recently installed overhead wires along C Street.⁹⁷ The recently installed wires were replacements for pre-prohibition wires.⁹⁸

U.S. Lighting refused to pull down the wires and argued that it had not installed overhead wires since September 15, 1888.⁹⁹ The company also argued that it had replaced and not undergrounded the C Street wires because the Commissioners had hesitated to permit the undergrounding of those wires.¹⁰⁰

The court agreed that no overhead wires had been installed since September 15, 1888 and dismissed the suit.¹⁰¹ The court also held that the company was not obligated, under the District appropriations acts for 1891 and 1892, to underground pre-prohibition wires.¹⁰² Those acts, the court reasoned, indicated that “Congress was experimenting” with undergrounding.¹⁰³

The Commissioners report to Congress for 1897 indicated that “the legislation relating to the extension of electrical systems . . . is vague in terms, and its interpretation has been a source of great trouble to the Commissioners. A definite law to govern the extension and control of all these electrical systems is urgently needed.”¹⁰⁴

For 1898, Congress appropriated \$55,000 for electric street

⁹⁵ *Stops Wire Conduits; Decision by Attorney Thomas in Electric Lighting; No Authority to Issue Permits*, WASH. POST, Nov. 14, 1896, at 11.

⁹⁶ *Id.*

⁹⁷ *May Pull Wires Down*, WASH. POST, Jan. 22, 1897, at 10.

⁹⁸ *District Goes to Law; Suit to Compel Electric Company to Remove Wires*, WASH. POST, Jan. 23, 1897, at 12.

⁹⁹ *Overhead Wires Litigation; Reply of the United States Company to the Commissioners' Suit*, WASH. POST, Jan. Feb. 6, 1897, at 9.

¹⁰⁰ *Id.*

¹⁰¹ *Wires Legally Strung; Injunction Against the United States Company Dissolved*, WASH. POST, Feb. 10, 1897, at 8.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Ann. Rep. of the Commissioners of the District of Columbia for the Year Ended June 30, 1897, H.R. DOC. NO. 7, VOL. 1, 55th Cong., 2d Sess. 1, 27-28, 29 (1897).

lighting.¹⁰⁵ Congress prohibited overhead wires and reduced the price cap.¹⁰⁶ The appropriations act also imposed a moratorium on undergrounding overhead wires “until Congress shall provide for an underground conduit system.”¹⁰⁷ The Commissioners could permit U.S. Lighting, however, to underground new wires in, and thus to provide electric service to, the specific District neighborhoods referenced in the District appropriations act for 1897.

In May 1897, U.S. Lighting Company undergrounded overhead wires along Pennsylvania Avenue.¹⁰⁸ The Commissioners report to Congress for 1898 made no mention of overhead wires or undergrounding but observed that the dense foliage of the District undermined the effectiveness of street lighting.¹⁰⁹

IX. CARTE BLANCHE FOR UNDERGROUNDING

As the 19th century drew to a close, Congress finally clarified the authority of the Commissioners to permit undergrounding of pre-prohibition overhead wires. In the appropriations act for 1899, Congress appropriated \$60,000 for electric street lighting, prohibited overhead wires, and retained the price cap.¹¹⁰ The act also authorized the Commissioners to permit the undergrounding of overhead wires along several specific District thoroughfares. The commissioners report to Congress for 1899 reported that the District had 6,455 gas lamps and 658 arc lights along district streets and parks.¹¹¹

Finally, for 1900, Congress appropriated \$63,000 for electric street lighting, prohibited overhead wires, and retained the price cap.¹¹² In

¹⁰⁵ Act of March 3, 1897, ch. 387, 29 Stat. 665 (making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1898, and for other purposes).

¹⁰⁶ *Id.*

¹⁰⁷ *Senate Wins on Light; Final Adoption of District Appropriations Bill*, WASH. POST, March 4, 1897, at 4.

¹⁰⁸ *Light Up, Says Thomas*, WASH. POST, May 15, 1897, at 12.

¹⁰⁹ Ann. Rep. of the Commissioners of the District of Columbia for the Year Ended June 30, 1898, H.R. DOC. NO. 7, 55th Cong., 3rd Sess. 29 (1898).

¹¹⁰ Act of June 30, 1898, ch. 540, 30 Stat. 525 (making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1899, and for other purposes).

¹¹¹ Annual Report of the Commissioners of the District of Columbia for the Year Ended June 30, 1899, H.R. DOC. NO. 7, 56th Cong., 1st Sess. 23-24 (1899).

¹¹² Act of March 3, 1899, ch. 422, 30 Stat. 1045 (making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal

addition, the appropriations act authorized the Commissioners to permit “the repair, enlargement, [and] extension, under proper regulations” of underground conduit for power lines.¹¹³ This language appeared to represent *carte blanche* for the Commissioners to permit the undergrounding of all remaining overhead wires installed prior to September 15, 1888. Indeed, the Commissioners report to Congress for 1900 observed that U.S. Lighting “enjoy[s] unlimited privileges” to underground overhead wires and expand its electric service.¹¹⁴

In November 1899, U.S. Lighting undergrounded its remaining pre-prohibition overhead wires¹¹⁵ “The company has been engaged during the greater part of the past summer in laying conduits for the reception of the wires, and the task has been one of considerable magnitude.”¹¹⁶ Along F Street, businessmen delighted in the fact that “the unsightly electric light and telegraph poles and wires which lately disfigured that [street] were things of the past.”¹¹⁷

CONCLUSION

For over a decade, Congress failed to provide the District with clear authority to permit undergrounding of overhead wires installed prior to the 1888 prohibition on such wires. Limited authorizations for undergrounding were followed by no authorizations, which raised the presumption that Congress had imposed a moratorium on undergrounding. The failure of Congress consistently to authorize the Commission to permit undergrounding exasperated the District and delayed the ultimate undergrounding of power lines. Congressional micromanagement of District street lighting actually delayed progress toward a livable federal capital.

Fortunately, Congress has no interest whatsoever in the current proposal for power line undergrounding in the District. In the absence of Congressional micromanagement, this proposal, therefore, will proceed smoothly.

year ending June 30, 1900, and for other purposes).

¹¹³ 30 Stat. at 1045.

¹¹⁴ Ann. Rep. of the Commissioners of the District of Columbia for the Year Ended June 30, 1900, H.R. DOC. No. 7, 56th Cong., 2d Sess. 18 (1900).

¹¹⁵ *Wires Now In Conduits*, WASH. POST, Nov. 29, 1899, at 12.

¹¹⁶ *Id.*

¹¹⁷ *Should Use Conduits; Erection of Poles Is Legal But Not Advisable*, WASH. POST, June 22, 1900, at 12.

