

ORDER NO. 88999

IN THE MATTER OF THE APPLICATION OF
 TRANSOURCE MARYLAND LLC FOR A
 CERTIFICATE OF PUBLIC CONVENIENCE AND
 NECESSITY TO CONSTRUCT TWO NEW 230 KV
 TRANSMISSION LINES ASSOCIATED WITH THE
 INDEPENDENCE ENERGY CONNECTION
 PROJECT IN PORTIONS OF HARFORD AND
 WASHINGTON COUNTIES, MARYLAND

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BEFORE THE
 PUBLIC SERVICE COMMISSION
 OF MARYLAND

 CASE NO. 9471

Issue Date: January 15, 2019

On December 21, 2018, the Maryland Public Service Commission (“Commission”) issued a Notice of Opportunity to Respond to Power Plant Research Program, Department of Natural Resources’ (“PPRP”) Motion to Dismiss Without Prejudice or, In the Alternative, to Suspend the Schedule (“Motion”) regarding Transource Maryland LLC’s (“Transource”) Application for a Certificate of Public Convenience and Necessity (“CPCN”) to construct two new 230 kV transmission lines in Maryland associated with the Independence Energy Connection (“IEC”) Project in portions of Harford and Washington Counties, Maryland.¹ The Commission directed that responses to the Motion be filed by January 7, 2019.

A. PPRP’s Motion

In its Motion, PPRP alleges that Transource failed to carry out the predicate analysis required in section 7-209 of the Public Utilities Article (“PUA”), *Maryland Annotated Code*, which requires that:

¹ PPRP’s Motion was filed on December 20, 2018. ML# 223364.

- (a) The Commission shall examine alternatives to the construction of a new transmission line in a service area, including the use of an existing transmission line of another company, if:
 - (1) the existing transmission line is convenient to the service area; or
 - (2) the use of the transmission line will best promote economic and efficient service to the public.
- (b) In considering the use of an existing transmission line under subsection (a) of this section, the Commission need not consider whether the company that owns the line has a franchise in the service area.”

PPRP states that “Transource did not identify, nor did it provide the required examination under § 7-209 of the PUA of specific existing transmission lines as an alternative to building the new transmission line proposed by the Applicant.”²

PPRP asserts that “[a]fter substantial discovery, it is clear that there was no examination to consider an existing transmission line [in Harford County, Maryland] as an alternative for the eastern segment of the Project ... prior to filing the CPCN for the Project, even though the existing transmission lines appear likely to be both convenient to the service area and to best promote economic and efficient service to the public.”³ PPRP also asserts that in response to certain data requests, Transource’s responses indicate that the Applicant “is modifying its position as to the need for and benefits of the Project from a ... ‘market efficiency project’ to now asserting other benefits associated with emerging reliability concerns.”⁴

² PPRP Motion at 2.

³ *Id.* PPRP notes that during its review of the Project, PPRP became aware of two nearby existing double-circuit transmission tower lines that have only one 230 kilovolt (“kV”) circuit installed and which could carry a second 230 kV circuit on the existing structures. (PPRP Motion at 5.)

⁴ *Id.* (citing Transource’s responses to PPRP Data Requests 5, 6 and 7). PPRP suggests that with regard to the IEC-East (Harford County) project, there are other transmission line configurations using these existing tower lines that may not produce reliability concerns while providing regional benefits in a manner that minimizes the environmental and socioeconomic impacts to the State. (PPRP Motion at 6.)

PPRP submits that granting its Motion to dismiss the Application would allow Transource to refile an application after it has considered, and appropriately incorporated, the existing transmission lines in Harford County as an alternative to constructing an entirely new line through valuable natural resources and pastoral landscapes.⁵ Alternatively, PPRP requests that the Commission suspend the procedural schedule until such time as the Applicant files supplemental application materials that (1) provide a thorough examination with respect to utilizing the existing transmission lines in Harford County, and (2) provide evidence to support any other benefits of the Project that Transource will be asserting, including the capability of the Project, as compared with alternatives, to address reliability concerns.⁶

B. Responses in Support of PPRP’s Motion

The Commission’s Staff (“Staff”), Maryland Office of People’s Counsel (“OPC”), and Intervenors (Keith and Kristin Comer and Barron Shaw, Harford County and Harford County Council, STOP Transource Power Lines MD, Inc. (“STOP Transource”), Tony Tanner, Mary Beth Scott and Daniel John Scott), filed responses in support of PPRP’s Motion. Intervenors vigorously oppose the IEC East Project, asserting—among other things—that the protections of the State Preservation Easement are of paramount significance in this case and that Transource’s CPCN Application should be denied. STOP Transource adds that “[i]f, in fact, the existing towers can accommodate the IEC–East Project, thus avoiding its devastating impacts to

⁵ *Id.* at 3.

⁶ *Id.*

the members of STOP Transource and other individual property owners, they must be seriously considered.”⁷

1. Staff and OPC’s Response

In its response, Staff recommends that the Commission grant the Motion, suspend the procedural schedule, and direct Transource to supplement its application. Staff notes that although the text of PUA § 7-209 requires that the Commission examine alternatives to construction of a new transmission line, including the use of existing transmission lines regardless of whether a different company owns it, the statutory burden of production is upon the applicant to provide evidence supporting the approval of its CPCN application.⁸ Staff argues that in its Motion, PPRP has made a credible showing that a potential upgrade to the two existing transmission lines (in Harford County) in proximity to the proposed transmission lines could be an alternative to the construction of the IEC East Project.⁹ Additionally, Staff notes that given the significance of the issue of “transmission congestion and its costs,” Transource should be required to supplement the record with regard to both the market efficiency and reliability predicates (if that is the case) underlying the Project.¹⁰

OPC also supports PPRP’s Motion, in its entirety. OPC focuses on PPRP’s argument that “it appears that Transource may be changing its position that the Project is needed as the most effective market efficiency solution into an assertion that the project would also provide solutions to address PJM-identified ‘emerging reliability

⁷ STOP Transource Response at 2.

⁸ Staff Response at 5.

⁹ *Id.* at 6.

¹⁰ *See* Staff Response at 7.

concerns.”¹¹ Based on this, OPC argues that it is reasonable to assume that, without the relief sought in PPRP’s Motion, Transource will include *new* reliability analyses in its Rebuttal testimonies, allowing only very limited time for discovery.¹²

2. Transource’s Opposition

Transource filed a response in opposition (“Opposition”) to the Motion, asserting that the Motion is without merit and should be denied. Transource argues that the Applicant has satisfied all State filing requirements, including evaluation of alternative routes that included “the extensive consideration of paralleling existing transmission lines.”¹³ Transource notes that its Application in this case relies on a fulsome description of the PJM’s market efficiency analysis as part of the overall Regional Transmission Expansion Plan (RTEP) process, the evaluation of 41 different alternative projects (including ones utilizing existing transmission lines).¹⁴

Although Transource argues that it is not required to undertake an engineering study of PPRP’s *hypothetical* “Conceptual Alternative,” which it argues PPRP first introduced and requested in the course of discovery,¹⁵ Transource states that “as part of the work leading up to [PPRP’s certification], Transource studied over 30 study segments in its review consistent with Commission practice before PPRP certified the application as complete.”¹⁶ Transource argues that its Application includes substantial evidence for the Commission to carry out its obligation under § 7-209, including the consideration of existing transmission lines, and argues that “disputes over whether the Commission

¹¹ OPC Response at 4. “PJM” refers to PJM Interconnection, LLC.

¹² *Id.* at 4-5.

¹³ Transource Opposition at 8.

¹⁴ *Id.* at 2.

¹⁵ *Id.* at 20.

¹⁶ *Id.* PPRP certified Transource’s Application as “administratively complete” by filing an Updated Administrative Completeness Review on August 31, 2018. ML# 221938.

should consider an alternative are properly the subject of competing testimony at the evidentiary hearing.”¹⁷ Transource proffers that the Direct Testimony of Barry A. Baker explains, in detail, the alternative routes Transource evaluated and why the proposed route was chosen.¹⁸ Transource cites numerous references in its prefiled testimony purportedly addressing study, evaluation, or analysis of existing transmission line alternatives. Transource also argues that there is no basis to delay the procedural schedule as PPRP requests, and that PPRP and other parties will have ample opportunity to dispute the Applicant’s position that no suitable alternative exists during the course of the evidentiary hearings.

Finally, Transource asserts that it has not changed the need for the project from “market efficiency” to “reliability,” but notes that according to PJM, “the Project would alleviate an overload violation on the Peach Bottom-Conastone 500 kV line,” which Transource submits can be interpreted as “additional information regarding the effect of the Project on ‘the stability and reliability of the electric system.’”¹⁹

C. Commission Decision

Upon consideration of this matter, the Commission denies PPRP’s Motion to Dismiss Transource’s CPCN Application. PPRP’s motion to *wholly* suspend the procedural schedule also is denied. However, the Commission will modify the procedural schedule to allow the Parties the opportunity to conduct additional analysis or

¹⁷ *Id.* at 11. Citing *In the Matter of the Application of the Potomac Edison Company D/B/A Allegheny Power For a Certificate of Public Convenience and Necessity to Construct an Overhead 230 kV Transmission Line in Frederick County, Maryland*; the “*Urbana Loop* case, Transource acknowledges that “a CPCN applicant, as the party with the burden of proof, should be prepared to present evidence at the hearing to address any suggestions by other parties that the proposed project should be denied because there exists a clearly superior alternative.” *Id.* at 15.

¹⁸ *Id.* at 16; Application, Attachment A (“Baker Direct”) at 7-30.

¹⁹ *Id.* at 25.

discovery regarding the use of existing transmission lines (PPRP's Conceptual Alternative).

In response to PPRP's Motion, Transource acknowledges that as the CPCN applicant—the party with the burden of proof—it should be prepared to present evidence at the hearing to address any suggestions by other parties that the proposed project should be denied because there exists a clearly superior alternative. This criteria includes the existing transmission line evaluation requirements set forth in PUA § 7-209. Additionally, Transource should be prepared to address any additional information regarding the effect of the Project on the stability and reliability of the electric system that will assist the Commission in its consideration whether the project satisfies the criteria under PUA § 7-207.

Therefore, the Commission will grant in part PPRP's motion with regard to the procedural schedule and will extend the filing date an additional 30 days for the submission of PPRP, Staff, OPC and Intervenors' Direct Testimony.²⁰ In doing so, the Commission notes that PPRP represents multiple State agencies and plays an important role in CPCN proceedings as the State's expert witness. Thus, its input helps greatly in determining what is and is not in the public interest.

Although PPRP had previously determined that Transource's Application was complete, the Commission accepts that after reviewing the Applicant's responses to data requests PPRP now believes that supplemental information is needed to address the PUA § 7-209 requirement to examine existing transmission line routes. By permitting

²⁰ In the event that PPRP determine that more than 30 days is needed to supplement the record, it shall notify the Commission and the Parties of the additional time within 7 days of this Order. If necessary, the Commission will consider and address any follow up request by PPRP at that time.

additional time for discovery and analysis, PPRP will have the opportunity to evaluate the two existing lines identified for the IEC-East Project, and support the record necessary to ensure that this statutory provision is fully addressed.²¹

IT IS THEREFORE, this 15th day of January, in the year Two Thousand Nineteen, by the Public Service Commission of Maryland,

ORDERED: (1) That the Motion to Dismiss Without Prejudice is denied. PPRP's alternative motion to suspend is granted in part;

- (2) That the procedural schedule in this matter is modified as follows:
 - (a) Staff, PPRP, OPC, and Intervenors shall file direct testimony by February 25, 2019;
 - (b) All Parties shall file rebuttal testimony by March 18, 2019;
 - (c) All Parties' Surrebuttal Testimony and PPRP Reply to Public Comments (if needed) to be filed by April 1, 2019; and
 - (d) Live Rejoinder Testimony may be allowed among the parties (as needed) during the evidentiary hearings; and

(3) That other than the modifications made in Ordered Paragraph 2, the remainder of the procedural schedule remains unchanged.

By Direction of the Commission,

/s/ Terry J. Romine

Terry J. Romine
Executive Secretary

²¹ The extension of time to conduct additional analysis and discovery regarding existing transmission lines is not a finding by the Commission that the Commission views Transource's Application as incomplete. Unless specifically retracted, PPRP's certification of completeness remains in effect.