

ORDER NO. 89035

IN THE MATTER OF THE	*	BEFORE THE
APPLICATION OF THE POTOMAC	*	PUBLIC SERVICE COMMISSION
EDISON COMPANY FOR A	*	OF MARYLAND
CERTIFICATE OF PUBLIC	*	
CONVENIENCE AND NECESSITY TO	*	
REBUILD THE RINGGOLD-CATOCTIN	*	
TRANSMISSION LINE IN FREDERICK	*	
AND WASHINGTON COUNTIES,	*	
MARYLAND	*	CASE NO. 9470
	*	

Issue Date: February 15, 2019

On December 14, 2018, the Maryland Public Service Commission’s (“Commission”) Chief Public Utility Law Judge, Ryan C. McLean, entered a Proposed Order of Public Utility Law Judge (“Proposed Order”) granting The Potomac Edison Company’s (“Potomac Edison” “the Company”) Application for a Certificate of Public Convenience and Necessity (“CPCN”) to modify the Ringgold-Catoctin Transmission Line in Frederick and Washington Counties, Maryland, subject to conditions, including but not limited to the Commission Staff’s (“Staff”) Recommended Conditions: (1) Commission approval of the Transource MD Project (Case No. 9471) and all conditions associated with that approval; and (2) Pennsylvania Public Utility Commission (“PUC”) approval of the Transource Pennsylvania Project (Docket No. A-2017-2587821).¹

¹ Proposed Order at 32; Appendix B. Potomac Edison seeks a CPCN to rebuild an existing single-circuit 138 kilovolt (“kV”) transmission line to a single-circuit 230 kV transmission line, beginning at the Ringgold Substation near Smithsburg, Maryland and extending easterly 9.8 miles to the Catoctin Substation near Thurmont, Maryland (referred to as the “Ringgold-Catoctin Rebuild”).

1. Potomac Edison's Request for Clarification

Potomac Edison filed a Request for Clarification, or in the Alternative, Notice of Appeal on January 10, 2010.² In its Request for Clarification, Potomac Edison states that:

To the extent that Staff Condition No. 1 was intended to reflect that approvals of the Transource project in Maryland and Pennsylvania might be subject to conditions, and that the Ringgold-Catoctin Rebuild should only proceed if Transource (however conditioned) proceeds, then there is no problem. ... However, if the Judge was under the impression that Staff's intent was to require that any conditions ... either this Commission or the Pennsylvania Commission imposes on the Transource lines in either Pennsylvania or Maryland would be transferred to and also imposed on the Ringgold Catoctin Rebuild, the Company respectfully submits that was not Staff's intent, and that such a ... wholesale transfer of Pennsylvania and Maryland conditions on Transource to the Ringgold-Catoctin Rebuild would be unsound both procedurally and substantively.³

The Company also argues that Staff Condition No. 1 is inconsistent with PPRP Condition No. 2, which states that the "Project shall only be constructed after the Maryland Public Service Commission (PSC) grants a final order, which is not stayed on appeal, for a Certificate of Public and Convenience (CPCN) for the Transource Maryland Independence Energy Connection Project."⁴

Potomac Edison insists that "a blind transfer" of future Transource conditions onto the Ringgold-Catoctin Rebuild CPCN would produce "unnecessary and pernicious results," or create an impossible situation wherein the Ringgold-Catoctin Rebuild would be required to meet conditions that are inconsistent with each other.⁵ Finally,

² Potomac Edison Request for Clarification, ML# 223564.

³ *Id.* at 2.

⁴ *Id.* at 3.

⁵ *Id.* at 4.

Potomac Edison believes that PPRP Condition No. 2 was intended to, “and did,” supersede Staff Condition No. 1, except “everyone agreed with Staff’s concepts that Pennsylvania’s approval of the Transource, not just Maryland’s is an appropriate condition.”⁶

2. Staff and OPC’s Response

In response to the Company’s Request for Clarification, Staff and Maryland Office of People’s Counsel (“OPC”) insist that there is no actual controversy, Staff asserting that “the plain language of the Proposed Order clearly expresses the agreement and intention of the parties.”⁷ While Staff believes that revision of the Proposed Order would risk setting a bad precedent allowing parties to second guess their own prior agreements, Staff does not disagree with Potomac Edison’s proposed revision in this case.⁸ OPC argues that Staff Condition No. 1 is clear and does not need to be amended.⁹

3. Commission Decision

During the course of the hearings, the Company acknowledged its agreement with “all the conditions proposed by PPRP and Staff.”¹⁰ However, it is clear that the parties intended that PPRP Condition No. 2 and Staff Condition No. 1 would be viewed as consistent, requiring that the Ringgold-Catoctin Rebuild project should be *contingent*

⁶ *Id.*

⁷ Staff Reply Memorandum, ML# 223876 at 3; OPC Reply Memorandum, ML# 223935 at 3.

⁸ Staff Reply Memorandum at 4.

⁹ OPC Reply Memorandum at 5.

¹⁰ *See* November 7, 2018 Hearing Transcript, p. 5.

upon Maryland PSC and Pennsylvania PUC approval of Transource’s CPCN applications for the respective Maryland and Pennsylvania portions of the Transource Project. In an effort to reflect the parties’ understanding, the Proposed Order adopted both PPRP Condition No. 2 and Staff Condition No. 1. Adopting both conditions, however, gave rise to the confusion that Potomac Edison requests the Commission clarify. PPRP Condition No. 2 only applies to Transource Project approval by the Maryland Commission. However, it is silent with regard to any requirement of Pennsylvania Public Utility Commission (“PUC”) approval. While, Staff Condition No. 1 requires Transource Project approval by both the Maryland PSC and Pennsylvania PUC as a condition for the Ringgold-Catoctin Rebuild Project, Staff’s condition is overbroad in suggesting that the Ringgold-Catoctin Rebuild CPCN approval should require the Project’s compliance with additional conditions imposed by the Maryland and Pennsylvania Commissions with regard to the respective portions of the Transource Project.

OPC is concerned that delay in the in-service date (voluntarily or otherwise) with regard to the Transource Project could delay or completely eliminate the need for the Ringgold-Catoctin Rebuild Project, and result in unnecessary construction or pre-construction costs.¹¹ Potomac Edison, however, has committed that it will minimize, to the extent possible, all construction activities related to the Ringgold-Catoctin Rebuild Project before the construction of the Transource Project is approved.¹²

¹¹ OPC Reply Memorandum at 4.

¹² *See* November 7, 2018 Hearing Transcript, p. 36.

In order to avoid confusion with regard to the Company's requirements in relation to the Transource Project, the Commission will strike the words "**and all conditions associated with that approval**" in Staff Condition No. 1 as that phrase relates both to (i) Commission approval of the Transource Maryland Project (Case No. 9471) and (ii) Pennsylvania PUC approval of the Transource Pennsylvania Project (Docket No. A-2017-2587821). Accordingly, the Commission hereby modifies Appendix B as referenced in Ordering Paragraph No 2 of the Proposed Order of the Public Utility Law Judge (containing Staff Condition No. 1) as discussed herein. Revising Staff Condition No. 1 does not in any way relieve Potomac Edison of its commitment to minimize construction activities related to the Ringgold-Catoctin Rebuild Project before construction of the Transource Project is approved.

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

ORDERED: (1) That Potomac Edison's Request for Clarification is hereby granted. Staff Condition No. 1, as referenced in Ordering Paragraph No. 2, and as set forth in Appendix B to the Proposed Order of the Public Utility Law Judge in its matter, is hereby modified to strike the words "**and all conditions associated with that approval**" in Staff Condition No. 1 as that phrase relates both to (i) Commission approval of the Transource Maryland Project (Case No. 9471) and (ii) Pennsylvania Public Utility Commission approval of the Transource Pennsylvania Project (Docket No. A-2017 2587821).

(2) That the Proposed Order of Public Utility Law Judge granting The Potomac Edison Company's Application for a Certificate of Public Convenience and

Necessity to modify the Ringgold-Catoctin Transmission Line in Frederick and Washington Counties, Maryland, subject to conditions set forth in the Proposed Order, as modified, is hereby affirmed.

/s/ Jason M. Stanek _____

/s/ Michael T. Richard _____

/s/ Anthony J. O'Donnell _____

/s/ Odogwu Obi Linton _____

Commissioners*

*Commissioner Mindy L. Herman did not participate in the Commission's decision on this matter.