

ORDER NO. 90684

Potomac Edison Company's
Application for a Certificate of Public
Convenience and Necessity to Rebuild
Doubs-Goose Creek Transmission
Line

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BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

CASE NO. 9669

ORDER DENYING APPEAL

Before: Jason M. Stanek, Chairman
Michael T. Richard, Commissioner
Anthony J. O'Donnell, Commissioner
Odogwu Obi Linton, Commissioner
Kumar P. Barve, Commissioner¹

Issued: June 27, 2023

¹ Commissioner Barve is not participating in this Order.

I. SUMMARY

1. This Order addresses an appeal to the Commission by the Maryland Office of People’s Counsel (“OPC”) (“the Appeal”), from the Proposed Order entered by the Chief Public Utility Law Judge (“Chief PULJ” or “PULJ”) in the above-captioned matter granting a Certificate of Public Convenience and Necessity (“CPCN”) to The Potomac Edison Company (“Potomac Edison” or “the Company”) to rebuild the transmission line described in the Company’s August 3, 2021 Application.

2. For reasons discussed below, OPC’s Appeal is denied. However, anticipating the ongoing need to upgrade aging transmission infrastructure within the State, the Commission will direct Staff to review the definition of “modification” in Code of Maryland Regulations (“COMAR”) 20.79.01.02(B)(28), and propose any clarifications that may be needed. Additionally, as discussed herein, the Commission resolves to request CPCN applications for transmission construction include a plan in accordance with COMAR 20.79.04.01.B.

II. PROCEDURAL HISTORY AND BACKGROUND

3. On August 3, 2021, Potomac Edison filed with the Commission an Application for a CPCN pursuant to PUA § 7-207 to rebuild the 15.2-mile Maryland portion of the Doubs to Goose Creek 500 kilovolt (“kV”) single circuit transmission line in Frederick and Montgomery Counties, Maryland (“the Project”).² In support of the Application, Potomac Edison filed direct testimony from five Company witnesses. The Chief PULJ convened a pre-hearing conference on September 14, 2021, in which the Power Plant Research Program (“PPRP”) of the Maryland Department of Natural Resources (“DNR”), the Commission’s Technical Staff (“Staff”), Office of People’s Counsel (“OPC”), Montgomery County, Maryland, and Potomac Edison participated (collectively, “the Parties”). Due to deficiencies

² Maillog No. 236430.

in the application, PPRP was granted additional information and time to review the Company's data responses before a procedural schedule was established.³

4. A virtual evening public comment hearing was held on December 1, 2021 and Supplemental Direct Testimony was filed by Staff on August 18, 2022.

5. On September 21, 2022, PPRP filed Direct Testimony of two witnesses, a Project Assessment Plan ("PAR") an executed Secretarial Letter, and Initial Recommend License Conditions.⁴ Also on September 21, OPC filed Direct Testimony of one witness, and Staff filed additional Direct Testimony of one witness.⁵

6. On October 26, 2022, Potomac Edison filed Rebuttal Testimonies of four witnesses. On October 27, 2022, a second public comment hearing was held virtually.

7. On December 12, 2022, PPRP filed Surrebuttal Testimonies Revised Recommended License Conditions.

8. On December 14, 2022, OPC and Staff filed Surrebuttal Testimonies. On December 16, 2022, Potomac Edison filed an errata Rebuttal Testimony.

9. The Chief PULJ held an in-person evidentiary hearing on January 11, 2023.

10. The PPRP did not file any further modifications to its Recommended License Conditions within the 15-day time period permitted by PUA § 7-207(d)(5)(ii); therefore, PPRP's Revised Recommended License Conditions became PPRP's Final Recommended License Conditions.

11. On February 10, 2023, Potomac Edison, OPC and Staff filed Initial Briefs.

12. On March 2, 2023, Potomac Edison, OPC and Staff filed Reply Briefs.

13. On March 23, 2023, the Chief PULJ issued his Proposed Order granting the Application of Potomac Edison to rebuild the Project subject to PPRP's Final Recommended

³ Proposed Order at 2.

⁴ *Id.* at 3.

⁵ *Id.*

Licensing Conditions and the ongoing requirement that Potomac Edison comply with all relevant agreements it has with PJM Interconnection, LLC (“PJM”) and all obligations imposed by the North American Electric Reliability Council (“NERC”) and the Federal Energy Regulatory Commission (“FERC”) related to the ongoing operation and maintenance of the overhead transmission line.

14. OPC took issue with two areas in the case: (1) whether the Company should have presented alternative routes or alternatives to construction of transmission lines since it claimed the scope of the Project essentially built or rebuilt a new line, and (2) whether the Company should have presented a cost-effectiveness analysis and demonstrated that the Project is the least-cost solution.

15. In the Proposed Order, the PULJ noted that the COMAR 20.79.01.02B(28) defines modification as follows: “‘Modification’ to an *existing* transmission line as ‘(i) Obtaining new real property or additional rights-of-way through eminent domain; or (ii) Construction requiring larger or higher structures to accommodate increased voltage or larger conductors.’”⁶ (emphasis original) The PULJ found that this definition of modification “is clear and unambiguous and accurately describes the Company’s proposal” in the instant case.⁷ The PULJ stated that “[t]he Line has existed for decades and cannot be found to be a new transmission regardless of the scope of work. The fact that all the existing structures are being replaced is irrelevant.”⁸ As currently planned, the PULJ noted that this Project requires the replacement of the existing structures with larger and higher structures, which meets the definition of a modification and therefore the consideration of alternative routes pursuant PUA § 7-207(f)(1)(ii) is not required.⁹ The PULJ highlighted that his finding is consistent

⁶ *Id.* at 43.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

with a recent Baltimore Gas and Electric Company (“BGE”) case that proposed to reconstruct a 2.25 mile stretch of an existing 230 kV transmission line running beneath the Patapsco River with overhead wire and 8 support structures.¹⁰ He noted that in that case, the Commission found that “PUA §7-207(f)(1)(ii) is intended to apply to new transmission lines, not replacements of existing line.”¹¹ The PULJ also discussed how the Delmarva Power & Light Co. (“DPL”) case (Case No. 9393), which is relied upon by OPC to support its’ position that Potomac Edison be required to consider alternative routes, “involved the construction of a *new* transmission line, i.e., the line did not exist in an existing ROW; not the rebuild of an *existing* transmission line.”¹² The PULJ noted that in the DPL case the Commission appropriately treated the construction as a new line and considered alternatives to DPL’s proposal unlike the Potomac Edison Project which is an existing transmission line for which no alternative routes are required to be considered.¹³

16. The PULJ rejected “OPC’s argument that if a project meets the COMAR definition of a modification but actually results in the construction of a new transmission line, the project should be subjected to CPCN requirements for a new transmission line.”¹⁴ The PULJ noted that “if the General Assembly intended for an entire rebuild of an existing transmission line to be subject to PUA §7-207(f)(1)(ii) it could have easily done so” but OPC cannot unilaterally change an already clear definition of modification.¹⁵ The statute language is clear and calls for the consideration of alternative routes only for *new* transmission lines, and not for the existing lines.¹⁶

¹⁰ *Id.* at 43-44.

¹¹ *Id.* at 44 citing *In the Matter of the Application of Baltimore Gas and Elec. Co. for a Certificate of Public Convenience and Necessity for the Key Crossing Reliability Initiative Transmission Line Project*, Case No. 9600, Order No. 89532, slip op., at 4, para. 15 (February 12, 2020).

¹² Proposed Order at 44.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 44-45.

17. Regarding whether the Company should have considered alternatives to construction of a transmission line pursuant to PUA § 7-209, the PULJ found that the statute language is clear and that the Commission only needs to consider alternatives to the construction of a *new* transmission line.¹⁷ The PULJ reiterated the fact that Potomac Edison's proposal to completely rebuild an existing line does not transform the Project into a new transmission line and is therefore under no obligation to consider any alternatives.¹⁸ The PULJ also rejected OPC's proposed six-month delay for Potomac Edison to conduct an alternative analysis observing that the Company testified that construction needed to begin within two to four years from the filing of the CPCN - August 3, 2021.¹⁹ He also noted that it is unknown how long such an alternative analysis would take or whether the six-month delay would include time for the review, any additional testimony, a hearing or issuance of a Proposed Order, etc.²⁰ Therefore, the PULJ found OPC's proposal to be unworkable based on the record.

18. Regarding the cost-effectiveness of the Project, the PULJ found that the Company satisfied COMAR 20.79.04.01A(4) which requires an explanation of a project's cost-effectiveness and does not require, as OPC argued, that the Company demonstrate the Project is the least-cost solution.²¹ The PULJ pointed out that the Company provided the estimated cost of the Project and the resulting impact on the rates its customers will pay and neither were challenged by any of the parties.

¹⁷ *Id.* at 71.

¹⁸ *Id.*

¹⁹ *Id.* at 72

²⁰ *Id.*

²¹ *Id.* at 75.

III. OPC APPEAL

19. On April 24, 2023, pursuant to the *Annotated Code of Maryland*, Public Utilities Article (“PUA”) § 3-113(d)(2), OPC filed a Notice of Appeal²² of the Proposed Order and subsequently filed a Memorandum on Appeal²³ on May 3, 2023, pursuant to the Code of Maryland Regulations (“COMAR”) 20.07.02.13. On May 23, 2023, reply memoranda in opposition to OPC’s Appeal were filed by Potomac Edison²⁴ and Staff.²⁵

20. In its Memorandum on Appeal, OPC alleges that the PULJ erred in its findings that granted Potomac Edison a CPCN to rebuild the 500 kV Doubs-Goose Creek Transmission Line. First, OPC asserts that the PULJ “erred in finding that the proposed rebuild is a modification to an existing line and does not require consideration of alternatives under PUA § 7-209(a).”²⁶ OPC requests that the Commission “remand the case back to the PULJ to allow for additional fact-finding on the extent to which the Company sufficiently evaluated alternatives pursuant to PUA §§ 7-207(f)(1)(ii) and 7-209.”²⁷

21. OPC argues that the Proposed Order wrongly interprets the term “new” in PUA §§ 7-207(f)(1)(ii) and 7-209 in a manner that limits projects subject to alternative analysis. OPC contends that based on the Proposed Order “...any project, regardless of the scope of work, cannot be a ‘new’ line if the project includes removing an existing line and constructing a line along the same path.”²⁸ In its Appeal Memorandum, OPC states that by such logic replacing an existing 69kV line with a 500 kV would not be subject to alternative consideration under PUA §§ 7-207 and 7-209. OPC argues that the PULJ’s interpretation unduly narrows the statute. To support its argument, OPC points out that the statute offers no

²² Maillog No. 302531.

²³ Maillog No. 302765, (“OPC Memorandum on Appeal”).

²⁴ Maillog No. 303119.

²⁵ Maillog No. 303121.

²⁶ OPC Appeal Memorandum at 2.

²⁷ *Id.* at 11.

²⁸ *Id.* at 5.

definitions in PUA §§ 7-207 and 7-209 for “new overhead transmission line” or “new transmission line.” OPC acknowledges, however, that PUA § 7-207(b)(4) does refer to “existing transmission line” and the term is undefined.

22. OPC focuses its analysis on the statute’s legislative history and points out that in its initial form PUA §§ 7-207 and 7-209 did not distinguish between “new” line and existing lines and therefore OPC argues that “the General Assembly had no intention of limiting the statute’s applicability based on whether a proposed line was ‘new’ or related to an existing line.”²⁹ OPC notes that when the term “new” first appeared in PUA § 7-209 during the 1998 reorganization and modernization of the Maryland General Code, no similar revision was made to PUA § 7-207 and the notes explaining the revised text indicates that the new statute language was not intended to have any substantive change from former Art. 78 § 73(b). Therefore, OPC contends that applying the term “new transmission line” must be read broadly to mean the transmission line construction being considered and does not support excluding certain projects – such as rebuilding an existing line – from the required consideration of alternatives.³⁰

23. Additionally, OPC contends that the Proposed Order incorrectly relied on COMAR 20.79.01.02(B)(28) to determine that the Project is a “modification” to an existing overhead transmission line.³¹ OPC argues that the PULJ’s reliance on COMAR 20.79.01.02(B)(28) is misplaced because its purpose is not to distinguish the construction of “new” lines from the modification of existing lines.³² OPC therefore requests that the Commission finds the Company’s proposal to completely rebuild an existing line is subject to the alternatives

²⁹ *Id.* at 6.

³⁰ *Id.* at 7.

³¹ *Id.* at 9-10.

³² *Id.* at 10.

considerations required by PUA §§ 7-207(f)(1)(ii) and 7-209 and remand the case back to the PULJ to allow for additional fact-finding on other alternatives to be considered.³³

24. OPC also argues that the PULJ “erred in finding that the project’s estimated cost and resulting impact on customer rates satisfies COMAR 20.79.04.01A(4)’s requirement that a CPCN applicant explain a project’s cost effectiveness.”³⁴ OPC “requests that the Commission find Potomac Edison’s explanation of the project’s cost-effectiveness was insufficient and that the PULJ erred in concluding Potomac Edison satisfied COMAR 20.79.04.01A(4). OPC contends that “beyond speculation and assumptions, in this case there is nothing in the record that conclusively explains the cost-effectiveness of completely removing and replacing the Doubs-Goose Creek 500 kV line.”³⁵ OPC acknowledges that the need to replace the Line is driven by the Line’s age and condition” and argued that “[a]t a minimum, explaining a project’s cost-effectiveness requires showing whether other alternatives are not viable or are cost-prohibitive.”³⁶ Without this level of analysis addressing the viability and cost alternatives, OPC argues that the Company’s explanation of the cost-effectiveness is inconclusive.³⁷ Hence, OPC requests that the Commission should remand the case back to the PULJ to allow for additional fact finding on the viability and relative costs of alternative solutions.”³⁸

IV. RESPONSIVE PLEADINGS

*Staff Response*³⁹

25. Staff argues that the Commission must reject as unsupported by the statute OPC’s assertion that Potomac Edison’s rebuilding of the existing line of 500 kV Doubs-Goose

³³ *Id.* at 11.

³⁴ *Id.* at 3.

³⁵ *Id.* at 14.

³⁶ *Id.* at 14-15.

³⁷ *Id.* at 15.

³⁸ *Id.*

³⁹ Staff Reply Memorandum, Maillog No. 303121 (“Staff Reply”).

Creek constitutes construction of a “new” line and requires an analysis of alternatives under PUA §7-209.⁴⁰ Staff contends that OPC’s analysis presupposes that the Project should not be considered a “mere modification” because the scope of the work is so significant as to require an analysis of alternatives under PUA §7-209. Staff argues that OPC’s analysis attempts to introduce ambiguity as to when PUA §7-209 requires an analysis but the plain text of the statute is clear and unambiguous. Staff observes that PUA §7-209(a) provides:

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. (emphasis added)

Similarly, in PUA §7-207(f)(1)(ii) the consideration of alternative routes is only required for “construction related to a **new** overhead transmission line...”⁴¹ (emphasis added) Staff argues that “[t]he CPCN statutory scheme clearly divides transmission lines into two categories, the first involving “a new transmission line” and the second “an existing transmission line.”⁴² Since the Doubs-Goose Creek 500 kV Transmission Line already exists, Staff contends the Project would not require an analysis of transmission line alternatives.⁴³ Staff also rejects OPC argument indicating that the definition in COMAR for “modification to an existing overhead transmission line” is somehow inapplicable in the present case and cannot be used to distinguish between a modification and new construction of a transmission line.⁴⁴ Staff points out that the Project, which is installing higher

⁴⁰ Staff Reply at 3.

⁴¹ *Id.* at 5.

⁴² *Id.*

⁴³ *Id.* at 5-6.

⁴⁴ *Id.* at 6.

transmission structures to accommodate larger conductors, squarely meets the definition of modification COMAR 20.79.01.02(B)(28).⁴⁵ The definition states:

(b) “Modification” to an **existing** transmission line means:

- (i) Obtaining new real property or additional rights-of-way through eminent domain; or
- (ii) Construction requiring larger or higher structures to accommodate increased voltage or larger conductors. **(emphasis added)**

Staff contends that the work involved in the rebuild of the Doubs-Goose Creek Transmission Line is clearly a modification according to statute.

26. Staff also argues that OPC’s Appeal of the Proposed Order is based on its interpretation of the CPCN statutes regarding new and existing transmission lines, namely what a “new transmission line” means. Staff notes that OPC’s questioning of the General Assembly’s understanding of the statutory text or its intent when it is adopted is not one of the forms of statutory construction accepted by the Supreme Court of Maryland.⁴⁶ For proper statutory construction, Staff cited *Chavis v. Blibaum & Assocs.*, 476 Md. 534, 554, 264 A. 3d 1254, 1265 (2021), where the Court summarized it as follows:

“When we interpret a statute, our goal is to ascertain and give effect to the actual intent of the General Assembly. *Lockshin v. Semsker*, 412 Md. 257, 274, 987 A.2d 18 (2010). We begin this inquiry by examining the plain meaning of the statutory language. *Agnew v. State*, 461 Md. 672, 679, 197 A.3d 27 (2018). **If the language of the statute is unambiguous and clearly consistent with the statute’s apparent purpose, our inquiry ordinarily comes to an end, and we apply the statute as written, without resort to other rules of construction.** *Lockshin*, 412 Md. at 275. However, we do not analyze statutory language in a vacuum. *Matter of Collins*, 468 Md. 672, 689-90, 228 A.3d 760 (2020). “Rather, statutory language ‘must be viewed within the context of the statutory scheme to which it belongs, considering the purpose, aim, or policy of the Legislature in enacting the statute.’” *Id.* (quoting *Lockshin*, 412 Md. at 276).” (emphasis added)

Staff argued that the PULJ followed these instructions in reviewing the statutes cited by OPC and found that the statute was clear and that there was no ambiguity in their text.

⁴⁵ *Id.*

⁴⁶ *Id.* at 7.

Additionally, Staff pointed out that the PULJ stated the obvious when determining whether rebuilding an existing line should be considered to be the same as constructing a new transmission line when it stated that “if the General Assembly intended that entire rebuild of an existing transmission line to be subject to [PUA] §7-207(f)(1)(ii) it could have easily done so.”⁴⁷ Staff concludes that application of proper statutory construction shows that there is no ambiguity within the CPCN statutory scheme regarding whether the rebuilding of the 500 kV Doubs-Goose Creek Transmission Line was construction of an “existing transmission line
....”⁴⁸

27. Staff further contends that the PULJ properly applied COMAR 20.79.04.01 with the CPCN statutory scheme and was consistent with past practice. Staff noted that the PULJ correctly evaluated OPC’s assertion that cost-effectiveness required comparison with other alternatives and countered that assertion noting that the CPCN statute does not require an analysis of alternatives.⁴⁹ Further, Staff’s Reply points out that the Chief PULJ discussed that the Project design costs was reduced by Potomac Edison’s decision to use the same transmission structure design for its portion of the 500 kV Doubs-Goose Creek Transmission Line as Dominion Energy used in the Virginia portion, making it more cost effective.⁵⁰

28. Additionally, Staff cautioned that should the Commission adopt OPC’s interpretation that rebuilding an existing transmission line constitutes construction of a new transmission line, then it should also proceed to implement this policy change through a formal rulemaking process since all electric transmission line owners in Maryland will be affected.⁵¹

Additionally, Staff asserts that such a policy change would require a statutory change to the “mandatory” CPCN waiver language of PUA 7-207(b)(4). Further, Staff suggests that if the

⁴⁷ *Id.* at 9.

⁴⁸ *Id.* at 10.

⁴⁹ *Id.*

⁵⁰ *Id.* at 10-11.

⁵¹ *Id.* at 11.

Commission decides to adopt OPC's recommendation to remand the case back to the PULJ for further fact finding it may be appropriate to condition this to ensure that the additional evaluation would not significantly delay the commencement of construction of the Doubs-Goose Creek Transmission Line.⁵²

Potomac Edison's Response⁵³

29. Potomac Edison asserts that the Doubs-Goose Creek Transmission Line is an existing transmission facility that, contrary to OPC's position, cannot meet any definition of a "new" line as the right-of-way and structures have been in place since the 1960s.⁵⁴ Potomac Edison states that the Project to rebuild the existing line is an "in-kind replacement of the structures and equipment" to address the age of the line and mitigate system impacts. Potomac Edison points out that the governing statutes and regulations relied upon in this case are silent as to what distinguished a rebuild from new construction, but it asserts that clearly there is a distinction, otherwise the applicable statutes would not have used the word "new" in multiple areas.⁵⁵ Potomac Edison also noted that COMAR distinguishes between a "proposed" and an "existing" transmission line. Contrary to OPC's argument the words "- new, proposed, existing- have meaning and cannot be ignored under Maryland law."⁵⁶ Potomac Edison argued that instead of giving these words their straightforward plain meaning as instructed in Office of People's Counsel v. Md. Pub. Serv. Comm'n, 355 Md. 1, 22 (1999), OPC introduced extrinsic evidence in the form of a revisor's note to support its interpretation of the CPCN statute.⁵⁷ However, Potomac Edison noted that the revisor's note was boilerplate language which failed to shed light on the issue. Further, Potomac Edison explained that,

⁵² *Id.* at 13.

⁵³ Potomac Edison Reply Memorandum on Appeal, Maillog No. 303119 ("Potomac Edison Reply").

⁵⁴ Potomac Edison Reply at 3.

⁵⁵ *Id.* at 3-4.

⁵⁶ *Id.* at 4.

⁵⁷ *Id.*

under Maryland law, statutory interpretation requires language to be viewed within the context of the statutory scheme to which it belongs with the goal of reconciling and harmonizing the various statutory provisions.⁵⁸ With that in mind, Potomac Edison argued that when taken all together the only reasonable interpretation of the words of PUA 7-207(f) “is that for construction of any transmission lines, the Commission must consider the need to meet existing and future demand for electric service, but for construction of new transmission lines only, the Commission must consider the alternative routes the applicant considered.”⁵⁹

30. Potomac Edison also contends that OPC’s assertion that alternatives to the Project were not considered is contrary to the record. Potomac Edison pointed out that two alternative greenfield routes were considered and found that “construction of new lines in other locations would have environmental impacts that can be avoided by rebuilding the existing line.”⁶⁰ Potomac Edison also highlighted that during the evidentiary hearing, Company witness Lawrence Hozempa offered testimony for Potomac Edison regarding constructing a non-wires solution that would meet the needs addressed by an in-kind replacement. The Project was also evaluated in two ways during the Regional Transmission Expansion Plan (RTEP) process.⁶¹ Additionally, Potomac Edison discussed that when Dominion approached PJM with its end-of-life determination for the Virginia portion, it provided modeling for the *entire* Doubs-Goose Creek 500 KV line portion in Maryland, making it subject to PJM’s competitive planning process.⁶²

31. Potomac Edison further argued that COMAR 20.79.04.01 requires that an applicant provide “an explanation of the cost-effectiveness of the project, including an estimate of capital costs and annual operating cost,” not demonstrate that the project is the “least-cost”

⁵⁸ *Id.* at 5.

⁵⁹ *Id.* at 6.

⁶⁰ *Id.* at 8-9.

⁶¹ *Id.* at 9.

⁶² *Id.* at 9-10.

solution as OPC argues.⁶³ Potomac Edison discusses how OPC’s witness during the evidentiary hearing described additional analysis that in his view could confirm whether an in-kind rebuild was the least-cost solution to resolve the reliability concerns documented to occur with the line no longer in service.⁶⁴ Potomac Edison pointed out that “no such studies are required” when deciding to issue a CPCN for a rebuild of an existing line, and efforts to engage in such analysis would cause significant delay.⁶⁵

32. Finally, Potomac Edison argues that the record in this case demonstrates that alternative solutions would not be as cost-effective or provide the same operational flexibility as the Project. Potomac Edison points out the OPC witness testified that another alternative would likely have not been the least-cost option.⁶⁶ Potomac Edison notes that “the only evidence in the record on the costs of alternatives is that they would be higher.”⁶⁷

V. COMMISSION DECISION

33. In the Proposed Order, the PULJ set forth the applicable statutory requirements for an applicant to obtain a CPCN, namely PUA § 7-207, and then proceeded, through an 87-page opinion, to consider all of the Parties’ testimonies related to each requirement. He also noted that PUA § 2-113(a) grants the Commission its general supervisory powers for regulating public service companies in Maryland.

34. In considering OPC’s assertion that the PULJ erred in finding that the proposed rebuild is a modification to an existing line and does not require consideration of alternatives under PUA § 7-207(f)(1)(ii) and PUA § 7-209(a), the Commission rejects OPC’s arguments.

35. OPC bases its position on the facts underlying the Company’s proposal; that is, that the existing line will be completely torn down and rebuilt with new, larger structures and

⁶³ *Id.* at 10-11.

⁶⁴ *Id.* at 12

⁶⁵ *Id.*

⁶⁶ *Id.* at 14.

⁶⁷ *Id.*

conductors which will result in doubling the line's capacity and materially changing its capability.⁶⁸ OPC's position is that such extensive work goes beyond a "mere modification" and therefore triggers the consideration of alternative routes for the construction of *new* transmission lines required under PUA § 7-207(f)(1)(ii) and PUA § 7-209(a). The PULJ noted that COMAR 20.79.01.02(B)(28) defines "modification" as follows: "Modification" to an **existing** transmission line means: (i) Obtaining new real property or additional rights-of-way through eminent domain; or (ii) Construction requiring larger or higher structures to accommodate increased voltage or larger conductors. **(emphasis added)** The PULJ rejected OPC's argument and found that the definition of modification set forth in COMAR 20.79.01.02(B)(28) is clear and unambiguous and accurately described the Company's proposal.⁶⁹ The PULJ noted that the Doubs-Goose Creek Transmission Line has been in existence for decades and therefore cannot be found to be *new* regardless of the scope of work. As defined, the Project will replace all of the existing structures with larger and higher structures that will nearly double the line's rating from 2,442 to 4,330 MVA. The PULJ found "the fact that all existing structures are being replaced is irrelevant" to the question of whether this project constitutes a modification.

36. The Commission agrees with the PULJ's finding that the Project satisfies the definition of modification set forth in COMAR 20.79.01.02(B)(28). Additionally, the Commission finds that there is no language in the regulation which sets a threshold or benchmark for when a modification for an *existing* transmission line crosses the line and becomes construction of a new transmission line under PUA § 7-207(f)(1)(ii) and PUA § 7-209. As stated in the Proposed Order, OPC cannot unilaterally change an already clear

⁶⁸ OPC Appeal Memorandum at 2.

⁶⁹ Proposed Order at 43.

definition of modification to fit its argument.⁷⁰ The PULJ correctly stated that “if the General Assembly intended that an entire rebuild of an existing transmission line be subject to PUA § 7-207(f)(1)(ii) it could have easily done so.”⁷¹ The Commission finds that the PUA § 7-207(f)(1)(ii) and PUA § 7-209 language are clear and require consideration of alternative routes for *new* transmission lines, not for those that already exist such as the Doubs-Goose Creek Transmission Line.

37. OPC’s arguments attempt to obfuscate the plain meaning of the words “new”, “existing” and “modification” found in PUA § 7-207(f)(1)(ii), PUA § 7-209, and COMAR 20.79.01.02(B)(28). As the Company noted in its reply, “instead of giving these words their straightforward plain meaning as instructed in Office of People’s Counsel v. Md. Pub. Serv. Comm’n, 355 Md. 1, 22 (1999), OPC introduced extrinsic evidence in the form of a revisor’s note to support its interpretation of the CPCN statute.”⁷² However, when interpreting a statute, the analysis should begin by “looking to the normal, plain meaning of the language ... reading the statute as a whole to ensure that no word, clause, sentence, or phrase is rendered surplusage, superfluous, meaningless or nugatory.”⁷³ Finally, while questions of law are subject to review by the courts, the agency’s interpretation of a statute (or regulations) it is charged with administering is entitled to deference.⁷⁴

38. Here, the Commission finds that the statutory scheme divides transmission lines into new and existing lines, and this CPCN request to rebuild a transmission line must adhere to the COMAR definition of a modification. However, given the likely need to upgrade aging transmission infrastructure within the State and in anticipation of similar CPCN filings for significant existing transmission line rebuilds, the Commission directs Staff – within one year

⁷⁰ *Id.* at 44.

⁷¹ *Id.*

⁷² Potomac Edison Reply at 4.

⁷³ *Id.* at 5.

⁷⁴ OPC v. Public Service Commission, 355 Md. 1, 14 (1999).

of the date of this Order – to initiate a review of the definition of “modification” in COMAR, and propose any clarifications that may be needed to address additional criteria that should trigger this definition.

39. The Commission also notes COMAR 20.79.04.01.B, which provides that “If requested by the Commission, an application for a proposed transmission line shall include a plan as defined under COMAR 20.79.01.02.” Under COMAR 20.79.01.02, “plan” means a comprehensive and interrelated set of actions for meeting forecasted electric demand for the 10-year period from the date of the application. Given the likely need to upgrade aging transmission infrastructure within the State and in anticipation of similar CPCN filings for significant existing transmission line rebuilds, going forward pursuant to COMAR 20.79.04.01B the Commission resolves to request this plan in future transmission line siting CPCN proceedings.⁷⁵ Maryland’s electricity demand is predicated on the State’s clean energy policies -- most of which take effect within 10 years. These policies will drive what type of energy will be generated for end-use consumption in Maryland and delivered to electricity customers, and what transmission line rebuilds or new constructions may or may not be needed to cost-effectively carry out these policies.⁷⁶

40. The Commission also rejects OPC’s assertion that the PULJ erred in finding that the project’s estimated costs and resulting impact on customer rates satisfies COMAR 20.79.04.01A(4)’s requirement that a CPCN applicant explain cost effectiveness. In its Appeal, OPC contends that a thorough analysis would have demonstrated whether the proposed project was the most cost-effective solution. COMAR 20.79.04.01A(4) states that

⁷⁵ In future CPCN proceedings, either the Commission or the designated PULJ, if the proceeding is delegated to the PULJ Division, may direct the filing of the COMAR 20.79.04.01B Plan.

⁷⁶ In requesting a plan as provided for in COMAR, this Order does not invoke *per se* a discretionary waiver, modification or additional requirements as permitted under COMAR 20.79.01.09. The Commission however has such authority, and in this Order the Commission finds that circumstances warrant requesting the Plan as discussed herein.

“an application for a proposed transmission line or modification to an existing transmission line shall include “[a]n explanation of the cost effectiveness of the project, including an estimate of capital cost and annual operating cost.” However, as the PULJ noted in the Proposed Order, there is “no specific statutory requirement, and OPC cites none, that require the Company to conduct a cost-effectiveness analysis of the Project.”⁷⁷ The PULJ noted that Company witness Rostock provided the revenue requirement associated with the Project. The total cost of the project is estimated to be \$66 million, and the annual revenue requirement is estimated to be \$10 million per calendar year immediately following the Project’s completion.⁷⁸ He further estimated that Potomac Edison customers would experience a 0.34 percent increase on monthly bills, which equals \$0.28 per month.⁷⁹ Staff expressed no concerns with the calculations provided by Potomac Edison. The PULJ found that the Company satisfied COMAR 20.79.04.01A(4) and that testimony by Company witness Mr. Hozempa discussed Potomac Edison’s use of Dominion’s design standards and its contractor will result in a more reduced cost to the Project. Additionally, the PULJ found “it unlikely that a viable alternative route would have arisen had the Company elected to use the Federal Regulatory Commission (FERC) Form 715 baseline process.”⁸⁰ The Commission finds that the plain language of the statute calls only for an explanation of the project’s cost effectiveness and does not require the company to demonstrate that the Project is the least-cost solution as requested by OPC.

41. The Commission has reviewed the record and the Proposed Order in this case and finds that the Proposed Order appropriately granted Potomac Edison’s request to rebuild the 500 kV Doubs-Goose Creek Transmission Line in accordance with PUA §§ 7-207(f)(1)(ii)

⁷⁷ Proposed Order at 75.

⁷⁸ *Id.* at 72-73.

⁷⁹ *Id.* at 73.

⁸⁰ *Id.* at 45.

and 7-209 and COMAR 20.79.04.01A(4). Therefore, for the reasons discussed above, OPC's Appeal is denied, and the Proposed Order is affirmed.

IT IS THEREFORE, this 27th day of June, in the year Two Thousand Twenty-Three, by the Public Service Commission of Maryland, **ORDERED**:

(1) that the Appeal filed by the Maryland Office of People's Counsel is denied;
and

(2) that within one year of this Order, Staff is directed to initiate a review and to propose any necessary clarifying rules pertaining to the definition of transmission line "modification" under COMAR 20.79.01.02(B)(28).

/s/ Jason M. Stanek _____

/s/ Michael T. Richard _____

/s/ Anthony J. O'Donnell _____

/s/ Odogwu Obi Linton _____
Commissioners

**Joint Concurring Statement of
Commissioners Michael T. Richard and Odogwu Obi Linton**

We are pleased with the direction this Commission has taken to set forth clarity in future transmission planning in our state.

We are at a confluence of having to deal with the aging of transmission infrastructure that was planned and built to meet our needs as viewed, in many cases, approximately a half century ago and the growing need to plan and build the right regional grid that reflects the needs and policies we have adopted for our future. This recent trend of an immediacy to replace in-kind (rebuild-in-place) transmission to preclude impending structural failure of the existing system is fast becoming a key driver of long-term transmission planning. It limits the ability to consider alternative projects or solutions that may more cost-effectively address our future needs and policies.

Simply replacing an entire transmission line in short order does not make for reasonable long-term transmission planning, though Marylanders will be paying for these new projects for decades. As such, we are encouraged by the FERC's Notice of Proposed Rulemaking to better plan for the future of the regional transmission grid. (Docket RM21-17-000: *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*.) This planning should be done holistically and with consideration of the needs and policies of Maryland and all states in the region.

But states, including our state, also have a hand in cost-effective transmission planning. It goes beyond accepting a summary of what the transmission owner intends to rebuild and bill electricity customers. It could condition CPCN approval upon

demonstration that the proposed transmission project meets the needs and policies of our state, and the region as a whole, in the most reasonable and cost-effective manner. This level of transparency is essential for ensuring Marylanders are charged just and reasonable rates for decades to come. This can be further effectuated through the plan specified in COMAR 20.79.04.01B for future CPCN applications. We envision this plan addressing the need to meet future demand for electric service under PUA § 7-207 as guided by the State's greenhouse gas policies per PUA § 2-113.

/s/ Michael T. Richard

/s/ Odogwu Obi Linton

Commissioners