

**ORDER NO. 90272**

FEDERAL GRANT OPPORTUNITIES FOR  
UTILITIES UNDER THE  
INFRASTRUCTURE INVESTMENT AND  
JOBS ACT

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BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF MARYLAND

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**ORDER ON PETITION**

1. On November 15, 2021, the President of the United States signed into law the Infrastructure Investment and Jobs Act, H.R. 3684, 117<sup>th</sup> Congress (2021) (“IIJA”). The IIJA provides, *inter alia*, for substantial investment of federal funds in utility infrastructure including grid resiliency and reliability, electric generation and transmission, access to clean water, and improved cybersecurity. Among the many programs IIJA authorizes, several may relate, and be available, to Maryland-based utility companies, including but not limited to:

- i. Grants to assist entities in carrying out efforts to harden the grid, reduce risks of wildfires, or reduce or diminish the consequences of disruptive events; (IIJA § 40101)
- ii. Programs that encourage innovative approaches to transmission, storage, and distribution infrastructure to improve resilience and reliability, and to encourage approaches to enhance regional grid resilience; (IIJA § 40103)
- iii. Initiatives that expand the Smart Grid Investment Matching Grant Program established by Section 1306(a) of the Energy Independence and Security Act of 2007, which allows for investment in technology to enhance grid flexibility; (IIJA § 40107)

- iv. Grants to improve cybersecurity technologies and provide technical assistance to small and rural utilities; (IIJA § 40124)
- v. Programs to develop carbon capture technology to improve environmental performance of coal and natural gas use; (IIJA §§ 40303 and 40305)

### **Background**

2. On May 5, 2022, pursuant to Public Utilities Article (“PUA”) § 2-204(a), *Annotated Code of Maryland*, the Maryland Office of People’s Counsel filed a petition with the Commission requesting that the Commission open a docket to allow utilities and interested parties to file reports and comments related to federal programs and funding available to Maryland utilities through the federal Infrastructure Investment and Job Act (“Petition”).<sup>1</sup> On May 20, 2022, OPC filed a subsequent letter to the Commission reiterating its request and noting that the Commission should act promptly as IIJA funds currently are being allocated to state and local governments through both formula and competitive grants.<sup>2</sup>

3. On June 10, 2022, Baltimore Gas and Electric Company, Potomac Electric Power Company, Delmarva Power & Light Company, The Potomac Edison Company, and Southern Maryland Electric Cooperative (collectively the “Joint Maryland Utilities”) filed a response to OPC’s Petition and requested, among other things, that the Commission deny the Petition to initiate a formal proceeding for purposes of overseeing federal IIJA opportunities for Maryland utilities (“Joint Utilities Response”).<sup>3</sup>

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<sup>1</sup> *Petition of the Office of People’s Counsel Requesting A Proceeding On Federal Grant Opportunities For Utilities Under The Infrastructure Investment and Jobs Act*, filed May 5, 2022 (“Petition”). Maillog No. 240572.

<sup>2</sup> Maillog No. 240783.

<sup>3</sup> Response of the Joint Maryland Utilities to the Petition of the Office of People’s Counsel Requesting a Proceeding on Federal Grant Opportunities for Utilities Under the Infrastructure Investment and Jobs Act, filed June 10, 2022 (“Joint Utilities Response”). Maillog No. 241054.

4. On June 24, 2022, OPC filed a Reply to the Joint Utilities’ Response reiterating and renewing its request for the Commission to initiate an IIJA proceeding and to deny the alternate proposal made by the Maryland utilities in their response.<sup>4</sup>

5. For reasons discussed below, the OPC’s Petition is granted in part and denied in part. The Commission also grants in part and denies in part the Joint Utilities’ request.

A. OPC Petition

6. In its Petition, OPC notes that under PUA § 2-113(a)(1)(i) the Commission has the authority and responsibility to supervise and regulate Maryland public service companies subject to the jurisdiction of the Commission to “... ensure their operation in the interest of the public.”<sup>5</sup> Consequently, OPC argues that it is in the public interest for the State’s utilities “to diligently consider and pursue the funds and programs available under the IIJA.”<sup>6</sup> OPC notes that the programs covered by IIJA funds aim to develop clean energy, improve grid resilience and security and expand access to clean energy and water to underserved populations, all of which benefit Maryland residents and utility customers.<sup>7</sup>

7. OPC argues that it is in the public interest to foster greater cooperation between the Commission, utilities, and other stakeholders with regard to the exploration and utilization of IIJA program funding. Therefore, OPC requests that the Commission open a docket, which will provide “a forum for coordination by utilities, state agencies and

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<sup>4</sup> Office of People’s Counsel’s Reply To Joint Maryland Utilities’ Response To Petition For An IIJA Proceeding, filed June 24, 2022 (“OPC Reply”). Maillog No. 241210. Parties seeking to file surreply comments, such as in the case of OPC’s June 24 filing, should request leave of the Commission stating the reasons for their consideration.

<sup>5</sup> Petition at 2.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 3.

local governments of requests for competitive grants that will enhance the prospects of approval by the relevant federal agencies.”<sup>8</sup>

8. Further, OPC argues that, pursuant to the Climate Solutions Now Act (“CSNA”)<sup>9</sup> recently enacted by the Maryland General Assembly, the Commission is charged to “provide assistance and support to electric companies applying for and obtaining access to federal and other available funds to meet the State’s policy goals.”<sup>10</sup> OPC notes that the CSNA directs the Commission to require electric companies to report to the Commission on the IJA funding applications the utilities have submitted, the purpose of the funds, the status of the applications and any conditions that must be met to obtain the funding.<sup>11</sup> The Petition also points out that the CSNA provides that the Commission may “adopt regulations or issue orders that require electric companies to apply for federal and other available funds in a timely manner.”<sup>12</sup>

9. OPC contends that a new docket where utilities can report on their efforts to obtain federal funds promotes transparency, creates important opportunities for public input, and helps ensure a diligent and thorough consideration of time-limited federal funding.<sup>13</sup> OPC also notes that opening a docket to review the utility companies’ IJA plans would help ensure that other Maryland state agencies have information on what Maryland utilities are seeking to accomplish by accessing federal funds.<sup>14</sup> Specifically, in footnote 13, OPC highlights that Governor Hogan established the Governor’s Subcabinet on Infrastructure by Executive Order 01.01.2022.01 “to coordinate the State’s

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<sup>8</sup> *Id.*

<sup>9</sup> 2022 Bill Text MD S.B. 528, Maryland General Assembly, Senate Bill 528, Climate Solutions Now Act of 2022 (April 9, 2022); See also PUA §§7-801 through 7-804.

<sup>10</sup> Petition at 3.

<sup>11</sup> Petition at 3-4.

<sup>12</sup> *Id.* at 4.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

federal infrastructure funds spending and develop a strategy to maximize funding from the IJA.”<sup>15</sup>

#### B. Joint Utilities Response

10. As an alternative approach to OPC’s petition, the Joint Maryland Utilities propose instead to provide, to the Commission and designated stakeholders, periodic written reports on IJA grant applications.<sup>16</sup> Specifically, the Joint Utilities propose that instead of a fully docketed proceeding, the utilities would provide regular written IJA grant application status reports to the Commission and designated stakeholders (including OPC) on a Commission-designated time frame (e.g., quarterly).<sup>17</sup> The Joint Utilities Response stated that these reports could include the information that is suggested by the CSNA on an “as needed basis”: (1) funding for which the utility has applied; (2) purposes for which the funding is intended to be used; (3) status of funding applications; and (4) conditions that must be met to obtain the funding.<sup>18</sup> The Joint Utilities Response also committed to include, in future rate cases, information on whether a particular planned project has IJA funding implications.<sup>19</sup>

11. The Joint Utilities argue that a fully docketed proceeding is not the best or most efficient way to accomplish the transparency and stakeholder input that OPC raises in its Petition.<sup>20</sup> They contend that “OPC’s proposal will likely hinder the ability of the state’s utilities to pursue grant opportunities as they arise, reducing potential federal funding for the state, its residents and businesses.”<sup>21</sup> The Joint Utilities point out that requiring

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<sup>15</sup> *Id.* 4, citing n. 13.

<sup>16</sup> Joint Utilities Response at 1.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 2.

<sup>21</sup> *Id.* at 2-3.

utilities to engage in a regulatory proceeding of the kind proposed by OPC while simultaneously reviewing and pursuing federal grant opportunities could cause undue delay and jeopardize their chances to receive awards in what is a highly competitive process.<sup>22</sup> They also note that OPC’s request fails to acknowledge that many of the materials it is seeking to have utilities file in a public docket for stakeholder review may contain sensitive and proprietary business information.<sup>23</sup>

12. In addition to its alternate proposal, the Joint Utilities propose that the Commission authorize each of the utilities to establish an IJJA-specific regulatory asset to track IJJA-related incremental costs and any related savings (similar to the regulatory asset that the Commission authorized for COVID-19- related costs incurred and savings realized). They argue that such a mechanism would “signal to decision-makers at the federal level of the State of Maryland’s seriousness about supporting Maryland utility efforts to move forward with transformative IJJA projects.”<sup>24</sup>

### **Commission Decision**

13. Pursuant to PUA § 2-113, the Commission’s supervisory and regulatory powers provide that the Commission shall regulate public service companies subject to its jurisdiction to ensure their operation is in the public interest and to promote adequate, economical, and efficient delivery of utility services in the State without unjust discrimination. The IJJA authorizes an historic investment of billions of dollars in federal funds in the country’s utility infrastructure and creates programs to distribute federal financial assistance to states to be used in coordination and collaboration with electric

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<sup>22</sup> *Id.* at 3.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 4.

and gas utility companies in order to improve transmission, storage, and distribution infrastructure to fortify and enhance grid resilience and reliability.<sup>25</sup> The Commission finds that it is in the public interest for the public service companies of the State to fully and carefully consider applying for the available funds and financial assistance provided through the IJA programs in order to promote adequate, economical, and efficient delivery of utility service to the ratepayers of the State, and to meet State policy goals for the electric distribution system.<sup>26</sup>

14. The Commission also finds that it is in the public interest that each electric company, in accordance with the CSNA, report to the Commission on any funding for which the electric company has already applied; the purpose for which such funding is intended to be used and its connection to State policy goals, as well as the utility's existing distribution plan;<sup>27</sup> the status of the company's funding applications; and any conditions that must be met to obtain the funding, to include minimum and maximum required funding matches.<sup>28</sup> This reporting will help promote and provide transparency while ensuring utilities are pursuing federal grant funds for infrastructure projects.

15. The Commission finds that the Joint Utilities' alternative proposal to submit regular written IJA grant application reports to the Commission and designated stakeholders on a monthly basis is sufficient, provided that such reports include the items as described in this Order. In recognition of the competitive nature of certain IJA program funding applications and that disclosure of certain information could be

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<sup>25</sup> Pub. L. No. 117-58, 135 Stat. 429 (2021).

<sup>26</sup> See PUA § 7-803(D). In addition, § 7-801 states, "it is the goal of the State that the electric distribution system support, in a cost-effective manner, the State's policy goals with regard to: (1) Greenhouse gas reduction; (2) renewable energy; (3) decreasing dependence on electricity imported from other states, and (4) achieving energy distribution resiliency, efficiency, and reliability."

<sup>27</sup> The utility also should provide a justification if a project does not have a connection to the existing distribution plan (multi-year rate plan, if applicable).

<sup>28</sup> See PUA § 7-803.

disadvantageous to the utility, the Commission directs that the utilities need only report the IJA funds applied for, including the information outlined above in the next monthly report after said applications have been submitted to the appropriate federal agencies for IJA funding consideration.

16. Further, in compliance with the CSNA mandate that the Commission and the Maryland Energy Administration “provide assistance and support to electric companies for applying for and obtaining access to federal and other available funds to meet the State’s policy goals for the electric distribution system,”<sup>29</sup> the Commission finds it in the public interest to initiate a public conference where government agencies and interested parties may file written comments in the public conference docket identifying program opportunities available to Maryland utilities under the IJA and associated projects that may align with state policy goals. The Commission encourages the utilities to review and fully consider written comments when pursuing program funding available under the IJA. The Commission finds that written comments by interested persons will assist and support Maryland utilities in identifying projects across the State that are eligible for IJA funding and that advance state policy goals.

17. The Commission finds that OPC’s recommendation to explicitly solicit written comments in a docket “for actions the Commission should take to facilitate the application, receipt, and deployment of available federal funds” is beyond the scope of what the CSNA requires.

18. Last, the Commission finds that allowing each utility to establish an IJA-specific regulatory asset to track IJA-related incremental expenditures and savings is appropriate. To be clear, the establishment of an IJA-specific regulatory asset is not a finding of

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<sup>29</sup> See PUA § 7-803(B).



prudence and does not provide a predetermined certainty of cost recovery for those expenses.

19. For the above reasons, the OPC Petition Requesting a Proceeding on Federal Grant Opportunities for Utilities under the Infrastructure Investment and Jobs Act is granted, in part, and is denied, in part, by declining to solicit written comments in the docket regarding actions the Commission should take to facilitate the application, receipt, and deployment of available federal funds.

**IT IS THEREFORE**, this 29<sup>th</sup> day of June, in the year Two Thousand Twenty Two, by the Public Service Commission of Maryland, **ORDERED**:

(1) That each electric and gas public service company subject to the jurisdiction of the Commission shall identify and file with the Commission a monthly IJA report as described herein that contains descriptions of all projects for which IJA funding has been sought. Each report shall include the purpose for which the funding is intended to be used and its connection to State policy goals, as well as the utility's existing distribution plan; the status of the funding applications; and any conditions that must be met to obtain the IJA funding. The report shall be filed in the public conference docket on or about the first of the month, beginning August 1, 2022;

(2) That stakeholders and interested parties may file written comments identifying potential programs authorized under the IJA available to Maryland utilities that advance State policy goals;

(3) That Public Conference 56 is hereby initiated; each electric public service company filing, and other stakeholders written comments in regard to the Infrastructure Investment and Jobs Act programs and funding shall be filed therein;

(4) That the Office of People’s Counsel Petition is granted in part and denied in part, as described herein; and

(5) That the Joint Utilities’ requests in their Response to OPC’s Petition are granted in part and denied in part, as described herein.

*/s/ Jason M. Stanek*  
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*/s/ Michael T. Richard*  
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*/s/ Anthony J. O’Donnell*  
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*/s/ Odogwu Obi Linton*  
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*/s/ Patrice M. Bubar*  
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Commissioners