

**ORDER NO. 89571**

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

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CASE NO. 9471  
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**ORDER APPROVING SETTLEMENT AND GRANTING CERTIFICATE OF  
PUBLIC CONVENIENCE AND NECESSITY AND WAIVERS**

Before: Jason M. Stanek, Chairman  
Michael T. Richard, Commissioner  
Anthony J. O'Donnell, Commissioner  
Odogwu Obi Linton, Commissioner  
Mindy L. Herman, Commissioner

**Issued: June 30, 2020**

## APPEARANCES

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Sondra McLemore, Steven M. Talson, and Ankush Nayar for *Power Plant Research Program – Maryland Department of Natural Resources*

Michael A. Dean and Lloyd J. Spivak for *Maryland Public Service Commission Staff*

Gary L. Alexander and Mikhail Raykher for *Maryland Office of People's Counsel*

Bradley J. Neitzel for *Harford County, Maryland*

Charles E. Kearney for *Harford County Council*

Charles D. MacLeod and Patrick W. Thomas of MacLeod Law Group, LLC for *STOP Transource Power Lines Maryland, Inc.*

James B. Rutledge, III and Benjamin C. Stevens of Rutledge & Stevens Attorneys at Law for *Tony and Cynthia Tanner and Daniel and Mary Beth Scott*

David E. Ralph for *Baltimore Gas and Electric Company*

Kristin Comer, *pro se*

Barron Shaw, *pro se*

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## **I. INTRODUCTION**

1. This matter comes before the Maryland Public Service Commission on an application by Transource Maryland, LLC (“Transource”) for a Certificate of Public Convenience and Necessity (“CPCN”) to construct two new 230 kV interstate transmission lines connecting certain substations in Maryland and Pennsylvania, for the purpose of relieving economic congestion on the regional transmission system. As a result of successful negotiations resolving siting concerns raised during the course of this proceeding, Transource now requests that the Commission approve a Settlement Agreement and Stipulation, which modifies the original CPCN application by limiting the “greenfield” development—and thus, the scope of Transource’s requested CPCN—to the western portion of the transmission project in Washington County, with a CPCN waiver request by Baltimore Gas and Electric Company (“BGE”) to construct the remaining, eastern portion in Harford County, using its existing transmission infrastructure and rights-of-way.

2. By this Order, the Commission approves the proposed Settlement Agreement, subject to modification. For the reasons discussed herein, the Commission finds that granting the requested CPCN to Transource and the CPCN waivers to BGE, subject to the project-specific Recommended Conditions sponsored by the Department of Natural Resources Power Plant Research Program (“PPRP”), is in the public interest. The Commission concludes that the Maryland portions of the proposed transmission line project, as reconfigured, will address regional congestion issues as well as Maryland and regional reliability needs while reducing the project’s impacts on Maryland’s agricultural, environmental, and natural resources.

## II. BACKGROUND AND PROCEDURAL HISTORY

3. On December 27, 2017, pursuant to Public Utilities Article (“PUA”), *Annotated Code of Maryland*, § 7-207, and Code of Maryland Regulations (“COMAR”) Title 20, Subtitle 79, Transource submitted an application to the Maryland Public Service Commission for a Certificate of Public Convenience and Necessity (“Application”) requesting authorization to construct two new 230 kV interstate electric transmission lines designated as PJM Interconnection, LLC’s (“PJM”) Market Efficiency Project 9A (“Project 9A”), associated with the Independence Energy Connection (“IEC”) Project (the “IEC Project” or “Project”) in portions of Harford and Washington counties, Maryland (“Maryland Segments”).<sup>1</sup> The Commission docketed this proceeding to investigate the merits of the Application and issued a Notice of Pre-hearing Conference on January 4, 2018.<sup>2</sup>

4. On February 16, 2018, the Commission convened a pre-hearing conference in this matter<sup>3</sup> in which Transource, Power Plant Research Program (“PPRP”) of the Maryland Department of Natural Resources (“DNR”), Maryland Office of People’s Counsel (“OPC”), the Commission’s Technical Staff (“Staff”), STOP Transource Power Lines MD (“STOP Transource”), Tony and Cynthia Tanner, Daniel and Mary Beth Scott,

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<sup>1</sup> Maillog No. 218329 (Transource Application for a Certificate of Public Convenience and Necessity with Attachments, Transource Ex. 6) (“Application”).

<sup>2</sup> Maillog No. 218402. Transource’s Application was available for public inspection or copying at the Norrisville Library, 5320 Norrisville Road, White Hall, Maryland, and the Smithsburg Library, 66 West Water Street, Smithsburg, Maryland, and could be viewed or downloaded from the Commission’s website, [www.psc.state.md.us](http://www.psc.state.md.us).

<sup>3</sup> Notice of the Commission’s Pre-hearing Conference and notice of the Feb. 7, 2018 intervention deadline was published by Transource in various newspapers in Washington and Harford counties from January 25 through February 1, 2018, as noted in Transource’s Certificate of Publication, which was filed with the Commission on February 15, 2018 (Maillog No. 219010). Transource Exs. 1-5.

Kristin Comer, Barron Shaw, Harford County and the Harford County Council participated.

5. On February 22, 2018, the Commission issued Order No. 88585 in this matter, granting interventions<sup>4</sup> and establishing an initial schedule for written testimony, evidentiary hearings, and public comment hearings. The Commission directed Transource to file Supplemental Testimony by June 29, 2018, and directed PPRP to file a Status Update regarding completeness of Transource’s Application by July 13, 2018.

6. Baltimore Gas and Electric Company and the Office of the People’s Counsel for the District of Columbia (“DC OPC”) filed Petitions to Intervene out-of-time. The Commission granted BGE’s Petition to Intervene and denied DC OPC’s Petition to Intervene on October 29, 2019 and December 13, 2019, respectively.<sup>5</sup>

#### **A. PPRP’s Administrative Completeness Review**

7. On July 13, 2018, PPRP filed a Status Update regarding the completeness of Transource’s Application (“Administrative Completeness Review”), indicating that after

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<sup>4</sup> The Commission granted the Petitions to Intervene filed by: Tony D. and Cynthia A. Tanner (the “Tanners”); Mary Beth and Daniel John Scott (the “Scotts”); Randy and JoAnne Comer (“Comers I”); Barron Todd Shaw (“Mr. Shaw”); Donald and Jody Lee Edwards (the “Edwards”); Keith and Kristin Comer (“Comers II”); Curtis Darrel and Bonnie Comer (“Comers III”); Harriett S. Crowl (“Mrs. Crowl”); Harford County, Maryland and Harford County Council (together, “Harford County Government”); Travis Judd and Emily Leanne Szerensits (the “Szerensits”); STOP Transource Power Lines MD, Inc. (“STOP Transource”).

<sup>5</sup> In its Petition to Intervene, the District of Columbia Office of People’s Counsel (“DC OPC”) sought to address cost allocation issues that could potentially affect DC ratepayers in the Pepco transmission zone. *See* Maillog No. 227732 at 1-2. Transource opposed DC OPC’s Petition to Intervene, noting that the petition to intervene was untimely, unrelated to issues subject to the Commission’s review of the Petition for Adoption of Settlement, and that any interest in relevant or material issues the DC OPC might otherwise seek to raise can be adequately addressed by an existing party—namely, the Maryland Office of People’s Counsel. Maillog No. 227790 at 4. The Commission denied DC OPC’s Petition to Intervene, finding that DC OPC neither requested leave to intervene *out-of-time*, nor adequately explained why it seeks late intervention beyond the original deadline for intervention. Maillog No. 227830 at 3. The Commission also noted that the cost allocation issues identified in DC OPC’s Petition are under the jurisdiction of the Federal Energy Regulatory Commission and are not matters subject to this proceeding. Maillog No. 227830 at 3.

reviewing Transource’s supplemental testimony<sup>6</sup>—which was filed on June 29, 2018, as directed by the Commission—and information provided in response to data requests, PPRP determined that “the application is still incomplete and does not contain all necessary information required for full compliance with COMAR 20.79.04.04.”<sup>7</sup> Due to the incompleteness of the Application, PPRP requested that the Commission allow the parties an opportunity to propose a revised procedural schedule for the Commission’s consideration. The Commission gave the parties an opportunity to comment on PPRP’s Administrative Completeness Review and PPRP’s request to propose a revised procedural schedule.<sup>8</sup>

8. OPC, STOP Transource, and Staff filed comments supporting PPRP’s request to propose a revised procedural schedule. Transource also filed reply comments supporting PPRP’s request to file a recommended, revised procedural schedule by August 31, 2018.<sup>9</sup> The Commission granted PPRP’s request on July 26, 2018.

### **B. PPRP’s Updated Administrative Completeness Review and Procedural Schedule**

9. On August 31, 2018, PPRP filed its Updated Administrative Completeness Review, indicating that it had reviewed additional information submitted by Transource and that “the application is now administratively completed pursuant to COMAR 20.79.04.04.”<sup>10</sup> PPRP also proposed a revised procedural schedule recommending that Staff, PPRP, OPC and Intervenors file their direct and reply testimony by January 25,

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<sup>6</sup> Maillog No. 221110 (Transource Supplemental Direct Testimony).

<sup>7</sup> Maillog No. 221271 (PPRP Administrative Completeness Review) at 1. PPRP noted that most of the information necessary for review of the western segment had been provided, but information remained lacking with regard to the eastern segment.

<sup>8</sup> Maillog No. 221298 (Commission Notice of Opportunity to Comment).

<sup>9</sup> Maillog No. 221391.

<sup>10</sup> Maillog No. 221938.



2019, rebuttal and surrebuttal testimony on March 1 and March 29, 2019, respectively, with the evidentiary hearing commencing between April 23 and April 25, 2019, and public hearings be held in Harford and Washington counties in December 2018 and March 2019. However, shortly after the Commission adopted PPRP's revised schedule, PPRP filed a motion to dismiss Transource's Application.<sup>11</sup>

10. In its Motion to Dismiss, PPRP alleged that Transource failed to carry out the predicate analysis required under PUA § 7-209, which requires that:

(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.

11. After considering comments filed by the parties, the Commission denied PPRP's Motion to Dismiss Transource's CPCN Application, and also denied PPRP's motion to *wholly* suspend the procedural schedule. However, the Commission modified the procedural schedule in order to allow the parties the opportunity to conduct additional analysis and discovery regarding the use of existing transmission lines, as proposed by

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<sup>11</sup> Maillog No. 223364 (PPRP's Motion to Dismiss the CPCN Application Without Prejudice or, in the Alternative, to Suspend the Schedule) ("PPRP Motion to Dismiss")

PPRP (*i.e.*, PPRP’s “Conceptual Alternatives”).<sup>12</sup> In particular, the Commission recognized PPRP’s need for supplemental information to address the PUA § 7-209 requirement to examine existing transmission line routes.

### **C. Evidentiary Hearings and Hearings for Public Comment**

12. Public hearings for the receipt of public comment on Transource’s Application were held on April 27, 2019, in Harford County, and on May 18, 2019, in Washington County.<sup>13</sup> The County Commissioners in Harford County and Washington County were invited to sit jointly with the Commission at each of the respective public hearings. Evidentiary hearings on Transource’s case-in-chief commenced on June 3, 2019, and continued through June 11, 2019 (“June Hearing”). The deadline for written comments was May 29, 2019.

13. On June 27, 2019, Transource and PPRP filed a Joint Motion to Temporarily Suspend the Procedural Schedule in order to pursue settlement discussions.<sup>14</sup> The Commission suspended the procedural schedule and directed Transource and PPRP to

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<sup>12</sup> Transource acknowledged 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. These criteria include the analysis under PUA § 7-209. Additionally, the Commission noted that Transource should be prepared to address any additional information regarding the effect of the IEC Project on the stability and reliability of the electric system that will assist the Commission in its consideration of whether the Project satisfies the criteria under PUA § 7-207. The parties agreed to—and the Commission adopted—a second revised procedural schedule providing that Staff, PPRP, OPC and Intervenors’ direct and reply testimony would be filed by April 12, 2019, rebuttal and surrebuttal testimony on May 8 and May 22, 2019, respectively, with the evidentiary hearing on June 3 – 13, 2019, and if needed, June 17 – 18, 2019.

<sup>13</sup> Notice of Hearings for Public Comments was published by Transource in various newspapers in Washington and Harford counties, once in each of four successive weeks prior to the April 27, 2019 Harford County hearing date and prior to the May 18, 2019 Washington County hearing date, as noted in Transource’s Certificates of Publication, which were filed with the Commission on April 26, 2019 (Maillog No. 224956) and May 17, 2019 (Maillog No. 225360), respectively.

<sup>14</sup> Maillog No. 225845.

provide status reports to the Commission regarding the progress of settlement negotiations.<sup>15</sup>

14. On September 26 and October 10, 2019, Transource and PPRP filed status reports, followed by a Joint Motion for Adoption of Settlement (“Settlement Petition”) filed on October 17, 2019.<sup>16</sup>

15. In its Settlement Petition, Transource states that it entered into a comprehensive settlement agreement with PPRP; the Commission’s Technical Staff; BGE; Harford County, Maryland; and certain other Intervenors—Mary Beth and Daniel John Scott, Tony D. and Cynthia A. Tanner, Barron Shaw, and STOP Transource (the “Landowner Parties”) (collectively the “Settling Parties”).

16. Under the Settlement Agreement and Stipulation (“Settlement Agreement” or “Settlement”) attached to the Settlement Petition, the Settling Parties requested that the Commission approve a CPCN for Transource to construct the IEC West portion of the IEC Project (“IEC West Portion”), and grant CPCN waivers to BGE to upgrade two segments of BGE’s existing transmission infrastructure in Harford County, Maryland to construct an “alternative configuration of the ‘IEC East’ portion of the IEC Project” (hereinafter “Alternative IEC East Portion”)<sup>17</sup>

17. Separately, BGE filed a Petition to Intervene, stating that it is a party to the Settlement Agreement and acknowledging that under its terms, BGE would construct,

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<sup>15</sup> Order No. 89171 (June 27, 2019). Transource and PPRP filed a status report on August 26, 2019, and requested that the Commission hold the procedural schedule in abeyance until September 26, 2019. The Commission granted a further extension of the procedural schedule to September 26, 2019.

<sup>16</sup> Maillog No. 227188 (Petition for Adoption of Settlement, Transource Ex. 40) (“Settlement Petition”).

<sup>17</sup> Settlement Petition at 2; *see also* Staff Ex. 3, BGE Request for Waiver of CPCN Requirement for Project 5E (Dec. 6, 2019). The Alternative IEC East Portion refers to the reconfigured eastern portion of the IEC Project between Maryland and Pennsylvania. BGE has agreed to construct the Maryland segment of the Alternative IEC East Portion, as described in further detail herein.

own, and maintain segments of the Alternative IEC East Portion (hereinafter the “BGE Alternative Maryland Configuration”).<sup>18</sup> BGE noted further that it intended to provide testimony regarding the Alternative IEC East Portion.<sup>19</sup>

18. With regard to notice and the impact of the BGE Alternative Maryland Configuration on affected property owners, the Settling Parties represented that BGE would:

conduct its usual landowner and community outreach to educate the public regarding BGE’s portion of the work.... BGE would send out an initial notification letter to all affected stakeholders which will provide stakeholders an overview of the proposed project and advise that additional information will be provided. BGE would also conduct individualized outreach with adjacent property owners to provide awareness and information about the expected construction work.<sup>20</sup>

19. Additionally, Transource requested that the Commission reopen the evidentiary proceeding in this case to review and consider the terms of the Settlement Agreement as well as testimony in support for the Settlement; grant BGE’s Petition to Intervene; enter the proposed procedural schedule set forth by the Settling Parties; approve a CPCN for the IEC West Portion, subject to the recommended licensing conditions to be filed by PPRP; and approve good cause waivers for BGE to perform its work on the Alternative IEC East Portion.<sup>21</sup>

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<sup>18</sup> Maillog No. 227199 (BGE Petition to Intervene).

<sup>19</sup> BGE added that that no other party to this proceeding could adequately represent the interests of BGE; that the issues it intends to raise are relevant to the Commission’s determination as to whether to approve BGE’s segments of the Alternative IEC East Portion; and that if permitted to intervene, BGE would accept the record in this proceeding as it currently stands.

<sup>20</sup> Settlement Petition at 11 n.21.

<sup>21</sup> *Id.* at 12.

20. The Commission granted Transource's request to reopen the evidentiary record in this proceeding and also granted BGE's Petition to Intervene (out-of-time).<sup>22</sup> In granting BGE's Petition to Intervene, the Commission directed BGE to promptly give written notice of the Commission's reopening of this proceeding to affected landowners adjacent to BGE's rights-of-way ("ROW") and the proposed BGE segments of the Alternative IEC East Portion. The Commission further directed BGE to include in its notice a description of the proposed modifications to its existing transmission facilities.<sup>23</sup>

21. An additional public input hearing was held in Harford County, Maryland on December 14, 2019.<sup>24</sup> On December 13 and 16, 2019, Transource filed certificates of publication and an affidavit demonstrating compliance with the Commission's requirements regarding publication of notice of the December 14, 2019 public hearing date.<sup>25</sup> The Commission set January 31, 2020, as the deadline for written public comments regarding the proposed Settlement.<sup>26</sup>

22. On December 16, 2019, Transource, PPRP, BGE and Staff filed testimony supporting the Settlement. Transource filed Settlement Testimony of Brian D. Weber, Steven R. Herling and Timothy J. Horger.<sup>27</sup> PPRP filed Direct Settlement Testimony of Frederick S. Kelly along with an Updated Secretarial Letter of the Reviewing State Agencies (*i.e.*, Maryland Department of Agriculture, Department of Commerce,

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<sup>22</sup> Order No. 89325 (Oct. 29, 2019).

<sup>23</sup> The deadline for further intervention requests, relating to the proposed alternative IEC East project, was extended to December 2, 2019. The Commission directed the parties to file Testimony in Support of (or in Opposition to) the Settlement Agreement and Stipulation on December 16, 2019, and Reply Testimony in Response to Testimony in Support of (or in Opposition to) the Settlement on January 20, 2020.

<sup>24</sup> Commission letters were sent to The Honorable Barry Glassman and The Honorable Patrick S. Vincenti, requesting that they advise the Commission no later than December 10, 2019, if they did not wish to sit jointly at the public hearing. Maillog No. 227441.

<sup>25</sup> Maillog Nos. 227836 and 228872, Transource Ex. 41.

<sup>26</sup> Maillog No. 227394.

<sup>27</sup> Maillog No. 227870.

Department of Planning, Department of Transportation, Department of the Environment, Department of Natural Resources, and Maryland Energy Administration). PPRP also filed a Draft Project Assessment Report for the IEC West Portion and Recommended Licensing Conditions for the IEC West Portion as well as Recommended Conditions for each line segment of the BGE Alternative Maryland Configuration.<sup>28</sup> BGE filed Settlement Testimony of Albert E. Alford.<sup>29</sup> Staff filed Settlement Testimony of Roger Austin.<sup>30</sup>

23. Notably, only one party, OPC, opposed the Settlement and filed Testimony by Douglas A. Smith.<sup>31</sup>

24. Evidentiary hearings on the Petition for Adoption of Settlement were conducted on February 3 and 4, 2020 (“Settlement Hearing”). Briefs were filed by the parties on March 12, 2020.

### **III. THE PROJECT**

25. Transource is seeking Commission approval to construct portions of its IEC Project, also designated as PJM’s Market Efficiency Alternative Project 9A (as reconfigured), which is proposed to be developed in Baltimore, Harford and Washington counties, Maryland as well as in Pennsylvania. The IEC Project consists of: (1) the IEC West Portion, which is comprised of approximately 29 miles of new double-circuit 230 kV alternating current overhead transmission line between the existing Potomac Edison Ringgold Substation in Washington County, Maryland to a new Rice Substation in

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<sup>28</sup> Maillog No. 227861.

<sup>29</sup> Maillog No. 227845.

<sup>30</sup> Maillog No. 227868.

<sup>31</sup> Maillog No. 227867.

Franklin County, Pennsylvania; and (2) the reconfigured IEC East Portion, which is designated the Alternative IEC East Portion of Alternative Project 9A and is comprised of new and rerouted 230 kV alternating current overhead transmission lines between a new Furnace Run Substation in York County, Pennsylvania, and the existing BGE Conastone (via Baltimore County) and Graceton Substations in Harford County, Maryland.

26. The Maryland segment of the Alternative IEC East Portion will be constructed, owned, and maintained by BGE within BGE's existing utility ROW. BGE proposes to add terminal equipment at the Conastone Substation and a second 230 kV circuit on the existing BGE structures supporting the Otter Creek–Conastone 230 kV line, along with an additional, new structure in the BGE ROW that would terminate at the Furnace Run Substation. BGE will also replace eight lattice structures that currently support the Maryland portion of the single-circuit Manor–Graceton 230 kV line with new monopole structures, which would then also carry a second 230 kV line between the Graceton Substation and the Furnace Run Substation.<sup>32</sup>

27. As originally proposed, the IEC East Portion of Project 9A would have been comprised of approximately 16 miles of new double-circuit 230 kV alternating current overhead transmission lines between the existing BGE Conastone Substation to a new Furnace Run Substation.<sup>33</sup> The Maryland segment of the originally proposed IEC East portion would have comprised approximately three miles of the transmission line located in Harford County, Maryland.<sup>34</sup> The Maryland segment of the proposed IEC West

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<sup>32</sup> Settlement Petition at 4.

<sup>33</sup> Application at 2.

<sup>34</sup> Application at 7.

Portion is unchanged from the Application and includes approximately 4.5 miles of the transmission lines in Washington County, Maryland.

28. Project 9A is delineated as a market efficiency project, as part of the PJM Regional Transmission Expansion Plan (“RTEP”). In its Application, Transource gave an explanation of the need for Project 9A, as provided by PJM, and also included (i) a description of the effect of Project 9A on system reliability and stability, (ii) a description of the consequences if Project 9A is not approved, (iii) an explanation of the cost effectiveness of Project 9A, and (iv) a description of the impact of Project 9A on the economies of the State of Maryland.<sup>35</sup>

29. According to the Application, Project 9A was approved by the PJM Board on August 2, 2016, to reduce congestion on electric transmission facilities, improve electric transmission economic efficiencies, and improve grid reliability.<sup>36</sup> The market efficiency analysis conducted by PJM involved project submittals through PJM’s Long Term Proposal Window, which was described by Transource as “a competitive process” consistent with Federal Energy Regulatory Commission (“FERC”) Order No. 1000.<sup>37</sup> Transource’s IEC Project proposal prevailed in the PJM Market Efficiency Long Term Proposal Window, and on November 2, 2016, Transource executed a Designated Entity Agreement with PJM to construct the IEC West and IEC East Portions of Project 9A for which CPCN approval was sought in its Application.<sup>38</sup>

30. Alternative Project 9A, inclusive of the Alternative IEC East Portion and reflective of the Settlement Agreement, was presented to the PJM Board in November

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<sup>35</sup> *Id.* at 9-14; Transource Ex. 42, Settlement Testimony of Brian D. Weber (“Weber Settlement”) at 2.

<sup>36</sup> Application at 9.

<sup>37</sup> *Id.* at 10.

<sup>38</sup> The Designated Entity Agreement was approved by FERC on November 14, 2016. *Id.* at 12.



2019. PJM’s representatives indicate that the PJM Board approved Alternative Project 9A, subject to approval by this Commission and the Pennsylvania Public Utility Commission (“Pennsylvania Commission”), and subject to written confirmation from Transource that the Scope of Work set forth in the Designated Entity Agreement will be revised to reflect the configuration of the IEC Project with the Alternative IEC East Portion.<sup>39</sup>

31. According to Transource, the reconfigured Alternative Project 9A (inclusive of the Alternative IEC East Portion) continues to meet the needs identified, *supra*, for PJM Board-approved Project 9A<sup>40</sup> and continues to exceed the 1.25 benefit-to-cost ratio required by PJM of market efficiency projects.<sup>41</sup>

#### IV. STATUTORY CONSIDERATIONS

32. With regard to certificates of public convenience and necessity, PUA § 7-207 prescribes as follows:

(e) The Commission shall take final action on an application for a certificate of public convenience and necessity only after due consideration of:

(1) the recommendation of the governing body of each county or municipal corporation in which any portion of the construction of the generating station, overhead transmission line, or qualified generator lead line is proposed to be located; and

(2) the effect of the generating station, overhead transmission line, or qualified generator lead line on:

(i) the stability and reliability of the electric system;

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<sup>39</sup> Transource Ex. 46, Settlement Testimony of Steven R. Herling (“Herling Settlement”) at 4.

<sup>40</sup> *Id.* at 7-8; Transource Ex. 47, Reply Testimony of Steven R. Herling in Support of the Settlement (“Herling Settlement Reply”) at 10-11; *see also* Transource Ex. 44, Settlement Testimony of Timothy J. Horger (“Horger Settlement”) at 2-5.

<sup>41</sup> Weber Settlement at 2.

- (ii) economics;
- (iii) esthetics;
- (iv) historic sites;
- (v) aviation safety as determined by the Maryland Aviation Administration and the administrator of the Federal Aviation Administration;
- (vi) when applicable, air quality and water pollution; and
- (vii) the availability of means for the required timely disposal of wastes produced by any generating station.

(f) For the construction of an overhead transmission line, in addition to the considerations listed in subsection (e) of this section, the Commission shall:

- (1) take final action on an application for a certificate of public convenience and necessity only after due consideration of:
  - (i) the need to meet existing and future demand for electric service; and
  - (ii) for construction related to a new overhead transmission line, the alternative routes that the applicant considered, including the estimated capital and operating costs of each alternative route and a statement of the reason why the alternative route was rejected;
- (2) require as an ongoing condition of the certificate of public convenience and necessity that an applicant comply with:
  - (i) all relevant agreements with PJM Interconnection, L.L.C., or its successors, related to the ongoing operation and maintenance of the overhead transmission line; and
  - (ii) all obligations imposed by the North America Electric Reliability Council and the Federal Energy Regulatory Commission related to the ongoing operation and maintenance of the overhead transmission line; and
- (3) require the applicant to identify whether the overhead transmission line is proposed to be constructed on:

- (i) an existing brownfields site;
- (ii) property that is subject to an existing easement; or
- (iii) a site where a tower structure or components of a tower structure used to support an overhead transmission line exist.

33. PUA § 7-207(b)(3)(ii) further states: “For construction related to an existing transmission line, the Commission may waive the [CPCN] requirement ... for good cause.”

34. To obtain a CPCN, the burden is on the applicant to demonstrate that the Project meets the public convenience and necessity.

#### **V. POSITIONS OF THE PARTIES**

35. Transource, PPRP, Staff, OPC, STOP Transource and Intervenors Barron Shaw, Mary Beth Scott and Daniel Scott, and Tony Tanner and Cynthia Tanner filed testimonies and exhibits in this proceeding. Transource witnesses Brian D. Weber, Steven R. Herling, Kamran Ali, Barry A. Baker, Kent Herzog, Thomas Schaffer, Dr. Susan F. Tierney, James Michael Silva, Dr. Mark Israel, David Ray Dominy, and Stephen P. Stein filed various direct, rebuttal and/or surrebuttal testimony supporting Transource’s original Project 9A and/or Alternative Project 9A, addressing: the need for the IEC Project; economic benefits to Maryland customers; PJM’s market efficiency transmission planning and project development process; PPRP’s Conceptual Alternatives; Transource’s commitment to PPRP’s recommended conditions; critiques of OPC, Staff and Intervenors’ positions; and other matters.

36. PPRP filed direct and/or surrebuttal testimony, along with exhibits, of Frederick S. Kelley, Dwight D. Etheridge, Hon. Joseph Bartenfelder, and Michelle Cable initially opposing the original Project 9A and addressing PPRP's criteria as applied to both Project 9A and Alternative 9A, including: project need and economics; alternative routes and PPRP's Conceptual Alternatives; and the socioeconomic, cultural, and environmental impacts of original Project 9A and Alternative Project 9A, as well as impacts on agricultural resources. PPRP also filed a Secretarial Letter of the Reviewing State Agencies opposing Project 9A and, after Settlement, an Updated Secretarial Letter supporting Alternative Project 9A, subject to PPRP's project-specific recommended conditions.

37. Similarly, Staff and OPC filed direct and rebuttal testimonies of Roger Austin and Douglas A. Smith, respectively questioning the need and Transource-estimated benefits of original Project 9A, the consideration (or lack of consideration) of alternatives (including PPRP's Conceptual Alternatives), as well as these considerations as they relate to Alternative Project 9A.

38. The Intervenors, STOP Transource, Barron Shaw, Mary Beth Scott and Daniel Scott, and Tony Tanner and Cynthia Tanner opposed original Project 9A, but joined with Transource, PPRP and Staff as Settling Parties with respect to Alternative Project 9A. OPC opposed original Project 9A and remains opposed to Alternative Project 9A. The Parties' respective positions on the Settlement Agreement are described in greater detail in Section VI of this Order.

## A. Transource

39. In support of the original Project 9A, Transource witness Weber provided an overview of the Application, the selection process for the transmission line routes, the construction, operations, and maintenance of the IEC Project, and the status of the rights-of-way (“ROW”) acquisitions. Mr. Weber testified that the Project (as proposed) was based on a determination by PJM that “PJM identified a need to alleviate transmission congestion constraints in Pennsylvania, Maryland, West Virginia, and Virginia,” and approved Project 9A—of which the IEC Project is a component—in order to resolve these constraints.<sup>42</sup> Mr. Weber also testified that siting studies were performed to provide Transource with “an understanding of the opportunities and constraints in each Study Area [in order] to facilitate the development of feasible Alternative Routes, evaluate potential impacts associated with these Alternative Routes, and identify Proposed Routes to be constructed to meet the need for the IEC Project.”<sup>43</sup> With regard to ROWs, Mr. Weber stated that Transource’s standard ROW for 230 kV transmission lines is 130 feet (65 feet on either side of the centerline),<sup>44</sup> and that negotiations with affected landowners had been underway since October 2017, when the routes were first proposed.<sup>45</sup> He testified that if the necessary ROWs and easements could not be obtained through agreements with the respective property owners, Transource would “promptly file separate applications seeking PSC approval to exercise the power of eminent domain to acquire rights-of-way and easements for the proposed IEC Project.”<sup>46</sup>

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<sup>42</sup> Transource Ex. 8, Direct Testimony of Brian Weber (“Weber Direct”) at 9.

<sup>43</sup> *Id.* at 13.

<sup>44</sup> *Id.* at 17.

<sup>45</sup> *Id.* at 18-19.

<sup>46</sup> *Id.* at 19.

40. PJM Vice President of Planning, Steven R. Herling, testified on behalf of Transource regarding PJM's RTEP Process, original Project 9A, and why Project 9A was needed to alleviate transmission congestion.<sup>47</sup> Mr. Herling testified that PJM ultimately selected Project 9A, after evaluating alternatives and reviewing the proposals with PJM stakeholders, "because [Project 9A] provided the highest Benefit/Cost Ratio in terms of reductions and load market payments compared to the project's costs," and was "expected to produce high levels of transmission congestion savings, and reductions in the variable cost of generation supply to the market."<sup>48</sup> According to Mr. Herling, "[t]he RTEP provides forward-looking information as to the state of the supply and delivery infrastructure and identifies future system needs, both in terms of reliability and market efficiency."<sup>49</sup>

41. In discussing PJM's market efficiency analysis, Mr. Herling explained that "[t]he purpose of the Benefit/Cost Ratio threshold is to hedge against the uncertainty of estimating benefits and to provide a degree of assurance that a project with a 15-year net benefit near zero will not be approved."<sup>50</sup> He explained further that 93 proposals were submitted in response to PJM's 2014/15 Long Term Proposal Window, with 41 proposals addressing the referenced congestion. After evaluating the 41 proposals over an 18-month period, Project 9A was selected. Project 9A exceeded the 1.25:1 Benefit/Cost Ratio

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<sup>47</sup> Transource Ex. 10, Direct Testimony of Steven R. Herling ("Herling Direct"). Mr. Herling adopted portions of the direct testimony initially filed by Paul McGlynn, striking pages 1-6, and page 7 through line 12 and page 15 beginning at line 12 through page 30 line 12, and all of page 32. Other portions of Mr. McGlynn's direct testimony was adopted by Transource witness Horger.

<sup>48</sup> *Id.* at 7.

<sup>49</sup> *Id.* at 9.

<sup>50</sup> *Id.* at 18.

threshold, with estimated costs of \$320.10 million and a required in-service date of June 1, 2020.<sup>51</sup>

42. With regard to PPRP’s Conceptual Alternatives recommendation, Mr. Herling testified that all of PPRP’s Conceptual Alternatives were proposed through data requests, and that (at the time) each provided “much less” information than PJM’s FERC-approved RTEP process requires of project submittals.<sup>52</sup> He acknowledged, however, that no proposals—similar to the Conceptual Alternatives—were among the 41 proposals submitted in the 2014/2015 Long Term Proposal Window, and therefore no such similar proposal was evaluated by PJM against Project 9A. Mr. Herling concluded that none of the Conceptual Alternatives proposed by PPRP were “clearly superior” to Project 9A, and that PPRP witness Etheridge’s assertion that Conceptual Alternative No. 2 could be made viable was shortsighted.<sup>53</sup>

43. PJM’s Director of Energy Market Operations, Timothy J. Horger, adopted portions of direct testimony filed by Paul McGlynn and not adopted by Mr. Herling.<sup>54</sup> Mr. Horger also provided an overview of the original Project 9A,<sup>55</sup> and testified that as a federally-approved Regional Transmission Organization (“RTO”), PJM is responsible for ensuring the reliable and efficient operation of the electric transmission system in the PJM region.<sup>56</sup> He explained that PJM prepares an annual Regional Transmission

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<sup>51</sup> *Id.* at 31.

<sup>52</sup> Transource Ex. 11, Rebuttal Testimony of Steven R. Herling (“Herling Rebuttal”) at 27.

<sup>53</sup> *Id.* at 31-32.

<sup>54</sup> Mr. Horger adopted portions of the direct testimony initially filed by Paul McGlynn, striking pages 1-2 through line 14, page 4 lines 10 through 15, page 7 line 13 through page 15 line 11, page 30 line 13 through page 31 line 22. Other portions of Mr. McGlynn’s direct testimony were adopted by Transource witness Herling.

<sup>55</sup> Transource Ex. 12, Direct Testimony of Timothy J. Horger (“Horger Direct”) at 3.

<sup>56</sup> *Id.* at 4.

Expansion Plan and applies North American Electric Reliability Corporation (“NERC”) Reliability Standards to evaluate the reliability of the transmission system.

44. In addition to discussing PJM’s reliability analysis, Mr. Horger testified that PJM’s RTEP also includes a market efficiency analysis to identify transmission facilities that may have economic and wholesale market benefits.<sup>57</sup> Project 9A, he testified, was a product of PJM’s RTEP market efficiency analysis.<sup>58</sup>

45. Mr. Horger explained that in October 2014, PJM opened the 2014/15 Long Term Proposal Window to solicit proposals to address transmission congestion across the AP-South interface. He added that, after extensive evaluation of “alternatives” and review with stakeholders, PJM selected Project 9A to address the needs identified in the 2014/15 Long Term Proposal Window “because it provided the highest Benefit/Cost Ratio in terms of reductions in load market payments compared to the project’s cost.”<sup>59</sup> He explained that PJM’s market efficiency analysis begins with the determination of the congestion drivers that may signal market inefficiencies. Additionally, PJM performs market simulations to determine projections of future market congestion, based on the anticipated RTEP upgraded transmission system, and then evaluates the costs and benefits of any identified new potential upgrades targeted specifically at economic efficiency.<sup>60</sup>

46. With regard to the cost/benefit analysis component of PJM’s market efficiency analysis, Mr. Horger testified that “[t]he Benefit/Cost Ratio is calculated by dividing the present value of the total annual benefit for each of the first 15 years of the life of the

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<sup>57</sup> *Id.* at 5.

<sup>58</sup> *Id.* at 6.

<sup>59</sup> *Id.* at 7.

<sup>60</sup> *Id.* at 17.



enhancement or expansion by the present value of the total annual cost for each of the first 15 years of the life of the enhancement or expansion.”<sup>61</sup> He stated that the purpose of the Benefit/Cost Ratio threshold is to hedge against the uncertainty of estimating benefits in the future and to provide a degree of assurance that a project with a 15-year net benefit near zero will not be approved.<sup>62</sup> He testified that the benefit component includes two metrics, the “Energy Market Benefit” and the “Reliability Pricing Model Benefit,” accounting for benefits to customers from reduction in both energy prices and capacity prices.<sup>63</sup> Regarding the cost component, he testified that the annual cost of the enhancement is “the revenue requirement of the enhancement.”<sup>64</sup>

47. Transource Witness Kamran Ali is an electrical engineer and transmission system planner for Transource. He also testified with regard to PJM’s project selection and approval process, the need for the IEC Project, and Transource Pennsylvania’s obligations to complete the IEC Project. In his direct testimony, Mr. Ali explained that PJM selects market efficiency transmission projects through the Long Term Proposal Window to solicit solutions to the PJM-identified congestion constraint.<sup>65</sup> Mr. Ali stated that “the IEC-East Project was developed to offload higher cost generating facilities”<sup>66</sup> and that the IEC East Project has additional benefits for Maryland by enhancing the strength and reliability of the transmission system.

48. Mr. Ali also testified that Transource reviewed projects similar to PPRP’s Conceptual Alternatives which, when compared to Project 9A, were found to be inferior

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<sup>61</sup> *Id.* at 17-18.

<sup>62</sup> *Id.* at 18.

<sup>63</sup> *Id.* at 18.

<sup>64</sup> *Id.* at 21.

<sup>65</sup> Transource Ex. 32, Direct Testimony of Kamran Ali at 3.

<sup>66</sup> *Id.* at 12.

to Project 9A.<sup>67</sup> He noted also that, as designed, two components of Project 9A involve upgrades to existing facilities owned and operated by BGE and Potomac Edison—countering PPRP’s assertion that transmission developers lack any incentive to incorporate existing underutilized transmission infrastructure in their solution planning process.<sup>68</sup>

49. AECOM Vice President, Barry Baker, testified on behalf of Transource with regard to Transource’s original Siting Studies and assessment of feasible “Alternative Routes” by its siting team.<sup>69</sup> After considering Alternative Routes, Mr. Baker testified that for the IEC West Project “Route C” was selected because it provided a more direct alignment between the Rice and Ringgold Substations.<sup>70</sup> For the originally configured IEC East Project, “Alternative Route E provided a more direct alignment between the relevant (Furnace Run and Conastone)” Substations.<sup>71</sup> Mr. Baker also testified that Route E (for the initially-proposed IEC East Project) minimizes impacts on agricultural lands, farming operations, and orchards, spans fewer streams, and minimally impacts riparian areas.<sup>72</sup>

50. Burns & McDonnell Project Manager, Kent Herzog, testified on behalf of Transource with regard to the IEC Project’s safety and design features.<sup>73</sup> He testified that the IEC Project transmission lines (as originally proposed) would be designed to meet the recommendations set forth in the American Civil Engineers Manual 74, and testified that

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<sup>67</sup> Transource Ex. 33, Rebuttal Testimony of Kamran Ali at 7.

<sup>68</sup> *Id.* at 8.

<sup>69</sup> Transource Ex. 21, Direct Testimony of Barry A. Baker (“Baker Direct”) at 6-11, 13-30.

<sup>70</sup> *Id.* at 21.

<sup>71</sup> *Id.* at 21-29.

<sup>72</sup> *Id.* at 29.

<sup>73</sup> *See* Transource Ex. 29, Direct Testimony of Kent M. Herzog at 2 (stating the purpose of his testimony).

high speed line protection will be installed that will de-energize the line nearly instantaneously in the event of an operational problem.<sup>74</sup>

51. AEPSC Manager of Transmission Right-of-Way, Thomas Schaffer, also testified on behalf of Transource regarding land impacts of the original Project 9A and oversight of the IEC Project's ROW acquisitions. He stated that landowners impacted by the IEC Project will be fairly compensated based on the fair market values of affected properties, and that compensation could be provided for crop loss or damages during construction.<sup>75</sup> Mr. Schaffer also testified in rebuttal to the Intervenors (including the Scotts, Tanners, and others), stating that the landowners impacted by the IEC Project will not lose significant portions of land.<sup>76</sup> He acknowledged, however, that under the original project design for Project 9A, there would be some restrictions on land use in the acquired ROWs for the IEC East Project.<sup>77</sup> He added that “[a]s of May 8, 2019, IEC Project representatives had successfully negotiated and secured Option to Purchase Easement agreements with thirteen of the twenty-nine Landowners crossed by the IEC Project in Maryland, 65% of those on the IEC-West Project route and [before the filing of Alternative Project 9A] 17% of those on the IEC-East Project route.”<sup>78</sup>

52. Susan Tierney, Ph.D., a Senior Advisor at Analysis Group, Inc. provided testimony on behalf of Transource (in rebuttal to PPRP and OPC witnesses), focusing on economic and public policy bases for considering Project 9A. She advised that the Commission should give “great weight” to the results of PJM's RTEP, which concluded

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<sup>74</sup> *Id.* at 4.

<sup>75</sup> Transource Ex. 16, Direct Testimony of Thomas Schaffer at 4-5.

<sup>76</sup> Transource Ex. 18, Rebuttal Testimony of Thomas Schaffer at 2.

<sup>77</sup> *Id.* at 3.

<sup>78</sup> *Id.* at 5.

that the Project (even as originally proposed) would provide economic and reliability benefits to Maryland electric consumers.<sup>79</sup> Dr. Tierney noted that Maryland depends on regional transmission and electricity imports by the PJM market, relying on imports to supply 44 percent of its retail electricity needs.<sup>80</sup> She added that the PJM transmission planning process “takes into account the availability of ... demand-reduction actions on the grid.”<sup>81</sup> Dr. Tierney submits that Maryland’s CPCN process and PJM’s RTEP process need not be in conflict, *i.e.*, that “Maryland’s interests in siting this proposed Project can align with the region’s interests in seeing Maryland approve the Project.”<sup>82</sup> She added that “[g]iven Maryland’s restructured industry and its literal reliance on regional resources to supply Maryland customer loads, the performance of the SOS auction process regulated by the Commission depends upon a well-functioning and efficient wholesale market in the region.”<sup>83</sup>

53. Transource witness James Silva, in his rebuttal testimony, addressed electromagnetic fields (“EMF”), exposure assessment of EMF levels, audible noise, and electromagnetic compatibility relating to the IEC Project.<sup>84</sup> Dr. Mark Israel also provided testimony on behalf of Transource, addressing research on power frequency EMF exposure as a cause or contributing factor in the development of cancer, including leukemia.<sup>85</sup> Transource witness David Dominy testified in rebuttal to the Intervenors (including the Scotts, Tanners, and others) addressing the potential impact of high voltage transmission lines (HVTLs) on properties on and adjacent to the proposed IEC Project.

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<sup>79</sup> Transource Ex. 15, Rebuttal Testimony of Susan F. Tierney (“Tierney Rebuttal”) at 4.

<sup>80</sup> *Id.* at 5.

<sup>81</sup> *Id.* at 6.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 16.

<sup>84</sup> Transource Ex. 25, Rebuttal Testimony of James M. Silva at 2.

<sup>85</sup> Transource Ex. 28, Rebuttal Testimony of Dr. Mark A. Israel at 13.

He testified that the price effects of HVTLs on nearby agricultural and recreational properties represent generally a “0 to 5% diminution for properties crossed by the right-of-way (or easement area) when compared to similar properties farther away.”<sup>86</sup> Stephen Stein provided rebuttal testimony in response to OPC’s cost estimates.<sup>87</sup> Mr. Herzog testified that Transource will compensate landowners for any impacts or crop loss during the construction and restoration period.<sup>88</sup>

## **B. PPRP**

54. PPRP and the seven Reviewing State Agencies initially opposed the Project as originally configured. The Reviewing State Agencies argued that there was insufficient evidence in the record “to demonstrate that the [original ‘Project’ 9A], including the siting of the ‘greenfield’ transmission line from southern Pennsylvania into Maryland is superior to other alternatives that could provide economic and reliability benefits for Maryland and the surrounding region.”<sup>89</sup> The Reviewing State Agencies added that “Maryland’s agriculture industry is vital to Maryland as its single largest industry after the federal government, which is why Maryland has prioritized preserving farmland and ensuring the integrity of [Maryland Agricultural Land Preservation Foundation] easements.”<sup>90</sup>

55. In his Direct Testimony, Mr. Kelley, PPRP Project Manager, testified that the IEC Project will require modifications to two existing transmission lines: (1) to Potomac Edison’s Ringgold to Catoctin 138 kV transmission line and (2) to Baltimore Gas and

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<sup>86</sup> Transource Ex. 20, Rebuttal Testimony of David Dominy at 7.

<sup>87</sup> Transource Ex. 19, Rebuttal Testimony of Stephen P. Stein at 1-5.

<sup>88</sup> Transource Ex. 29, Rebuttal Testimony of Kent M. Herzog at 2.

<sup>89</sup> PPRP Ex. 12, Secretarial Letter of Reviewing State Agencies, Exhibit FSK-2 to the Direct Testimony of Frederick S. Kelley (April 12, 2019).

<sup>90</sup> *Id.*

Electric Company’s Conastone to Northwest transmission line.<sup>91</sup> He added, however, that PPRP and the Reviewing State Agencies believed there was an alternative route using existing transmission lines that was superior to the initially-proposed IEC East configuration.<sup>92</sup> Mr. Kelley further testified that Transource’s proposed routes do not meet PPRP’s criteria that the proposed route (1) be environmentally acceptable, (2) assess one or more reasonable alternatives, and (3) assess whether any of the alternatives are clearly superior.<sup>93</sup> He noted that the IEC Project proposed by Transource in the Application would occupy lands currently “unencumbered” by a transmission line ROW, and the proposed IEC West Portion parallels, but does not occupy, any existing transmission ROW for most of its length in Maryland.<sup>94</sup> The IEC East Portion (as originally proposed), Mr. Kelley testified, would have occupied eight parcels protected by land preservation easements, a number of which are held by the Maryland Agricultural Land Preservation Foundation (“MALPF”), and the IEC West Project passes through one of Washington County’s six Priority Preservation Areas in which a few parcels are protected by MALPF easements.<sup>95</sup>

56. Mr. Kelley also testified with regard to adverse socioeconomic, land use, property value, visual quality, cultural and aesthetic resources, economic, fiscal, transportation, biological impacts of the IEC East and IEC West Projects (as originally proposed).<sup>96</sup> He stated that PPRP identified a number of environmental impacts that would likely result

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<sup>91</sup> PPRP Ex. 11, Direct Testimony of Frederick S. Kelley (“Kelley Direct”) at 7. Witness Kelley explained that the Potomac Edison Ringgold–Catoctin line will need to be rebuilt from a 138 kV transmission line to a 230 kV transmission line, if Project 9A is approved in Maryland and Pennsylvania (Case No. 9470). For the BGE Conastone–Northwest transmission line, BGE will need to replace conductors on the line. *Id.*

<sup>92</sup> *Id.* at 10.

<sup>93</sup> *Id.* at 11.

<sup>94</sup> *Id.* at 13-14.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* at 30-40.

from construction and operation of the original Project 9A. In summary, these impacts include adverse changes to sensitive natural resources, rivers, streams, forests and wetlands, as well as undesirable impacts to wildlife occupying these habitats, including certain fish and rare, threatened, and endangered species. PPRP also found potentially adverse water impacts to certain river and Tier II stream systems in Harford County. Whereas PPRP's findings with regard to the IEC West portion of the IEC Project are discussed in further detail in Section VII of this Order, PPRP witness Kelley indicated that many of the deleterious impacts imposed by the IEC East Project could be minimized or avoided by "other viable alternatives that would utilize existing transmission infrastructure and rights-of-way," while providing similar benefits to Maryland and the surrounding region.<sup>97</sup>

57. Exeter Associates Vice President, Dwight Etheridge, testified on behalf of PPRP with regard to Transource's statement of need for the Project, and alternatives that could address the need criteria. He testified that "it would be imprudent to place any degree of confidence" in PJM's 2016 economic benefits estimates for the [original] Project, and that "the proper focus for this case should be on charting a path forward to identify the preferred solution to the emerging reliability issues and not on attempts to achieve elusive economic benefits."<sup>98</sup> Prior to the filing of Alternative Project 9A, he also testified that "[n]either PJM nor Transource gave any consideration to increasing the transmission capacity of [] existing transmission corridors as an alternative to the IEC-East project until pressed for information in this case and a similar proceeding in Pennsylvania."<sup>99</sup> He

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<sup>97</sup> See *id.* at 41.

<sup>98</sup> PPRP Ex. 15, Direct Testimony of Dwight D. Etheridge ("Etheridge Direct") at 4.

<sup>99</sup> *Id.*

added that PPRP had been able to determine that its Conceptual Alternatives to the IEC East Portion line, which make use of existing transmission infrastructure “appear viable,” and are “far superior” to Transource’s proposed “greenfield” 230 kV transmission line from a public policy perspective.<sup>100</sup>

58. Additionally, Mr. Etheridge noted that Schedule 6 of the PJM Operating Agreement provided PJM staff the leeway to not recommend approval of a “greenfield” transmission line (*i.e.*, the IEC East Project) as part of the eastern portion of Project 9A. He notes that Section 1.5.8(e) of Schedule 6 could have been used to point out that the eastern portion of Project 9A was not a cost-effective solution for addressing the targeted economic congestion on the AP South and AEP-DOM interfaces, and also that the eastern portion of the project was not economically viable on a standalone basis.<sup>101</sup>

59. In its evaluation of existing underutilized transmission infrastructure as an alternative to the IEC East Project, Mr. Etheridge testified that Conceptual Alternative No. 3 passed PJM’s reliability screening studies while Conceptual Alternatives Nos. 2 and 4 triggered overloads on the system.<sup>102</sup> He noted that “[PPL Electric Utilities Corporation (“PPL EU”)], and to a lesser extent BG&E, is in the best position to answer the question whether utilization of existing underutilized transmission infrastructure is a viable alternative to Transource’s IEC East Project, but PPL EU’s recent actions strongly indicate that the IEC-East project’s ‘greenfield’ transmission line may not be needed.”<sup>103</sup>

He noted, however, that PPL EU’s recent market efficiency proposal demonstrates that

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<sup>100</sup> *Id.* at 5.

<sup>101</sup> PPRP Ex. 16, Surrebuttal Testimony of Dwight D. Etheridge at 18-19.

<sup>102</sup> *Id.* at 22.

<sup>103</sup> *Id.* at 23. Witness Etheridge explained that “PPL EU is strategically positioned to present viable alternatives to the IEC-East 15 project, whereas PPRP is not. PPL EU knows the capabilities of its existing underutilized 16 transmission infrastructure to accommodate higher capacity conductors that could be 17 used to develop alternatives to the IEC-East project.” *Id.* at 4.



existing underutilized transmission corridors can be greatly enhanced to provide needed incremental transmission capacity from southern Pennsylvania into northeastern Maryland in an environmentally responsible manner.<sup>104</sup> Also, with regard to the market efficiency benefits of Project 9A, Mr. Etheridge testified that the benefits are “elusive”.<sup>105</sup>

60. Maryland’s Secretary of Agriculture, Joseph Bartenfelder, also testified on behalf of PPRP. In his testimony, Secretary Bartenfelder noted that Transource’s Project (as originally proposed) to construct new transmission lines in Harford and Washington counties would “directly impact agricultural operations and agricultural resources in the State, particularly farmlands that have been designated as having statewide importance.”<sup>106</sup> He also added that Transource’s IEC East Portion’s original configuration would interfere “substantially” with several MALPF easements properties, “which the State purchased with taxpayer funds to preserve farmland.”<sup>107</sup> The Secretary recommended that “[g]iven the existing impacts to agriculture, existing ROWs should be used if at all possible.”<sup>108</sup> Along with the other reviewing State agencies, the Department of Agriculture initially recommended denial of Project 9A as it was originally proposed.

61. MALPF Executive Director, Michelle Cable, testified that MALPF was created by statute in 1974 in order to protect against the loss of productive farmland in Maryland,<sup>109</sup> by authorizing MALPF to purchase agricultural land preservation easements on qualifying farmland from eligible and willing landowners. She testified that under the statute, MALPF pays landowners substantial funds from taxpayer dollars to compensate

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<sup>104</sup> *Id.* at 24.

<sup>105</sup> *Id.* at 25.

<sup>106</sup> PPRP Ex. 6, Direct Testimony of Joseph Bartenfelder at 3-4.

<sup>107</sup> *Id.* at 4.

<sup>108</sup> *Id.* at 6.

<sup>109</sup> PPRP Ex. 7, Direct Testimony of Michelle Cable (“Cable Direct”) at 4.

for the “use restrictions” applied to farmland.<sup>110</sup> Ms. Cable testified that the IEC West Project—as proposed—will impact two easements held by MALPF, and the IEC East Project—as originally proposed—will affect four MALPF easements. She added that not only might the IEC Project affect the profitability of the landowner’s farming operations, the Project could cause soil erosion and compact soil in the location of the transmission lines (with regard to the IEC East Portion in Harford County).<sup>111</sup> Ms. Cable also stated that the adverse impacts on MALPF easement holders could justify their request for termination of the easement, which could in turn have ramifications that would weaken the nature of this “important” State program.<sup>112</sup>

### **C. Staff**

62. Staff filed direct testimony and exhibits of Roger Austin, Public Service Commission Engineer.<sup>113</sup> Mr. Austin initially recommended that the Commission deny Transource’s CPCN application in this case, concluding that while the IEC Project would have an overall average net benefit to Maryland, DPL zone customers in Maryland’s Eastern Shore would see increased net load payments. Mr. Austin testified that Project 9A (as originally designed) would likely be successful in relieving the economic congestion south of the AP South Reactive Interface, and would bring with it the additional benefit of addressing emerging reliability in Pennsylvania. However, he also testified that various state initiatives, including deployment of “renewable resources, energy efficiency and other transmission alternatives are constantly evolving which may

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<sup>110</sup> *Id.* at 5.

<sup>111</sup> *Id.* at 9.

<sup>112</sup> *Id.* at 11.

<sup>113</sup> Maillog No. 224730.

eventually render this project unnecessary.”<sup>114</sup> Mr. Austin notes that PJM has studied several non-transmission alternatives; however, he stated that PJM’s analysis of non-transmission energy saving and additional resources “is only a ‘snapshot.’”<sup>115</sup>

63. Mr. Austin discussed the existing transmission infrastructure in ROWs that could be used as viable alternatives to portions of the IEC Project, *i.e.*, the Conceptual Alternatives advocated by PPRP that correlate to alternative routes proposed by the Pennsylvania Office of Consumer Advocate (“OCA”) for the Pennsylvania segment of the IEC East Portion.<sup>116</sup> In discussing Transource’s IEC East Portion and OCA’s proposed alternative, Mr. Austin noted that adding a new 230 kV circuit “to the existing PPL tower lines would duplicate to a great extent the two proposed 230 kV circuits of the IEC East Project without the need for about 13 miles of new right-of-way in Pennsylvania and 3 miles of new right-of-way in Maryland.”<sup>117</sup>

64. With regard to PJM’s market efficiency benefit/cost analysis, Mr. Austin observed that when describing how PJM performs its benefit/cost analysis, “only those transmission zones that see a benefit in lower net load payments are included in the benefit/cost calculation while those transmission zones that see an increase in net load payment ... are excluded from the calculation.”<sup>118</sup> Based on PJM’s approach, for the original Project 9A, Mr. Austin calculated that customers in the BGE zone would pay 19.73% (or \$73.44 million) of the IEC Project costs, Pepco zone customers will pay 20.8% (or \$77.68 million), APS zone customers would pay 8.73% (or \$32.49 million) of

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<sup>114</sup> Staff Ex. 1, Direct Testimony of Roger Austin at 2-3, 8-9.

<sup>115</sup> *Id.* at 10.

<sup>116</sup> *Id.* at 11.

<sup>117</sup> *Id.* (citing Ex. RFA-5 to his testimony for an illustration of the Lanzalotta Option).

<sup>118</sup> *Id.* at 19.

the IEC Project costs, and DPL zone customers would not pay any costs.<sup>119</sup> He added—under the original project design—that customers in many zones would see increased net load payments, but customers in three of the four zones that serve Maryland customers would see lower net load payments. In conclusion, Mr. Austin submitted that the 15-Year Net Present Value of New Load Payment benefits to Maryland transmission zones for the original Project 9A proposal would be \$296,880,855.<sup>120</sup>

65. With regard to Maryland’s renewable generation initiatives, Mr. Austin noted that “significantly more [renewable energy credits (“RECs”)] come from states south and east of the APS South Interface, such as Virginia, West Virginia, North Carolina, and Tennessee than from states that would aggravate congestion such as Pennsylvania, Ohio, and Indiana.”<sup>121</sup> He observed that, if the import trend for RECs continues into the future, the source of RECs will reduce the congestion benefits of the project.<sup>122</sup> He added that with recent Maryland legislative enactments, including the Maryland Clean Energy Jobs Act of 2019, it is probable that most of the new renewable generation will likely come from either Maryland or areas south and east of Maryland that will alleviate congestion, rather than from areas north and west of Maryland that Transource witness Horger claims will aggravate congestion.<sup>123</sup>

#### **D. OPC**

66. OPC recommended that the Project be denied. Daymark Energy Advisors Managing Consultant, Douglas A. Smith, testified on behalf of OPC that PJM and

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<sup>119</sup> *Id.*

<sup>120</sup> *Id.* at 21.

<sup>121</sup> Staff Ex. 2, Surrebuttal Testimony of Roger Austin at 4.

<sup>122</sup> *Id.* at 5.

<sup>123</sup> *Id.* at 6.

Transource appear to have followed the PJM market efficiency project assessment process each time the IEC Project was evaluated; however, the PJM process has not been designed to provide the information that the Commission needs to determine that the project is in the interest of Maryland ratepayers.<sup>124</sup> He adds that the high transmission congestion costs that first motivated PJM to solicit market efficiency projects, including Project 9A, have declined significantly in recent years. He also noted that “[b]ecause Project 9A is defined as a market efficiency project, PJM has not studied any other solutions to the reliability issues and has not determined if there are lower-cost options available for only solving that reliability need.”<sup>125</sup> Mr. Smith stated that PJM’s cost allocation, *i.e.*, the percentage of project costs allocated among the various transmission zone customers, will not change over time.<sup>126</sup> However, the benefit/cost ratio for the Project has varied from 2.48, during its initial evaluation, to 1.30, 1:32, 1.42 and, more recently, to 2.17. Furthermore, PJM’s method for calculating the benefit/cost metrics has changed over time.<sup>127</sup> Like Staff, OPC witness Smith testified that the DPL zone is not forecasted to be a beneficiary of Project 9A, and the DPL zone’s net load payments are expected to increase significantly over the 15-year study period.<sup>128</sup>

67. Mr. Smith also testified that Transource provided minimal information in its Application regarding project alternatives. However, after being presented with PPRP’s Conceptual Alternatives, PJM has conducted some evaluation of them.<sup>129</sup> Although he testified that none of the Conceptual Alternatives have been subjected to the rigorous

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<sup>124</sup> OPC Ex. 15, Direct Testimony of Douglas A. Smith at 3.

<sup>125</sup> *Id.* at 12

<sup>126</sup> *Id.* at 16.

<sup>127</sup> *Id.* at 17, 21-23.

<sup>128</sup> *Id.* at 30.

<sup>129</sup> *Id.* at 39.

engineering work that would be necessary, Mr. Smith submitted that Conceptual Alternative No. 3 “passes the n-1 screening with minor modifications.”<sup>130</sup> Mr. Smith also testified that neither Transource nor PJM have presented or considered any generation options that could provide congestion benefits in lieu of the proposed transmission solution.<sup>131</sup> He testified, however, that additional generation, beyond what is online today, could be an alternative means of solving the congestion problem for which Project 9A is intended.<sup>132</sup>

#### **E. Intervenors**

68. STOP Transource filed the direct testimony and exhibits of Aimee O’Neill, President and owner of Aimee O’Neill & Co. Inc.; property owners Barron Shaw, Mary Beth Scott and Daniel Scott, and Tony Tanner and Cynthia Tanner also filed their direct testimonies and exhibits opposing the original Project 9A. Additionally, the Harford County Council filed a Resolution in Opposition to the original Project 9A.<sup>133</sup>

69. STOP Transource is comprised of concerned citizens in the vicinity of the proposed path for the IEC East Portion, including certain owners of real property in Harford County whose land lies directly within the proposed Project ROW. Ms. O’Neill testified as the non-profit corporation’s authorized representative. Her testimony included as exhibits the Shaw and Crowl easements with MALPF easements, and she testified that Project 9A (as originally designed) would usurp lands from Harford County property owners who rely on these agricultural lands to earn a living. Ms. O’Neill also testified that approval of Transource’s Application (as originally submitted) would result

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<sup>130</sup> *Id.* at 41.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.* at 42.

<sup>133</sup> Maillog No. 224686.

in “the permanent loss and detriment of the community at large[,]” and would constitute “an abuse of the condemnation and eminent domain procedures.”<sup>134</sup>

70. Mr. Barron Shaw testified that the Project 9A (as originally designed) would have a direct and adverse impact on the profitability of his Harford County farm—Shaw Orchards<sup>135</sup>—and would discourage the farm’s “pick-your-own market customers, because the proximity (and potential health concerns) related to the presence of high voltage overhead transmission lines.”<sup>136</sup> Mr. Shaw testified that the presence of power lines crossing his farm will impair aerial spraying of field crops, and the use of transmission lines as a perch for migrating birds would be an added nuisance.<sup>137</sup>

71. Intervenors Mary Beth Scott and Daniel Scott, and Tony Tanner and Cynthia Tanner, added that their farms are encumbered by MALPF easements. Construction of the original Project 9A and, in particular, the IEC East Portion—as requested by Transource in the Application—would totally and permanently destroy the esthetics of their farms, and would have an adverse visual impact in every direction.<sup>138</sup> The Tanners added that the compensation offered by Transource for an ROW easement on their property was inadequate.<sup>139</sup>

72. In its Resolution in Opposition, the Harford County Council submitted that “the removal of land from agricultural conservation by eminent domain or purchase of easements should the application by Transource Maryland, LLC [as originally proposed]

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<sup>134</sup> STOP Transource Ex. 1, Direct Testimony of Aimee O’Neill at 6.

<sup>135</sup> Shaw Ex. 1, Direct Testimony of Barron Shaw at 5.

<sup>136</sup> *Id.* at 7.

<sup>137</sup> *Id.* at 8-9.

<sup>138</sup> Scott Ex. 4, Direct Testimony of Daniel J. Scott at 3; Scott Ex. 5, Direct Testimony of Mary Beth Scott at 3; Tanner Ex. 2, Direct Testimony of Tony D. Tanner (“T. Tanner Direct”) at 4; Tanner Ex. 3, Direct Testimony of Cynthia A. Tanner (“C. Tanner Direct”) at 4.

<sup>139</sup> T. Tanner Direct at 15; C. Tanner Direct at 15.

be approved is not in the best interest of the citizens of Harford County and Maryland.”<sup>140</sup>

The Resolution added that the Public Utilities Article requires the Commission to give “due consideration” to the recommendations of the governing body of a county in which a portion of the transmission line is proposed to be located.<sup>141</sup>

## **VI. PETITION FOR ADOPTION OF SETTLEMENT**

73. On October 17, 2019, Transource filed the Settlement Petition in which the Settling Parties requested that the Commission adopt the Settlement Agreement and (1) approve a CPCN for Transource to construct the IEC West portion of the IEC Project; and (2) grant CPCN waivers to BGE to upgrade two segments of BGE’s existing transmission infrastructure in Harford County, Maryland, as an “alternative configuration to the ‘IEC East’ portion of the IEC Project.”<sup>142</sup> Separately, BGE filed a Petition to Intervene, acknowledging that under the terms of the Settlement BGE agreed to construct, own, and maintain portions of the “[A]lternative IEC East” project.<sup>143</sup> BGE’s portion of the work is referred to in the Settlement Agreement as the “BGE Alternative Maryland Configuration.”<sup>144</sup>

74. On October 29, 2019, the Commission granted BGE’s Petition to Intervene, and extended the deadline for interventions related to the proposed Alternative IEC East Portion to December 2, 2019.<sup>145</sup> The Commission further directed BGE to promptly provide written notice of the proceeding to affected landowners adjacent to BGE’s ROW

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<sup>140</sup> Harford County Council Ex. 1, Harford County Council Resolution Opposing Project at 2.

<sup>141</sup> *Id.* at 3.

<sup>142</sup> Settlement Petition at 2.

<sup>143</sup> Maillog No. 227199 (BGE Petition to Intervene).

<sup>144</sup> Settlement Agreement at 2.

<sup>145</sup> Order No. 89325 (Procedural Order on Settlement Petition).



and the proposed Alternative IEC East Portion project line, and include a description of BGE's proposed modifications to its existing transmission facilities.

#### **A. Transource Settlement Testimony**

75. In support of the Settlement, Transource filed Settlement Testimony on behalf of Brian D. Weber, Steven R. Herling and Timothy J. Horger.

##### **1. Mr. Weber**

76. Mr. Weber states that the market efficiency net benefit of the IEC Project is \$844.8 million to the State of Maryland and surrounding regions, and the project will also further support the renewable energy goals of Maryland.<sup>146</sup> Mr. Weber testifies that the Settlement represents the culmination of Transource's efforts with PPRP and PJM to develop the Alternative IEC East Portion of the IEC Project "that addresses the siting concerns raised by PPRP, Harford County, and others."<sup>147</sup> The Settlement, he states "incorporates the use of existing transmission infrastructure and corridors, while still addressing the persistent congestion that has been adversely affecting Maryland customers and customers in the surrounding region for many years."<sup>148</sup> According to witness Weber, the benefit-to-cost ratio for the IEC Project "with the Alternative IEC East Portion has risen to a value of 1.66 using the companies' updated cost estimates (up from an initial range of 1.39 – 1.51 ...)."<sup>149</sup>

77. The Maryland segment of the Alternative IEC East Portion, Mr. Weber testifies, would be entirely constructed, owned, and maintained by BGE using BGE's existing

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<sup>146</sup> Weber Settlement at 2.

<sup>147</sup> *Id.* at 3.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.* at 4.

utility ROWs.<sup>150</sup> BGE would add a second 230 kV circuit on the existing Otter Creek–Conastone 230 kV line (which would then become the “Furnace Run–Conastone 230 kV line”), and BGE would also replace the structures that currently support the single-circuit Manor–Graceton 230 kV line with new double-circuit structures, which would carry two 230 kV lines (which would then become the “Furnace Run–Graceton 230 kV line”).<sup>151</sup>

78. According to Mr. Weber, PJM has approved the IEC Project as outlined in the Settlement, and states that “[b]ased upon PJM’s review of the Alternative IEC East Portion, the IEC Project ... would continue to meet PJM’s planning criteria.”<sup>152</sup> He states that if approvals are granted by the Maryland and Pennsylvania commissions, the companies (Transource and BGE in Maryland; PPL in Pennsylvania) anticipate beginning construction in the second quarter of 2020, and that the companies have begun working with PJM to coordinate and schedule outage time on existing lines that are being upgraded.<sup>153</sup>

79. Mr. Weber explains that the Alternative IEC East Portion and Conceptual Alternative 3A, the latter of which the parties discussed prior to the conclusion of the June 2019 evidentiary hearings, are identical.<sup>154</sup> He states that PJM, in conjunction with BGE, PPL, and Transource, has confirmed that the IEC Project (with the Alternative IEC East Portion) would “continue to meet PJM’s regional transmission planning criteria ... would still address the congestion on the AP South and related constraints within the

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<sup>150</sup> *Id.* at 5.

<sup>151</sup> *Id.* at 5-6. Mr. Weber notes that Harford County Council reviewed the terms of the Settlement at an open meeting on November 5, 2019, and voted to join the Settlement. Harford County, Maryland and the Harford County Council are both signatories to the Settlement. *Id.* at 6; *see also* Harford County Council Ex. 2, Harford County Council Concurrence with Settlement.

<sup>152</sup> Weber Settlement at 8.

<sup>153</sup> *Id.* at 8-9.

<sup>154</sup> *Id.* at 11.

needed timeframes ... [and] would also resolve the emerging reliability issues on the transmission system in southern Pennsylvania and northern Maryland that Project 9A has been projected to resolve.”<sup>155</sup>

80. The companies estimate the total cost for constructing “this alternative” to be approximately \$195 million for the entire Alternative IEC East Portion of Alternative Project 9A.<sup>156</sup>

81. The projected in-service date for the Alternative IEC East Portion of the IEC Project remains May 2022, while the expected in-service date for the IEC West Portion is March 2021.<sup>157</sup> The Settlement does not propose modifications to the IEC West Portion, which under the Application is proposed to parallel existing transmission corridors in Washington County, Maryland.

82. Mr. Weber further testifies that Transource agrees to comply with PPRP’s proposed conditions for the construction of the IEC West Portion.<sup>158</sup> He also indicates that Transource has reached agreements with additional landowners on the IEC West Portion and has Option to Purchase Easement agreements with 76 percent of the landowners on the IEC West Portion of the IEC Project.<sup>159</sup> Additionally, he testifies that Transource has worked with landowners on the IEC West Portion who own farmland that is preserved by a MALPF easement to acquire “easement option agreements” that will allow Transource to construct and operate the IEC West Portion on their properties.<sup>160</sup> “The landowners’ rights to continue to farm the land within the easement will be

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<sup>155</sup> *Id.* at 12.

<sup>156</sup> *Id.* at 13.

<sup>157</sup> *Id.* at 9.

<sup>158</sup> *Id.*

<sup>159</sup> *Id.* at 10.

<sup>160</sup> *Id.*

preserved through express language in the easement[,] and Transource will also work with the landowners to obtain MALPF's permission for a utility overlay easement under MALPF's regulations, so that Transource's utility overlay easement ... co-exists with MALPF's easement.”<sup>161</sup>

83. Mr. Weber notes that, as part of the Settlement, Transource agreed to reimburse individual landowners and local advocacy groups certain legal costs incurred throughout the course of this proceeding, but Transource is not seeking any action by the Commission relating to the agreement to reimburse these parties' legal costs.<sup>162</sup>

## 2. Mr. Herling

84. Mr. Herling explains PJM's intention to take the necessary steps to implement the Alternative IEC East Portion, if approved by the Maryland and Pennsylvania commissions.<sup>163</sup> He adds that the entire IEC Project, inclusive of the Alternative IEC East Portion, would continue to meet PJM's long-term regional transmission planning process requirements—inclusive of PJM's FERC mandate to address persistent economic congestion adversely impacting PJM's regional transmission system “as well as to address emerging reliability criteria violations forecasted to impact the region's transmission system.”<sup>164</sup>

85. Mr. Herling states that the Alternative IEC East Portion of the IEC Project was presented during a November 2019 meeting of PJM's Transmission Expansion Advisory Committee (“TEAC”) “for information purposes to inform [PJM] stakeholders and

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<sup>161</sup> *Id.* at 10-11 (footnote omitted).

<sup>162</sup> *Id.* at 6-7.

<sup>163</sup> Herling Settlement at 1.

<sup>164</sup> *Id.* at 2.

market participants of the [Project 9A and IEC Project] modifications.”<sup>165</sup> Thereafter, the IEC Project, inclusive of the Alternative IEC East Portion, was presented to the PJM Board for consideration as Alternative Project 9A.<sup>166</sup> The PJM Board approved Alternative Project 9A, subject to approval by the Maryland and Pennsylvania commissions as well as written confirmation from Transource that the scope of work set forth in the Designated Entity Agreement will be revised to reflect the configuration of the IEC Project with the Alternative IEC East Portion.<sup>167</sup>

86. Mr. Herling states that modification of the IEC Project is not inconsistent with PJM rules. He states that “PJM will accommodate the alternative route so long as it comports with PJM’s [RTEP] process ... and the *pro forma* designated entity agreement set forth in PJM’s Open Access Transmission Tariff...”<sup>168</sup> These documents, he notes, “contemplate the fact that projects approved through PJM’s RTEP process may need to be modified from time to time, including to comply with state regulatory approvals.”<sup>169</sup>

87. Mr. Herling also testifies that the IEC Project (inclusive of the Alternative IEC East Portion) continues to result in overall benefits to the system. He states that the Project, as modified, would continue to meet PJM’s long-term planning needs by addressing the persistent congestion on the AP South reactive interface and related constraints.<sup>170</sup> In addition, he states that the project, as modified, would also resolve emerging reliability criteria violations. If Project 9A were to be removed from further consideration, he states, “PJM’s RTEP analysis has previously identified a number of

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<sup>165</sup> *Id.* at 3.

<sup>166</sup> *Id.* The Alternative IEC East Portion was described in detail in a whitepaper submitted by PJM to the PJM Board on December 3, 2019. *Id.*

<sup>167</sup> *Id.* at 4.

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> *Id.* at 7-8.

reliability criteria violations starting in the 2023 study year,” including “conductor overloads on 500 kV transmission lines which, in PJM’s experience, are likely to be resolved only through the construction of additional greenfield transmission.”<sup>171</sup>

### 3. Mr. Horger

88. Mr. Horger states that in July 2019—unrelated to Project 9A—PJM’s market planning group completed a “mid-cycle” update to PJM’s market efficiency “base case,” stating that the updated analysis shows that the IEC Project (inclusive of the Alternative IEC East Portion) continues to provide substantial market efficiency benefits. PJM’s updated analysis shows that the IEC Project, inclusive of the Alternative IEC East Portion, is “now projected to have a benefit-to-cost ratio up to 1.66 ... representing an increase in the range PJM had calculated in May [2019].”<sup>172</sup> He states that the IEC Project, inclusive of the Alternative IEC East Portion, “would continue to allow for an IEC Project that provides substantial benefits to the transmission grid and to Maryland’s energy policy goals.”<sup>173</sup> The benefits to consumers in Maryland and the surrounding region, he opines, would include “lower production costs, reduced re-dispatch of higher-carbon-producing generation, and greater access to less carbon-intensive technologies [and] would continue to provide additional transmission pathways to accommodate the development of renewable resources and wind generation off the Delmarva shore.”<sup>174</sup>

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<sup>171</sup> *Id.* at 8 (citing PJM White Paper: December 2019 Baseline Market Efficiency Recommendations, Ex. SRH-S2 to Herling Settlement, at 7 (Dec. 3, 2019)).

<sup>172</sup> Horger Settlement at 3.

<sup>173</sup> *Id.* at 5.

<sup>174</sup> *Id.*

## **B. PPRP Testimony in Support of Settlement (Mr. Kelley)**

89. PPRP filed Direct Testimony of Frederick S. Kelley in Support of the Settlement, along with the Secretarial Letter of Secretaries Joseph Bartenfelder, Kelly M. Schulz, Robert S. McCord, Pete K. Rahn, Ben Grumbles and Director Mary Beth Tung, on behalf of the Reviewing State Agencies. PPRP also filed Recommended Licensing Conditions for the IEC West Portion; and Recommended Conditions for the Maryland segments of the Alternative IEC East Portion. Finally, PPRP filed its Draft Project Assessment Report (“PPRP–PAR”) for the IEC West Portion of the IEC Project.<sup>175</sup>

90. PPRP witness Kelley states that “the Settlement Agreement is in the best interest for Maryland because it significantly reduces impacts to environmental and cultural resources that would have occurred had the original IEC East Project been constructed instead of the now proposed use of existing transmission infrastructure.”<sup>176</sup> He adds that the new configuration “will provide” Maryland ratepayers in the BGE and Pepco transmission zones “congestion cost savings and reliability benefits.”<sup>177</sup> The Alternative IEC East Portion configuration, he states, “addresses PJM’s emerging reliability issues in a way that maximizes Maryland’s existing infrastructure and avoids unnecessary deleterious impacts to its resources.”<sup>178</sup>

91. In evaluating the need for the IEC Project, PPRP–PAR Section 2.2.2 states that the IEC West Project will increase power flows from Pennsylvania into Maryland, and

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<sup>175</sup> PPRP Ex. 23, PPRP Draft Project Assessment Report for the Transource Independence Energy Connection Project – Western Portion (Maryland Segment) in Washington County, Maryland, Exhibit FSK-20 to PPRP Direct Settlement Testimony of Frederick S. Kelley (hereinafter “PPRP–PAR”). PPRP did not file a separate PPRP–PAR for the BGE segments of the Alternative IEC East Portion of the IEC Project.

<sup>176</sup> PPRP Ex. 18, Direct Settlement Testimony of Frederick S. Kelley (“Kelley Settlement Direct”) at 4.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

correspondingly reduce power flows across the AP-South interface, “thereby reducing congestion costs and lowering energy prices, primarily for customers in Virginia, Washington D.C., and Maryland.”<sup>179</sup> The IEC East Project, it states—both as originally proposed and as reconfigured pursuant to the Settlement—complements the IEC West Portion by providing new transmission capacity from the high-voltage transmission system in southern Pennsylvania into northeastern Maryland, “further reducing congestion costs on the integrated transmission system.”<sup>180</sup>

92. Ultimately, PPRP recommends approval of the Alternative IEC East Portion, using existing transmission infrastructure owned and operated by BGE.<sup>181</sup> According to PPRP witness Kelley, the Alternative IEC East Portion does not pose any issues related to MALPF easements. PPRP, however, recommends conditions that include “erosion and sediment control to protect streams, Species of Concern, and invasive species” for the Maryland Segments of the IEC West and Alternative IEC East Portions of the IEC Project.<sup>182</sup> PPRP also supports BGE’s “good cause” CPCN waiver request, noting that the reconfiguration alternative for the IEC East Project addresses the safeguards that accompany full CPCN review.<sup>183</sup>

93. Witness Kelley asserts that by adopting the Settlement Agreement, “this case underscores the need to consider existing infrastructure early in the process of siting a new transmission project in Maryland, [adding that] [h]ad PJM’s constructability analysis included a consideration of all relevant state transmission siting laws, the potential for

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<sup>179</sup> PPRP-PAR at 7.

<sup>180</sup> *Id.*

<sup>181</sup> Kelley Settlement Direct at 23.

<sup>182</sup> *Id.* at 25.

<sup>183</sup> *Id.* at 30.



using existing infrastructure would have been appropriately considered as part of a potential project.”<sup>184</sup>

### C. Staff Testimony in Support of Settlement (Mr. Austin)

94. Staff filed Settlement Testimony of Roger Austin in support of the Settlement.

95. Mr. Austin states that the reconfiguration of the IEC Project, with the addition of a second 230 kV circuit on the BGE Conastone–Otter Creek 230 kV line, satisfies the “good cause” CPCN waiver requirements of PUA § 7-207(b)(3)(ii), subject to conditions proposed by PPRP, and he recommends that the Commission grant BGE’s requested waivers.<sup>185</sup> He adds that PJM Project 9A “with the reconfigured IEC Project would likely be successful in relieving the economic congestion across the AP South Reactive Interface[, and that] Project 9A with the reconfigured IEC Project will not result in any NERC or PJM reliability criteria violations.”<sup>186</sup>

96. Mr. Austin further testifies that “Maryland consumers will receive approximately \$36.48 million of net benefits in energy costs over 15 years with the reconfigured project, which is slightly less than the approximately \$74.4 million each over 15 years they were expected to receive with the original project.”<sup>187</sup>

97. The nominal cost of the Alternative Project 9A, Mr. Austin testifies, is \$478.48 million, whereas the nominal costs of the original Project 9A was projected to be \$372.2 million.<sup>188</sup> He submits that the “total annual costs of the revenue requirement for the

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<sup>184</sup> *Id.* at 32.

<sup>185</sup> Staff Ex. 4, Settlement Testimony of Roger Austin (“Austin Settlement”) at 2.

<sup>186</sup> *Id.* (footnotes omitted).

<sup>187</sup> Maillog No. 228629 (Staff Revised Settlement Testimony of Roger Austin) (“Austin Revised Settlement”) at 2.

<sup>188</sup> Austin Settlement at 6.

reconfigured project over 15 years is now \$508.92 million compared to \$452.79 million for the original project.”<sup>189</sup>

98. Mr. Austin calculates that over 15 years, BGE zone customers will pay 19.73 percent of the total cost, or \$100.41 million; customers in the Pepco zone will pay 20.87 percent, or \$106.21 million; and APS zone customers will pay 8.73 percent, or \$44.43 million. No costs will be assessed to DPL zone customers.<sup>190</sup> He states that the cost for the project over 15 years for Maryland customers is \$251.05 million.<sup>191</sup> With regard to Maryland customers’ contribution to the costs of the project, Mr. Austin calculates that Maryland customers will contribute \$182.92 million (\$100.41 million in the BGE zone, \$75.41 million in the Pepco zone, and \$7.11 million in the APS zone).<sup>192</sup>

99. Maryland customers will share in “net load payment benefits”—*i.e.*, lower net load payments—of \$106,852,669 in the BGE zone; \$170,915,031 in the Pepco zone (shared with customers in the District of Columbia); and \$60,259,292 in the APS zone (shared with customers in parts of Virginia, West Virginia and Pennsylvania);<sup>193</sup> However, customers in the DPL zone will share in \$59,451,722 of increased net load payments (shared with customers in Delaware and part of Virginia).<sup>194</sup>

100. Proportionally, the 15-year net present value of net load payment benefits to Maryland customers specifically, Mr. Austin states, will be \$278,575,270, assessed at \$106.85 million in benefits in the BGE zone, \$121.35 million in benefits in the Pepco zone, \$9.64 million in benefits in the APS zone, and \$18.43 million in increased

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<sup>189</sup> *Id.* Total annual cost of the revenue requirement over 15 years is used when determining the benefit/cost ratio of the project. *Id.*

<sup>190</sup> Austin Revised Settlement at 6.

<sup>191</sup> *Id.* at 6-7.

<sup>192</sup> *Id.* at 7.

<sup>193</sup> Austin Settlement at 7-8.

<sup>194</sup> *Id.* at 8.

payments in the DPL zone, for a total of \$219.41 million in net benefits to Maryland customers from Alternative Project 9A.<sup>195</sup>

#### **D. BGE Testimony in Support of Settlement (Mr. Alford)**

101. BGE filed Settlement Testimony of Albert E. Alford in support of the Settlement. Mr. Alford's testimony also explains BGE's role in the construction of the Alternative IEC East Portion of the IEC Project.

102. Mr. Alford explains that under the terms of the Settlement, if approved by the Commission, two segments of BGE's existing transmission infrastructure would be upgraded, *i.e.*, the Otter Creek–Conastone 230 kV line<sup>196</sup> and the Manor–Graceton 230 kV line.<sup>197</sup> He states that in Pennsylvania, each of these lines would be routed into the new Furnace Run substation. In Maryland, the lines would continue to be routed to BGE's existing Conastone and Graceton substations, respectively.<sup>198</sup> BGE would rename these lines: Furnace Run–Conastone 230 kV and Furnace Run–Graceton 230 kV.

103. The existing ROW for the Otter Creek–Conastone 230 kV line is approximately 150 feet wide, with monopole structures centered within the ROW. Between the Gorsuch Mill split and the Conastone substation, the existing ROW is approximately 300 feet and consists of double-circuit lattice structures carrying the existing Otter Creek–Conastone 230 kV line adjacent to BGE's Conastone–Hunterstown 500 kV line.<sup>199</sup>

104. BGE proposes to add a new “Furnace Run–Conastone #2 230 kV line from the Pennsylvania–Maryland border to the Conastone Substation[,]” installing new arms,

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<sup>195</sup> *Id.*

<sup>196</sup> The Otter Creek–Conastone 230 kV line consists of 26 monopole and lattice structures that currently only carry a single 230 kV circuit. These structures, however, are capable of carrying two 230 kV circuits.

<sup>197</sup> BGE Ex. 1, Settlement Testimony of Albert E. Alford (“Alford Settlement”) at 2.

<sup>198</sup> *Id.*

<sup>199</sup> *Id.* at 3.

conductors and necessary hardware to the open positions on the existing structures that currently carry the Otter Creek–Conastone 230 kV line.<sup>200</sup> BGE also proposes to add an underground termination yard at the Conastone Substation in order to transition the new Furnace Run–Conastone #2 230 kV line from overhead to underground for entrance into the substation, and will add terminal equipment inside the Conastone Substation to accommodate the connection of the new 230 kV line into the substation.<sup>201</sup> BGE does not expect that it will need to acquire any new ROW to complete the work related to the Furnace Run–Conastone 230 kV line, and estimates that the total cost for the Furnace Run–Conastone line will be \$17.93 million (\$10.75 million for the overhead transmission work, and \$7.18 million for the work as the Conastone Substation—including the underground transmission connection).<sup>202</sup>

105. On the Furnace Run–Graceton 230 kV line, BGE would create a new double-circuit configuration connecting into the Graceton Substation, by removing the eight existing lattice structures and replacing them with new monopole structures capable of supporting two 230 kV conductors.<sup>203</sup> Witness Alford states that BGE also does not anticipate the need to acquire any new ROW in order to complete the work related to the Furnace Run–Graceton 230 kV line.<sup>204</sup> BGE’s cost estimate for the Furnace Run–Graceton line, Mr. Alford states, is \$14.86 million (consisting of \$12.70 million for the

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<sup>200</sup> *Id.*

<sup>201</sup> *Id.* at 4.

<sup>202</sup> *Id.*

<sup>203</sup> *Id.* at 5. The new monopole structures would be approximately 130 feet in height.

<sup>204</sup> *Id.*

overhead transmission work, and \$2.16 million for the work at the Graceton Substation).<sup>205</sup>

106. Also, Mr. Alford testifies, “BGE anticipates only minimal environmental and social impacts from the construction of the new Furnace Run–Conastone and Furnace Run–Graceton 230 kV lines, [since] the work is expected to be contained within existing maintained ROW and BGE-owned substation property.”<sup>206</sup> “Assuming no material changes,” BGE agrees to comply with the PPRP-recommended environmental and construction activity conditions referenced in PPRP witness Kelley’s Direct Settlement Testimony.<sup>207</sup>

107. Mr. Alford also testifies that BGE discussed its potential work on the Alternative IEC East Portion with elected and government officials in Baltimore and Harford counties, and the discussions “were met positively by these officials.”<sup>208</sup> BGE also conducted individualized outreach to adjacent property owners to provide awareness and information regarding expected construction work.<sup>209</sup>

#### **E. OPC Testimony in Opposition to Settlement (Mr. Smith)**

108. OPC filed Testimony of Douglas A. Smith in opposition to the Settlement.

109. According to Mr. Smith, the transmission congestion that motivated PJM to seek a market efficiency upgrade giving rise to Project 9A has remained “substantially lower” in 2019, and congestion patterns have shifted in the area of Project 9A.<sup>210</sup> He adds

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<sup>205</sup> *Id.* at 6.

<sup>206</sup> *Id.*

<sup>207</sup> *Id.* at 7.

<sup>208</sup> *Id.* at 8.

<sup>209</sup> *Id.*

<sup>210</sup> OPC Ex. 38, Testimony of Douglas A. Smith in Opposition to the Settlement (“Smith Settlement”) at 2 and Figure 1 at 6.

further that “the Reconfigured Project 9A<sup>211</sup> with the Alternative IEC East component provides a similar level of economic benefit [as compared with the original IEC East proposal], but at a substantially higher cost.”<sup>212</sup>

110. Maryland ratepayers, he states, will be responsible for a fixed portion of the costs of the Reconfigured/Alternative Project 9A, but any benefits of the project will accrue to customers based on actual market conditions. This, he states, “presents an ongoing risk that Maryland customers could be responsible for costs that exceed the benefits of the project.”<sup>213</sup>

111. Witness Smith also recommends that PJM should include the newly proposed Hunterstown–Lincoln Project in the base case for its evaluation of Project 9A and the Reconfigured/Alternative Project 9A, in order to provide a clear record of whether the benefit/cost ratio of the Reconfigured/Alternative Project 9A exceeds the 1.25 threshold.<sup>214</sup> He notes, however, that PJM will be updating the zonal cost allocation as a result of the Reconfigured/Alternative Project 9A, and that the project cost allocation will be matched to the most recent estimate of the distribution of benefits at the time of PJM’s future FERC filing.<sup>215</sup>

112. Mr. Smith submits that even if market conditions change and the project’s beneficiaries change, the cost allocation percentages will be set—however—and are not

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<sup>211</sup> Mr. Smith refers to Alternative Project 9A as “Reconfigured Project 9A” throughout his testimony.

<sup>212</sup> Smith Settlement at 2.

<sup>213</sup> *Id.*

<sup>214</sup> *Id.* at 3.

<sup>215</sup> *Id.* at 8.

expected to change over time. This concern, he states, is not alleviated by the new cost allocation filing.<sup>216</sup>

113. With regard to the updated benefit/cost evaluation, Mr. Smith notes that the higher cost of Reconfigured/Alternative Project 9A has reduced the total benefit/cost ratio.<sup>217</sup> He maintains that “the risk to Maryland ratepayers lies in the fact that the cost allocation is fixed, but the benefits actually accrue to zones based on how market conditions and congestion actually materialize[,]” noting that the “distribution of benefits to different zones have changed throughout the evaluations of the project as modeling assumptions have changed, and the actual accrual of benefits will likely be different from the forecasts.”<sup>218</sup>

114. Mr. Smith also believes PJM should have evaluated and calculated the benefit/cost ratio of Reconfigured/Alternative Project 9A with the Hunterstown–Lincoln 115 kV line in the market efficiency base case.<sup>219</sup> He opines that “due to the proximity of the two projects,” the addition of the Hunterstown–Lincoln 115 kV line to the Project 9A base case analysis would “alter the flows of power that produced the 9A benefits[,]”<sup>220</sup> and—he opines—might reduce the calculated benefits of the Reconfigured/Alternative Project 9A.<sup>221</sup> Prior to any decision by the Commission in this docket, witness Smith recommends that PJM conduct the benefit/cost analysis of the Reconfigured/Alternative

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<sup>216</sup> *Id.*

<sup>217</sup> *Id.* at 10.

<sup>218</sup> *Id.* at 3.

<sup>219</sup> *Id.* at 16.

<sup>220</sup> *Id.*

<sup>221</sup> *Id.* at 17.

Project 9A with the Hunterstown–Lincoln 115 kV line included in the market efficiency base case.<sup>222</sup>

#### **F. Transource Settlement Reply Testimony**

115. In response to OPC witness Smith, Transource filed Reply Settlement Testimony of witnesses Weber, Herling and Horger.

##### **1. Mr. Weber**

116. In reply to OPC witness Smith’s testimony opposing the Settlement, Transource witness Weber states that if approval of the project is delayed (as witness Smith recommends) Maryland customers will continue to be negatively impacted by congestion.<sup>223</sup> Mr. Weber also rebuts witness Smith’s assertion that a delay of the project, for purposes of obtaining more information, would not impact the schedule for the Project,<sup>224</sup> stating that project delays would have other associated costs, including return of debt and carrying costs associated with construction work in progress (CWIP), ongoing legal and regulatory costs, and the potential need to update project pricing for major equipment and labor.<sup>225</sup>

117. Mr. Weber explains that Transource solicited and accepted bids from various outside vendors for different components of the IEC Project, as well as bids for the gas-insulated substation work at the Furnace Run substation—which is required for the

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<sup>222</sup> *Id.* at 18.

<sup>223</sup> Transource Ex. 43, Reply Testimony of Brian D. Weber (“Weber Settlement Reply”) at 2.

<sup>224</sup> *Id.* at 3.

<sup>225</sup> *Id.* at 5.



Alternative IEC East Portion.<sup>226</sup> He states that the cost estimates for the Project have been verified and are verifiable by the Commission.

2. Mr. Herling

118. In his Reply Settlement Testimony, Mr. Herling rebuts OPC witness Smith's assertion that PJM's evaluations of the Project were inadequate, countering that Mr. Smith's analysis of the Project is "flawed, unnecessary, and inconsistent with PJM's planning practices."<sup>227</sup> He notes that while PJM's planning practices are "forward-looking," OPC witness Smith performed a "backward-looking" analysis that proposed to have PJM include in its base case market efficiency projects that were developed *after* Project 9A was included in the RTEP.<sup>228</sup>

119. Mr. Herling states that since Project 9A was approved and incorporated into the RTEP, PJM has conducted annual market efficiency analyses, including the re-evaluation of previously-approved RTEP projects. He states that each of those analyses have incorporated Project 9A along with all other previously-approved RTEP projects into PJM's updated base cases.<sup>229</sup> He adds that Project 5E and the "Hunterstown–Lincoln Project" were developed, evaluated and ultimately approved using a base case that incorporated Project 9A in the RTEP "as in-service (along with all other RTEP projects in the 2016/2017 base case)."<sup>230</sup>

120. Mr. Herling submits that OPC's request to have PJM add the Hunterstown–Lincoln Project (a project approved in December 2019) to the previous RTEP base case,

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<sup>226</sup> *Id.* at 6.

<sup>227</sup> Herling Settlement Reply at 2.

<sup>228</sup> *Id.* at 3.

<sup>229</sup> *Id.* at 5.

<sup>230</sup> *Id.*

while keeping Project 5E in the base case, and testing the effect of removing Project 9A (or Alternative Project 9A, inclusive of the Alternative IEC East Portion) is inconsistent with PJM’s forward-looking planning practice.<sup>231</sup>

121. Likewise, he states “through the 2018/2019 PJM market efficiency open window, the PJM Board approved two market efficiency projects to resolve additional congestion that would exist on the transmission system even if Project 9A (and all other previously-approved RTEP projects) was constructed.”<sup>232</sup> He states that “later-approved projects (such as Project 5E and the Hunterstown–Lincoln Project) are premised upon previously-approved projects (such as Project 9A) continuing to be needed and continuing to be in the RTEP.”<sup>233</sup> Mr. Herling states that performing the analysis requested by OPC witness Smith would require the “associated removal and re-analysis of later-approved market efficiency projects ... [and] [t]he re-analysis would be needed to determine whether, without Project 9A, the congestion drivers for Project 5E and the Hunterstown–Lincoln Project still exist or are of a different magnitude.”<sup>234</sup> More important, he states, “is the question as to whether those subsequent projects remain effective solutions to the now-different congestion patterns in the area, and the reliability problems that the Project [9A] solves.”<sup>235</sup>

122. Mr. Herling denies that the geographic proximity of Project 9A and the Hunterstown–Lincoln Project will alter the flows of power that produced the Project 9A benefits, and denies that it is possible that including the Hunterstown–Lincoln Project in

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<sup>231</sup> *Id.* at 7.

<sup>232</sup> *Id.* at 5.

<sup>233</sup> *Id.* at 6.

<sup>234</sup> *Id.* at 7.

<sup>235</sup> *Id.*

the market efficiency base case will reduce the calculated benefits of the Alternative Project 9A.<sup>236</sup>

### 3. Mr. Horger

123. In his Reply Settlement Testimony, Transource witness Horger reiterates that PJM’s congestion data shows that the constraints that the IEC Project, inclusive of the Alternative IEC East Portion, is designed to address continue to experience “some of the highest levels of congestion costs on the PJM transmission system,”<sup>237</sup> and with regard to OPC witness Smith’s observation that congestion continues to shift over time, he states “[t]he question is not whether congestion is shifting [because]; all congestion tends to shift over time as the transmission topology changes. ... The proper question [he states] is whether the proposed solution successfully mitigates the congested facilities despite the shifting nature of transmission.”<sup>238</sup> He adds that PJM’s analysis indicates that the IEC Project (as reconfigured) will benefit transmission zones that cover most of the State, including the BGE, Pepco and APS transmission zones.<sup>239</sup>

#### **G. OPC’s Reply Testimony**

124. OPC filed Reply Testimony in Opposition to the Proposed Settlement of Douglas A. Smith. In his reply testimony, Mr. Smith expressed concern that Maryland ratepayers will be “locked into a fixed allocation of costs,” because—he states—“PJM has not committed to filing a new zonal cost allocation for the Reconfigured Project 9A with the

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<sup>236</sup> *Id.* at 8.

<sup>237</sup> Transource Ex. 45, Reply Testimony of Timothy J. Horger in Support of the Settlement (“Horger Settlement Reply”) at 2.

<sup>238</sup> *Id.* at 3 (emphasis original).

<sup>239</sup> *Id.* at 4.

FERC.”<sup>240</sup> He maintains that if PJM does not do so, the cost allocation percentages determined in 2016 will be used, despite the fact that PJM’s recent analysis of the Reconfigured/Alternative Project 9A shows that the distribution of benefits has materially changed.<sup>241</sup>

125. Mr. Smith also reiterates that Transource and PJM should be required to re-evaluate the need for the Reconfigured/Alternative Project 9A, noting that Transource and PJM have not provided an analysis evaluating the benefits of the Reconfigured/Alternative Project 9A with both Project 5E and the newly-approved Hunterstown–Lincoln 115 kV project.<sup>242</sup>

## **VII. COMMISSION DISCUSSION AND FINDINGS**

126. The Settlement Agreement supplements and revises key aspects of Transource’s CPCN Application.<sup>243</sup> Under the Settlement, Transource seeks the Commission’s approval for a CPCN to construct the Maryland segment of the IEC West Portion of Alternative Project 9A. The Maryland portion of the IEC West route remains unchanged from the original Application and consists of approximately 4.5 miles of a 29-mile, new double-circuit 230 kV transmission line that will be routed from Potomac Edison’s existing Ringgold Substation in Maryland to a new Rice Substation in Pennsylvania. Transource, PPRP, and Staff agree that “the issuance of a CPCN for the Maryland segment of the IEC West Portion that will incorporate the Recommended Licensing

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<sup>240</sup> OPC Ex. 39, Settlement Reply Testimony of Douglas A. Smith (“Smith Settlement Reply”) at 2.

<sup>241</sup> *Id.*

<sup>242</sup> *Id.*

<sup>243</sup> The Settlement revises Transource’s original CPCN Application. If the Commission adopts the Settlement Agreement, the Commission would grant a CPCN to Transource and the respective CPCN waivers—for good cause—to BGE as described in the Settlement Agreement.

Conditions ... by PPRP, would be in the public interest and will serve the public convenience and necessity.”<sup>244</sup>

127. There are three issues presented in the Settling Parties’ request for the adoption of the Settlement Agreement. First, the Commission must determine whether Transource has met the statutory conditions for granting a CPCN to construct the IEC West Portion of the IEC Project. In this regard, the Commission must find that the proposed line is in the public interest—that it serves the public convenience and necessity.<sup>245</sup> Second, the Commission must determine whether granting discretionary CPCN waivers to BGE would be appropriate in this instance and that “good cause” exists to do so. Finally, the Commission addresses whether adoption of the Agreement is in the public interest.

#### **A. Due Consideration Analysis**

128. In evaluating whether the construction of a new transmission line would serve the public convenience and necessity, the Commission applies the same due consideration analysis under the Public Utilities Article whether the parties litigate the issues or submit a settlement for approval, and whether the settlement is unanimous or not. Whereas OPC is the sole objecting party to the Settlement, the Commission considers OPC’s specific objections to the Settlement, which are focused on the need for the Project, as reconfigured, its costs, and ratepayer impacts.

129. Based on the record in this proceeding, which includes the Settlement Agreement and the parties’ written testimony and exhibits in support or opposition, the parties’ oral

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<sup>244</sup> Settlement Agreement ¶ 4.

<sup>245</sup> *In re Baltimore Gas and Electric Company*, 64 Md. PSC 39, 57 (1973).

arguments at the Settlement Hearing, and the parties' briefs, the Commission makes the findings below.

1. Need for the Project

130. The Commission finds that Alternative Project 9A has no adverse effect on the stability and reliability of the electric system<sup>246</sup> and finds the Project meets the existing and future demand for electric service in Maryland.<sup>247</sup> Alternative Project 9A passes all of PJM's reliability screens, including the generation deliverability test and the n-1 and n-1-1 tests.<sup>248</sup> Additionally, PJM notes that Alternative Project 9A "prevents significant reliability issues that PJM forecasts will occur in its absence."<sup>249</sup> Transource and BGE also demonstrated that they each have (or will) comply with all relevant agreements with PJM related to the ongoing operation and maintenance of Project facilities in Maryland.<sup>250</sup>

*a. Effect on the stability of the electric system*

131. Alternative Project 9A (the reconfigured project) has been conditionally approved by the PJM Board as a market efficiency project designed to reduce "chronic, long term transmission system congestion constraints across the AP South Reactive Interface that affects Maryland, the District of Columbia, and Northern Virginia."<sup>251</sup> Due to this congestion, as well as congestion on other transmission interfaces, lower priced energy is prevented from flowing freely from other parts of PJM into Maryland and the

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<sup>246</sup> PUA § 7-207(e)(2)(i).

<sup>247</sup> PUA § 7-207(f)(1)(i).

<sup>248</sup> Transource Brief at 10; Austin Revised Settlement at 6.

<sup>249</sup> Transource Brief at 10 (citing Transource witness Herling); *see also* Settlement Hr'g Tr. at 305 (Herling); June Hr'g Tr. at 123-24 (Herling).

<sup>250</sup> PUA § 7-207(f)(2)(i)-(ii).

<sup>251</sup> Staff Brief at 10; *see also* Herling Settlement at 3-4.

surrounding sub-region.<sup>252</sup> OPC acknowledges that when there are binding constraints and locational price differences on a segment of the transmission system, customers in the constrained segment of the system pay higher energy prices.<sup>253</sup> OPC also accepts that when PJM solicited projects to address congestion on the AP South Interface in 2014, significant congestion was identified. However, OPC argues that more recently congestion on the AP South Interface has decreased significantly, obviating the need for Alternative Project 9A.<sup>254</sup>

132. The Commission finds that the persistent transmission constraints on the AP South Interface and other interfaces “consistently required PJM system operators to reduce power from least-cost generation resources that stand ready to deliver power into Maryland and the surrounding region.”<sup>255</sup> During these constrained times, PJM was required to call upon generation south of the constraint to reliably deliver power into Maryland, “but at an increased cost.”<sup>256</sup> PJM’s congestion data shows that the system constraints that Alternative Project 9A is designed to address *continue to experience “some of the highest levels of congestion costs on the PJM transmission system.”*<sup>257</sup> With regard to OPC witness Smith’s observation that congestion continues to shift over time, Mr. Horger noted “[t]he question is not whether congestion is shifting [because] all congestion tends to shift over time as the transmission topology changes. ... The proper question is whether the proposed solution successfully mitigates the congested facilities

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<sup>252</sup> Staff Brief at 10.

<sup>253</sup> See OPC Brief at 4-5.

<sup>254</sup> *Id.* at 1.

<sup>255</sup> Transource Ex. 13, Rebuttal Testimony of Timothy J. Horger (“Horger Rebuttal”) at 5.

<sup>256</sup> *Id.* at 5-6.

<sup>257</sup> Horger Settlement Reply at 3 (emphasis added).

despite the shifting nature of transmission.”<sup>258</sup> PJM’s analysis shows that Alternative Project 9A will benefit transmission zones that cover most of the State, including the BGE, Pepco and APS transmission zones.<sup>259</sup>

133. The Commission finds that absent Alternative Project 9A “[b]ased on PJM’s modeling, in 2023 (three years from now), the projected loadings on the Peach Bottom–Conastone 500 kV line [serving north central Maryland and southward] will exceed that line’s emergency rating under normal system conditions.”<sup>260</sup> The Commission agrees “[i]f neither Alternative 9A nor Project 9A are approved and constructed, PJM has indicated that new “greenfield” transmission upgrades and operational actions, including the potential for load shedding, would be required to address these emerging reliability issues.”<sup>261</sup>

*b. Ongoing operations and maintenance*

134. PUA § 7-207(f)(2)(ii) requires Commission consideration of all obligations imposed by NERC and FERC related to the ongoing operations and maintenance of the overhead transmission line. In this case, the Commission finds that Alternative Project 9A resolves “serious” emerging NERC reliability violations that PJM forecasts will occur as soon as the 2023 study year, unless addressed.<sup>262</sup>

135. The Commission is satisfied that Alternative Project 9A is a reasonable solution to the grid stability and reliability issues identified by PJM forecasts, and avoids—as

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<sup>258</sup> *Id.* (emphasis original).

<sup>259</sup> *Id.* at 4.

<sup>260</sup> PPRP Brief at 26.

<sup>261</sup> Transource Brief at 10; *see* Settlement Hr’g Tr. at 350 (Herling).

<sup>262</sup> Transource Brief at 3.



PPRP notes—the need for new “greenfield” transmission lines in the immediate future.<sup>263</sup>

While OPC’s observations indicate some reduction in congestion on the AP South Interface since PJM began soliciting solutions in 2014, congestion is—as PJM explains—a shifting phenomenon “as the transmission topology changes.”<sup>264</sup> Alternative Project 9A mitigates the presently known congestion, which is what PJM is obliged to address under FERC Order No. 1000.

136. The IEC West portion of Alternative Project 9A will be constructed by Transource pursuant to Transource’s Designated Entity Agreement with PJM, subject to PJM tariff provisions and operating manuals, and has been included in PJM’s RTEP, subject to approvals by the Maryland and Pennsylvania state regulatory commissions, satisfying PUA § 7-207(f)(2)(i).<sup>265</sup> Transource will own, operate, and provide maintenance for the Maryland segment of the IEC West Portion.<sup>266</sup> Furthermore, Transource has access to a network of five “Transmission Dispatch and System Control Centers” that employ over 250 employees, and the network is available at all times (year round).<sup>267</sup> Transource will maintain transmission equipment and respond to storm-related outages and other transmission operation and maintenance issues, in the event they occur.<sup>268</sup> Transource and BGE respectively agree to all operation and maintenance conditions recommended by PPRP.

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<sup>263</sup> PPRP Brief at 26-27.

<sup>264</sup> Horger Settlement Reply at 2.

<sup>265</sup> Transource Brief at 28.

<sup>266</sup> Weber Direct at 16.

<sup>267</sup> *Id.*

<sup>268</sup> *Id.* at 16-17. When responding to an event, a “dedicated services contractor” will call on its local crews, for a timely response. *Id.* at 17.

## 2. Economics

137. Maryland is part of an interconnected, multi-state grid administered by PJM and relies on regional resources and efficient wholesale electricity markets, importing 44 percent of the State’s retail electricity needs.<sup>269</sup> Retail electricity suppliers and utility SOS providers call upon these market resources for reliable and efficient delivery of electricity into Maryland, at minimum cost. Transource witness Tierney testified to the value of PJM’s RTEP, among other things, opining that Maryland can leverage PJM’s regional planning process to achieve congestion benefits and other positive benefits not otherwise attainable without a regional perspective.<sup>270</sup> As was explained, the RTEP serves to periodically assess—on a going forward basis—“the need for transmission enhancements to address some combination of reliability, market efficiency and public-policy goals related to the provision of wholesale electric service in that region.”<sup>271</sup>

138. Dr. Tierney recommended that the Commission give “great weight” to the results of PJM’s RTEP, which in this case concluded that Project 9A, now Alternative 9A, will benefit Maryland’s electricity customers (and the region).<sup>272</sup> Specifically, she listed a “variety of benefits” expected to result from the IEC Project, including:

consumer’s electricity cost savings from reduced congestion, macroeconomic benefits to Maryland (including jobs, increased economic activity, and tax revenues), and reliability/resiliency benefits to the interconnected electric system.... These are

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<sup>269</sup> Horger Rebuttal at 5.

<sup>270</sup> Tierney Rebuttal at 6-7.

<sup>271</sup> *Id.* at 10-11; *see also* Herling Direct at 9.

<sup>272</sup> Tierney Rebuttal at 4, 7, 12.

benefits to Maryland's economy and its electricity consumers that merit consideration by the Commission....<sup>273</sup>

139. While Staff witness Austin observed that DPL customers will share in increased net load payments under Alternative Project 9A, the analysis shows overall net load benefits to Maryland in excess of \$36 million,<sup>274</sup> as well as transmission benefits that would support Maryland's clean energy policies and statutes. Given Maryland's legislative expansion of offshore wind under the Clean Energy Jobs Act, the Commission recognizes there is significant potential for interconnecting offshore wind on the Delmarva peninsula inasmuch as these resources are anticipated to use the regional transmission system. Without the congestion benefits of Alternative Project 9A, and the Alternative IEC East Portion specifically, new offshore wind in Maryland would likely encounter transmission limitations on deliverability of those resources. The Commission is persuaded that as more offshore wind in Maryland and other renewable resources become available, the need to address congestion on the system will only increase.

140. Project 9A and, later, Alternative Project 9A were approved by the PJM Board for inclusion in the RTEP process as projects satisfying the requirement that the project address congestion issues, where PJM's market efficiency analysis determined the transmission upgrade would result in economic benefit, and the project satisfies PJM's established market efficiency benefit/cost criteria.<sup>275</sup> Pursuant to Section 1.5.7(d) of Schedule 6 to the PJM Operating Agreement—the metrics governing market efficiency projects—the “Benefit/Cost Ratio” for the project must be greater than or equal to

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<sup>273</sup> Tierney Rebuttal at 14. At the June Hearing, Dr. Tierney also mentioned in passing that Project 9A is expected to provide other non-monetary benefits as well. June Hr'g Tr. at 460 (Tierney).

<sup>274</sup> Austin Revised Settlement at 2.

<sup>275</sup> Horger Direct at 15-16; *see also* Herling Direct at 15 (“Project 9A was deemed necessary under the RTEP's market efficiency analysis.”).

1.25.<sup>276</sup> The Benefit/Cost Ratio for Project 9A fluctuated over time, from 2.48 during its initial evaluation in 2015 to a low of 1.32 in 2018, while Alternative Project 9A—the project agreed to by the Settling Parties—achieved a 1.66 Benefit/Cost Ratio.

141. The Commission finds that over a 15-year period, Alternative Project 9A is projected to relieve \$845 million in net load payments relating to transmission congestion in the AP South Interface and connecting interfaces, of which Maryland customers will be relieved of \$219 million in net load payments over this 15-year period, providing positive economic benefits in Maryland.<sup>277</sup> In addition to the Peach Bottom–Conastone 500 kV transmission line violation noted by PPRP, Staff noted four other transmission facility violations identified in the 2023 study year, including a Three Mile Island 500 / 230 kV transformer, Hunterstown–Lincoln 115 kV Line Conductor, Lincoln Tap–Lincoln 115 kV Line Conductor and Lincoln–Straban 115 kV Line Conductor.<sup>278</sup>

142. Although Alternative Project 9A exceeds the FERC Order No. 1000 benefit/cost threshold, OPC takes issue that—on a Maryland benefits-to-cost basis—the project fails to satisfy the 1.25 Benefit/Cost ratio, asserting that under a benefit-to-cost analysis for Maryland, the project only achieves a 1.20 Benefit/Cost ratio.<sup>279</sup> While OPC relies on Staff’s net load payments analysis to support its assertion that Alternative Project 9A fails the benefit to cost test on a Maryland-specific basis, the assertion—and the suggested support for it—is of no consequence with regard to Alternative Project 9A, which—pursuant to FERC Order No. 1000 and PJM’s Tariff—must be evaluated on a regional, not on a state-specific basis.

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<sup>276</sup> Herling Direct at 14 n.5.

<sup>277</sup> Staff Brief at 10-11; PUA § 7-207(e)(2)(iv).

<sup>278</sup> Staff Brief at 11.

<sup>279</sup> OPC Brief at 1, 20.

143. Additionally, the total estimated cost of the IEC West Portion of the IEC Project (inclusive of substation construction in Pennsylvania) is approximately \$126 million (2018 dollars). The estimated cost for the Maryland segment of the IEC West Portion (in Washington County) is \$15 million.<sup>280</sup> Moreover, “the construction is expected to have a positive impact on employment and income on the Washington County economy.”<sup>281</sup> Since most of Alternative Project 9A will be constructed in Pennsylvania, the Commission finds that the economic impacts to the Maryland economy will be modest, but positive.<sup>282</sup>

144. For the Alternative IEC East Portion, BGE proposes to add a new “Furnace Run–Conastone #2 230 kV line from the Pennsylvania–Maryland border to the Conastone Substation, installing new arms, conductors and necessary hardware to the open positions on the existing structures that currently carry the Otter Creek–Conastone 230 kV line.”<sup>283</sup> BGE also proposes to add an underground termination yard at the Conastone Substation in order to transition the new Furnace Run–Conastone #2 230 kV line from overhead to underground for entrance into the substation, and will add terminal equipment inside the Conastone Substation to accommodate the connection of the new 230 kV line into the substation.<sup>284</sup> BGE does not expect that it will need to acquire any new ROW to complete the work related to the Furnace Run–Conastone 230 kV line and estimates that the total cost for the Furnace Run–Conastone line will be \$17.93 million (\$10.75 million

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<sup>280</sup> PPRP–PAR at 35.

<sup>281</sup> *Id.*

<sup>282</sup> *Id.*

<sup>283</sup> Alford Settlement at 3.

<sup>284</sup> *Id.* at 4.

for the overhead transmission work and \$7.18 million for the work at the Conastone Substation, including the underground transmission connection).<sup>285</sup>

145. On the Furnace Run–Graceton 230 kV line, BGE will create a new double-circuit configuration connecting into the Graceton Substation by removing the eight existing lattice structures and replacing them with new monopole structures capable of supporting two 230 kV conductors.<sup>286</sup> BGE also does not anticipate the need to acquire any new ROW in order to complete the work related to the Furnace Run-Graceton 230 kV line.<sup>287</sup> BGE’s cost estimate for the Furnace Run–Graceton line is \$14.86 million, consisting of \$12.70 million for the overhead transmission work and \$2.16 million for the work at the Graceton Substation.<sup>288</sup>

146. BGE anticipates “only minimal environmental and social impacts from the construction of the new Furnace Run–Conastone and Furnace Run–Graceton 230 kV lines, [since] the work is expected to be contained within existing maintained ROW and BGE-owned substation property.”<sup>289</sup> The Commission finds that, with BGE’s construction of the Alternative IEC East Portion of the IEC Project, the “societal costs” that were objected to based on the original Project 9A design are no longer present.<sup>290</sup>

147. OPC concedes that Alternative 9A will provide societal benefits by siting the IEC East line on BGE’s existing ROWs rather than through greenfield land. Nonetheless, OPC insists that the cost of building Alternative Project 9A is still unjustified.<sup>291</sup> OPC

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<sup>285</sup> *Id.*

<sup>286</sup> *Id.* at 5. The new monopole structures would be approximately 130 feet in height.

<sup>287</sup> *Id.*

<sup>288</sup> *Id.* at 6.

<sup>289</sup> *Id.*

<sup>290</sup> Settlement Hr’g Tr. at 423 (Austin).

<sup>291</sup> OPC Brief at 1.

argues that the cost of Alternative Project 9A will be about \$125 million more than the original Project 9A but will provide less in future dollar benefits to Maryland customers.

148. Whereas OPC's calculation of net load payments is based on a Maryland-specific benefit/cost-based net load payment analysis for the Alternative IEC East Portion, the Commission finds this assessment unpersuasive as it understates the net benefit to Maryland electric customers and fails to consider the full benefits contemplated by PJM's regional planning analysis in this case, including anticipated reliability violations in the absence of Alternative Project 9A.

149. OPC also submits that the Project could be detrimental to Maryland customers if Transource does not also receive approval from the Pennsylvania commission (or the Project is otherwise abandoned by PJM) because, if so, Transource and BGE may be entitled to the recovery of prudently incurred abandonment costs. The issue of abandonment costs is an appreciable risk.<sup>292</sup> Regarding the mitigation of such costs, in Case No. 9470—a separate but related CPCN proceeding—Potomac Edison, the applicant transmission owner, committed to limiting its construction costs, to the extent possible, pending the ultimate approval of the combined IEC Project in Maryland and in

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<sup>292</sup> Transource witness Herling noted at the June Hearing that in contrast to the abandoned MAPP and PATH transmission projects, where dramatically altered customer behaviors eliminated the need for those projects, PJM has yet to see sufficient evidence of changed customer behaviors that would eliminate the need for Project 9A, despite observing fluctuations in congestion since 2014. June Hr'g Tr. at 285-86 (Herling). Moreover, at the Settlement Hearing, Transource witness Weber emphasized that Alternative Project 9A underwent six rigorous and recurring reevaluations by PJM and "passed the benefit to cost hurdle every single time...." Settlement Hr'g Tr. at 96 (Weber).

Pennsylvania.<sup>293</sup> The Commission finds that a similar limitation under the circumstances is warranted. At the February Settlement Hearing, Transource witness Weber testified that Transource has incurred approximately \$35 million to date, non-inclusive of Transource's additional firm price contracts.<sup>294</sup> Witness Weber stated that Transource would wait for approvals from both Maryland and Pennsylvania before beginning construction.<sup>295</sup> The Commission will hold Transource to this commitment.

150. Furthermore, the Settlement Agreement provides that the Agreement shall terminate if, among other things, the Maryland Commission or Pennsylvania Commission disapproves the Settlement and denies regulatory approvals for the applicable portions of the IEC Project, or approves the Project subject to unfavorable conditions or modifications. Finding that this provision places BGE on the same footing as Transource with respect to its work on the Alternative IEC East Portion, the Commission shall also require that BGE limit its potential abandonment costs, including construction-related

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<sup>293</sup> In Case No. 9470, the Commission issued a CPCN for the modification of an existing transmission line in Washington County, contingent upon the Maryland and Pennsylvania regulatory approvals of the Transource Project. OPC expressed concern that any delay in Transource's in-service date could result in unnecessary construction or pre-construction costs. The Commission, however, observed that Potomac Edison had committed to minimize, to the extent possible, all construction activities related to the proposed transmission line modification before the Transource Project is approved by the Maryland and Pennsylvania commissions. See Order No. 89035, *In the Matter of the Application of the Potomac Edison Company for a Certificate of Public Convenience and Necessity to Rebuild the Ringgold-Catoctin Transmission Line in Frederick and Washington Counties, Maryland*, Case No. 9470, at 4 (Feb. 15, 2019).

<sup>294</sup> Settlement Hr'g Tr. at 97 (Weber).

<sup>295</sup> Settlement Hr'g Tr. at 108-09 (Weber). The record in this proceeding is built around the economic viability of both the IEC East and IEC West Portions of the IEC Project, combined. The Commission recognizes that a proposed settlement concerning the Pennsylvania portions of the IEC Project is currently pending regulatory approval before the Pennsylvania Commission. If the Pennsylvania Commission rejects the Pennsylvania settlement, then the PJM Board's conditional approval of the Alternative Project 9A is effectively voided.



costs, pending the approval by the Pennsylvania Commission of the Alternative IEC East Portion in Pennsylvania.<sup>296</sup>

151. Although the net load payment analysis was updated by PJM based on the reconfiguration of the IEC East Project, as OPC notes, the original allocation filed by Transource in 2016 may still be used for the reconfigured Project.<sup>297</sup> The only recourse parties have, however, is to protest PJM RTEP cost allocation updates in future FERC proceedings.

### 3. Existing and future demand for electric service

152. PUA § 7-207(f)(1)(i) also requires consideration of whether the project is needed to meet existing and future demand for electric service. The Commission is satisfied that Transource demonstrated that Alternative Project 9A meets this requirement. In addressing the overall need for the Project in connection with the stability and reliability of the electric system, *i.e.*, one of several factors enumerated under PUA § 7-207(e)(2)(i), PJM—charged with protecting the reliability of the transmission system—modeled the

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<sup>296</sup> The Commission is cognizant of PPRP’s Recommended Condition No. 2 for the BGE Alternative Maryland Configuration, which is identical for the Conastone and Graceton segments. Condition No. 2 pertains to “Waiver Expiration” and requires BGE to begin construction of the Conastone and Graceton segments “within one (1) year of receiving the discretionary waiver from the Public Service Commission ... [which] must be completed for operation by December 31, 2022. If conditions warrant an extension of this schedule, BGE must notify the PSC and [PPRP] and explain the reason for the requested extension.” Condition No. 2 further provides that the “waiver shall expire if the BGE project is not constructed and operational within three (3) years of the waiver issuance date.” PPRP Ex. 21, Draft Recommended Conditions - IEC East - BGE Graceton–State Line, Attachment B to Kelley Settlement Direct at 2; PPRP Ex. 22, Draft Recommended Conditions - IEC East - BGE Conastone–State Line, Attachment C to Kelley Settlement Direct at 2. If BGE is unable to begin construction of the BGE Alternative Maryland Configuration within one year of the dates of this Order, BGE may request an extension of the schedule under Condition No. 2, reflective of BGE’s revised construction start and completion dates, along with any request to modify the Condition to accommodate the requested extension.

<sup>297</sup> OPC Brief at 20.

economic benefit of the IEC Project.<sup>298</sup> PJM determined that Project 9A, now Alternative 9A, is needed to mitigate congestion that has persistently impacted Maryland and the surrounding region, notably preventing reliability violations on the Peach Bottom–Conastone 500 kV transmission line serving Maryland as well as several other lower voltage transmission facilities.<sup>299</sup> Furthermore, Alternative Project 9A will also support future developments of the electric system, including developments that encourage renewable energy generation such as offshore wind generation.<sup>300</sup>

153. While modification of the IEC Project (*i.e.*, the creation of Alternative Project 9A) is not inconsistent with PJM rules, and PJM’s Tariff “contemplate[s] the fact that projects approved through PJM’s RTEP process may need to be modified from time to time, including to comply with state regulatory approvals,”<sup>301</sup> the Commission has no control over FERC’s transmission incentive policies or PJM’s cost allocation rules for market efficiency projects. In approving the original Project 9A, however, PJM did not consider Maryland’s transmission line siting requirement to examine the use of existing infrastructure, or require a transmission developer to do so in its RTEP project proposal.<sup>302</sup> As a result, the original IEC East Portion’s greenfield configuration drew significant criticism from State and County authorities, who along with numerous landowners stressed the project’s discord with State policies supporting the preservation

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<sup>298</sup> See generally Horger Rebuttal, Ex. TJH-R6 (PJM White Paper: Transource Independence Energy Connection Market Efficiency Project) (“PJM Transource White Paper”).

<sup>299</sup> Horger Rebuttal at 16; PJM Transource White Paper at 1; Herling Settlement at 7-8 (testifying that the IEC Project, inclusive of the Alternative IEC East Portion, would continue to meet PJM’s long-term planning needs by addressing this congestion on the AP South interface and related constraints as well as resolve the emerging reliability criteria violations); Transource Brief at 13.

<sup>300</sup> Staff Brief at 15-16.

<sup>301</sup> Herling Settlement at 4.

<sup>302</sup> June Hr’g Tr. at 117-18 (Herling) (“[PJM is] not in a position to essentially prompt the transmission developers as to what they should be considering because ... that would be viewed as anticompetitive.”).

of prime agricultural land and the protection of Maryland’s natural resources. While PJM’s Tariff governs the RTO’s ability to recommend specific transmission infrastructure configurations, in future cases transmission owners and developers themselves should consider (and apply) Maryland’s statutory requirements at the outset before embarking on projects that could require the extraordinary modifications required in this case.

4. Recommendations of Counties and Local Governments

154. Washington County did not participate or file comments in these proceedings. While Washington County local officials received notice of the filing of the Application in 2017, they have not raised any objections to the Maryland segment of the IEC West Portion.<sup>303</sup> Nor did Washington County provide any recommendation—favorable or unfavorable—regarding the IEC West Portion.

155. Given that Washington County did not file comments with the Commission regarding the IEC West Portion, the Commission therefore finds Washington County as neither supporting nor opposing the Maryland segment of the IEC West Portion. By contrast, Harford County did intervene in this case with regard to the IEC East Portion of the Project. The Commission finds that, while Harford County officials were originally opposed to the IEC Project, they are now signatories to the Settlement Agreement and fully support the Alternative IEC East Portion of the IEC Project. Baltimore County

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<sup>303</sup> See Transource Brief at 10.

neither sought intervention nor filed comments on BGE's proposed work on the Alternative IEC East Portion following the filing of the Settlement Petition.<sup>304</sup>

#### 5. Impacts on Esthetics, Historical Sites and Aviation

156. The Commission finds that Alternative Project 9A (both with respect to IEC East and IEC West) will have little or no adverse impact on esthetics. The IEC East portion of the Project will be constructed by BGE within BGE's existing ROWs, with BGE replacing its current lattice structures with monopoles on its segment of the Alternative IEC East. Similarly, the IEC West Portion of the Project parallels an existing transmission line for much of its path through Maryland, thus minimizing any "new" localized visual changes.<sup>305</sup> The impact on esthetics by the IEC West Portion is reduced by use of steel monopole structures "likely visible to casual observers from no more than 2.5 miles."<sup>306</sup>

157. The Commission is satisfied that PPRP's Project Assessment Report demonstrates that the IEC West Portion will have minimal impact on esthetics, no adverse impact on cultural and recreational activities, and no adverse effect on aviation safety. Any concerns regarding historical sites also have been addressed by PPRP by including Recommended Conditions satisfactory to the Maryland Historical Trust.<sup>307</sup>

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<sup>304</sup> BGE states that prior to the Settlement filing BGE "discussed with elected and other government officials from Baltimore and Harford Counties regarding the possibility that a settlement may be reached which would allow BGE to construct portions of [Alternative IEC East Portion] by upgrading two segments of BGE's existing transmission infrastructure in Maryland." Alford Settlement at 8. "[Those] discussions were met positively by these officials." *Id.*

<sup>305</sup> Transource Brief at 12.

<sup>306</sup> Staff Brief at 14 (citing PPRP-PAR at 43-46).

<sup>307</sup> *Id.* (citing PPRP-PAR at 6 (Conditions 12 and 13)).

## 6. Impacts on Air Quality

158. The Commission is further satisfied that the PPRP–PAR concludes the IEC West Portion is not expected to result in any significant adverse impacts to air quality. Although the PPRP–PAR notes that “a transmission line could allow for an increase in power generation at existing or new power plants, and thus could indirectly allow for an increase in air emissions[,]” the IEC West Portion is not a direct source of air emissions, and PPRP found “no known concerns with indirect increase in emission of air pollutants.”<sup>308</sup> Any air quality impacts from the IEC West Portion would be limited to those from temporary construction activities and periodic maintenance. Consequently, the Commission finds that there are not any significant adverse impacts to air quality.<sup>309</sup>

159. PPRP has recommended License Conditions to minimize the creation of nuisance and air pollution, and to prevent the discharge of gases, vapors, or odors in a manner that complies with all applicable County and State air pollution regulations. Transource has agreed to all of the conditions sponsored by PPRP for the IEC West Portion.

160. Based on the record, the Commission finds that the Maryland Segments of the IEC West and Alternative IEC East Portions will not be direct or indirect sources of air emissions. Any impacts to air quality arising from the IEC West Portion will be limited to construction and maintenance activities. Although PPRP did not submit a separate PAR for the BGE Alternative Maryland Configuration—with regard to the Alternative IEC East Portion—construction of the BGE Alternative Maryland Configuration will occur within BGE’s existing ROWs and any air pollution impacts would similarly be

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<sup>308</sup> PPRP–PAR at 51.

<sup>309</sup> *Id.* at 54.

limited to construction and maintenance activities. Taken together, the Commission is satisfied that these impacts will not be significant, provided that Transource and BGE adhere to PPRP's Recommended Conditions for their respective segments. Accordingly, the Commission finds that the Maryland segment of the Alternative IEC East Portion will not result in significant adverse impacts to air quality.

#### 7. Impacts on Water Pollution and Other Natural Resources

161. PPRP's independent assessment of the IEC West Portion found that the construction and operation of the Maryland segment in Washington County would likely result in impacts to the Little Antietam Creek watershed and certain streams draining into the watershed.<sup>310</sup> Specifically, construction would involve the clearing of forested riparian areas along the Little Antietam Creek, which would impact stream buffers and scenic rivers.<sup>311</sup> PPRP estimates that 13.5 acres of wooded area would be removed.<sup>312</sup> Construction and operation of the Maryland segment of the IEC West Portion would also impact approximately 0.78 acres of wetlands as well as floodplains in the vicinity of the Little Antietam Creek, where tree clearing and the siting of certain pole structures will occur within the floodplain or within a few feet thereof.<sup>313</sup> Lastly, the Little Antietam Creek and other sites in the watershed support a suitable habitat for rainbow trout, and the proposed ROW will impact the amount of desirable trout habitat and could affect the species' reproductive success.<sup>314</sup>

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<sup>310</sup> Kelley Direct at 34-35.

<sup>311</sup> *Id.* at 35.

<sup>312</sup> *Id.* at 36.

<sup>313</sup> *Id.* at 36-37.

<sup>314</sup> *Id.* at 37-38.

162. Despite these impacts, the Commission finds that granting a CPCN to construct the IEC West Portion is in the public convenience and necessity, where PPRP has included several license conditions “to ensure that the IEC West Project could be constructed and operated without adverse impact to the environment of the State.”<sup>315</sup> These Recommended Licensing Conditions address the following: (1) erosion and sediment control to mitigate potential impacts to sensitive stream habitats near and downstream of the transmission line ROW; (2) mitigation of impacts to wetlands and waters through design changes and other field adjustments during construction; (3) mitigation of impacts to vegetation through certain vegetation management practices; (4) forest conservation through compliance with Maryland’s Forest Conservation Act; (5) protection of wildlife species, including minimizing any disturbance from construction; and (6) measurement of any electromagnetic fields occurring within the ROW.<sup>316</sup> The Commission finds that PPRP’s Recommended Licensing Conditions are adequate to address the concerns identified.

163. With regard to the Alternative IEC East Portion, the Commission finds that the BGE Alternative Maryland Configuration avoids the disruptions and detrimental impacts to Maryland’s forests, forest dwelling species, wetlands and streams, aquatic species and threatened species originally associated with the initially-proposed IEC East configuration.<sup>317</sup> PPRP has sponsored two sets of Recommended Conditions that address the marginal environmental impacts from construction and operation of the two additional line segments in Harford County.

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<sup>315</sup> Staff Brief at 15.

<sup>316</sup> PPRP Brief at 22-23.

<sup>317</sup> *Id.* at 15-16.

164. The two reconfigured segments of IEC East pose similar environmental impacts due to their relatively close proximity. Given the area is primarily used for agricultural production and drained by relatively high-quality streams, PPRP recommends similar conditions for enhanced erosion and sediment control. These conditions require BGE to use certain best management practices to protect streams, wetlands and floodplains, aquatic species, and rare, threatened, or endangered species that are present in or near the BGE ROW.<sup>318</sup> The Commission finds PPRP's Recommended Conditions adequate to address the concerns.

165. Regarding animal species, the Maryland Department of Natural Resources Wildlife and Heritage Service has identified records of a federal- and state-listed threatened species of turtle (the Bog Turtle) in some of the existing ROW areas, as well as suitable wetland habitats within or adjacent to the ROWs for this species. Consequently, the Commission finds that conditions "are necessary to establish construction and operation procedures that minimize impacts to sensitive and ecologically valuable species that are protected under law or state policy."<sup>319</sup> The Recommended Conditions also aim to control the proliferation of certain non-native, or invasive, insects and trees that risk spreading in or near the areas in which BGE will construct the two transmission line segments. BGE has agreed to these conditions, and the Commission finds them to be adequate.

166. The record supports a finding in this instance that Alternative Project 9A, with adherence to PPRP's Recommended Licensing Conditions for the IEC West Portion and the Recommended Conditions for each segment of BGE's work on the Alternative IEC

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<sup>318</sup> Kelley Settlement Direct at 25.

<sup>319</sup> *Id.* at 27.



East Portion, will have minimal impacts to the natural resources in and around the proposed transmission line routes. Moreover, the Secretarial Letter filed by PPRP, which summarizes the overall assessment by the Reviewing State Agencies, states that “construction by Transource of a new transmission line located in Washington County and the modification by BGE of its two existing transmission lines in Harford and Baltimore Counties can be constructed and operated in accordance with all applicable environmental regulations.”<sup>320</sup>

167. Given that PPRP has carefully examined the potential socioeconomic, cultural, and environmental impacts for the Maryland Segments of the IEC West and Alternative IEC East Portions and has provided appropriate, project-specific conditions to address these impacts, the Commission is satisfied that adherence to these conditions will minimize or avoid impacts to Maryland’s environmental and natural resources. Moreover, those resources will be protected in accordance with applicable statutes and regulations.

8. Consideration of Alternative Routes and Existing Transmission Lines Under PUA § 7-207(f) and 7-209

168. Under PUA § 7-207(f)(1)(ii), the Commission must take due consideration of the potential alternative routes that Transource considered and the reason(s) why the alternative route was rejected. Furthermore, PUA § 7-209 requires the Commission to also consider alternatives that use existing transmission infrastructure, including those of another company, especially if doing so will best promote economic and efficient service to the public.

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<sup>320</sup> PPRP Ex. 19, Secretarial Letter of the Reviewing State Agencies, Attachment to Kelley Settlement Direct (Dec. 16, 2019) (“PPRP December 2019 Secretarial Letter”) at 1.

*a. IEC West Project*

169. Neither Transource nor any other party identified an alternative route to the proposed greenfield IEC West segment that uses existing transmission lines.<sup>321</sup> Likewise, PPRP could not identify any existing transmission infrastructure that could accommodate the requirements of the IEC West Portion.<sup>322</sup>

170. Transource’s siting studies considered three potential “Alternative Routes” before selecting the proposed IEC West Portion of the IEC Project.<sup>323</sup> Transource applied a series of general and technical siting guidelines for the purpose of selecting a proposed route that: “(1) reasonably minimizes adverse impacts on area land uses and the natural and cultural environment; (2) minimizes special engineering design requirements and unreasonable costs; and (3) can be constructed and operated in a timely, safe and reliable manner.”<sup>324</sup> Of the three Alternative Routes analyzed—Routes A, B, and C—Route C was found to be “a more direct alignment between the Rice and Ringgold Substations....”<sup>325</sup>

171. PPRP evaluated Transource’s three Alternative Routes for the IEC West Portion and observed that all three routes “traversed through a variety of forests, agricultural fields, commercial and residential areas, roads and rail lines.”<sup>326</sup> The selected route mostly parallels existing transmission lines<sup>327</sup> and was chosen because it is the shorter,

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<sup>321</sup> Staff Brief at 16.

<sup>322</sup> See Kelley Settlement Direct at 13.

<sup>323</sup> Baker Direct at 13.

<sup>324</sup> Transource Siting Study Independence Energy Connection (West), Attachment B to the Application, at 8.

<sup>325</sup> Baker Direct at 21. Witness Baker explained that, compared to the other routes, Route C crosses fewer parcels, impacts fewer landowners, avoids more populated sections of the Project Study Area, and parallels sections of an existing transmission line. *Id.*

<sup>326</sup> Kelley Settlement Direct at 12; PPRP–PAR at 8.

<sup>327</sup> PPRP–PAR at 5.

more direct route compared to the other alternatives and, as a result, crosses few parcels and affects fewer landowners.<sup>328</sup> It also “crosses a relatively low number of streams, is expected to have limited impact on riparian zones, ... crosses the least wetland areas relative to the other alternatives” and would require the least amount of tree clearing, reducing forest fragmentation.<sup>329</sup> Any impacts that could result from the construction and operation of the IEC West Portion are projected to be similar to those that currently exist for the adjacent transmission ROW. PPRP also found the costs of the proposed route to be lower than the costs of the two alternative routes.<sup>330</sup>

172. Based on Transource’s Siting Study for IEC West and supporting testimony, as well as PPRP’s assessment on this issue, which OPC does not contest, the Commission finds that alternative routes to the proposed Maryland segment of IEC West were considered and reasonably rejected in favor of a route that minimizes environmental impacts. The Commission is further satisfied by PPRP’s characterization of the process that Transource used to consider multiple potential routes for the IEC West Project—namely, that it was “thorough and collaborative, considered all environmental impacts that could be evaluated without ground surveys, and engaged property owners and other stakeholders in identifying suitable options and critical issues.”<sup>331</sup>

173. Based on the above findings, the Commission concludes that Transource has sufficiently demonstrated under the due consideration criteria of §§ 7-207 and 7-209 that the Maryland segment of the IEC West Portion is in the public interest and will serve the public convenience and necessity.

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<sup>328</sup> Kelley Settlement Direct at 12; PPRP–PAR at 8.

<sup>329</sup> Kelley Settlement Direct, PPRP Ex. 18 at 12.

<sup>330</sup> PPRP–PAR at 8.

<sup>331</sup> *Id.* at 25.

*b. Alternative IEC East Portion*

174. The record in this case supports a finding under PUA § 7-209 that the reconfigured Maryland segment of the IEC East Project is a suitable alternative to greenfield construction that will utilize existing transmission infrastructure in the service area, consistent with Maryland siting requirements. Prior to Settlement, Harford County, PPRP and the Reviewing State Agencies, along with the other parties, and numerous public commenters opposed the original configuration of the IEC East Project, which at the time would have constructed 16 miles of greenfield double-circuit 230 kV transmission line between the existing BGE Conastone Substation in Maryland to a new Furnace Run Substation in Pennsylvania.

175. PPRP proposed four Conceptual Alternatives to Transource’s greenfield IEC East Portion that leveraged the use of two nearby existing double-circuit transmission tower lines, each having “only one 230 [kV] circuit installed ... and which could carry a second 230 kV circuit on the existing structures.”<sup>332</sup> The existing lines appeared to be “convenient to the service area and [would] best promote economic and efficient service to the public.”<sup>333</sup> PPRP argued these Conceptual Alternatives were superior to the proposed greenfield line, “given the deleterious impacts the ‘greenfield’ line would impose on Maryland’s natural and cultural resources.”<sup>334</sup>

176. PJM modeled PPRP’s Conceptual Alternatives but determined that all of the

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<sup>332</sup> PPRP Motion to Dismiss at 5.

<sup>333</sup> *Id.* at 2.

<sup>334</sup> Etheridge Direct at 5.

alternatives resulted in NERC reliability violations.<sup>335</sup> It was only with the additional modification of one proposed alternative—Conceptual Alternative No. 3—and the addition of a 500 kV to 230 kV transformer—that PJM and Transource determined, as modified, Conceptual Alternative “3A” would meet PJM’s benefit-to-cost ratio threshold requirement of 1.25.<sup>336</sup> The other Conceptual Alternatives were rejected for cost reasons or because efforts to resolve their reliability violations raised *additional* thermal reliability criteria violations.<sup>337</sup>

177. Conceptual Alternative 3A, as modified, became the basis for the Settlement.<sup>338</sup> The reconfigured Maryland segment of the Alternative IEC East Portion—the BGE Alternative Maryland Configuration—uses BGE’s existing transmission infrastructure and existing rights-of-way in lieu of the initially proposed greenfield route.<sup>339</sup> It resolves the siting concerns originally raised by PPRP, Harford County, and numerous others, while still addressing PJM’s need to resolve emerging reliability issues on the transmission system.

178. PJM has determined that the Alternative IEC East Portion “would, as a single integrated project, meet PJM’s planning criteria for an Economic-based Enhancement or Expansion under ... [its] Operating Agreement...”<sup>340</sup> Furthermore, PJM’s Board of

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<sup>335</sup> June Hr’g Tr. at 23 (Weber). Transource witness Herling explained that because PPRP’s Conceptual Alternative proposals were evaluated outside of the RTEP process, PJM did not have same level of project detail and information that otherwise would have been provided to PJM during the RTEP proposal window. Herling Rebuttal at 29. PJM identified significant reliability criteria violations on both rerouted lines under Conceptual Alternative No. 1.

<sup>336</sup> June Hr’g Tr. at 23-24 (Weber).

<sup>337</sup> Herling Rebuttal at 29-30.

<sup>338</sup> Transource Brief at 27.

<sup>339</sup> See Settlement Agreement at 2; see also Description of the reconfiguration of the IEC East Portion of the IEC Project, Ex. A to the Settlement Agreement; Weber Settlement at 3-4.

<sup>340</sup> Settlement Agreement at 2.

Managers has conditionally approved Alternative Project 9A, pending the required regulatory approvals by the Maryland Commission and the Pennsylvania Commission.<sup>341</sup>

179. The Commission finds there is no dispute that the identification, evaluation, and ultimate selection of Conceptual Alternative 3A, as modified to meet reliability requirements, is a direct result of the Settling Parties applying the required consideration under PUA § 7-209. In accordance with the statute, the BGE Alternative Maryland Configuration relies solely on BGE's existing transmission infrastructure and ROWs. It no longer involves greenfield construction, and this fact is undisputed.

180. OPC, as the only non-settling party, acknowledges that "the proposed Settlement Transource transmission line will traverse BGE's existing right of way rather than the green fields that Project 9A would trod upon[, and] OPC certainly agrees that it is better for Maryland if a transmission line is sited on existing ROWs rather than on green fields."<sup>342</sup> OPC has not offered any evidence or indication of another viable, alternative solution that can either replace or substitute for the IEC East Project, as reconfigured or as initially proposed.

181. For the above-stated reasons, the Commission finds that Transource and PPRP have provided the Commission with sufficient information and analysis to satisfy the requirement under PUA § 7-209. The Commission concludes that the Maryland segments of the Alternative IEC East Portion are convenient to the service area and, taken together with the remainder of Alternative Project 9A, as a whole, will best promote economic and efficient service to the public.

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<sup>341</sup> Transource Brief at 28.

<sup>342</sup> OPC Brief at 39.

## **B. PPRP's Proposed MALPF Licensing Condition**

182. The IEC Project will require siting of the proposed transmission lines over certain properties in Maryland that are encumbered by existing easements held by MALPF. The IEC West Portion will cross three properties in Washington County covered by two MALPF easements.<sup>343</sup> The Alternative IEC East Portion will cross one MALPF-encumbered property along the BGE Conastone–State Line,<sup>344</sup> which is subject to an existing right-of-way covered by a utility easement. BGE would be required to adhere to the requirements of the easement.<sup>345</sup>

183. Transource has agreed to accept PPRP's Recommended Licensing Conditions for the Maryland segment of the IEC West Portion. Licensing Condition No. 10 pertains to MALPF easements and reads as follows:

For each property occupied by the Project and encumbered by a MALPF easement, Transource shall comply with any applicable requirement set forth in Md. Code, Agriculture, § 2-501 et seq. and COMAR 15.15.01 et seq. to obtain approval for an overlay easement to construct and operate the Project. Prior to commencing construction of the Project on any property encumbered by a MALPF easement, Transource shall file notification in the PSC Docket for Case No. 9471 that Transource has obtained all necessary approvals under Md. Code,

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<sup>343</sup> Cable Direct at 7. The three properties are owned by two persons. Settlement Hr'g Tr. at 98-99 (Weber); Staff Brief at 22 n.94 (citing same). PPRP witness Cable testified that one farm maintains a livestock operation, and the other conducts a dairy operation. Cable Direct at 7.

<sup>344</sup> The IEC East Portion, as originally proposed, would have impacted four parcels also encumbered by MALPF easements. Cable Direct at 7. As a result of the Settlement, however, the Alternative IEC East Portion will use BGE's existing utility ROWs, thereby eliminating the need for greenfield construction over the MALPF-encumbered parcels. Whereas a number of landowners, including the private citizen intervenors in this matter, objected to the original IEC East configuration, those objections have been resolved as a result of the Settlement.

<sup>345</sup> Settlement Hr'g Tr. at 26 (Kelley).

Agriculture, § 2-501 et seq. and COMAR 15.15.01[16.00,] et seq.<sup>346</sup>

184. No landowner objections were raised concerning the MALFP-encumbered properties in the IEC West portion of the Project. Moreover, the owners of the three MALPF-encumbered parcels in Washington County have agreed to allow Transource to construct and operate the IEC West Portion on their properties, and Transource will work with them to obtain the necessary MALPF overlay easements.<sup>347</sup>

185. In view of the Maryland Court of Appeals' July 2019 decision in *Bd. of County Commissioners of Washington County, Maryland v. Perennial Solar, LLC* ("Perennial Solar"),<sup>348</sup> the Commission finds that PPRP's recommended Licensing Condition 10, which infers MALPF's discretionary approval of an overlay easement for a transmission line ROW post-issuance of a CPCN, is consistent with the Commission's statutory authority for siting transmission lines. Recommended Licensing Condition No. 10 requires Transource to comply with MALPF requirements when obtaining the overlay easements. PPRP witness Kelley testified that the issuance of a CPCN to Transource would satisfy the MALPF requirements under COMAR 15.15.16 and give Transource the prerequisite eligibility to present the easement requests to the MALPF Board of Trustees.<sup>349</sup> If the MALPF Board denies the overlay easement, Transource may seek redress through a condemnation action using the condemnation authority granted to the

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<sup>346</sup> PPRP Ex. 20, PPRP Draft Recommended Licensing Conditions for the Independence Energy Connection West, Attachment A to Kelley Settlement Direct, Condition No. 10.

<sup>347</sup> Weber Settlement at 10-11.

<sup>348</sup> 464 Md. 610 (2019).

<sup>349</sup> Kelley Settlement Direct at 10. "To enter into any type of overlay encumbrance on a MALPF-eased farm, a landowner must be willing to enter into a [right-of-way] agreement with [Transource] to construct new transmission lines, and any such request must meet regulatory requirements, including the grantee's possession of condemning authority." PPRP-PAR at 41.



Company by the Commission through an issued CPCN.<sup>350</sup> Transource contends that the CPCN would constitute a determination by the Commission that “a greater public purpose exists for the use of a portion of the MALPF parcel”—*i.e.*, service by the utility line in the transmission of electricity—and that “no reasonable alternative site” exists for the proposed line.<sup>351</sup>

186. MALPF land preservation easements serve to preserve agricultural land and woodland in the State by restricting their use for agricultural purposes and generally prohibiting non-agricultural commercial or industrial development.<sup>352</sup> Nevertheless, Maryland law and COMAR provide two means for acquiring a utility right-of-way on a MALPF property. First, MALPF regulations specifically provide for the granting of an overlay easement as follows:

The Foundation may permit an easement, right-of-way, or other servitude to be granted in land encumbered by an agricultural preservation easement, subject to conditions it deems necessary to protect and maintain the agricultural integrity of the farm under the following circumstances: ... H. *If the overlay easement is used to install a utility easement for electricity, telephone, cable, oil, gas, or similar utility and the grantee of the proposed overlay easement has condemning authority....*<sup>353</sup>

187. Second, § 2-515 of the Agriculture Article (“AG”), *Annotated Code of Maryland*, expressly allows an agency of the State, county, or other governmental authority to acquire by condemnation land protected under a MALPF preservation easement, if doing so would serve a public purpose. The condemning authority must demonstrate, however, that “1. [a] greater public purpose exists than that served by the [MALPF] easement; and

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<sup>350</sup> PPRP Brief at 24; *see also* Maillog No. 228493 (PPRP Response to Bench Data Request) at 1.

<sup>351</sup> Transource Brief at 39; June Hr’g Tr. at 607, 689 (Baker).

<sup>352</sup> Cable Direct at 8.

<sup>353</sup> COMAR 15.15.16.02 (emphasis added).

2. [t]here is no reasonable alternative site.”<sup>354</sup> These provisions complement the Commission’s jurisdictional siting authority under PUA § 7-207, which, as Staff, Transource, and PPRP accurately state, allows the Commission to, among other things, confer condemnation authority to Transource upon the issuance of a CPCN in the public interest.<sup>355</sup> Transource then becomes the entity with condemning authority to proceed under AG § 2-515.<sup>356</sup>

188. The General Assembly gave the Commission broad jurisdiction and broad general powers, including final authority to approve CPCNs and site new transmission lines under the statutory scheme specified in PUA §§ 7-207 and 7-208. This authority, which applies equally to the siting of energy generation stations, was upheld by the Maryland Court of Appeals in *Perennial Solar*. In ruling that the Commission’s siting authority under the CPCN statute preempted a county zoning law for a proposed solar photovoltaic generating station in Washington County, the Court of Appeals interpreted the statute as follows:

[Pub. Utils.] § 7-207 preempts by implication local zoning authority approval for the siting and location of generating stations which require a CPCN. The statute is comprehensive and grants the PSC broad authority to determine whether and where [the solar facility] may be constructed. Local land use interests are

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<sup>354</sup> AG § 2-515(a)(2)(iii).

<sup>355</sup> The Commission denies Transource’s request for the Commission to act as the condemning authority under AG § 2-515(a) and pre-determine the requirements under AG § 2-515(a)(2)(iii) regarding the acquisition of agriculturally preserved land.

<sup>356</sup> In its brief, Transource asks the Commission to make “specific findings indicating that the Commission, as the condemning authority, has made the determinations outlined in AG § 2-515(a)(2)(iii).” Transource Brief at 39-40. The Commission denies Transource’s request for a pre-determination of the requirements under AG § 2-515(2)(iii) regarding the acquisition of agriculturally preserved land. The Commission has not acted in the capacity of a condemning authority in recent history and declines to do so in this case. PUA § 7-207(b)(3)(v)(2) unequivocally gives the recipient of a CPCN for the construction of a transmission line condemning authority in “any property or right necessary for the construction or maintenance of the transmission line.”

specifically designated by statute as requiring “due consideration” by the PSC. This includes the recommendation of the governing body of each county or municipal corporation in which any portion of the construction of the generating station is proposed to be located, as well as due consideration by the PSC of the consistency of the application with the comprehensive plan and zoning for the respective local jurisdiction.

Under the plain language of the statute, local government is a significant participant in the process, and local planning and zoning concerns are important in the PSC approval process. However, the ultimate decision-maker is the PSC, not the local government or local zoning board. Although local zoning laws are preempted and therefore not directly enforceable by the local governments as applied to generating stations such as [the solar facility], they are nevertheless a statutory factor requiring due consideration by the PSC in rendering its ultimate decision.”<sup>357</sup>

189. The Court of Appeals also addressed the application of COMAR 20.79.01.04(E), which requires a CPCN application to list “each local, state, or federal government agency having authority to approve or disapprove the construction or operation” of the project in question.<sup>358</sup> The Court stated:

Although the regulation acknowledges that there may be other agencies which might have approving authority, the language is silent on which agencies might have authority, and/or what that authority might mean. We do not read the regulation to suggest that the Board of Zoning Appeals has authority to issue a separate approval of [Solar Energy Generating Systems], particularly where the Board's approval or disapproval could be inconsistent with the PSC's final determination.<sup>359</sup>

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<sup>357</sup> *Perennial Solar*, 464 Md. at 644-45 (emphasis added).

<sup>358</sup> *See id.* at 644.

<sup>359</sup> *Id.*

190. The Court of Appeals’ preemption analysis is instructive here, where the Commission and the Department of Agriculture, which administers the MALPF Program, are both entities of the State.<sup>360</sup> The MALPF program was given statutory authority by the Legislature to approve or disapprove an overlay easement consistent with its regulations. Just as the Commission may not adopt any CPCN condition that is inconsistent with federal and State environmental laws and standards,<sup>361</sup> *Perennial Solar* would hold that MALPF’s jurisdiction over land preservation easements does not itself give MALPF the authority to act in a manner that would be inconsistent with other State laws—in this case, the Commission’s final determination under the Public Utilities Article. In fact, the Legislature provided a specific pathway for challenging and superseding an adverse decision by the MALPF Board—namely, a transmission developer like Transource can receive condemning authority, from the Commission, in order to acquire rights in the preserved land through eminent domain.

191. Lastly, in determining whether a transmission project should be allowed on agriculturally preserved land, MALPF Executive Director Cable indicated that deference could be afforded to the Commission’s CPCN decision-making. She testified that State policy requires a measured balancing of benefits to ensure that those inuring from the proposed activities (*e.g.*, construction) are superior to the interests served by the land preservation easement. While condemning authorities are required by law to take precautionary steps<sup>362</sup> prior to acquiring MALPF easement areas for public purpose,

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<sup>360</sup> Staff Brief at 24.

<sup>361</sup> PUA § 7-208(g)(2).

<sup>362</sup> Specifically, “any condemning authority must demonstrate that a greater public purpose exists than that served by the MALPF easement. A condemning authority must also show that there are no reasonable alternative sites for the proposed project.” Cable Direct at 22-25.

witness Cable observed that “[the] balancing test is similar to decisions made by the [Commission] in its consideration whether to grant a CPCN [under PUA §§ 7-207 and 7-208].”<sup>363</sup>

192. For these reasons, the Commission finds that Licensing Condition No. 10 does not usurp or conflict with the Commission’s statutory authority under PUA 7-207 and 7-208 regarding the siting of transmission lines. The Commission will therefore approve Licensing Condition No. 10, as agreed upon by the Settling Parties, as part of the CPCN granted to Transource in this matter.

### **C. BGE’s Good Cause Waiver Requests**

193. The proposed BGE Alternative Maryland Configuration involves the modification of existing (high voltage) overhead transmission lines, and consequently triggers the CPCN requirement under PUA § 7-207. Under PUA § 7-207(b), the Commission shall grant a waiver of the requirement to obtain a CPCN for construction related to an existing transmission line if the Commission finds that the construction does not:

(1) require the electric company to obtain new real property or additional rights-of-way through eminent domain; or

(2) require larger or higher structures to accommodate:

(A) increased voltage; or

(B) larger conductors.<sup>364</sup>

In all other cases, the Commission may grant a waiver, in its discretion, for “good cause.”<sup>365</sup>

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<sup>363</sup> See *id.* at 9.

<sup>364</sup> PUA § 7-207(b)(4)(i).

<sup>365</sup> PUA § 7-207(b)(3)(ii).

194. The proposed BGE Alternative Maryland Configuration will not require any new real property or additional rights-of-way. Instead, BGE will remove and replace eight existing lattice structures with new monopole structures and install new H-frame structures for the Graceton Line, and the addition of a new steel monopole for the Conastone Line.<sup>366</sup> The Settling Parties do not request a mandatory waiver under § 7-207(b)(4). Staff asserts that the scope of BGE’s work “is consistent with the granting of a waiver of the CPCN requirement under § 7-207(b)(3)(ii) for good cause shown and is supported by the administrative record.”<sup>367</sup> Given BGE’s use of new replacement structures that are generally consistent with the size of BGE’s existing overhead transmission lines, and the fact that no new land or additional rights-of-way will be required, the Commission finds BGE’s request for a discretionary waiver appropriate under the circumstances. The Commission turns next to the issue of good cause.

195. BGE provides several reasons why good cause exists for the requested CPCN waivers. First, BGE’s proposed work for the BGE Alternative Maryland Configuration did not undergo the typical CPCN waiver process. Instead, BGE participated in a more comprehensive review process and completed many of the requirements for a full CPCN review.<sup>368</sup> Second, BGE conducted extensive public outreach regarding the BGE Alternative Maryland Configuration and met with government officials from Baltimore County and Harford County to discuss the project.<sup>369</sup> Third, PPRP evaluated BGE’s proposed work and filed an extensive list of recommended conditions to address potential

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<sup>366</sup> Staff Brief at 19.

<sup>367</sup> *Id.* at 21-22.

<sup>368</sup> BGE Brief at 6.

<sup>369</sup> *Id.* at 6-7.

project impacts, which BGE has agreed to accept.<sup>370</sup> Fourth, the BGE Alternative Maryland Configuration is expected to yield certain “societal” benefits from avoiding a greenfield line—benefits that “should weigh strongly in favor of granting the good cause waivers.”<sup>371</sup>

196. The procedural posture of BGE’s request is atypical of a CPCN waiver request, and the Commission finds that BGE’s participation in the settlement portion of this proceeding supports granting the waivers for good cause. Unlike other CPCN waiver requests, BGE submitted its proposal to a more involved, albeit expedited, review and public engagement process that incorporated several elements and safeguards that normally fall under the Commission’s CPCN review process under PUA § 7-207. Procedural elements of a CPCN proceeding include, *inter alia*, the following: (1) notice and outreach to affected landowners; (2) notice to local government officials; (3) notice and opportunity for public comment and a public hearing; (4) sworn testimony regarding the project details, including costs, benefits, and impacts; (5) project evaluation by reviewing State Agencies and recommended licensing conditions by PPRP; and (6) an evidentiary hearing with discovery and post-hearing briefing (as appropriate).

197. The parties do not dispute that BGE voluntarily submitted to and completed many, if not all, of the above-listed activities.<sup>372</sup> Additionally, PPRP in coordination with the other Reviewing State Agencies conducted an independent evaluation of the BGE

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<sup>370</sup> *Id.* at 7-8.

<sup>371</sup> *Id.* at 8-9.

<sup>372</sup> Among other actions, BGE notified affected landowners of the reopening of this proceeding, provided them with a detailed description of BGE’s proposed project, and informed them of the deadline for intervention. BGE submitted sworn testimony before the Commission regarding its work, engaged in an extensive public engagement process, which included a public hearing and opportunity for public comment, and participated in an evidentiary hearing during which the company’s witness was questioned by the Commission and other parties. *Id.* at 6-7.

Alternative Maryland Configuration and produced two sets of comprehensive Recommended Conditions, one for each line, aimed at mitigating socioeconomic, cultural, and environmental impacts from the project. These, too, are commonplace for CPCN applications. The Commission is satisfied that BGE has agreed to accept these Recommended Conditions as a condition of any granted waiver.

198. Lastly, the Commission recognizes that BGE was not a participant to this proceeding prior to the Settlement. Yet, in concert with the Parties' efforts to resolve critical siting concerns with the initially-proposed IEC East Project, BGE participated in settlement discussions, in good faith, and reached a viable solution with the other Settling Parties. While certain societal benefits of the BGE Alternative Maryland Configuration are not as quantifiable as reliability or congestion benefits, it is significant that many parties to this proceeding, including Harford County, the Reviewing State Agencies, and the various Landowner Parties, placed great value on avoiding greenfield construction. Whereas these parties were previously opposed to the greenfield project, they now support the BGE Alternative Maryland Configuration.

199. For the above-stated reasons, the Commission shall grant for good cause:

(1) a waiver of the CPCN requirement for BGE to rebuild approximately 1.8 miles of the existing single circuit 230 kV Manor–Graceton transmission line from the Graceton Substation to the Maryland/Pennsylvania border as a double circuit transmission line; and

(2) a waiver of the CPCN requirement for BGE to add a second circuit to the approximately 4.8 miles of the existing 230 kV single circuit Manor–



Conastone transmission line from the Conastone Substation to the Maryland/Pennsylvania border.

**D. The Settlement Agreement and Reimbursement of Private Party Litigation Costs**

200. The Commission is presented with a Settlement Agreement supported by all but one party to this proceeding. When considering whether to adopt a proposed settlement—whether contested or otherwise—the Commission must determine that the Settlement is in the public interest and supported by substantial evidence in the record as a whole. In evaluating a contested settlement, the Commission may also consider “in addition to any economic evidence, such factors as: the desirability of avoiding costly and time-consuming rate proceedings; whether the settling parties represent interests that are normally adverse to one or more of the other settling parties; and ... the reasonableness of the effects of the particular settlement upon particular customer classes, considering all of the various aspects of the proposed settlement.”<sup>373</sup>

201. The Commission finds there is substantial evidence of record to support adoption of the Settlement Agreement, as modified below, and that the Settlement is further supported by parties representing diverse interests, including those of Transource; the Reviewing State Agencies; the Landowner Parties; and BGE, another transmission owner/operator. As discussed in this Order, the Commission concludes that Transource and BGE have met their respective burdens of proof under PUA §§ 7-207(e) and (b)(3)(ii), respectively—by demonstrating that the granting of a CPCN to Transource for

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<sup>373</sup> Order No. 78400, *In the Matter of the Commission’s Inquiry into the Competitive Selection of Electricity Supplier/Standard Offer Service*, Case No. 8908, 2003 MD PSC Lexis 5, \*138-39 (Apr. 29, 2003) (quoting *Re Potomac Electric Power Company*, 80 MD PSC 61, 64 (1989)).

the Maryland segment of the IEC West Project, and the granting of good cause waivers to BGE for its segments of the reconfigured IEC East Project, are in the public interest and will serve the public convenience and necessity. With the exception of two Settlement terms that exceed the Commission’s approval authority, the Commission finds that the expected benefits from the Settlement lend additional support for the Settlement Agreement.

The Settlement Agreement provides that each term of the Settlement “is vital to the Settlement Agreement as a whole, since the Settling Parties expressly and jointly state that they would not have signed the Settlement Agreement had any term been modified in any way.”<sup>374</sup> The key provisions of the Settlement that fall within the Commission’s jurisdiction are addressed elsewhere in this Order. Provisions 21 and 22 of the Settlement Agreement, however, specify that Transource will make certain monetary payments to STOP Transource and to specific Landowner Parties “for the payment of reasonable legal costs related to the Application.”<sup>375</sup>

202. Transource does not ask the Commission to review and approve the reasonableness of reimbursing certain parties’ legal costs under the Settlement.<sup>376</sup> At the Settlement Hearing, Transource witness Weber explained the operation of Settlement provisions 21, 22, and 32 in relation to each other as follows:

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<sup>374</sup> Settlement Agreement ¶ 32.

<sup>375</sup> By way of example, Paragraph 21 of the Settlement Agreement provides as following with respect to STOP Transource: “Within 30 days after the execution of this Settlement Agreement, Transource [Maryland] will pay \$20,000 to STOP Transource for the payment of reasonable legal costs related to the Application. Within 30 days after the issuance of all necessary regulatory approvals for the construction of the IEC Project, which is an express condition precedent, Transource [Maryland] will pay \$40,000 to STOP Transource for the payment of reasonable legal costs to the Application.” Settlement Agreement ¶ 21. Paragraph 22 is substantively identical to Paragraph 21, but is addressed to a specific Landowner Parties to the Settlement. *See* Settlement Agreement ¶ 22.

<sup>376</sup> Weber Settlement at 7 (“The Settling Parties are not seeking any Commission action or rulings related to the agreed upon reimbursement of legal costs.”).

[T]he provisions as outlined in section 32 asking for the approval [of the Settlement Agreement] as a whole would only really apply to the Commission to the paragraphs which the Commission is named.

So[,] as I went through the licensing conditions, the CPCN and the waiver, those are the only paragraphs that I'm aware of that ... we will ask the Commission to apply.... This is legal and contractual interpretation, which is why we clarified in testimony that the legal costs that were being asked about, we weren't seeking Commission approval.<sup>377</sup>

203. Transource's contractual agreement with certain private parties to reimburse them for specific legal costs falls outside the Commission's jurisdiction and approval authority. The Commission therefore rejects Provisions 21 and 22 of the Settlement Agreement, specifically, but approves the remaining terms of Settlement as in the public interest.

### **VIII. CONCLUSION**

204. The Commission, in considering the record as a whole, shall accept the Settling Parties' Settlement Agreement and Stipulation, as modified and discussed herein, with the final Conditions as agreed by the Settling Parties also accepted according to the Settlement Agreement. The Commission finds that Transource and BGE have met their respective burdens under the applicable provisions of the Public Utilities Article, §§ 7-207 and 7-209. Furthermore, the Settlement Conditions, as modified herein, are reasonable and supported by the administrative record. Accordingly, the Commission finds the respective Maryland Segments of the IEC West and IEC East portions of Alternative Project 9A, together, inclusive of the Conditions recommended by PPRP, to be in the public interest. Consistent with the analysis and findings in this Order, the

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<sup>377</sup> Settlement Hr'g Tr. at 106-07 (Weber).

Commission hereby grants a Certificate of Public Convenience and Necessity to Transource, subject to the Recommended License Conditions appended to the Direct Settlement Testimony of PPRP witness Kelley as Attachment A, for the Maryland segment of the IEC West Portion, and the Commission separately grants to BGE the requested CPCN waivers for good cause shown, subject to the Recommended Conditions appended to the witness Kelley's same testimony as Attachments B and C, for the BGE Alternative Maryland Configuration.<sup>378</sup>

**IT IS, THEREFORE,** this 30th day of June, in the year Two Thousand Twenty by the Public Service Commission of Maryland,

**ORDERED:** (1) That the Settlement Agreement filed on October 17, 2019, with Transource Maryland, LLC's Petition for Adoption of Settlement is hereby accepted, as modified herein, as a fair and reasonable resolution of this proceeding;

(2) That the Application filed by Transource Maryland, LLC for a Certificate of Public Convenience and Necessity to construct a new double-circuit 230 kV overhead transmission line in western Maryland, is hereby granted in accordance with the findings and decisions rendered in this Order and subject to the Licensing Conditions in Appendix A, attached hereto and incorporated herein;

(3) That the request by Baltimore Gas and Electric Company for two good cause waivers to construct two 230 kV overhead transmission lines in eastern Maryland is hereby granted in accordance with the findings and decisions

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<sup>378</sup> A concurring statement from Commissioner Richard is attached to this Order.

rendered in this Order and subject to the Conditions in Appendices B and C for each respective line segment, attached hereto and incorporated herein; and

(4) That as an additional condition of the Commission's approvals in this matter, Transource and BGE are directed to minimize all construction activities and additional construction-related costs, as they relate to the Maryland portions of the IEC Project, pending the regulatory approvals of Alternative Project 9A by the Pennsylvania Public Utility Commission and final approval by the PJM Board.

*Jason M. Stanek*

*Michael T. Richard*

*Anthony J. O'Donnell*

*Odogwu Obi Linton*

*Mindy L. Herman*

Commissioners

**CPCN CASE NO. 9471**  
**SECRETARIAL LETTER**  
**ATTACHMENT A**

**DRAFT Recommended Licensing Conditions for the  
Independence Energy Connection West**

**ATTACHMENT A**  
**DRAFT Recommended Licensing Conditions for the IEC West**  
**CPCN Case No. 9471**

1. General – Construction and operation of the Independence Energy Connection (IEC) West segment of transmission line, located in Washington County, Maryland, shall be undertaken in accordance with this certificate and shall comply with all applicable local, State, and federal laws and regulations, including but not limited to the following:
  - a. Nontidal Wetlands – COMAR 26.23 et seq. applies to activities conducted in nontidal wetlands and wetland buffer.
  - b. Waterway Construction – COMAR 26.17.04 applies to regulations governing construction activities in nontidal waters and floodplains.
  - c. Water Quality and Water Pollution Control – COMAR 26.08.01 through COMAR 26.08.04 applies to discharges to surface water and maintenance of surface water quality.
  - d. Erosion and Sediment Control – COMAR 26.17.01 applies to the preparation, submittal, review, approval, and enforcement of erosion and sediment control plans.
  - e. Forest Conservation – Maryland's Forest Conservation Act, Md. Code, Section 5-1601 et seq. of the Natural Resources Article.
  - f. Threatened and Endangered Species – COMAR 08.03.08 applies to actions affecting threatened or endangered species on State or private lands.
  - g. Scenic and Wild River-Maryland’s Scenic and Wild River Act, MD. Code, Section 8-401 et seq. of the Natural Resources Article.
  - h. Particulate Matter from Materials Handling and Construction - COMAR 26.11.06.03D, applies to airborne particulate matter such that a person may not cause or permit any material to be handled, transported, or stored, or a building, its appurtenances, or a road to be used, constructed, altered, repaired, or demolished without taking reasonable precautions to prevent particulate matter from becoming airborne.
  - i. Nuisance - COMAR 26.11.06.08, applies to the creation of nuisance or air pollution such that an installation or premises may not be operated or maintained in such a manner that a nuisance or air pollution is created. Nothing in this regulation relating to the control of emissions may in any manner be construed as authorizing or permitting the creation of, or maintenance of, a nuisance or air pollution.

- j. Odors - COMAR 26.11.06.09, applies to the discharge of air pollution such that a person may not cause or permit the discharge into the atmosphere of gases, vapors, or odors beyond the property line in such a manner that a nuisance or air pollution is created.
  - k. Noise - COMAR 26.02.03, applies to noise regulations whereby Transource shall construct and operate the proposed Project in such a way that it complies with the Maryland noise regulations in and with relevant Washington County noise ordinances.
2. CPCN Expiration - Construction of the IEC West segment of the Transource Maryland IEC Project, located in Washington County, Maryland, must commence within one (1) year of receiving the Certificate of Public Convenience and Necessity (CPCN) and must be completed for operation by March 31, 2022. If circumstances warrant an extension of this schedule, Transource must notify the Public Service Commission (PSC) and the Power Plant Research Program (PPRP) and explain the reason for the requested extension, which notification shall be entered in the PSC Docket for the case. Notwithstanding any such extension, this CPCN shall expire if the Transource IEC project is not constructed and operational within three (3) years of the CPCN issuance date, unless otherwise extended by the Commission.
3. Project As-Built Engineering Details - Transource shall provide PPRP and the PSC Engineering Staff with the following as-built details in accordance with COMAR 20.79.04.02A:
- a. Engineering and construction plans of the linear facilities, including right-of-way (ROW) width, length and total acreage of the ROW;
  - b. Transmission line structure and foundation types, dimensions, locations, and depths;
  - c. Transmission line conductor configuration; and
  - d. Nominal length of span between transmission line structures.
  - e. Where the above-listed as-built details are identical to those submitted with the CPCN application, Transource should provide a statement to this effect and not resubmit the information. In addition, Transource shall provide engineering and construction plans for all new access roads and those modifications to existing access roads for which a construction drawing is required for permitting, as well as the final plans for roadway reclamation following construction of the proposed Project, if any.



4. Erosion and Sediment Control - Transource shall employ erosion and sediment control best management practices (BMPs) presented in the Maryland Department of the Environment (MDE) document titled, *2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control*, and as otherwise may be approved or required by Washington County. All portions of the ROW disturbed during construction shall be stabilized as soon as practicable after the cessation of construction activities within that portion of the ROW, followed by seed application, except in actively cultivated lands, in accordance with the above cited document. In no instance shall non-native species be seeded or otherwise planted.

Enhanced soil and erosion control BMPs shall be implemented in and around the floodplain of the Little Antietam Creek tributaries at Gardenhour Road, with particular attention to preventing runoff into the streams from any clearing or construction activities on the steep slope adjacent to the floodplain area. Enhanced BMPs shall follow the Basic Checklist developed by MDE for Tier II Waters:

([https://mde.maryland.gov/programs/Water/TMDL/WaterQualityStandards/Documents/Tier-II-Forms/Tier\\_II\\_App\\_BMP\\_List.pdf](https://mde.maryland.gov/programs/Water/TMDL/WaterQualityStandards/Documents/Tier-II-Forms/Tier_II_App_BMP_List.pdf))

5. ROW Management - No more than 30 days after finalizing contract specifications for clearing, construction, and rehabilitation of the rights-of-ways, Transource shall notify the PSC and PPRP that copies of the contract specifications are available. Such notification shall be provided prior to commencing construction.
6. Wetlands and Waterways - If changes to the engineering design of the transmission line or field adjustments to the designs provided with the CPCN Application result in impacts (temporary or permanent) to streams or their 100-year floodplains or to non-tidal wetlands and their regulated buffers, Transource shall assess and quantify the impact. Prior to commencing construction activities at these locations, Transource shall provide the impact assessments to MDE and PPRP and consult with them to determine what action or permit is required to address the identified impacts.
7. Vegetation Management - With the permission of the property owner, Transource shall manage the ROW vegetation by employing the measures specified in paragraphs (a) through (d) below, and utilizing the wire zone/border zone definitions and management approaches specified in Best Management Practices: Integrated Vegetation Management (IVM) for Utility Rights-of-Way (R. Miller, International Society of Arboriculture, Second Edition, 2014). As defined in that document, the border zone on each side of the ROW begins at the outer edge of the ROW and ends roughly 10 feet from the outermost conductor(s), while the wire zone is the section of the ROW directly under the wires and extending outward roughly 10 feet on each side of the outermost conductor. Each resulting

vegetation clearance shall comply with applicable North American Electric Reliability Corporation (NERC) and Federal Energy Regulatory Commission (FERC) rules, guidance, policies, procedures, and/or regulations.

- a. In any part of the ROW that bisects designated Maryland Department of Natural Resources Green Infrastructure or other forested parcels, and which is not under active cultivation, Transource shall, to the extent feasible, (with appropriate permissions from landowners other than Transource) maintain the ROW such that 1) the wire zone supports a low-growing plant community dominated by grasses, herbs, forbs, and small shrubs [under 3 feet in height at maturity], and 2) scattered, small native trees and woody shrubs grow within the border zone of the ROW. Any access tracks through these areas that require mowing shall follow mowing conditions noted in Licensing Condition 7(b) below. The ROW shall be maintained as such while the ROW is in use by Transource or its successors or assignees.
- b. Post-construction, Transource, subject to landowner consent and local grass height ordinances, shall not mow areas within the ROW maintained as grasses and forbs during the breeding season for ground nesting birds from May through August of each year. If mowing is necessary outside of the May through August breeding season, the mowed height will be no less than 10 inches in the border zone and no less than 6 inches in the wire zone, with the exception of areas under special management for invasive species control. Vegetation within the border zone will be maintained as a low-growing plant community dominated by small native trees and woody shrubs.
- c. Subject to applicable law and landowner requirements, herbicide applications employed to establish and maintain IVM shall be performed in accordance with industry best practices and incorporated into the plans to accomplish the desired habitat, as described in Licensing Conditions 7(a) and 7(b) above, while allowing for adequate access by Transource.
- d. All wetlands, and stream and wetland buffers (as defined by MDE), shall be maintained through IVM protocols that minimize mechanical mowing and are designed to obtain a sustainable vegetation community of maximum height and density consistent with NERC transmission line safety standards. A "riparian corridor" vegetation management regime shall be employed at stream crossings, and shall extend in an upland direction no less than 25 feet beyond the top of the

stream bank or 25 feet beyond the boundary of the mapped 100-year floodplain, whichever is greater. In these areas, including but not limited to the tributaries to Little Antietam Creek at Gardenhour Road, the wire zone shall be treated as border zone for vegetation management purposes. If Transource finds it necessary to establish a mowed access track through any wetland or stream or wetland buffer, all mowing shall be restricted as described in Licensing Condition 7(b) above.

8. Forest Conservation - Transource shall comply with Maryland's Forest Conservation Act (FCA), Md. Code, Sections 5-1601 through 5-1613 of the Natural Resources Article, and the Washington County Forest Conservation Ordinance that implements the FCA.
9. Species of Concern - Transource shall avoid impacts to rare, threatened, and endangered (RTE) species known to occur in the project area. Transource shall notify and consult with the Department of Natural Resources, Wildlife and Heritage Service to determine appropriate actions if any Federal- or State-listed RTE species is encountered during planning, construction, or maintenance of the Project.
  - a. Allegheny Pearl Dace (*Margariscus margarita*), State-listed Threatened, and Checkered Sculpin (*Cottus* sp. 7), a Species of Greatest Conservation Need, are known to occur in the Little Antietam Creek near Gardenhour Road. Rainbow Trout (*Oncorhynchus mykiss*) are known to naturally reproduce in these stream systems. Therefore, Transource shall adhere to the most stringent sediment and erosion control Best Management Practices with respect to the stream crossings of tributaries to Little Antietam Creek near Gardenhour Road.
  - b. Transource shall avoid tree clearing in or in the vicinity of the ROW during the maternity roosting period for bat species (Little Brown Bat, Northern Long-eared Bat, and Tricolored Bat, and Indiana Bat) from June 1 to July 31. In addition, if a roost tree for any of these species is identified in or near the ROW, then any clearing activity is prohibited within a 0.25-mile radius of the identified tree.
10. Maryland Agricultural Land Preservation Foundation (MALPF) Easements - For each property occupied by the Project and encumbered by a MALPF easement, Transource shall comply with any applicable requirement set forth in Md. Code, Agriculture, § 2-501 et seq. and COMAR 15.15.01 et seq. to obtain approval for an overlay easement to construct and operate the Project. Prior to commencing construction of the

Project on any property encumbered by a MALPF easement, Transource shall file notification in the PSC Docket for Case No. 9471 that Transource has obtained all necessary approvals under Md. Code, Agriculture, § 2-501 et seq. and COMAR 15.15.01[16.00,] et seq.

11. Complaint Resolution - Transource shall develop a complaint resolution process to address written complaints by an owner of property crossed by the Project related to the project's impacts. For each such complaint, Transource shall provide to the PSC and PPRP a copy of the complaint and Transource's response, including a description of any reasonable mitigation steps to resolve the complaint. Transource's response to any written complaint shall clearly state that the aggrieved party may submit its concerns to the Commission directly.
12. Maryland Historical Trust (MHT) - Prior to construction, Transource shall certify to the PSC and PPRP that it has addressed all MHT concerns and recommendations for the mitigation of project impacts upon cultural and archaeological resources.
13. Archeological Discoveries - In the event that construction reveals unforeseen archeological sites, Transource, in consultation with and as approved by the MHT, shall develop and implement a plan for avoidance and protection, data recovery, or destruction without recovery of such relics or sites.
14. Traffic Management- Transource shall mitigate disruptions to commuter traffic to the extent practicable by scheduling the transport of materials and equipment to staging areas and construction sites during non-peak hours.
15. Road Occupancy Permits - Transource shall comply with all permit requirements for the use, crossing and occupancy of State and county roads and obtain approvals as necessary.
16. Oversize/Overweight Loads - Transource shall comply with all permit requirements for transport of oversize or overweight loads on State and county roads and obtain appropriate approvals as necessary.
17. Federal Aviation Administration (FAA) Compliance - Prior to construction, Transource shall certify to PPRP and PSC that the Project does not exceed Federal Aviation Administration obstruction standards for air navigation.
18. Electromagnetic Fields (EMF) - Within three months of energizing the transmission line, Transource shall submit to PPRP and PSC, the actual EMF values measured at the centerline and edge of the IEC West transmission line ROW, while the transmission line is operating under

typical loading conditions. In addition to the measurement data, Transource shall provide the following:

- a. A site drawing with the measurement locations, with the ROW and the center line of the transmission line identified,
  - b. The Mega-Volt Ampere (MVA) load on the transmission line at the location where the magnetic field measurements were taken,
  - c. The date, time and temperature that the magnetic field measurements were taken, and
  - d. The manufacturer and model of the instrument used to measure the electrical field level.
19. Project Need - If, prior to construction, PJM determines to terminate PJM's Designated Entity Agreement with Transource for PJM Upgrade Project b2743, this CPCN shall be void.
20. Submission to PPRP - Informational copies of the required communications, reports or studies referenced in the preceding recommended license conditions shall be sent to PPRP by mail and e-mail at:

Director  
Power Plant Assessment Division  
Department of Natural Resources  
Tawes State Office Bldg., B-3  
580 Taylor Avenue  
Annapolis, Maryland 21401  
[e-mail: pprp@maryland.gov](mailto:pprp@maryland.gov)

**CPCN CASE NO. 9471**  
**SECRETARIAL LETTER**  
**ATTACHMENT B**

**DRAFT Recommended Conditions –**  
**Independence Energy Connection East – BGE Graceton to State Line**

**ATTACHMENT B**  
**DRAFT Recommended Conditions -**  
**Independence Energy Connection East - BGE Graceton to State Line**

1. **General** - Construction and operation of the IEC East - BGE Graceton to State Line segment of transmission line, located in Harford County, Maryland, shall be undertaken in accordance with these conditions and shall comply with all applicable local, State, and federal laws and regulations, including but not limited to the following:
  - a. Nontidal Wetlands - COMAR 26.23.01 et seq. applies to activities conducted in nontidal wetlands and wetland buffer.
  - b. Waterway Construction - COMAR 26.17.04 applies to regulations governing construction activities in nontidal waters and floodplains.
  - c. Water Quality and Water Pollution Control - COMAR 26.08.01 through COMAR 26.08.04 applies to discharges to surface water and maintenance of surface water quality.
  - d. Erosion and Sediment Control - COMAR 26.17.01 applies to the preparation, submittal, review, approval, and enforcement of erosion and sediment control plans.
  - e. Forest Conservation - Maryland's Forest Conservation Act, Md. Code, Section 5-1601 et seq. of the Natural Resources Article.
  - f. Threatened and Endangered Species - COMAR 08.03.08 applies to actions affecting threatened or endangered species on State or private lands.
  - g. Scenic and Wild River-Maryland's Scenic and Wild River Act, MD. Code, Section 8-401 et seq. of the Natural Resources Article.
  - h. Particulate Matter from Materials Handling and Construction - COMAR 26.11.06.03D, applies to airborne particulate matter such that a person may not cause or permit any material to be handled, transported, or stored, or a building, its appurtenances, or a road to be used, constructed, altered, repaired, or demolished without taking reasonable precautions to prevent particulate matter from becoming airborne.
  - i. Nuisance - COMAR 26.11.06.08, applies to the creation of nuisance or air pollution such that an installation or premises may not be operated or maintained in such a manner that a nuisance or air pollution is created. Nothing in this regulation relating to the control

of emissions may in any manner be construed as authorizing or permitting the creation of, or maintenance of, a nuisance or air pollution.

- j. Odors - COMAR 26.11.06.09, applies to the discharge of air pollution such that a person may not cause or permit the discharge into the atmosphere of gases, vapors, or odors beyond the property line in such a manner that a nuisance or air pollution is created.
  - k. Noise - COMAR 26.02.03, applies to noise regulations whereby BGE shall construct and operate the proposed Project in such a way that it complies with the Maryland noise regulations in and with relevant Harford County noise ordinances.
2. Waiver Expiration - Construction of the IEC East – BGE Graceton to State Line segment of the Transource Maryland Independence Energy Connection Project, located in Harford County, Maryland, must commence within one (1) year of receiving the discretionary waiver from the Public Service Commission (PSC) and must be completed for operation by December 31, 2022. If conditions warrant an extension of this schedule, BGE must notify the PSC and the Power Plant Research Program (PPRP) and explain the reason for the requested extension. Notwithstanding any such extension, this waiver shall expire if the BGE project is not constructed and operational within three (3) years of the waiver issuance date.
3. Project As-Built Engineering Details - BGE shall provide PPRP and the PSC Engineering Staff with the following as-built details:
- a. Engineering and construction plans of the linear facilities, including right-of-way (ROW) width, length and total acreage of the ROW;
  - b. Transmission line structure and foundation types, dimensions, locations, and depths;
  - c. Transmission line conductor configuration; and
  - d. Nominal length of span between transmission line structures.
  - e. In addition, BGE shall provide engineering and construction plans for all new access roads and those modifications to existing access roads for which a construction drawing is required for permitting, as well as the final plans for roadway reclamation, if any, following construction of the proposed Project.
4. Sediment and Erosion Control - BGE shall employ erosion and sediment control best management practices (BMPs) presented in the Maryland



Department of the Environment (MDE) document titled, *2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control*, and as otherwise may be approved or required by Harford County. All portions of the ROW disturbed during construction shall be stabilized as soon as practicable after the cessation of construction activities within that portion of the ROW, followed by seed application, except in actively cultivated lands, in accordance with the above cited document. In no instance shall non-native species be seeded or otherwise planted.

Enhanced soil and erosion control BMPs shall be implemented within the Broad Creek watershed, a Tier II Catchment, with particular attention to preventing runoff into the streams from any clearing or construction activities on any slopes adjacent to the floodplain area. Enhanced BMPs shall follow the Basic Checklist developed by MDE for Tier II Waters: [https://mde.maryland.gov/programs/Water/TMDL/WaterQualityStandards/Documents/Tier-II-Forms/Tier\\_II\\_App\\_BMP\\_List.pdf](https://mde.maryland.gov/programs/Water/TMDL/WaterQualityStandards/Documents/Tier-II-Forms/Tier_II_App_BMP_List.pdf)

5. ROW Management - No more than 30 days after finalizing contract specifications for clearing, construction, and rehabilitation of the rights-of-ways, BGE shall notify the PSC and PPRP that copies of the contract specifications are available. Such notification shall be provided prior to commencing construction.
6. Wetlands and Waterways - If changes to the engineering design of the transmission line or field adjustments to the designs provided with the waiver request result in impacts (temporary or permanent) to streams or their 100-year floodplains or to non-tidal wetlands and their regulated buffers, BGE shall assess and quantify the impact. Prior to starting construction activities at these locations, BGE shall provide the impact assessments to, and consult with, MDE and PPRP to determine each action or permit that is required to address each identified impact.
7. Vegetation Management - BGE shall notify property owners prior to conducting vegetation management activities on the ROW. BGE shall manage the ROW vegetation by employing the measures specified in paragraphs (a) through (d) below, and utilizing the wire zone/border zone definitions and management approaches specified in Best Management Practices: Integrated Vegetation Management (IVM) for Utility Rights-of-Way (R. Miller, International Society of Arboriculture, Second Edition, 2014). As defined in that document and in accordance with BGE's Transmission Vegetation Management Program (TVMP), the border zone on each side of the ROW begins at the outer edge of the ROW and ends

roughly 20 feet from the outermost conductor(s), while the wire zone is the section of the ROW directly under the wires and extending outward roughly 20 feet on each side of the outermost conductor. Each resulting vegetation clearance shall comply with applicable North American Electric Reliability Corporation (NERC) and Federal Energy Regulatory Commission (FERC) rules, guidance, policies, procedures, and/or regulations. Herbicide applications, subject to applicable law and landowner requirements, shall be performed in accordance with industry best practices and shall only use EPA-registered herbicides in accordance with label recommendations. The IVM control methods used shall, to the greatest extent possible, minimize environmental impact and maintain a sustainable vegetation community of maximum height and density, consistent with the wire zone/border zone specifications of BGE's TVMP.

- a. In any part of the ROW that bisects designated Maryland Department of Natural Resources Green Infrastructure or other forested parcels, and which is not under active cultivation, BGE shall, to the extent feasible, (with appropriate permissions from landowners other than BGE) maintain the ROW such that 1) the wire zone supports a low-growing plant community dominated by grasses, herbs, forbs, and small shrubs [under 3 feet in height at maturity], and 2) scattered, small native trees and woody shrubs grow within the border zone of the ROW. Any access tracks through these areas that require mowing shall follow mowing conditions noted in Condition 7(b) below. The ROW shall be maintained as such while the ROW is in use by BGE or its successors or assignees.
- b. Post-construction, BGE, subject to landowner notification and local grass height ordinances, shall not mow areas within the ROW maintained as grasses and forbs during the breeding season for ground nesting birds from May through August of each year. If mowing is necessary outside of the May through August breeding season, the mowed height will be no less than 10 inches in the border zone and no less than 6 inches in the wire zone, with the exception of areas under special management for invasive species control, or areas required to be maintained as access roads and areas around tower/pole foundations.
- c. Subject to applicable law and landowner requirements, herbicide applications employed to establish and maintain IVM shall be performed in accordance with industry best practices and incorporated into the plans to accomplish the desired habitat, as

described in Conditions 7(a) and 7(b) above, while allowing for adequate access by BGE.

- d. All wetlands, and stream and wetland buffers (as defined by MDE), shall be maintained through IVM protocols that minimize mechanical mowing and are designed to obtain a sustainable vegetation community of maximum height and density consistent with NERC transmission line safety standards. A "riparian corridor" vegetation management regime shall be employed at stream crossings, and shall extend in an upland direction no less than 25 feet beyond the top of the stream bank or 25 feet beyond the boundary of the mapped 100-year floodplain, whichever is greater. If BGE finds it necessary to establish a mowed access track through any wetland or stream or wetland buffer, all mowing shall be restricted as described in Condition 7(b) above.
8. Species of Concern - BGE shall avoid impacts to rare, threatened, and endangered (RTE) species known to occur in the project area. BGE shall notify and consult with the Department of Natural Resources, Wildlife and Heritage Service to determine appropriate actions if any Federal- or State-listed RTE species are encountered during planning, construction, or maintenance of the Project.
    - a. Bog Turtle (*Glyptemys muhlenbergii*), State and Federal-listed Threatened, is known to occur in a wetland area spanned by the Graceton to State-line transmission line. BGE shall conduct vegetation management in the wetland area to reduce woody vegetation cover by 75% as an enhancement for bog turtles. At no time shall heavy equipment be used in the wetland area or its buffer. BGE is directed to contact the DNR Wildlife & Heritage Service (410-827-8612, ext. 103) if there are any concerns regarding this species.
  9. Invasive Species - The Spotted Lanternfly is an invasive insect species that has been reported recently in Maryland and Pennsylvania. BGE shall comply with Quarantine Order #19-02 issued by the Maryland Department of Agriculture (MDA) to prevent the spread of Spotted Lanternfly in the State. The quarantine order applies to Cecil County and Harford County, and affects the movement of regulated articles (including industrial and construction material and equipment) by establishing a permitting process to control the movement of materials. Furthermore, BGE shall report any sightings of adults or egg masses encountered during construction or maintenance activities to MDA as soon as possible. The Tree of Heaven

(*Ailanthus altissima*) is an invasive tree species that is the preferred host for the Spotted Lanternfly, and should also be controlled by BGE where it occurs along the ROW.

10. Maryland Historical Trust (MHT) - Prior to construction, BGE shall certify to the PSC and PPRP that it has addressed all MHT concerns and recommendations for the mitigation of project impacts upon cultural and archaeological resources.
11. Archeological Discoveries - In the event that construction reveals unforeseen archeological sites, BGE, in consultation with and as approved by the MHT, shall develop and implement a plan for avoidance and protection, data recovery, or destruction without recovery of such relics or sites.
12. Traffic Management- BGE shall mitigate disruptions to commuter traffic to the extent practicable by scheduling the transport of materials and equipment to staging areas and construction sites during non-peak hours.
13. Road Occupancy Permits - BGE shall comply with all permit requirements for the use, crossing and occupancy of State and county roads and obtain approvals as necessary.
14. Oversize/Overweight Loads - BGE shall comply with all permit requirements for transport of oversize or overweight loads on State and county roads and obtain appropriate approvals as necessary.
15. FAA Compliance - Prior to construction, BGE shall certify to PPRP and PSC that the Project does not exceed Federal Aviation Administration obstruction standards for air navigation, or otherwise that proposed marking of structures satisfies FAA obstruction standards.
16. EMF - Within three months of energizing the transmission line, BGE shall submit to PPRP and PSC, the actual electromagnetic field (EMF) values measured at the centerline and edge of the IEC East- BGE Graceton to State transmission line ROW, while the transmission line is operating under typical loading conditions. In addition to the measurement data, BGE shall provide the following:
  - a. A site drawing with the measurement locations, with the ROW and the center line of the transmission line identified,

- b. The MVA load on the transmission line at the location where the magnetic field measurement were taken,
  - c. The date, time and temperature, and
  - d. The manufacturer and model of the instrument used to measure the electrical field level.
17. Project Need - If, prior to construction, PJM determines that the IEC East - BGE Graceton to State Line in Harford County is no longer needed to resolve congestion constraints, as defined by PJM, this waiver shall be void.
18. Submission to PPRP - Informational copies of the required communications, reports or studies referenced in the preceding recommended conditions shall be sent to PPRP by mail and e-mail at:

Director  
Power Plant Assessment Division  
Department of Natural Resources  
Tawes State Office Bldg., B-3  
580 Taylor Avenue  
Annapolis, Maryland 21401  
e-mail: pprp@maryland.gov

**CPCN CASE NO. 9471**  
**SECRETARIAL LETTER**  
**ATTACHMENT C**

**DRAFT Recommended Conditions –**  
**Independence Energy Connection East – BGE Conastone to State Line**

**ATTACHMENT C**  
**DRAFT Recommended Conditions -**  
**Independence Energy Connection East - BGE Conastone to State Line**

1. General - Construction and operation of the IEC East – BGE Conastone to State Line segment of transmission line Project, located in Baltimore and Harford Counties, Maryland, shall be undertaken in accordance with this certificate and shall comply with all applicable local, State, and federal laws and regulations, including but not limited to the following:
  - a. Nontidal Wetlands – COMAR 26.23.01 et seq. applies to activities conducted in nontidal wetlands and wetland buffer.
  - b. Waterway Construction – COMAR 26.17.04 applies to regulations governing construction activities in nontidal waters and floodplains.
  - c. Water Quality and Water Pollution Control – COMAR 26.08.01 through COMAR 26.08.04 applies to discharges to surface water and maintenance of surface water quality.
  - d. Erosion and Sediment Control – COMAR 26.17.01 applies to the preparation, submittal, review, approval, and enforcement of erosion and sediment control plans.
  - e. Forest Conservation – Maryland's Forest Conservation Act, Md. Code, Section 5-1601 et seq. of the Natural Resources Article.
  - f. Threatened and Endangered Species – COMAR 08.03.08 applies to actions affecting threatened or endangered species on State or private lands.
  - g. Scenic and Wild River-Maryland's Scenic and Wild River Act, MD. Code, Section 8-401 et seq. of the Natural Resources Article.
  - h. Particulate Matter from Materials Handling and Construction - COMAR 26.11.06.03D, applies to airborne particulate matter such that a person may not cause or permit any material to be handled, transported, or stored, or a building, its appurtenances, or a road to be used, constructed, altered, repaired, or demolished without taking reasonable precautions to prevent particulate matter from becoming airborne.
  - i. Nuisance - COMAR 26.11.06.08, applies to the creation of nuisance or air pollution such that an installation or premises may not be operated or maintained in such a manner that a nuisance or air pollution is created. Nothing in this regulation relating to the control

of emissions may in any manner be construed as authorizing or permitting the creation of, or maintenance of, a nuisance or air pollution.

- j. Odors - COMAR 26.11.06.09, applies to the discharge of air pollution such that a person may not cause or permit the discharge into the atmosphere of gases, vapors, or odors beyond the property line in such a manner that a nuisance or air pollution is created.
  - k. Noise - COMAR 26.02.03, applies to noise regulations whereby BGE shall construct and operate the proposed Project in such a way that it complies with the Maryland noise regulations in and with relevant Baltimore and Harford County noise ordinances.
2. Waiver Expiration - Construction of the IEC East – BGE Conastone to State Line segment of the Transource Maryland Independence Energy Connection Project, located in Baltimore and Harford Counties, Maryland, must commence within one (1) year of receiving the discretionary waiver from the Public Service Commission (PSC) and must be completed for operation by December 31, 2022. If conditions warrant an extension of this schedule, BGE must notify the PSC and the Power Plant Research Program (PPRP) and explain the reason for the requested extension. Notwithstanding any such extension, this waiver shall expire if the BGE project is not constructed and operational within three (3) years of the waiver issuance date.
3. Project As-Built Engineering Details - BGE shall provide PPRP and the PSC Engineering Staff with the following as-built details:
- a. Engineering and construction plans of the linear facilities, including right-of-way (ROW) width, length and total acreage of the ROW;
  - b. Transmission line structure and foundation types, dimensions, locations, and depths;
  - c. Transmission line conductor configuration; and
  - d. Nominal length of span between transmission line structures.
  - e. In addition, BGE shall provide engineering and construction plans for all new access roads and those modifications to existing access roads for which a construction drawing is required for permitting, as well as the final plans for roadway reclamation, if any, following construction of the proposed Project.



4. Sediment and Erosion Control - BGE shall employ erosion and sediment control best management practices (BMPs) presented in the Maryland Department of the Environment (MDE) document titled, *2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control*, and as otherwise may be approved or required by Baltimore and Harford Counties. All portions of the ROW disturbed during construction shall be stabilized as soon as practicable after the cessation of construction activities within that portion of the ROW, followed by seed application, except in actively cultivated lands, in accordance with the above cited document. In no instance shall non-native species be seeded or otherwise planted.

Enhanced soil and erosion control BMPs shall be implemented within the Deer Creek watershed, a Tier II Catchment, with particular attention to preventing runoff into the streams from any clearing or construction activities on any slopes adjacent to the floodplain area. Enhanced BMPs shall follow the Basic Checklist developed by MDE for Tier II Waters: ([https://mde.maryland.gov/programs/Water/TMDL/WaterQualityStandards/Documents/Tier-II-Forms/Tier\\_II\\_App\\_BMP\\_List.pdf](https://mde.maryland.gov/programs/Water/TMDL/WaterQualityStandards/Documents/Tier-II-Forms/Tier_II_App_BMP_List.pdf))

5. ROW Management - No more than 30 days after finalizing contract specifications for clearing, construction, and rehabilitation of the rights-of-ways, BGE shall notify the PSC and PPRP that copies of the contract specifications are available. Such notification shall be provided prior to commencing construction.
6. Wetlands and Waterways - If changes to the engineering design of the transmission line or field adjustments to the designs provided with the waiver request result in impacts (temporary or permanent) to streams or their 100-year floodplains or to non-tidal wetlands and their regulated buffers, BGE shall assess and quantify the impact. Prior to starting construction activities at these locations, BGE shall provide the impact assessments to, and consult with, MDE and PPRP to determine each action or permit that is required to address each identified impact.
7. Vegetation Management - BGE shall notify property owners prior to conducting vegetation management activities on the ROW. BGE shall manage the ROW vegetation by employing the measures specified in paragraphs (a) through (d) below, and utilizing the wire zone/border zone definitions and management approaches specified in Best Management Practices: Integrated Vegetation Management (IVM) for Utility Rights-of-Way (R. Miller, International Society of Arboriculture, Second Edition, 2014). As defined in that document and in accordance with BGE's

Transmission Vegetation Management Program (TVMP), the border zone on each side of the ROW begins at the outer edge of the ROW and ends roughly 20 feet from the outermost conductor(s), while the wire zone is the section of the ROW directly under the wires and extending outward roughly 20 feet on each side of the outermost conductor. Each resulting vegetation clearance shall comply with applicable North American Electric Reliability Corporation (NERC) and Federal Energy Regulatory Commission (FERC) rules, guidance, policies, procedures, and/or regulations. Herbicide applications, subject to applicable law and landowner requirements, shall be performed in accordance with industry best practices and shall only use EPA-registered herbicides in accordance with label recommendations. The IVM control methods used shall, to the greatest extent possible, minimize environmental impact and maintain a sustainable vegetation community of maximum height and density, consistent with the wire zone/border zone specifications of BGE's TVMP.

- a. In any part of the ROW that bisects designated Maryland Department of Natural Resources Green Infrastructure or other forested parcels, and which is not under active cultivation, BGE shall, to the extent feasible, (with appropriate permissions from landowners other than BGE) maintain the ROW such that 1) the wire zone supports a low-growing plant community dominated by grasses, herbs, forbs, and small shrubs [under 3 feet in height at maturity], and 2) scattered, small native trees and woody shrubs grow within the border zone of the ROW. Any access tracks through these areas that require mowing shall follow mowing conditions noted in Condition 7(b) below. The ROW shall be maintained as such while the ROW is in use by BGE or its successors or assignees.
- b. Post-construction, BGE, subject to landowner notification and local grass height ordinances, shall not mow areas within the ROW maintained as grasses and forbs during the breeding season for ground nesting birds from May through August of each year. If mowing is necessary outside of the May through August breeding season, the mowed height will be no less than 10 inches in the border zone and no less than 6 inches in the wire zone, with the exception of areas under special management for invasive species control, or areas required to be maintained as access roads and areas around tower/pole foundations.
- c. Subject to applicable law and landowner requirements, herbicide applications employed to establish and maintain IVM shall be performed in accordance with industry best practices and

incorporated into the plans to accomplish the desired habitat, as described in Conditions 7(a) and 7(b) above, while allowing for adequate access by BGE.

- d. All wetlands, and stream and wetland buffers (as defined by MDE), shall be maintained through IVM protocols that minimize mechanical mowing and are designed to obtain a sustainable vegetation community of maximum height and density consistent with NERC transmission line safety standards. A "riparian corridor" vegetation management regime shall be employed at stream crossings, and shall extend in an upland direction no less than 25 feet beyond the top of the stream bank or 25 feet beyond the boundary of the mapped 100-year floodplain, whichever is greater. If BGE finds it necessary to establish a mowed access track through any wetland or stream or wetland buffer, all mowing shall be restricted as described in Condition 7(b) above.
8. Species of Concern - BGE shall avoid impacts to rare, threatened, and endangered (RTE) species known to occur in the project area. BGE shall notify and consult with the Department of Natural Resources, Wildlife and Heritage Service to determine appropriate actions if any Federal- or State-listed RTE species are encountered during planning, construction, or maintenance of the Project.
    - a. Bog Turtle (*Glyptemys muhlenbergii*), State and Federal-listed Threatened, is known to occur in a wetland area spanned by the Conastone to State-line transmission line. BGE shall conduct vegetation management in the wetland area to reduce woody vegetation cover by 75% as an enhancement for bog turtles. At no time shall heavy equipment be used in the wetland area or its buffer. BGE is directed to contact the DNR Wildlife & Heritage Service (410-827-8612, ext. 103) if there are any concerns regarding this species.
  9. Invasive Species - The Spotted Lanternfly is an invasive insect species that has been reported recently in Maryland and Pennsylvania. BGE shall comply with Quarantine Order #19-02 issued by the Maryland Department of Agriculture (MDA) to prevent the spread of Spotted Lanternfly in the State. The quarantine order applies to Cecil County and Harford County, and affects the movement of regulated articles (including industrial and construction material and equipment) by establishing a permitting process to control the movement of materials. Furthermore, BGE shall report any sightings of adults or egg masses encountered during construction or

maintenance activities to MDA as soon as possible. The Tree of Heaven (*Ailanthus altissima*) is an invasive tree species that is the preferred host for the Spotted Lanternfly, and should also be controlled by BGE where it occurs along the ROW.

10. Maryland Agricultural Land Preservation Foundation (MALPF) Easements - For each property occupied by the Project and encumbered by both a MALPF easement and a BGE overlay easement, BGE shall adhere to any applicable requirements of Md. Code, Agriculture, § 2-501 et seq.[15] and[/or] COMAR 15.15.01[16.00,] et seq and the terms of the overlay easements benefiting BGE.
11. Maryland Historical Trust (MHT) - Prior to construction, BGE shall certify to the PSC and PPRP that it has addressed all MHT concerns and recommendations for the mitigation of project impacts upon cultural and archaeological resources.
12. Archeological Discoveries - In the event that construction reveals unforeseen archeological sites, BGE, in consultation with and as approved by the MHT, shall develop and implement a plan for avoidance and protection, data recovery, or destruction without recovery of such relics or sites.
13. Traffic Management- BGE shall mitigate disruptions to commuter traffic to the extent practicable by scheduling the transport of materials and equipment to staging areas and construction sites during non-peak hours.
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15. Oversize/Overweight Loads - BGE shall comply with all permit requirements for transport of oversize or overweight loads on State and county roads and obtain appropriate approvals as necessary.
16. FAA Compliance - Prior to construction, BGE shall certify to PPRP and PSC that the Project does not exceed Federal Aviation Administration obstruction standards for air navigation, or otherwise that proposed marking of structures satisfies FAA obstruction standards.
17. EMF - Within three months of energizing the transmission line, BGE shall submit to PPRP and PSC, the actual electromagnetic field (EMF) values

measured at the centerline and edge of the IEC East- BGE Conastone to State transmission line ROW, while the transmission line is operating under typical loading conditions. In addition to the measurement data, BGE shall provide the following:

- a. A site drawing with the measurement locations, with the ROW and the center line of the transmission line identified,
  - b. The MVA load on the transmission line at the location where the magnetic field measurement were taken,
  - c. The date, time and temperature, and
  - d. The manufacturer and model of the instrument used to measure the electrical field level.
18. Project Need - If, prior to construction, PJM determines that the IEC East - BGE Conastone to State Line in Baltimore and Harford Counties is no longer needed to resolve congestion constraints, as defined by PJM, this discretionary waiver shall be void.
19. Submission to PPRP - Informational copies of the required communications, reports or studies referenced in the preceding recommended conditions shall be sent to PPRP by mail and e-mail at:

Director  
Power Plant Assessment Division  
Department of Natural Resources  
Tawes State Office Bldg., B-3  
580 Taylor Avenue  
Annapolis, Maryland 21401  
e-mail: pprp@maryland.gov

**CONCURRING STATEMENT OF COMMISSIONER MICHAEL T. RICHARD**

1. I concur with the decisions to grant Transource the necessary CPCN for the western segment of the “Independence Energy Connection” (“IEC”) project, and to grant BGE good cause waivers needed to construct its sections of the eastern segment of the IEC project. While proposed as a market efficiency project, my support is based on the recommendation of the Maryland State agencies represented by the Power Plant Research Program (PPRP) that the proposed settlement project, re-routed IEC-east segment built along existing BGE transmission line right-of-ways, will address emerging reliability issues that PJM claims would otherwise arise in 2023. Specifically PPRP indicates that “if the IEC Project is not constructed, another significant capital investment project in the regional transmission system will be needed relatively soon to address [reliability violations].”<sup>1</sup> PPRP also finds it “difficult to contemplate another alternative to the IEC Project that would not require the construction of a new ‘greenfield’ transmission line. Thus, given this potential threat of deleterious impact to Maryland’s finite resources from a future proposed greenfield project, the Settlement Agreement provides a ‘better and more reasonable solution’.”<sup>2</sup> Under these circumstances, I accept the State agencies’ finding that the project is in the public interest.

2. While I support the State agencies, I also agree with the Office of People’s Counsel’s economic arguments and I conclude that the IEC does not qualify as a “market efficiency” project for Maryland due to it yielding a cost benefit ratio for Maryland customers of 1.20, which fails PJM’s minimum requisite market efficiency benefits of

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<sup>1</sup> Post-Hearing Brief of the Department of Natural Resources’ Power Plant Research Program, at 25-26.

<sup>2</sup> *Id.* at 26-27.

achieving a cost ratio of 1.25. I disagree with this Order that states it is “of no consequence”<sup>3</sup> if the state-specific ratio is below the required cost test; as Maryland regulators I believe it is, in fact, a matter of consideration if a project that is deemed “market efficiency” is not in the economic interest of our citizens. PJM indicates that the 1.25 cost-benefits ratio consideration for market efficiency is there to account for a margin of uncertainty. Anything less and the project does not move forward. While it is PJM’s standard, it would appear that PJM’s project approval considerations in this case treat Maryland marginally. The re-routed project comes at an enormous cost, and at about \$125 million more than the original greenfield configuration, yet provides fewer estimated future dollar benefits.<sup>4</sup> This is compounded by the uncertainty of the presumed benefits given that the motivating reason for the transmission line, congestion costs, have “precipitously” declined in recent years.<sup>5</sup>

3. Staff in its pre-settlement testimony suggested that the IEC was “unnecessary” as a market efficiency project given State policies.<sup>6</sup> However, it found that the settlement would serve to avoid future reliability concerns and adopted a similar public-interest rationale as the State agencies for supporting the re-routed IEC. Staff also pointed out that in addition to addressing reliability concerns, the project will support future developments of the electric system, such as the retirement of coal-powered generation in

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<sup>3</sup> Order Approving Settlement and Granting Certificate of Public Convenience and Necessity and Waivers, (Order No. 89571) at 142.

<sup>4</sup> See Post-Hearing Brief of the Office of People’s Counsel to the Proposed Settlement of Case No. 9471, ARGUMENT A. at 19-22.

<sup>5</sup> See Post-Hearing Brief of the Office of People’s Counsel to the Proposed Settlement of Case No. 9471 ARGUMENT C. at 26-31.

<sup>6</sup> See Direct Testimony of Roger Austin on Behalf of Staff of the Public Service Commission of Maryland, April 12, 2019 at 2-3.

Maryland and offshore wind located off the Eastern Shore.<sup>7</sup> It is regrettable however, that such factors related to Maryland's environmental policies were never articulated when the project was selected by PJM and seemingly entered the record as an afterthought. Meeting state policy needs is certainly an important aspect of regional planning as set forth by the Federal Energy Regulatory Commission.<sup>8</sup> However, it seems clear that this specific project reached our bench without the benefit of such prior, purposeful consideration.

4. It is critically important that Maryland's statutes and policies be *fully* considered prior to applying for CPCN approval. I am pleased that the Settlement avoids many of the deleterious impacts created by the originally proposed project and now takes into account our statutes and policies related to transmission siting. But I associate myself with the statement in this order that highlights the need for parties to be familiar with our statutes when pursuing such projects to preclude similar, extended proceedings.<sup>9</sup> While market efficiency and reducing costs to ratepayers clearly reflects state policy, building more transmission is not always the answer. We have historically embraced a host of public policy initiatives that focus on demand reduction, energy efficiency and distributed renewable generation. It is incumbent upon PJM, the regional transmission planner, and its members to take note of these and other state policies when selecting transmission projects that our citizens will be funding for decades to come.<sup>10</sup>

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<sup>7</sup> Staff Post-Hearing Brief at 15-16.

<sup>8</sup> See *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, 136 FERC ¶ 61,051 (Order No. 1000).

<sup>9</sup> Order Approving Settlement and Granting Certificate of Public Convenience and Necessity and Waivers, (Order No. 89571) at 153.

<sup>10</sup> See PJM Operating Agreement, Schedule 6, Section 1.5.8.



5. I would also hope that any new transmission that is planned does not result in price signals that make reaching our policy goals even more expensive, or worse, unachievable. Our state has both long-term and short-term goals, and prospective action in the legislature may expand upon them. I would call for PJM and its stakeholders, including our utilities, to revisit the transmission project selection process to ensure that assessments, especially those calculated over a 15-year future period, align with state policies and directives over that same time frame.

*Michael T. Richard*  
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Commissioner