

## ***Critical Area Commission***

### **STAFF REPORT**

October 7<sup>th</sup>, 2020

<b>APPLICANT:</b>	Power Plant Research Program (Department of Natural Resources)
<b>PROPOSAL:</b>	BGE Bush River Crossing Transmission Line Rebuild
<b>JURISDICTION:</b>	Harford County, MD
<b>COMMISSION ACTION:</b>	Vote
<b>STAFF RECOMMENDATION:</b>	Approval
<b>STAFF:</b>	Tay Harris
<b>APPLICABLE REGULATIONS:</b>	COMAR 27.02.04 State and Local Agency Actions Resulting in Major Development on Private Lands or Lands Owned by Local Jurisdictions

### **DISCUSSION:**

Baltimore Gas and Electric Company is seeking approval of a Certificate of Public Convenience and Necessity (CPCN) from the Maryland Public Service Commission (PSC) to rebuild a 1.3-mile section of 115-kV transmission line that crosses the Bush River in Harford County, MD. The Department of Natural Resources (DNR) Power Plant Research Program (PPRP) is responsible for coordinating with the Critical Area Commission to review applications for energy projects that require review by the PSC. As such, PPRP has requested review of this project by the Critical Area Commission to determine if the Commission has any recommended licensing conditions for the application.

The current and proposed transmission lines are located south of the Perryman Road Bridge and crosses the Bush River. Baltimore Gas and Electric performed an impact analysis for both an underground line and an aboveground replacement and determined the aboveground replacement required lesser impacts. The proposed alignment of the new transmission line is located north of and adjacent to the existing transmission line. Shifting the transmission line will prevent impact to a Harford County forced sewer main and ensure continued service to the affected 125,000 civilian customers and 24,000 employees of the U.S. Aberdeen Proving Ground (APG).

The transmission line requires the construction of nine steel monopole towers, four of which will be located on privately owned land in Perryman, MD, and four of which will be located in Edgewood, MD on federally land owned by APG. One monopole will be located in the Bush

River. The height of the towers are 125 feet to 145 feet taller than the existing towers, and the foundations of the monopoles are comprised of a combination of concrete drilled piers and driven piles. Construction of this transmission line will require clearing to decommission the existing towers and transmission lines and accommodate the shifted alignment of the transmission line rebuild. This project will enhance service reliance by addressing degradation to tower foundations caused by avian contamination (bird droppings from nests located atop of the towers) that result in outages; and contact between sailboats and areas where the transmission line sags, resulting in outages and presenting a safety hazard to passengers on the sailboats.

A copy of each site plan is attached (Attachment A).

### **Certificate of Public Convenience and Necessity and the Public Service Commission**

As required by COMAR 27.02.04, this project requires review and approval by the Commission because it is a State action on private lands. COMAR 27.02.01.01(B)(53) includes in the definition of “State and Local Agency Actions,” the issuance of a CPCN by the Maryland Public Service Commission. Baltimore Gas and Electric must obtain a CPCN for the rebuild of the aboveground transmission line. On behalf of the PSC, the PPRP coordinates and facilitates the environmental review of the project by several State agencies including the Critical Area Commission. Other agencies include the Maryland Department of Planning, Maryland Department of Natural Resources, Maryland Department of Transportation, Maryland Department of Agriculture, Maryland Department of Commerce, Maryland Department of the Environment and Maryland Energy Administration. Based on each agencies review, PPRP will provide a set of recommended licensing conditions as written testimony to the PSC for their consideration during the hearing process. If accepted, the recommended licensing conditions will be incorporated as official conditions attached to the issued CPCN decision.

Baltimore Gas and Electric filed an application for the CPCN on April 17, 2020. PPRP will submit their Environmental Review document and testimony, including recommended licensing conditions, prior to the PSC’s filing deadline of December 15, 2020.

### **Critical Area Impacts**

As stated above, this project impacts Critical Area lands on both sides of the Bush River. Harford County governs lands west of the River and APG governs land on the east side of the River. COMAR 27.02.04.02.C (1) requires that the applicant demonstrate the extent to which the project is consistent with the provisions and requirements of the Critical Area program of the local jurisdiction within which it is located. Consequently, this staff report will break down impacts by jurisdiction and land ownership.

### **Perryman, MD - Harford County**

The portion of the project site, “Perryman Project Area,” is located east of the Bush River in Perryman, MD, south of the Perryman Road (Route MD 159) bridge, along Chelsea Road. The proposed limit of disturbance is 2.26 acres in size and is located on land designated as a Resource Conservation (RCA). The Buffer is expanded due to nontidal wetlands, hydric soils, highly erodible soils, and steep slopes and encompasses the entire project site. In addition, several Habitat Protection Areas (HPAs), including Forest Interior Dwelling Birds (FIDS)

habitat, the Boyden Road HPA, the Perryman “Flatwoods” Wetland of Special State Concern (WSSC) and a perennial stream are present on the site. Finally, the project area includes a right-of-way for Exelon Energy, established in the 1950s, that is cleared and comprised of non-hydric soils.

#### Buffer Impacts

The proposed work will temporarily disturb 1.49 acres of the Buffer to allow for site access and clearing. An additional 0.77 acres of forest will be permanently cleared to install the monopoles and accommodate the shifted transmission line ROW. Mitigation is required at a 2:1 ratio for permanent Buffer impacts plus 1:1 mitigation for canopy removal, for a total of 2.3 acres. Temporarily disturbed areas will not require mitigation because they will be restored to their pre-development condition.

#### FIDS Habitat Impacts

The proposed 0.77 acres of clearing also constitutes impacts to FIDS edge habitat. Therefore, 0.77 acres of the provided mitigation must consist of new or expanded FIDS habitat to ensure no net loss.<sup>1</sup> Mitigation will be planted onsite to the maximum extent feasible; however, according to BGE, the project site is unable to accommodate the required mitigation in its entirety. Baltimore Gas and Electric is working with Harford County to identify offsite planting areas, including FIDS areas. The planting plan and offsite mitigation planting plan, and accompanying planting agreements, are pending.

#### Nontidal Wetland Impacts

Multiple nontidal wetlands are present in the Perryman project area. Baltimore Gas and Electric proposes to permanently impact 0.03 acres of nontidal wetlands and temporarily impact 0.77 acres of nontidal wetlands, totaling 1.07 acres. The Maryland Department of the Environment is currently reviewing the proposed impacts and, if authorized, will require mitigation.

#### Critical Area 10% Phosphorous Reduction

Existing improvements includes one lattice tower and two wood H-frames, comprising 0.02 acres of lot coverage. Baltimore Gas and Electric proposes to remove all existing improvements. The proposed improvements result in a decrease in impervious surface from 0.60 acres to 0.21 acres. As a result, the 10% phosphorous reduction requirement is negative due to the reduction in impervious surfaces.

#### **Edgewood, MD - U.S. Aberdeen Proving Ground**

Projects located on Federal Lands are required to comply with the Coastal Zone Management Act (CZMA). The CZMA requires a development project located on Federal Lands to meet all state and local regulations, including the Critical Area Law and regulations. Commission staff reviewed the impacts on APG land separately from the impacts on private lands and issued a separate consistency letter on September 15, 2020. However, for the sake of completeness, the impacts on Federal Lands will be outlined below.

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<sup>1</sup> The Commission’s Science Adviser determined that since this area is considered FIDS edge habitat; the standard 1:1 Buffer mitigation for canopy cleared meets FIDS requirements.

The project site, “Edgewood Project Area,” is located west of the Bush River in Edgewood, MD, south of the Perryman Road (Route MD 159) Bridge, along Turkey Road. The LOD is 0.49 acres in size and is located on land designated Federal. The Buffer also includes expansion, encompassing the entire project site, due to forested tidal and nontidal wetlands, upland forest, hydric soils, highly erodible soils, steep slopes and a perineal stream.

#### Buffer Impacts

Baltimore Gas and Electric proposes to permanently clear 0.41 acres of trees of land to install the monopoles and accommodate the shifted transmission line and to allow for site access and to create work areas. Mitigation for permanent impacts will be provided at a 3:1 ratio (1.25 acres) as required by APG to ensure no net loss. Mitigation will be planted onsite to the maximum extent feasible; however, according to BGE, the Edgewood project area is unable to accommodate the required mitigation in its entirety. Baltimore Gas and Electric is working with APG to identify offsite planting areas. The planting plan and offsite mitigation planting plan, and accompanying planting agreements, are pending.

#### Nontidal Wetland Impacts

One large nontidal wetland and a portion of tidal wetland exists in the Edgewood project area. Baltimore Gas and Electric proposes to permanently impact 0.03 acres of nontidal wetlands and temporarily impact 0.77 acres of nontidal wetlands onsite, totaling 1.07 acres. The Maryland Department of the Environment is currently reviewing the proposed impacts and, if authorized, will require mitigation.

#### Critical Area 10% Phosphorous Reduction

Existing improvements includes one lattice tower and two wood H-frames, comprising 0.02 acres of lot coverage. Baltimore Gas and Electric proposes to remove all existing improvements. The proposed improvements result in a decrease in impervious surface from 0.61 acres to 0.21 acres. As a result, the 10% phosphorous reduction requirement is negative due to the reduction in impervious surfaces.

### **COASTAL RESILIENCE**

State regulations require consideration of coastal impacts. Baltimore Gas and Electric provided information indicating that the Perryman project area is partially vulnerable to categories 1, 2, 3 and 4 hurricane storm surge along the shoreline. The entire Edgewood project area is vulnerable to categories 1 and 2 hurricane storm surge. Furthermore, according to DNR’s Merlin, both areas appear to contain wetland migration areas that are undeveloped. Neither the Perryman project area nor the Edgewood project area are subject to sea level rise or land subsidence vulnerability.

Baltimore Gas and Electric considered the elevation of the mean high-water line to determine appropriate locations for the monopole foundations, which will be seven (7) feet higher than mean high water (MHW). As a standard practice, the proposed foundations are designed to withstand 100-year storms, including high winds and flooding. The location of the proposed transmission line considers environmental and infrastructure constraints. The proposed design layout minimizes impacts to these constraints, while ensuring electricity to 125,000 customers

and APG. Additionally, the proposed transmission line will resolve reliability and safety issues associated with the existing transmission lines. Furthermore, lot coverage in both project areas is the minimal necessary to accommodate the proposed transmission line, one lattice tower and two wood H-frames.

## **PERMITS AND REVIEWS BY OTHER AGENCIES**

All permit review by other agencies will be forthcoming. DNR PPRP has been in coordination with the necessary State and Federal agencies to ensure all requirements of the agencies are captured within PPRP's recommended licensing conditions. At this time, BGE has provided the following information:

### The Maryland Department of the Environment (MDE) and U.S. Corps of Engineers (USACE): Tidal and Nontidal Wetlands

In August of 2020, Baltimore Gas and Electric submitted a Joint Permit Application (JPA) to MDE. The estimated timeframe for MDE's authorization is August of 2021.

### Department of Natural Resources, Wildlife and Heritage Service (DNR WHS),

In a letter dated December 4, 2018, DNR WHS determined that part of the Boyer Road Shoreline Habitat Protection Area (HPA) lies within the Perryman project area due to the presence of state-listed Parker's Pipewort (*Eriocaulon parkeri*), Small Waterwort (*Elatine minima*), and Mudwort (*Limosella australis*). In addition, DNR WHS determined that a Wetland of Special State Concern (WSSC) is located in the Perryman project area.

After reviewing a survey conducted by the applicant, in a letter dated December 11, 2019, DNR WHS determined that the targeted plant species were not found within the Perryman project area. However, DNR WHS recommended that strict implementation of the sediment and erosion control measures, as well as timber harvesting best management practices be required during site preparation and construction.

In addition, in a letter dated January 15, 2019, DNR WHS determined that while the Bush River is a Use II stream and fisheries are located within the project vicinity, the proposed activity will not impact the nearby fisheries. However, DNR WHS recommended that strict implementation of the sediment and erosion control measures, including minimizing impacts to wetlands and/or mature forest vegetation be required during site preparation and construction.

### United States Fish and Wildlife Service (USFWS)

On November 18, 2018, USFWS determined that there are no threatened or endangered species, critical habitats or refuges or fish hatcheries within neither the Perryman project area, nor the Edgewood project area.

### Maryland Historical Trust (MHT)

On December 17, 2018, MHT determined that there are no historical structures onsite. On November 19, 2019, MHT determined that there are no archeological resources onsite.

### Harford County and U.S Aberdeen Proving Ground

#### *Stormwater Permits*

Since the proposed transmission line will reduce lot coverage significantly in both the Perryman project area and the Edgewood project area, BGE is seeking a stormwater waiver from Harford County Department of Public Works. The applicant plans to submit a stormwater waiver request to Harford County in February of 2021. Aberdeen Proving Ground is not requiring stormwater management, as per correspondence dated July 10, 2020.

### Harford County Soil Conservation District

#### *Sediment Erosion Control Permits*

The applicant plans to submit the sediment and erosion control plan to Harford County Soil Conservation Plan in February of 2021.

Aberdeen Proving Ground is not requiring sediment and erosion control plan approval prior to the start of construction. Rather, APG will inspect the project area during construction to ensure sediment and erosion control measures are in place, as per correspondence dated July 10, 2020.

### Public Notification Requirements and Comments

In accordance with COMAR 27.03.01.03, notice of the proposed project was published in *The Aegis* on September 18, 2020. A sign with information about the project was posted at both the Perryman project area and the Edgewood project area on September 22, 2020. As of the drafting of this staff report, no comments have been submitted.

### **STAFF RECOMMENDATION**

Staff recommends that the Critical Area Commission approve the following conditions, for incorporation into the PPRP recommended licensing conditions to the PSC, for the BGE Bush River Crossing Transmission Line Rebuild:

1. Construction and operation of the Project shall comply with all applicable local, State, and federal requirements for disturbance to the Critical Area, including COMAR 27.02.04, the Coastal Zone Management Act, and the Harford County Critical Area Program.
2. Prior to the start of construction, Baltimore Gas and Electric shall meet the following conditions for the "Perryman Project Area:"
  - a. Baltimore Gas and Electric shall receive final approval of all mitigation plans from Harford County, demonstrating compliance with the following approved impact values and mitigation requirements:
    - i. Mitigation at a ratio of 2:1 for 0.77 acres of permanent disturbance; and
    - ii. Additional mitigation at a ratio of 1:1 for 0.77 acres of forest canopy removed; this mitigation shall consist of new or expanded Forest Interior Dwelling Bird Habitat (FIDS) to ensure no net loss of FIDS habitat; and
    - iii. Mitigation will be planted onsite to the maximum extent feasible.
    - iv. Copies of all approved plans shall be forwarded to the Critical Area Commission staff.

- b. Baltimore Gas and Electric shall provide copies to Critical Area Commission staff of authorizations or waivers by Harford County for stormwater management and sediment and erosion control.
- c. Baltimore Gas and Electric shall provide copies to Critical Area Commission staff of authorizations or approvals by the Maryland Department of the Environment and the U.S. Army Corps of Engineers for nontidal and tidal wetlands impacts.
- d. Baltimore Gas and Electric shall implement the recommendations provided by the Department of Natural Resources Wildlife and Heritage Service into all authorizations and plan approvals. This includes compliance with the strict implementation of sediment and erosion control measures and timber harvesting best management practices, including minimizing impacts to wetlands and/or mature forest vegetation during site preparation and construction.