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Filed: August 6, 2026

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-1730

PSEG RENEWABLE TRANSMISSION LLC,

Plaintiff-Appellee,

v.

ARENTZ FAMILY, LP; BARNEY'S FARM, LLC; HZ PROPERTIES, LLC; M & R, LLC; THE DUG HILL ROD AND GUN CLUB, INC.; TROYER FARMS, LLC; TROYER REAL ESTATE, LLC; ALENE R. STICKLES; ROBERT H. STICKLES, SR.; AMY GAYLE YOUNGBLOOD; ANDREW D. MCLEAN; REBECCA MCLEAN; BENJAMIN EUGENE NUSBAUM; KENNETH EUGENE NUSBAUM; BETTY LOU MILLER; CARL E. MILLER; BRYAN N. HENDRIX; CONSTANCE M. HENDRIX; CARMEN COCKEY; CHRISTOPHER D. COCKEY; CATHERINE V. MILLER; WAYNE D. MILLER; CHARLES WILLIAM BOND; MORGAN DAVIS BOND; CHARLOTTE RUTH BIXLER; CHRIS N. RESH; DOROTHY I. DONMOYER; PETRICE MARIE DONMOYER-RESH; ROBERT L. DONMOYER; DEBORAH H. MAEDER; JOHN D. MAEDER; DIANE M. COOK; JAMES R. COOK; ERICH CHARLES STEIGER; REBECCA IRENE SCOLLAN; ESTHER JOHANN LENTZ-BUENGER; FAY ANN MILLER; KENNETH E. MILLER; GARY J.

BROCKMEYER; NANCY M. BROCKMEYER; HELEN L. BULL; JOSEPH L. GLOVER; RAINA C. GLOVER; JULIA LU; ZHEJUN FAN; JUSTIN WRIGHT; KEITH EMERSON ENSOR; KEVIN LEE ENSOR; KIMBERLY A. JOHNSTON; LESLIE ALFRED WHITE; MATT UNKLE; TOMI UNKLE; MOHAMAD A. KOURANI; NADA E. KOURANI; MORRIS L. BOHLAYER; SHARON L. BOHLAYER; NANCY P. MACBRIDE; RICHARD M. DOSTER; THOMAS B. COLLINS; TRACY W. COLLINS,

Defendants-Appellants,

and

DELLS GENERATION FARMS, LLC; GROVES MILL, LLC; PANORA ACRES, INC.; PETER AND JOHN RADIO FELLOWSHIP, INC.; RBC REAL ESTATE I, LLC; SCHOOL OF LIVING; ALLAN PATRICK SANDERS; ROY FRANCIS SANDERS; ANNE F. PRICE-DAVIS; MICHAEL A. DAVIS; AUSTIN L. KALTRIDER; JOYCE E. KALTRIDER; MARLIN L. KALTRIDER; MARVIN L. KALTRIDER; SHAWN L. KALTRIDER; BARCLAY G. CARAS; PAMELA J. CARAS; BRANDON HILL; BRUCE E. DOAK; GAYLE M. DOAK; C. WILLIAM KNOBLOCH, JR. AND CAROL KNOBLOCH REVOCABLE LIVING TRUST AGREEMENT DATED JANUARY 30, 2019; CAROL J. FERTITTA; JOSEPH V. FERTITTA, III; CATHERINE M. GESTIDO; EDUARDO E. GESTIDO; CHARLES GARY ATKINSON; INDRANEE KURUP-PUNAYAKE; STEPHEN GORDON ATKINSON; CHARLES WILLIAM ATKINSON; CHERYL ANN GEARY; PAUL JOSEPH GEARY; CHRISTINE D. EYRING; JOHN M. EYRING, JR.; DANIEL GEORGE SCHWARTZ; ERIK J. LENZ; FAITH J.

WEEKS; MICHAEL D. HANDS, JR.; FRANCIS LEE DELL; MARIAN V. DELL; HENRY WHITAKER; KAREN A. SCHLEPER; HOECKEL FAMILY SELF SETTLED ASSET PROTECTION FAMILY IRREVOCABLE TRUST; JAMES A. O'DONNELL; PATRICIA J. O'DONNELL; JUDITH A. FIEDLER; JULIUS J. PITRONE; LINDA S. GRESOCK; THOMAS S. GRESOCK; LISA M. WARD; ZACHARY J. WARD; MABEL E. WILSON REVOCABLE DEED OF TRUST DATED 3/25/1998; MATTHEW LEE DELL; NANCY E. CRAMER; NANCY EILEEN PIERCE; PAMELA M. WILSON; ROBERT KEITH WILSON; PHYLLIS A. REHMEYER; TODD M. REHMEYER,

Defendants.

COUNTY COMMISSIONERS OF CARROLL COUNTY, MARYLAND,

Amicus Supporting Appellant

Appeal from the United States District Court for the District of Maryland, at Baltimore. Adam B. Abelson, District Judge. (1:25-cv-01235-ABA)

Argued: May 5, 2026 Decided: August 6, 2026

Before WILKINSON, RICHARDSON, and BERNER, Circuit Judges.

Affirmed by published opinion. Judge Berner wrote the opinion, in which Judge Wilkinson joined. Judge

Richardson wrote an opinion concurring in the judgment.

ARGUED: Harris Eisenstein, David Matthew Wyand, ROSENBERG MARTIN GREENBERG, LLP, Baltimore, Maryland, for Appellants. Kurt James Fischer, VENABLE, LLP, Baltimore, Maryland, for Appellee. **ON BRIEF:** Lauren M. McLarney, ROSENBERG MARTIN GREENBERG, LLP, Baltimore, Maryland, for Appellants. J. Joseph Curran, III, Christopher S. Gunderson, Kenneth L. Thompson, Susan R. Schipper, Emily J. Wilson, VENABLE LLP, Baltimore, Maryland, for Appellee. Timothy F. Maloney, Alyse L. Prawde, JOSEPH, GREENWALD & LAAKE, P.A., Greenbelt, Maryland, for Amicus Curiae.

BERNER, Circuit Judge:

Foundational principles of statutory interpretation under Maryland law direct courts to presume that the Maryland General Assembly intends for its enactments to operate together as a consistent and harmonious body of law. This court, when construing Maryland statutes, must avoid an interpretation that renders a statutory scheme unworkable. The case before us turns on these principles.

PSEG Renewable Transmission LLC (PSEG) received federal approval to construct the Maryland Piedmont Reliability Project (MPRP), a transmission line intended to address the region's emerging electricity shortage. Before construction can begin, PSEG is required to obtain a Certificate of Public Convenience and Necessity (CPCN) from Maryland's

Public Service Commission (PSC). PSEG submitted a CPCN application to the PSC, which referred its review to Maryland's Power Plant Research Program (PPRP). The PPRP submitted a report to the PSC deeming the CPCN application incomplete until PSEG completes certain field-based studies. To conduct the surveys necessary for these studies, PSEG must access the properties over which the MPRP would run. The owners of these properties, the appellants in this case, refused such access.

PSEG filed suit against the property owners for injunctive relief and moved for a preliminary injunction which would permit PSEG to access the properties under Section 12-111(a) of the Maryland Code's Real Property Article. The district court granted PSEG's motion, and the property owners appealed. We conclude that the district court did not abuse its discretion in granting the preliminary injunction and thus affirm.

I. Factual Background

The following facts are drawn from the record "as it comes to us on this preliminary, interlocutory appeal." *Real Time Med. Sys., Inc. v. PointClickCare Techs., Inc.*, 131 F.4th 205, 213 (4th Cir. 2025). Where appropriate, we may take judicial notice of facts, including matters of public record, pursuant to Federal Rule of Evidence 201, as did the district court. *See Goldfarb v. Mayor & City Council of Balt.*, 791 F.3d 500, 508-09 (4th Cir. 2015).

Plaintiff-Appellee PSEG Renewable Transmission LLC (PSEG) is a New Jersey-based transmission development company that develops, constructs, and owns transmission projects. This case concerns a

transmission line project proposed by PSEG: the Maryland Piedmont Reliability Project (MPRP). The MPRP is a high-voltage transmission line that will transmit energy to residents of Maryland and the surrounding region. It is planned to traverse approximately sixty-seven miles through three Maryland counties: Baltimore County, Carroll County, and Frederick County.

The MPRP was developed in response to a federal government solicitation for proposed solutions to a growing energy crisis centered in the Mid-Atlantic region. Some brief regulatory background will be helpful to understand the federal process relevant to this appeal.

The Federal Energy Regulatory Commission (FERC) is a government agency that regulates the interstate transmission of energy resources, including electricity. *See* 16 U.S.C. § 824. It oversees the planning and cost allocation of new transmission infrastructure through regional transmission organizations like PJM Interconnection, LLC (PJM), which covers parts of the Mid-Atlantic and Midwest, including the State of Maryland. *See id.* § 824s (governing transmission infrastructure investment). Once a transmission line enters service, its operating company may become subject to federal regulation by FERC as a federal public utility. *See* Md. Code Ann., Pub. Util. (PU) § 7-207(b)(3)(iii). Thus, PSEG will be regulated as a federal public utility if the MPRP enters service. Still, state governments retain substantial authority under federal law to decide questions of transmission siting and construction. *See* 16 U.S.C. § 824(a) (preserving state authority); PU § 7-207 (governing public utility companies). The

interplay between federal and state regulation lies at the heart of this case.

For several years, PJM has observed a significant growth in electricity use in Maryland and Virginia that threatens to overload the energy grid by 2027. To respond to this increase and the retirement of power generation facilities in the region, PJM determined that the region needs additional transmission capacity. In February 2023, PJM solicited proposed solutions. PSEG submitted a proposal to develop and construct the MPRP. PJM selected the proposal and, in April 2024, entered into a Designated Entity Agreement (DEA) with PSEG to develop and construct the MPRP. The DEA includes a development schedule with several milestone dates that PSEG is required to meet. Relevant here, the DEA requires PSEG to have acquired all necessary federal, state, county, and local site permits by September 1, 2026. It also requires PSEG to have the MPRP in-service by June 1, 2027. These milestone dates are not set in stone, however. They may be extended by PJM.

Having obtained federal approval, PSEG sought the necessary permits as required by the State of Maryland. Maryland requires entities seeking to construct a transmission line in the state to first obtain a Certificate of Public Convenience and Necessity (CPCN) from the Maryland Public Service Commission (PSC). *See* PU § 7-207(b)(3)(i). PSC is an independent state agency that regulates "each public service company that engages in or operates a utility business in" the state. *Bd. of Cnty. Comm'rs of Wash. Cnty. v. Perennial Solar, LLC*, 212 A.3d 868, 875 n.12 (Md. 2019). Without a CPCN, "a person may [not] acquire by condemnation . . . any property or right

necessary for the construction or maintenance of the transmission line." PU § 7-207(b)(3)(v)(2).

PSEG submitted its CPCN application to the PSC in December 2024. *See In re Application of PSEG*, Case No. 9773 (Md. Pub. Serv. Comm'n 2024), https://webpscxb.pscmaryland.com/DMS/case/9773 [https://perma.cc/RK3P-D3AV] (last visited June 30, 2026). The PSC then began its review, which is still ongoing, to assess whether PSEG has shown a need for the MPRP and whether to approve the proposed route for the MPRP. As part of its application, PSEG was required to submit, among other information, certain "environmental, natural resources, and socio-economic information." Md. Code Regs. (COMAR) 20.79.01.06(K) (detailing CPCN application filing requirements). This includes a "summary of the environmental and socioeconomic effects of the construction and operation of the project" and copies "of all studies of the environmental impact of the proposed project prepared by the applicant." COMAR 20.79.04.04(B)-(C). The PSC is not responsible for determining whether the CPCN application is complete, however. The Maryland General Assembly assigned that responsibility to the Power Plant Research Program (PPRP), a division of the Maryland Department of Natural Resources. *See* Md. Code Ann., Nat. Res. (NR) § 3-303 (governing PPRP).

In January 2025, the PSC directed PPRP to determine whether PSEG's CPCN application was complete. The PPRP reported in March 2025 that it lacked sufficient information to make the requisite determination. Relevant here, PPRP needed field studies of the environmental and socioeconomic effects of the construction and operation of the MPRP

in order to determine whether the route for the MPRP was acceptable.

PSEG was unable to complete the required field studies without accessing the properties through which the MPRP would run. Many of these properties are owned by private landowners, including the Arentz Family and 116 other defendant-appellants (collectively, the Property Owners), who would not permit PSEG onto their properties. The properties at issue differ greatly. Some of the Property Owners operate multi-generational farms. Others have forest and wetlands conservation and preservation easements. Several operate commercial businesses on their properties.

Lacking the requisite field studies, PSEG opted to submit its CPCN application with desktop studies that it completed using secondary sources and without accessing the properties. In its report to the PSC on PSEG's CPCN application, PPRP made clear that the desktop studies could not be verified and that field studies were necessary. While PPRP acknowledged that PSEG lacked "the necessary access to conduct field studies," PPRP continued to require the studies. Parties' Joint Appendix (J.A.) 258. Thus, PSEG's application was found "administratively incomplete." J.A. 260. PPRP estimates that it takes approximately thirty months to assess a CPCN application after it is filed.

PSEG sought access from the Property Owners to conduct the requisite field studies. It asserted a right under Section 12-111(a) of the Maryland Code's Real Property Article to access "private land to make surveys" and to "obtain information relating to the acquisition or future public use of the property or for

any governmental report, undertaking, or improvement." Md. Code Ann., Real Prop. (RP), § 12-111(a)(1) (governing property access rights of entities having power of eminent domain). Whether PSEG likely possesses this right of access is the question before us. Most relevant to the factual background, though, is that PSEG proceeded as if it had this right. PSEG notified the Property Owners that it would seek access to their land and requested their consent.[1] The Property Owners refused, and this suit followed.

II. Procedural History

PSEG filed suit against the Property Owners for injunctive relief and moved for a preliminary injunction permitting it "to enter onto the properties [of the Property Owners] and to remain on the property to the extent necessary to make surveys . . . or obtain information relating to the acquisition and future use of the properties in connection with the [MPRP]." J.A. 1744; *see also* RP § 12-111(b) (providing cause of action to enforce right of access in Section 12-111(a)). The Property Owners opposed the preliminary injunction.

Following a hearing, the district court issued a memorandum opinion granting PSEG a preliminary injunction. *PSEG Renewable Transmission LLC v. Arentz Fam., LP*, 788 F. Supp. 3d 705 (D. Md. 2025). The district court found that PSEG met its burden on each of the four *Winter* factors necessary to obtain a preliminary injunction: likelihood of success on the merits, irreparable harm, the balance of equities, and

[1] The parties do not contest the district court's finding that this notice satisfied the requirements of Section 12-111(a).

the public interest. *See id.* at 735; *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

Interpreting Section 12-111 of the Maryland Code's Real Property Article based on its "text, statutory and regulatory context, legislative history, and purpose," *PSEG*, 788 F. Supp. 3d at 727, the district court concluded that PSEG had demonstrated a likelihood of success on the merits, *id.* at 735-37. The right to access "any private land to make surveys" under Section 12-111(a) can be invoked only by certain persons "acting on behalf of the State or of any of its instrumentalities or any body politic or corporate having the power of eminent domain[.]" RP § 12-111(a). The district court found that PSEG likely qualifies as a "body politic or corporate having the power of eminent domain." *PSEG*, 788 F. Supp. 3d at 726-730, 735. The parties primarily disputed—and continue to dispute on appeal—the second part of this finding, whether PSEG has the power of eminent domain.

Although State entities inherently possess the power of eminent domain, *Mayor & City Council of Balt. City v. Valsamaki*, 916 A.2d 324, 335 (Md. 2007), it is less clear when an applicant to become a federal public utility, like PSEG, gains that power. To answer that question, the Property Owners pointed to Section 7-207(b)(3)(v) of the Maryland Code's Public Utility Article, which prohibits an entity that will be regulated as a federal public utility from "acquir[ing] [property] by condemnation" until it is issued "a [CPCN] for the construction of an overhead transmission line[.]" PSEG responded that although Section 7-207(b)(3)(v) conditions the exercise of the power of eminent domain to condemn property on

receiving a CPCN, it asserts that the power of eminent domain is granted earlier in the permitting process for purposes of access to conduct surveys under Section 12-111(a).

Agreeing with PSEG, the district court reasoned that PSEG obtained the power of eminent domain, for purposes of Section 12-111(a), when it was directed to conduct the requisite surveys by PPRP, acting on behalf of the Maryland Department of Natural Resources and other state agencies. *PSEG*, 788 F. Supp. 3d at 727-28. As such, the district court found that, PSEG will be acting "at the direction of, and in some senses on behalf of, state agencies" that possess eminent domain power when conducting the studies. *Id.* at 728. That PSEG was "select[ed] by PJM for this project" added legitimacy to this direction. *Id.* at 729.

Because field studies are required as a condition of granting a CPCN, the district court explained, requiring PSEG to obtain a CPCN before it could gain access to conduct the surveys on which the studies are based would render the statutory scheme unworkable. *Id.* at 727-29. Significantly, Section 12-111(a) allows entities to conduct surveys "for the purpose of determining *whether* eminent domain" should be "exercised." *Id.* at 728. For this reason, the issuance of the CPCN is the determination that eminent domain can be exercised under Section 7-207(b)(3)(v), and thus an applicant must be permitted access under Section 12-111(a) before receiving a CPCN. *Id.* at 729. The Property Owners also argued that the statutory scheme would remain unworkable even under PSEG's interpretation because Section 12-111 does not permit geotechnical surveys, which the Property Owners

contend are required for the CPCN application. The district court rejected this argument. *Id.* at 730.

The district court noted that its conclusion accorded with "the most analogous case any of the parties have identified," *Transource Maryland, LLC v. Scott et al.*, No. 12-C-18-000549 (Harford Cnty. Cir. Ct. June 24, 2018). *Id.* at 729. There, a Maryland state court "granted a petition by Transource Maryland, a subsidiary of a transmission line construction company, for an order authorizing entry under § 12-111." *Id.* The Maryland court "held that § 12-111 authorizes entry before issuance of a CPCN" because "[n]o other reading makes sense." *Id.* (citation and quotation marks omitted). Hence, the district court concluded that PSEG satisfied the first *Winter* factor.

The district court next considered whether PSEG satisfied the remaining *Winter* factors.

On the question of irreparable harm, the district court concluded that PSEG was likely to suffer harm in the form of "lost revenues," resulting from a delay in construction, that PSEG would not be able to recover. *Id.* at 739. Without the permission granted in the preliminary injunction to access the properties to conduct the surveys, construction of the MPRP will be delayed indefinitely. Relying on Fourth Circuit precedent, the district court reasoned that economic losses that would, absent a preliminary injunction, likely result from delays in the construction of a large public infrastructure project constitute irreparable harm. *Id.* at 738 (citing *Mountain Valley Pipeline, LLC v. 6.56 Acres of Land, Owned by Sandra Townes Powell*, 915 F.3d 197, 216-19 (4th Cir. 2019) and *E. Tenn. Nat. Gas Co. v. Sage*, 361 F.3d 808, 828-29 (4th Cir. 2004)). The district court also rejected

attempts by the Property Owners to distinguish this precedent. *Id.* at 739. Although the district court acknowledged that economic losses do not generally constitute irreparable harm, it reasoned that they do here because they "would *not* be recoverable at the end of litigation." *Id.* (quoting *Mountain Valley*, 915 F.3d at 218).

The district court next concluded that the balance of equities weighs in PSEG's favor. *Id.* at 739-40. The Property Owners would suffer only "temporary, limited, non-invasive" access to their properties by PSEG to conduct surveys. *Id.* at 739. Because the injunction provides only "the narrow right of entry to conduct studies" permitted by Section 12-111(a), the district court found that any harm which could result from the actual construction of the transmission line itself was not relevant to this inquiry. *Id.* If harm to the properties does occur while PSEG carries out the surveys, the district court noted that Section 12-111(c) provides the Property Owners "a cause of action for damages." *Id.* at 740.

Finally, the district court concluded that the preliminary injunction was in the public interest. *PSEG*, 788 F. Supp. 3d at 740. It reasoned that advancing energy infrastructure projects, like the MPRP, "is generally in the public interest." *Id.* (citing *Mountain Valley*, 915 F.3d at 221-22 and *Sage*, 361 F.3d at 830). The district court also found significant that the PPRP, which the Maryland General Assembly tasked with assessing the environmental and socioeconomic effects of the MPRP, determined that conducting the surveys "is necessary for [the PPRP] to discharge its statutory duties." *Id.*

Having concluded that PSEG met its burden as to all four *Winter* factors, the district court granted the preliminary injunction. *Id.* The district court subsequently amended the preliminary injunction to clarify its scope.

The Property Owners timely appealed both the original and amended preliminary injunction orders. The district court denied the Property Owners' motion to stay the preliminary injunction pending appeal. The Property Owners then moved to stay the injunction before this court, which we denied. The County Commissioners of Carroll County, Maryland, filed an amicus brief in support of the Property Owners.

We exercise jurisdiction over this interlocutory appeal of the grant of a preliminary injunction pursuant to 28 U.S.C. § 1292(a)(1).

III. Analysis

On appeal, the Property Owners argue that the district court abused its discretion in finding that PSEG is likely to succeed on the merits, as well as in finding that PSEG satisfied the remaining *Winter* factors. They also contend that the preliminary injunction is improper because it is mandatory in nature.

This court reviews a district court's grant of a preliminary injunction under the deferential abuse of discretion standard. *Pashby v. Delia*, 709 F.3d 307, 319 (4th Cir. 2013). Although "a clear error in factual findings or a mistake of law" is grounds for reversal, we "may not reweigh evidence the district court considered." *Salomon & Ludwin, LLC v. Winters*, 150 F.4th 268, 274 (4th Cir. 2025). Nor may we "reverse so

long as the district court's account of the evidence is plausible in light of the record viewed in its entirety." *Real Time Med. Sys.*, 131 F.4th at 224 (quoting *Roe v. Dep't of Def.*, 947 F.3d 207, 219 (4th Cir. 2020)). Moreover, we may affirm a preliminary injunction "on any ground appearing in the record, including theories not relied upon or rejected by the district court." *Jensen v. Md. Cannabis Admin.*, 151 F.4th 169, 174 (4th Cir. 2025) (quoting *United States v. McHan*, 386 F.3d 620, 623 (4th Cir. 2004)).

To obtain a preliminary injunction, a plaintiff must demonstrate that she has met all four *Winter* factors, that: 1) she will likely succeed on the merits; 2) she will likely suffer irreparable harm in the absence of a preliminary injunction; 3) the balance of equities weighs in her favor; and 4) the public interest favors the preliminary injunction. *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 236 (4th Cir. 2014) (citing *Winter*, 555 U.S. at 20).

Because this action is brought pursuant to diversity jurisdiction and the claims involve Maryland statutes and regulations, we must apply the substantive law of the State of Maryland to determine the likelihood of success on the merits. *See, e.g.*, *Real Time Med. Sys.*, 131 F.4th at 224-25 (applying state law to determine likelihood of success, the first *Winter* factor); *Certified Restoration Dry Cleaning Network, LLC v. Tenke Corp.*, 511 F.3d 535, 541 (6th Cir. 2007) ("While we apply our own procedural jurisprudence regarding the factors to consider in granting a preliminary injunction, we apply [state] law to determine whether Plaintiff has met the first of these factors by demonstrating a substantial likelihood of success on the merits of his underlying diversity

action." (citing *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938)). We apply federal standards to the other three *Winter* factors. *See Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d 802, 811 (4th Cir. 1991); *Cap. Tool & Mfg. Co. v. Maschinenfabrik Herkules*, 837 F.2d 171, 172-73 (4th Cir. 1988).

We discern no abuse of discretion in the district court's grant of the preliminary injunction. We first consider whether the preliminary injunction is mandatory and then address each *Winter* factor in turn.

A. Whether the Preliminary Injunction is a Mandatory One

The Property Owners argue that the preliminary injunction is improper because it is a mandatory injunction. A mandatory injunction is one that does not "preserve the status quo[.]" *Pashby*, 709 F.3d at 320. If we conclude that a preliminary injunction is mandatory in nature, then "our review must be more searching." *Sage*, 361 F.3d at 830 (citation and quotation marks omitted). Under this searching review, we may affirm the preliminary injunction "only in those circumstances when the exigencies of the situation demand such relief." *Wetzel v. Edwards*, 635 F.2d 283, 286 (4th Cir. 1980).

The Property Owners contend that the preliminary injunction is mandatory because it grants the relief sought by PSEG in its complaint, thereby altering the status quo. The district court recognized this, noting that it was "sensitive to the fact that the relief PSEG [sought] in the form of a preliminary injunction is largely congruent with the final relief that PSEG seeks through its complaint," but nevertheless

granted the preliminary injunction. *PSEG*, 788 F. Supp. 3d at 736.

In determining whether a preliminary injunction is mandatory, we consider only the "preliminary injunction's tendency to preserve the status quo," which is the "last uncontested status between the parties [that] preceded the controversy." *Pashby*, 709 F.3d at 320 (citation omitted). Whether the preliminary injunction affords final relief is not the relevant inquiry.

Ultimately, here, we need not decide whether the preliminary injunction preserves the status quo. This is because "the circumstances are sufficiently demanding for the award of mandatory relief." *Sage*, 361 F.3d at 830 (affirming grant of mandatory preliminary injunction in part because the preliminary injunction was necessary to meet a deadline to construct an energy infrastructure project). The remainder of our decision explains why this is so.

B. Likelihood of Success on the Merits

We turn now to the *Winter* factors, beginning with the first, and most contested factor: likelihood of success on the merits. The parties dispute whether PSEG possesses the power of eminent domain necessary to access private property under Section 12-111(a) of the Maryland Code's Real Property Article.

To resolve a question of state law, we look to "decisions of the state's highest court and, if those decisions do not resolve the matter, 'predict how [that] court would rule on the state law issue in question.'" *Real Time Med. Sys.*, 131 F.4th at 224 (quoting *Koppers Performance Chems., Inc. v. Argonaut-*

Midwest Ins. Co., 105 F.4th 635, 640 (4th Cir. 2024)). While "the decisions of [state] intermediate appellate courts constitute the next best indicia of what state law is," these decisions "are never binding and may be disregarded" if we are "convinced by other persuasive data that the highest court of the state would decide otherwise." *Id.* (quoting *Colo. Bankers Life Ins. Co. v. Acad. Fin. Assets, LLC*, 60 F.4th 148, 154 (4th Cir. 2023)). We may also look to "canons of construction, restatements of the law, treatises, recent pronouncements of general rules or policies by the state's highest court, well considered dicta, and the state's trial court decisions." *Moore v. Equitrans, L.P.*, 27 F.4th 211, 220 (4th Cir. 2022) (citation omitted).

We begin by discussing the Maryland law relevant to our analysis. We then apply this law and conclude that the district court did not abuse its discretion in finding that PSEG met its burden to demonstrate a likelihood of success on the merits.

i. Relevant Maryland Law

Two areas of Maryland law are relevant here: eminent domain and statutory interpretation.

First, eminent domain. Maryland governmental entities have the inherent power of eminent domain "to take privately owned property . . . and convert it to public use, subject to reasonable compensation." *Valsamaki*, 916 A.2d at 335 (citation omitted) (explaining that this inherent power is circumscribed by the Maryland and the United States constitutions). "Condemnation," the process by which property is taken, "is a function of the State's power of eminent domain." *Id.* The Maryland General Assembly has exclusive discretion over the "mode and manner of the

exercise" of this power. *J.L. Matthews, Inc. v. Md.-Nat'l Cap. Park & Plan Comm'n*, 792 A.2d 288, 297 (Md. 2002) (citation omitted). The General Assembly may delegate this power and limit its use by "provid[ing] that there be a necessity for the taking [of property]." *Id.* (citation omitted).

Next, statutory interpretation. "The goal of statutory construction is to discern and carry out the intent of the Legislature." *Westminster Mgmt., LLC v. Smith*, 312 A.3d 741, 758 (Md. 2024) (citation omitted). An undefined term must be interpreted in the first instance by its "ordinary and popular meaning," looking to "dictionary definitions as a starting point." *Id.* (citation omitted). A court, however, may not "read statutory language in a vacuum" or confine its interpretation "of a statute's plain language to the isolated section alone." *Lockshin v. Semsker*, 987 A.2d 18, 29 (Md. 2010). It must, rather, view the plain language "within the context of the statutory scheme to which it belongs, considering the purpose, aim, or policy of the Legislature in enacting the statute." *Id.* "Presuming the General Assembly intends its enactments to operate together as a consistent and harmonious body of law," a court must "seek to reconcile and harmonize the parts of a statute, to the extent possible consistent with the statute's object and scope." *Westminster Mgmt.*, 312 A.3d at 758 (citation and quotation marks omitted). In so doing, a court must also read "statutes on the same subject" together and harmonize them "to the extent possible[.]" *Whiting-Turner Contracting Co. v. Fitzpatrick*, 783 A.2d 667, 671 (Md. 2001). This inquiry requires consideration of whether a statutory construction would result in a consequence contrary

to the General Assembly's intent in passing that statute. *Chesapeake Charter, Inc. v. Anne Arundel Cnty. Bd. of Educ.*, 747 A.2d 625, 628 (Md. 2000).[2]

ii. The Power of Eminent Domain

Section 12-111(a) of the Maryland Code's Real Property Article permits persons "acting on behalf of the State or of any of its instrumentalities or any body politic or corporate having the power of eminent domain" to access "any private land to make surveys. . . or obtain information relating to the acquisition or future public use of the property or for any governmental report, undertaking, or improvement." To determine the plain meaning of "having," we must first consult "those dictionaries that were contemporaneous at the time" the General Assembly added this term to the language of Section 12-111(a). *Md. Overpak Corp. v. Mayor & City Council of Balt.*, 909 A.2d 235, 254 n.20 (Md. 2006). The plain meaning of "having," which first appeared in Section 12-111(a) in 1963, 1963 Md. Laws, Ch. 52, is the present participle of the verb "have" that denotes the ongoing

[2] The Property Owners contend that statutes granting the power of eminent domain must be construed strictly. The district court did not apply this principle, however, because "this case is not about whether . . . eminent domain [should] be exercised. This case is only about whether, under § 12-111, PSEG is entitled to conduct certain studies as directed by PPRP." *PSEG*, 788 F. Supp. 3d at 729-30. We note no abuse of discretion in this conclusion. Even if we construe the statutes strictly, we would affirm the district court's finding that PSEG demonstrated a likelihood of success on the merits because "the purpose and intention of the Legislature when clearly manifested in the [eminent domain] statute should not be defeated by any narrow, strained, forced, or artificial construction of its language." *Davis v. Bd. of Educ. of Anne Arundel Cnty.*, 170 A. 590, 591 (Md. 1934).

"hold[ing] [of something] in possession as property" or "in one's use, service, or affection or at one's disposal," Webster's Seventh New Collegiate Dictionary 381 (1963). By choosing to employ the present participle of "have," the General Assembly clearly intended that the possession of eminent domain power be present and continuing.

In accordance with this definition, PSEG must presently possess the power of eminent domain in order to invoke the right of access provided in Section 12-111(a). We must therefore resolve when, or whether, PSEG obtained that power for purposes of access under Section 12-111(a).

The Property Owners contend that PSEG cannot possess the power of eminent domain until it has been issued a CPCN. They draw this requirement from the text of Section 7-207(b)(3)(v) of the Maryland Code's Public Utility Article, which provides that an entity that will be regulated as a federal public utility, like PSEG, "may acquire by condemnation . . . any property or right necessary for the construction or maintenance of the transmission line" only "[o]n issuance of a [CPCN]."

We agree with the district court that requiring PSEG to obtain a CPCN before accessing property under Section 12-111(a) would render the statutory scheme unworkable, "illogical, unreasonable, [and] inconsistent with common sense." *Lawrence v. State*, 257 A.3d 588, 601 (Md. 2021) (citation omitted). The General Assembly could not have intended for a federal public utility to obtain a CPCN before it could access properties to conduct the field surveys required for the CPCN application. *See Chesapeake*, 747 A.2d at 628 (forbidding construction of statute that would

result in a consequence contrary to the legislature's intent in passing that statute). Such an interpretation would undermine the presumption that the General Assembly "intends its enactments to operate together as a consistent and harmonious body of law[.]" *Westminster Mgmt.*, 312 A.3d at 758 (citation omitted).

The General Assembly intended for applicants to become a federal public utility to have a path to obtain a CPCN. If PSEG could not access property to conduct field surveys required for a CPCN application, it would have no viable path. The "findings from" this access are "necessary for determining" whether the power to exercise eminent domain will ultimately be granted. *King v. Mayor & Council of Rockville*, 447 A.2d 118, 122 (Md. Ct. Spec. App. 1982). That is the purpose of Section 7-207(b)(3)(v), to condition the exercise of eminent domain to condemn property on the issuance of a CPCN. *See J.L. Matthews*, 792 A.2d at 297 (explaining that legislature can place limits on exercise of inherent eminent domain power); *Valsamaki*, 916 A.2d at 335 (describing "[c]ondemnation [as] a function of the State's power of eminent domain"). PSEG must be able to seek access under Section 12-111(a) before it can receive a CPCN.

Thus, the district court did not abuse its discretion in finding that PSEG likely gained the power of eminent domain for purposes of access under Section 12-111(a) before the issuance of a CPCN. We also agree with the district court's conclusion that PSEG likely gained this power for purposes of Section 12-111(a) when PPRP directed it to complete the necessary field studies. As the district court explained, PPRP acts on behalf of Maryland state

agencies. *PSEG*, 788 F. Supp. 3d at 727-28. Accordingly, PSEG would be effectively conducting the surveys to complete these studies at the direction of state agencies.[3] *Id.* The DEA between PJM and PSEG adds legitimacy to the PPRP's delegation of this power to PSEG to conduct the surveys required to apply for a CPCN, without which the MPRP could never be constructed.

The district court appropriately consulted *Transource* as a highly analogous Maryland state court ruling. *Id.* at 729 (citing *Transource*, No. 12-C-18-000549). In that case, Transource, a private energy company, sought access under Section 12-111 to conduct the surveys required to obtain a CPCN. In holding that Transource had the right of access, the state court reasoned that a CPCN cannot be granted until an entity gains access to conduct the surveys necessary for its CPCN application. Thus, the state court concluded that Transource must have gained the power of eminent domain for purposes of Section 12-111(a) before it was issued a CPCN.

The Property Owners raise three arguments regarding why the district court was wrong. None are compelling.

First, the Property Owners contend that *Transource* is not persuasive because the state court

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[3] Our colleague has written separately to emphasize in part that PSEG cannot constitute a "person" that may act on behalf of Maryland or its instrumentalities under Section 12-111. We agree, and clarify that the significance of PPRP's direction does not obviate the requirement that PSEG possess the power of eminent domain. Rather, PPRP's direction to PSEG demonstrates that Maryland has delegated eminent domain power to PSEG for the purpose of access under Section 12-111(a).

assumed that Transource was a state electric company that already possessed the power of eminent domain. Not so. If that were true, the state court would have no reason to consider whether Transource had the power of eminent domain. *See Valsamaki*, 916 A.2d at 335 (explaining that state entities inherently possess eminent domain power).

Second, the Property Owners contend that the statutory scheme remains workable even if a CPCN is required for access because the PPRP can exercise its statutory power to perform the surveys itself. Although Section 3-305(f)(1) of the Maryland Code's Natural Resources Article empowers PPRP "to enter upon private property to . . . conduct . . . studies related to . . . potential overhead transmission lines," it does not require PPRP to do so. In situations where PPRP declines to conduct the surveys itself, the same unworkability issue would arise unless the applicant is able to conduct the surveys. By directing PSEG to conduct the surveys, PPRP implicitly declined to exercise its Section 3-305(f)(1) power. Further, PSEG cannot ask PPRP to exercise this power. While "an electric company" may make such a request, NR § 3-305(f)(1), PSEG is not an "electric company" because it does not yet, and might never, "physically transmit[ ] or distribute[ ] electricity in the State to a retail electric customer," PU § 1-101(i)(1).

Third, the Property Owners contend that the scheme remains unworkable even if PSEG has access because Section 12-111 does not permit geotechnical surveys, which assess the subsurface conditions of a building site. The parties agree that Section 12-111 does not give license to conduct such surveys because they typically cause more than "minimal incidental

damage." *See Mackie v. Mayor & Comm'rs of Town of Elkton*, 290 A.2d 500, 505 (Md. 1972). PSEG, however, "does not seek authority to conduct any such geotechnical surveys," *PSEG*, 788 F. Supp. 3d at 730, and has informed PPRP that Maryland law prohibits it from doing so.

Nor do the regulations detailing the CPCN application requirements explicitly require geotechnical surveys. *Compare* COMAR 20.79.01.06 (general CPCN filing requirements) *and* COMAR 20.79.04.01-.04 (CPCN filing requirements for transmission lines) *with* COMAR 20.79.03.03 (CPCN filing requirements for generating stations explicitly requiring "geotechnical report"). The Property Owners rely on PPRP's report to suggest that such surveys are required. This report cannot itself impose a requirement untethered from any statute or regulation, however. Once again, requiring geotechnical surveys would create the same unworkability problem: PSEG would be incapable of completing the required surveys. The district court properly rejected this argument, and we do so as well.

At this preliminary stage, PSEG "need not show a certainty of success" and has met its burden to show clearly that it is likely to succeed on the merits. *See Robinson v. Nat'l Collegiate Athletic Ass'n*, 172 F.4th 271, 287 (4th Cir. 2026) (quoting *Pashby*, 709 F.3d at 321). In so concluding, the district court did not abuse its discretion.

C. Irreparable Harm

Next, we address the second *Winter* factor: irreparable harm. PSEG must clearly show that it is "likely to suffer irreparable harm in the absence of preliminary relief," *Winter*, 555 U.S. at 20, that is

"neither remote nor speculative, but actual and imminent," *Mountain Valley*, 915 F.3d at 216 (quoting *Direx*, 952 F.2d at 812). Harm is irreparable when it "cannot be fully rectified by the final judgment after trial." *Id.* (citation omitted).

The district court did not clearly err in concluding that PSEG demonstrated it is likely to suffer irreparable harm, absent the preliminary injunction, in the form of lost revenues. *See Gilliam v. Foster*, 61 F.3d 1070, 1078 n.5 (4th Cir. 1995) (en banc) ("[W]e review the finding of irreparable harm for clear error." (citation omitted)). Specifically, the district court found that without access to conduct the field surveys—a necessary step to securing a CPCN—construction of the MPRP was likely to be perpetually delayed, causing PSEG to lose revenue that it could not later recover. *PSEG*, 788 F. Supp. 3d at 739. In so finding, the district court relied heavily on two Fourth Circuit cases that both involved the construction of natural gas pipelines: *Mountain Valley Pipeline, LLC v. 6.56 Acres of Land, Owned by Sandra Townes Powell*, 915 F.3d 197 (4th Cir. 2019), and *East Tennessee Natural Gas Co. v. Sage*, 361 F.3d 808 (4th Cir. 2004).

At the outset, we agree with the district court that *Mountain Valley* and *Sage* are relevant despite the differences between them and the case before us. *PSEG*, 788 F. Supp. 3d at 739. Both decisions stand for the principles that an obstruction at one stage of large-scale energy infrastructure construction can hinder and derail the entire project, and that potential lost revenues from delayed construction constitutes irreparable harm. *Mountain Valley*, 915 F.3d at 216-19; *Sage*, 361 F.3d at 828-29.

The Property Owners contend that the harm to PSEG is monetary, speculative, and impermissibly conditioned on possible future events. We disagree.

Although monetary losses are generally not considered irreparable, they may be considered so if they are unrecoverable or "threaten[ ] a party's very existence by, for instance, driving it out of business before litigation concludes." *Mountain Valley*, 915 F.3d at 218. That is the case here, and the district court did not clearly err in concluding so. PSEG would have no viable path to construct the MPRP without an injunction. Absent an injunction, PSEG would be unable to conduct the surveys required to complete its CPCN application. Without a completed application, PSEG would not be able to receive the CPCN necessary to begin constructing the MPRP. An unconstructed energy infrastructure project can yield no revenue. The longer it takes PSEG to obtain access to conduct the surveys, the longer it would have to wait for the MPRP to produce revenue. Revenue would be lost with each passing day, and could never be recovered.

Nor is the harm of lost revenues speculative. The Property Owners contend that PSC might not grant PSEG the CPCN even if it is able to complete its application. This contention misinterprets the prohibition on speculative harm. Irreparable harm need only be likely; it need not be certain. *Winter*, 555 U.S. at 22. What is certain is that PSEG cannot complete its CPCN application without the access authorized by the preliminary injunction and PSC is unlikely to grant a CPCN until PSEG completes its application.

The Property Owners argue that the harm of lost revenues is impermissibly conditioned on future events because it assumes that PSC will grant PSEG the CPCN. The Property Owners point to two cases in support of this argument: *Direx Israel, Ltd. v. Breakthrough Medical Corp.*, 952 F.2d 802 (4th Cir. 1991), and *In re Microsoft Corp. Antitrust Litigation*, 333 F.3d 517 (4th Cir. 2003). In both, the alleged harm depended on a series of events that had yet to occur. Thus, the plaintiffs could seek relief at "some later point" and still "satisfactorily forestall the occurrence of the expected harm." *Microsoft*, 333 F.3d at 530 (emphasis omitted); *see Direx*, 952 F.2d at 815-16 (similar). Here, by contrast, PSEG must access the properties now to complete its CPCN application and avoid losing revenue. *See Transcon. Gas Pipe Line Co., LLC v. 6.04 Acres*, 910 F.3d 1130, 1165 (11th Cir. 2018) (finding irreparable harm "caused by an inability to access Defendants' properties, not [by] the possibility that future delay [to in-service date] could conceivably occur based on other factors that might never occur").

The Property Owners also fault PSEG for not offering sufficiently detailed projections of the revenue it stands to lose. *Cf. Mountain Valley*, 915 F.3d at 217 (estimating lost revenues of "$40 to $50 million per month"). The district court acted well within its discretion to infer from other facts that PSEG might plausibly lose revenue if the MPRP is never constructed. *See Anderson v. City of Bessemer City*, 470 U.S. 564, 573-74 (1985) (explaining, on review of bench trial decision, that finding is not clearly erroneous when based on inferences and other plausible interpretations of the record evidence).

Finally, the Property Owners assert that, even with the injunction, PSEG would miss the in-service milestone date of June 2027 set in the DEA. PSEG estimated that it could only meet this milestone date if it began construction by January 2026. Construction cannot begin until the CPCN is granted, however, and the PPRP estimated that it would need approximately thirty months to assess PSEG's application after it is filed. Although this timeline means that the application could only be assessed by mid-2027 at the earliest, the in-service milestone date may be extended. Thus, it could plausibly be met.

For these reasons, the district court did not clearly err in concluding that PSEG demonstrated it would likely suffer irreparable harm absent the injunction.

D. Balance of Equities

PSEG must also demonstrate that the harms it would suffer absent the preliminary injunction "outweigh the harm[s]" to the Property Owners from the access provided by the injunction. *Mountain Valley*, 915 F.3d at 221. Weighing these harms, the district court concluded that the balance of equities favors PSEG. It reasoned that the harms asserted by the Property Owners would result from the construction of the MPRP, not from the "narrow right of entry to conduct studies" granted by the injunction. *PSEG*, 788 F. Supp. 3d at 739. This access would be "temporary, limited, [and] non-invasive," and the Property Owners could recover any damage to their land or personal property through the cause of action provided under Section 12-111(c). *Id.* at 739-40. Conversely, PSEG would suffer the irreparable harm

of "prospective financial losses" absent injunctive relief. *Id.* at 739.

We discern no abuse of discretion in the district court's conclusion. The Property Owners contend that the district court overlooked that this access constitutes a temporary taking without compensation by interfering with their property rights to exclude and depressing their property values. We disagree.

For one, the district court did not overlook this argument. It acknowledged that "the right to exclude is one of the essential sticks in the bundle of property rights" and noted that "common law has long recognized exceptions to the right." *Id.* at 736 (citation and quotation marks omitted). "One such exception is the right of a public utility to enter upon privately owned land for the purpose of making surveys preliminary to instituting a proceeding for taking by eminent domain." *Id.* (citation and quotation marks omitted). Access under Section 12-111(a), which codified a common law right, is an exception to the right to exclude. *See Steuart v. City of Baltimore*, 7 Md. 500, 516 (1855).

Nor did the district court legally err in so reasoning. The access provided by Section 12-111(a) does not constitute a taking under either the Takings Clause of the Fifth Amendment to the United States Constitution or the prohibition on the taking of private property without just compensation in Section 40 of Article III of the Maryland Constitution. "[G]overnment-authorized physical invasions" that "are consistent with longstanding background restrictions on property rights" do not constitute a taking under the Fifth Amendment. *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 160 (2021). Further,

the brief and minimal access provided by Section 12-111(a) "comes nowhere close to the frequent, extended physical presence at issue in *Cedar Point*." *PSEG*, 788 F. Supp. 3d at 737. Maryland's highest court has similarly recognized that the "constitutional prohibition against taking private property for public use" in the Maryland Constitution does not apply to "preliminary measures necessary" to determine whether to condemn a property, such as the access provided under Section 12-111(a). *Mackie*, 290 A.2d at 503-04 (quoting *Steuart*, 7 Md. at 516).

Further, the diminution in property value from such access, if any, does not constitute a taking in violation of either the United States Constitution or the Maryland Constitution. The Supreme Court has long recognized "that mere diminution in the value of property, however serious, is insufficient to demonstrate a taking" in violation of the Fifth Amendment. *Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Tr. for S. Cal.*, 508 U.S. 602, 645 (1993). To the same effect, Maryland's highest court has held that diminution in property value "during the period prior to a formal condemnation" is recoverable only "in the condemnation action." *Reichs Ford Rd. Joint Venture v. State Rds. Comm'n of the State Highway Admin.*, 880 A.2d 307, 319 (Md. 2005).

The district court thus did not abuse its discretion in concluding that "the balance of equities tips in PSEG's favor." *PSEG*, 788 F. Supp. 3d at 740.

E. Public Interest

Last, we must consider whether PSEG demonstrated that the injunction "is in the public interest," the fourth *Winter* factor. *Winter*, 555 U.S. at 20. The

district court concluded that it is for two reasons. First, advancing projects that satisfy energy demands, like the MPRP, generally benefits the public. *PSEG*, 788 F. Supp. 3d at 740 (citing *Mountain Valley*, 915 F.3d at 221-22 and *Sage*, 361 F.3d at 830). Second, the PPRP, in furtherance of its statutory duties, directed PSEG to conduct the studies in the report finding its CPCN application administratively incomplete. *Id.*

The Property Owners contend that the district court's conclusion on this factor was an abuse of discretion. They point out that the companies in *Mountain Valley* and *Sage* had been issued federal CPCNs based on findings that the large-scale energy infrastructure projects at issue in those cases would benefit the public. By contrast, the Property Owners assert that there was no such finding here. They also note that FERC and PJM have contingency plans to address the energy crisis should the MPRP fail.

These contentions do not undermine the district court's conclusion. This court in *Sage* reasoned that "the pipeline will make gas available for electric power generation plants," separate from the CPCN's finding of public interest. 361 F.3d at 830. We also recognized in *Mountain Valley* that the CPCN is not "dispositive of the public interest inquiry[.]" 915 F.3d at 222. Further, no evidence undermines PJM's present determination that the MPRP is necessary to address the looming energy crisis. Even so, disputing the MPRP's necessity goes to the decision to construct it, not to the purpose of the injunction: access to conduct surveys. *Id.* (criticizing argument "addressed to the pipeline project generally rather than" the subject of preliminary injunction). Granting access to conduct

the surveys serves the public interest because the surveys will help determine whether and how best to build the MPRP. If the MPRP would cause environmental harm, for example, that would be revealed through the surveys. Indeed, as in *Sage*, "the circumstances are sufficiently demanding for the award of mandatory relief." 361 F.3d at 830.

Accordingly, the district court did not abuse its discretion in finding that the public interest favors the preliminary injunction.

IV. Conclusion

PJM has identified a significant need for additional power generation in the region. The Maryland General Assembly intended for prospective federal public utilities, like PSEG, to help bridge this gap. To do so, PSEG must have a viable path to obtain a CPCN. The access it seeks is a necessary step on that path, and delaying this permitting process could exacerbate the very energy crisis that the MPRP was intended to prevent.

We are sympathetic to the concerns raised by the Property Owners. "The right to exclude is 'one of the most treasured' rights of property ownership." *Cedar Point*, 594 U.S. at 149 (quoting *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435 (1982)). The preliminary injunction, however, is narrow. PSEG is only permitted to conduct the surveys required to complete its CPCN application. The studies resulting from this injunction may reveal environmental and socioeconomic concerns that would need to be considered through a state review process outside this courthouse. Through that process, the Property Owners would have an opportunity to

raise their opposition, if any, to the construction of the MPRP.

We thus conclude that the district court did not abuse its discretion and affirm the order granting PSEG's motion for a preliminary injunction. The "exigencies of the situation demand such relief." *Wetzel*, 635 F.2d at 286.

AFFIRMED

RICHARDSON, Circuit Judge, concurring in the judgment:

I agree that the district court did not abuse its discretion in granting the preliminary injunction, and I concur in the Court's judgment. But I take a different path to get there. Applying Maryland's purposive method of statutory interpretation, I would reach the same result on the statutes' own terms.

I. MARYLAND'S PURPOSIVISM: INTERPRETING TEXT IN LIGHT OF PURPOSE

"[A] federal court sitting in diversity is obliged to apply state law principles to resolve" questions of statutory interpretation, "utilizing such principles as enunciated and applied by the state's highest court." *Volvo Trademark Holding Aktiebolaget v. Clark Mach. Co.*, 510 F.3d 474, 482 (4th Cir. 2007).[1] So here, we must interpret Maryland's statutes as Maryland's Supreme Court would.

Maryland's courts are avowed purposivists. Their "primary goal in interpreting statutory language is to discern the legislative purpose, the ends to be accomplished, or the evils to be remedied by the statutory provision under scrutiny." *Lockshin v. Semsker*, 987 A.2d 18, 28 (Md. 2010). But Maryland courts primarily look for that purpose where the General Assembly left it: in the enacted text. *Berry v. Queen*, 233 A.3d 42, 49 (Md. 2020).

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[1] *See* Abbe R. Gluck, *Intersystemic Statutory Interpretation: Methodology as "Law" and the* Erie *Doctrine*, 120 Yale L.J. 1898 (2011); *cf.* Stephen E. Sachs, *Finding Law*, 107 Calif. L. Rev. 527, 571 (2019).

So Maryland courts start with the text. "To ascertain the intent of the General Assembly," Maryland courts "begin with the normal, plain meaning of the language of the statute." *Id.* The "plain language must be viewed within the context of the statutory scheme to which it belongs, considering the purpose, aim, or policy of the Legislature in enacting the statute." *Lockshin*, 987 A.2d at 29; *Westminster Mgmt., LLC v. Smith*, 312 A.3d 741, 758 (Md. 2024). "If the language of the statute is unambiguous and clearly consistent with the statute's apparent purpose," the court's "inquiry as to legislative intent ends ordinarily and [the court] appl[ies] the statute as written, without resort to other rules of construction." *Lockshin*, 987 A.2d at 28-29.

"If the language of the statute is ambiguous . . . then courts consider not only the literal or usual meaning of the words, but their meaning and effect in light of the setting, the objectives and purpose of the enactment under consideration." *Montgomery Cnty. v. Phillips*, 124 A.3d 188, 192 (Md. 2015) (cleaned up). Courts may deem a statute ambiguous "either inherently or by reference to other relevant laws or circumstances." *Bd. of Educ. of Balt. Cnty. v. Zimmer-Rubert*, 973 A.2d 233, 242 (Md. 2009) (quoting *Arundel Corp. v. Marie*, 860 A.2d 886, 894 (Md. 2004)); *see also Elsberry v. Stanley Martin Cos.*, 286 A.3d 1, 13 (Md. 2022). So statutory ambiguity is not limited to facial ambiguity—other laws or external circumstances can sometimes render otherwise clear text ambiguous.

As a court interprets an ambiguous provision, its "job . . . is to resolve that ambiguity in light of" the statute's purpose, "using all the resources and tools of

statutory construction at [the court's] disposal." *Phillips*, 124 A.3d at 192 (quoting *Stoddard v. State*, 911 A.2d 1245, 1250 (Md. 2006)). These tools include legislative history, case law, statutory structure, and other Maryland statutes. *See id.*; *Anderson v. Council of Unit Owners of Gables on Tuckerman Condo.*, 948 A.2d 11, 19 (Md. 2008). Courts also consider "the relative rationality and legal effect of various competing constructions." *Phillips*, 124 A.3d at 192 (quoting *Stoddard*, 911 A.2d at 1250). Ultimately, "the statute must be given a reasonable interpretation, not one that is absurd, illogical, or incompatible with common sense." *Lockshin*, 987 A.2d at 29.

Still, Maryland courts do not disregard the text, even when resolving ambiguities. While a court's "[c]onsideration of the plain meaning of the statutory language does not entail a bare, isolated, or literal reading of the statutory language," *Elsberry*, 286 A.3d at 12, Maryland courts "do not construe a statute with 'forced or subtle interpretations' that limit or extend its application." *Lockshin*, 987 A.2d at 29 (quoting *Lonaconing Trap Club, Inc. v. Dep't of Env't*, 978 A.2d 702, 709 (Md. 2009)). And they "may neither add nor delete language so as to reflect an intent not evidenced in the plain and unambiguous language of the statute." *Price v. State*, 835 A.2d 1221, 1226 (Md. 2003). Simply put, interpreting text in light of purpose still requires interpreting text.

With these principles in mind, I turn to the statutes at issue.

II. PSEG IS LIKELY TO SUCCEED ON ITS CLAIM

The preliminary injunction turns on PSEG's likelihood of success on its claim of access under two statutes: Md. Code, Real Prop. § 12-111 and Md. Code, Pub. Util. § 7-207.

A. Section 12-111 Requires PSEG To Be A "Body Politic Or Corporate Having The Power Of Eminent Domain"

Start with § 12-111. Taking a purposive approach, we first look to the plain meaning of the text, discerning that plain meaning in light of context and purpose. Section 12-111(a) states, in relevant part: "Civil engineers, land surveyors, real estate appraisers, and their assistants acting on behalf of the State or of any of its instrumentalities or any body politic or corporate having the power of eminent domain" may "[e]nter on any private land" to perform certain enumerated tasks. § 12-111(a). But they may only enter private land "after [making] every real and bona fide effort to notify the owner or occupant in writing with respect to the proposed entry." *Id.* If a private landowner nonetheless refuses entry to "any civil engineer, surveyor, real estate appraiser, or any of their assistants," then subsection (b) permits "the person, the State, its instrumentality, or the body politic or corporate on whose behalf the person is acting" to apply to a court "for an order directing that the person be permitted to enter on and remain on the land to the extent necessary to carry out" the tasks listed in subsection (a). § 12-111(b).

The statute does three things. It identifies the professionals who may enter, describes the tasks they

may perform, and authorizes the professionals and specified principals to seek a court order when a landowner refuses access.

In this case, PSEG wants a court order that permits those working on its behalf to conduct studies on private property. Section 12-111(b) permits four parties to do this: "the person," "the State," the State's "instrumentality," or "the body politic or corporate" having the power of eminent domain. PSEG, as a New Jersey limited liability company, is not the State of Maryland or one of its instrumentalities. So it may only request a court order if it is a "person" or a "body politic or corporate." What do these terms mean? We find out by considering their plain meaning in context and in light of the statute's purpose.

1. PSEG is not "the person" who may seek a court order under § 12-111(b)

"Person" is a broad word, but context narrows it. Section 12-111(b) reads in full:

> If any civil engineer, surveyor, real estate appraiser, or any of their assistants is refused permission to enter or remain on any private land for the purposes set out in subsection (a) of this section, the *person*, the State, its instrumentality, or the body politic or corporate *on whose behalf the person is acting* may apply to a law court of the county where the property, or any part of it, is located for an order directing that *the person* be permitted to enter on and remain on the land to the extent necessary to carry out the purposes authorized by this section.

(emphasis added). In context, "the person" refers back to the "civil engineer, surveyor, real estate appraiser, or any of their assistants" who is refused permission to enter the private property. The text says "the person" not "a person," so we know the person is a particular one. And the statute goes on to list "the body politic or corporate *on whose behalf the person is acting*," referring to the same person from the beginning of the list. We know from § 12-111(a) that the parties "acting on behalf of" others are the engineers, surveyors, appraisers, and their assistants, further supporting that "the person" refers to them, not just any person. Finally, the statute specifies that "the order" will "direct[] that *the person* be permitted to enter on and remain on the land." In the context of subsection (b), this indicates that "the person" must be the civil engineers, surveyors, and appraisers, because those are the people who were denied entry at the beginning of the sentence. The added context of subsection (a), which only permits the civil engineers, surveyors, and appraisers to enter private property in the first place, solidifies this conclusion.

So PSEG can be "the person" under § 12-111 only if it is a civil engineer, surveyor, real estate appraiser, or one of their assistants. It is none of them.[2]

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[2] The district court found, in the alternative, that PSEG could request an injunction under § 12-111(b) because it was acting "on behalf of" the Power Plant Research Program. *See PSEG Renewable Transmission, LLC v. Arentz Fam., LP*, 788 F. Supp. 3d 705, 728 (D. Md. 2025). The majority "agree[s] with the district court's conclusion that PSEG likely gained" the power to enter private property "for purposes of Section 12-111(a) when [the Power Plant Research Program] directed it to complete the necessary field studies." Majority Op. at 22. The logic goes like

2. PSEG could be a "body politic or corporate having the power of eminent domain"

Since PSEG is not "the person" who can request an injunction, it can only get a court order if it is a "body politic or corporate," "having the power of eminent domain," "on whose behalf the person is acting." § 12-111(b), (a).[3] The "body politic or corporate" element is not contested. PSEG is a limited liability company—an entity the law treats as a person distinct from its members, capable of holding property and suing in its own name. The property owners do not argue that the

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this: Because PSEG is a "person" acting on behalf of an instrumentality of Maryland—the Program—PSEG itself does not need to possess the power of eminent domain in order to request a court order (as it would if PSEG were the body politic or corporate on whose behalf the person is acting). But this theory is wrong.

As explained above, "the person" acting on behalf of the State, its instrumentality, or the body politic or corporate, may request an injunction under § 12-111(b), but "the person" must be a "civil engineer, surveyor, real estate appraiser, or any of their assistants." PSEG is none of these. So the fact that PSEG may have acted on behalf of the Power Plant Research Program is irrelevant: In order for the alternative theory to work, PSEG would have to both be acting on behalf of the Program *and* be an engineer, surveyor, appraiser, or one of their assistants. The district court only found the former, which is not enough.

[3] Subsection (a) speaks of "any body politic or corporate *having the power of eminent domain*." Subsection (b) speaks of "*the* body politic or corporate on whose behalf the person is acting," without repeating the qualifier. But the definite article in subsection (b), just as it does for "the person," points back to the entity subsection (a) has described. And it could not be otherwise: Subsection (b) enforces the entry that subsection (a) authorizes, so it cannot supply a right of entry for those acting on behalf of an entity subsection (a) leaves out.

phrase excludes such an entity, and I accept that concession at this stage.

The tricky part is "having the power of eminent domain." The majority correctly concludes that § 12-111 requires present possession. Majority Op. at 20-21. "Having" means having—not hoping to have, and not qualifying to have someday. Text, context, and purpose all point the same way.

So what is the power one must presently have? Maryland's Supreme Court has defined the "power of eminent domain" as "the inherent power of a governmental entity to take privately owned property, especially land, and convert it to public use, subject to reasonable compensation for the taking." *Mayor & City Council of Balt. City v. Valsamaki*, 916 A.2d 324, 335 (Md. 2007) (cleaned up). This power "adheres to sovereignty and requires no constitutional authority for its existence." *Lore v. Bd. of Pub. Works*, 354 A.2d 812, 814 (Md. 1976). So the power of eminent domain is something the State has by virtue of its sovereignty. Other entities possess the power only when the General Assembly confers it. *See Chevy Chase Land Co. v. United States*, 733 A.2d 1055, 1075 (Md. 1999) ("[T]he power of eminent domain [is] a power reserved only to the government and those the government has annointed [sic].").

The power of eminent domain is not limitless. One can have the power of eminent domain without having the legal ability to presently exercise the power with respect to particular property. *See, e.g.*, *Bouton v. Potomac Edison Co.*, 418 A.2d 1168, 1169 (Md. 1980) ("[A] certificate is a prerequisite to the exercise of the Company's right of eminent domain."). The "mode and manner of the exercise of the power of Eminent

Domain is exclusively vested in the judgment and discretion of the Legislature." *Utilities, Inc. of Md. v. Wash. Suburban Sanitary Comm'n*, 763 A.2d 129, 133-34 (Md. 2000) (quoting *Ridgely v. Mayor & City Council of Baltimore*, 87 A. 909, 912 (Md. 1913)); *see also Cnty. Comm'rs of Frederick Cnty. v. Schrodel*, 577 A.2d 39, 47 (Md. 1990) ("In Maryland the General Assembly has demonstrated that it will place pre-conditions on a utility's exercise of eminent domain power, when the Legislature concludes that the conditions are appropriate."). So possessing the power is only half the story.

The State and its delegates alike can hold the power without being free to use it. Both the federal and Maryland constitutions limit the exercise of eminent domain power by allowing only takings "for public use" and requiring the payment of "just compensation" for the taken property. *See* U.S. Const. amend. V; Md. Const. art. III, § 40; *Schrodel*, 577 A.2d at 45-46. And the Maryland General Assembly has placed additional limits on the power's exercise through legislation—most prominently through Title 12 of the Real Property Article, which lays out the rules and procedures governing nearly all condemnation proceedings in Maryland. Md. Code, Real Prop. §§ 12-101 *et seq*. Title 12 does *not*, however, grant any eminent domain power. It only governs the exercise of power already possessed or granted. When the General Assembly wishes to delegate eminent domain power, it does so through separate legislation. And this legislation often places additional limits on the power's exercise, beyond those imposed by Title 12.

For example, Md. Code, Pub. Util. § 5-411 delegates eminent domain power to water companies.

By stating that "[a] water company may acquire by condemnation . . . any land or water rights," the statute delegates the power of eminent domain to water companies. *Id.* But the statute also places limits on the exercise of that power by permitting condemnation only of "land or water rights that the company is authorized to acquire to lay pipes or construct its work," requiring any condemnation action to comply with Title 12, and allowing water companies to condemn property only if the company cannot reach an agreement with the owner. Other Maryland statutes delegate eminent domain power in this same way, using the same or similar language to grant the power, and then placing limits on its exercise. *See, e.g.*, Md. Code, Pub. Util. §§ 5-403, 5-404.

In short: The State inherently has the power of eminent domain, but the General Assembly may delegate that power to other entities and place limits on its exercise. Having the power of eminent domain is not the same as exercising that power. And placing limits on the exercise of the power does not negate the underlying delegation. A power held subject to a condition on its exercise is presently held; the condition limits the use, not ownership, of the right. This means that PSEG is a body "having the power of eminent domain" only if the legislature conferred that power on it. But if the General Assembly has delegated the power to PSEG, the existence of limits on the power's exercise does not remove the delegation itself. So I next consider whether any statute delegates the eminent domain power to PSEG.

B. Section 7-207 Likely Confers The Power Of Eminent Domain On PSEG

The second statute at issue is Md. Code, Pub. Util. § 7-207. I conclude that § 7-207(b)(3) likely supplies the needed delegation.

Start with § 7-207(b)(3)(v), which states:

> 1. This subparagraph applies to the construction of an overhead transmission line for which a certificate of public convenience and necessity is required under this section.
> 2. On issuance of a certificate of public convenience and necessity for the construction of an overhead transmission line, a person may acquire by condemnation, in accordance with Title 12 of the Real Property Article, any property or right necessary for the construction or maintenance of the transmission line.

Clause (2) of subparagraph (v) is best read to do two things. First, it grants the power of eminent domain to "a person." It does this by stating that "a person may acquire by condemnation . . . any property or right." *Id.* Second, it restricts when and how that power may be exercised in three ways: Acquisition is limited to property necessary for constructing the transmission line, after issuance of a certificate, and in compliance with Title 12 of the Real Property Article. *See Bouton*, 418 A.2d at 1169.

The broader text of § 7-207 confirms that Maryland's legislature recognizes a difference between having the power of eminent domain and the ability to presently exercise that power through condemnation. For example, subparagraph (b)(3)(i) provides

that until a certificate is obtained, a person may not do two things: (1) "begin construction of an overhead transmission line" or (2) "exercise a right of condemnation with the construction." Neither prohibition addresses having the capacity to do something; they address the ability to *exercise* that capacity. Nothing in a certificate gives an applicant the capacity to build; the applicant can build, but the subparagraph forbids it until the Commission grants a certificate. The second prohibition works the same way. It bars the exercise of a right of condemnation—language that presupposes a right exists. A restriction on the use of a power does not imply the power's absence. *See also* § 7-207(b)(2) (absent a certificate and a capacity finding, "a person may not exercise a right of condemnation in connection with the construction of a generating station"). In this scheme, the General Assembly wrote the distinction between holding the power and being allowed to use it.

Other statutes in Maryland's Public Utilities Article illustrate how the General Assembly both delegates the power of eminent domain and limits its exercise. The Maryland statute delegating the power of eminent domain to water companies is one example. *See* Md. Code, Pub. Util. § 5-411. Section 5-411 first grants the condemnation power: "A water company may acquire by condemnation . . . any land or water rights." *Id.* Then the statute places limits on the delegation. But those limits do not negate the initial delegation of the power.

Section 5-411 is not alone in following this approach. *See, e.g.*, Md. Code, Pub. Util. § 5-403(b)-(c) (delegating the power of eminent domain to gas

companies by stating they "may acquire by condemnation, in accordance with Title 12 of the Real Property Article, rights-of-way or easements necessary [for gas pipelines]" and placing additional limits on its exercise in (c)); Md. Code, Pub. Util. § 5-404(b) (delegating eminent domain power to certain oil pipeline companies by stating they "may acquire by condemnation, in accordance with Title 12 of the Real Property Article, any property necessary to" operate and construct certain pipelines); Md. Code, Transp. § 5-417(a) (granting eminent domain power to "political subdivision[s]" by stating they "may acquire, by purchase or, if unable to agree on terms, by condemnation, any property, including any air right or interest, needed to establish or operate" airports and related facilities). The General Assembly, thus, often uses a formula for sharing the sovereign's power: Identify the class of grantees, say they "may acquire by condemnation," and fence in the power's use. Section 7-207(b)(3)(v) likely follows this formula.

That leaves the "who" question: To whom does subparagraph (v) grant the power? Section 1-101 of Maryland's Public Utility Article, of which § 7-207 is a part, lays out definitions that apply throughout. Section 1-101(w) defines "person" broadly as "an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation, or other entity." Md. Code, Pub. Util. § 1-101(w). Read in isolation, that definition would extend subparagraph (v)'s grant to every individual, fiduciary, and entity in Maryland. But Maryland does not read statutory language in isolation. *See Westminster Mgmt.*, 312 A.3d at 758 ("Our search for legislative intent begins

with the text of the provision we are interpreting, viewed not in isolation but 'within the context of the statutory scheme to which it belongs.'" (quoting *Nationstar Mortg. LLC v. Kemp*, 258 A.3d 296, 308 (Md. 2021))). Here, the statute likely only delegates the power of eminent domain to the kind of person who may receive a certificate.

Subparagraph (v)'s own conditions do the narrowing. Subparagraph (v) applies only to "the construction of an overhead transmission line for which a certificate . . . is required." § 7-207(b)(3)(v)(1); *see also* § 7-207(b)(3)(v)(2) (power of eminent domain may be exercised only "on issuance" of that certificate). And only an applicant who satisfies subparagraph (iii) may obtain such a certificate. So while "a person" means what § 1-101(w) says, the only persons who can ever satisfy this subparagraph and possess the right of eminent domain are the class of persons that subparagraph (iii) makes eligible. *Cf.* § 7-207(b)(3)(i) ("[U]nless a certificate . . . for the construction is first obtained from the Commission, a person may not begin construction" of a transmission line or "exercise a right of condemnation.").

Finally, the question § 12-111 actually asks: Does a person hold the power of eminent domain when the General Assembly has delegated it subject to a condition not yet satisfied? Maryland's cases suggest the answer is yes. Maryland's Supreme Court has recognized certificates as a "prerequisite to the exercise of the Company's right of eminent domain," *Bouton*, 418 A.2d at 1169, and the General Assembly often "place[s] preconditions on a utility's exercise of

eminent domain power," *Schrodel*, 577 A.2d at 47.[4] Both formulations distinguish an underlying right from a condition on its exercise. *See also* § 7-207(b)(3)(i) (prohibiting a person from "exercis[ing] a right of condemnation" before certification). PSEG appears to hold the power subparagraph (v) delegates. What it may not do is use it until the Commission grants a certificate. Section 12-111 asks the first question, not the second.[5]

* * *

Read whole, this scheme's parts fit and seem to serve the General Assembly's purpose. Subparagraph (iii) names the eligible applicants. Subparagraph (v) arms that class with a project-specific power of condemnation subject to conditions on its exercise. Subparagraph (i) holds that power in check until the commission grants a certificate. Section 12-111 then permits the applicants' engineers and surveyors to

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[4] Both *Bouton* and *Schrodel* were describing former Md. Code art. 78, § 54A, the predecessor to § 7-207.

[5] The property owners answer that § 7-207(b)(3)(v)(2)'s introductory phrase "[o]n issuance" fixes the time when the power itself arises. It's true that this phrase fixes timing but, for the reasons I have explained, it likely does so for when the power may be exercised. Every delegation in this family carries conditions, and every condition is about timing. A water company may condemn once it cannot agree with the owner. Md. Code, Pub. Util. § 5-411(1). A gas corporation may condemn once it serves local consumers along its route. § 5-403(c)(1). An oil pipeline corporation may condemn once the Commission, after a public hearing, finds the acquisition to be in the public interest. § 5-404(b), (e) (granting the power and then conditioning its use on a Commission order). And Title 12 governs the manner of exercising nearly every condemnation in Maryland. A certificate is § 7-207's version of the same instruction.

gather the information needed to evaluate the requested certificate. Because PSEG has shown that it likely belongs to the class presently holding that conditional power, I respectfully concur in the judgment.

Filed: June 20, 2025

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

PSEG RENEWABLE TRANSMISSION LLC, *Plaintiff*, v. ARENTZ FAMILY, LP, *et al.*, *Defendants*	Case No. 25-cv-1235-ABA

MEMORANDUM OPINION

Plaintiff PSEG Renewable Transmission LLC ("PSEG") is working to develop an approximately 67-mile high-voltage transmission line that, if built as presently planned, would traverse portions of three Maryland counties: Baltimore County, Carroll County, and Frederick County. The project is known as the Maryland Piedmont Reliability Project (the "Piedmont Project"). The Maryland Public Service Commission (the "PSC") is considering whether to issue a Certificate of Public Convenience and Necessity ("CPCN") for the project.

As part of the PSC proceeding, the Maryland Department of Natural Resources, specifically its Power Plant Research Program ("PPRP")—review by which is required for a CPCN to be granted—demanded that PSEG, among other things, perform certain surveys to enable PPRP to conduct an environmental assessment of the Piedmont Project. A number of residents along the proposed route have

refused to grant PSEG access to their properties to conduct those surveys. PSEG filed this case, naming 117 of the property owners as respondents ("Respondents"). PSEG has sought a preliminary injunction granting it permission to enter the properties at issue solely to conduct the surveys. Most of the Respondents have engaged counsel and appeared in this case, and filed motions to dismiss the complaint, and oppositions to PSEG's motion for a preliminary injunction. For the reasons that follow, the motions to dismiss will be denied, and PSEG's motion for a preliminary injunction will be granted.

* * *

I. BACKGROUND

Where defendants (or, as here, Respondents) file a motion to dismiss a complaint for failure to state a claim, the Court must "take as true the facts alleged in [the plaintiff's] complaint and draw all reasonable inferences in [its] favor." *Doe v. Univ. of N. Carolina Sys.*, 133 F.4th 305, 310 (4th Cir. 2025). The facts as set forth below are those alleged by PSEG. They include facts set forth in declarations that were filed in support of PSEG's motion for a preliminary injunction that PSEG incorporated by reference in its complaint. *See, e.g.*, ECF No. 1 ¶ 264 (incorporating declarations regarding communications with property owners); *id.* ¶ 245 (citing ECF No. 3, Declaration of Dawn Shilkoski ("Shilkoski Decl.")). They also include facts asserted by PSEG that are subject to judicial notice, such as orders issued by federal or state agencies. *See* F.R.E. 201(b); *United States v. Zayyad*, 741 F.3d 452, 463-64 (4th Cir. 2014) (holding that indisputable facts such as facts "generally known

within the trial court's territorial jurisdiction" are susceptible to judicial notice); *Rogers v. Deane*, 594 F. App'x 768, 770-71 (4th Cir. 2014) (holding that the filing of an order is indisputable, but the factual findings contained therein are not).

That is the standard of review with respect to Respondents' motions to dismiss, and is the standard by which the Court sets forth the background of the parties' dispute in this Section I, and discusses Respondents' motions to dismiss in Section II. With respect to PSEG's motion for a preliminary injunction, which the Court addresses in Section III, the Court need not, and does not, *accept* as true PSEG's allegations; instead, the pertinent component of the standard for issuance of a preliminary injunction is whether PSEG has shown a likelihood of success on the merits. *See* § III.A, *infra*.

A. The Piedmont Project

The construction of high-voltage electric transmission lines is governed by a mix of federal and state law and agencies. The Federal Energy Regulatory Commission ("FERC") oversees planning and cost allocation through regional transmission organizations. 16 U.S.C. § 824s; FERC Order No. 1000, 136 FERC ¶ 16,051 (July 21, 2011).[1] PJM Interconnection, LLC is the regional transmission organization that includes Maryland as well as its bordering states. ECF No. 1 ¶ 1. PJM identifies system needs and recommends projects for development within its regulated territory. *Id.* Under federal law, state governments retain substantial authority to decide

[1] Available at https://perma.cc/L9CZ-6ZFD.

questions of transmission siting and construction. 16 U.S.C. § 824(b)(1). Once a transmission line goes into service, the operating company (here, PSEG) becomes subject to regulation by FERC as a public utility. *See* Md. Code Ann., Pub. Util. § 7-207(b)(3)(iii).

"For several years, PJM has observed a significant load growth in Maryland and Virginia." ECF No. 3 ¶ 9. "PJM has also been notified that approximately 11,100 MW of power generation within its region has been deactivated (i.e., retired) or is in the process of deactivating." *Id.* Although some of those deactivations have been postponed, *see* ECF Nos. 125-1 & 125-2, PJM has determined that, in order to discharge its obligation to ensure adequate transmission capacity for current and anticipated load growth, additional transmission capacity is needed. ECF No. 3 ¶ 11. "For example, PJM has observed that, absent intervention, the key 500 kV transmission lines located in Maryland will become severely overloaded, with these lines carrying 115% to 213% of their rated capacity." *Id.* ¶ 10. "Transmission lines at the 500 kV level are a critical part of the region's electric system and allow electricity to flow across states from where power is generated to where it is needed." *Id.* ¶ 9.

In February 2023, PJM began the process of addressing this need by soliciting proposed solutions from qualified transmission owners and developers. *Id.* ¶ 12. PJM received and analyzed a total of 72 project proposals. *Id.* PJM approved several of those "transmission enhancement proposals," including the Piedmont Project. *Id.* ¶ 13. PJM designated PSEG as the "designated entity" to develop and construct the new transmission line. ECF No. 3-1 (Designated Entity Agreement between PJM Interconnection,

L.L.C. and PSEG Renewable Transmission LLC, executed April 11, 2024) (the "DEA"). The DEA requires PSEG to construct "an approximately 67-mile 500 kilovolt ('kV') alternating current ('AC') single circuit overhead transmission line," ECF No. 3 ¶ 6, to "extend from Allegheny Power System's ('APS's') existing Doubs Station, which is located in Frederick County, to an interconnection or demarcation point west of Baltimore Gas and Electric Company's ('BGE') Conastone Station in northern Baltimore County." *Id.* ¶ 7; *see also* ECF No. 3-1 at 19 (DEA's "Description of Projects").[2]

Part of PJM's agreement with PSEG includes a "Development Schedule." ECF No. 3-1 at 21. The schedule requires PSEG to meet several vital milestones. Several have already passed, including the deadlines for executing an interconnection coordination agreement (December 31, 2024), and for demonstrating adequate project financing (September 1, 2024). *Id.* PJM requires PSEG to have acquired "all necessary federal, state, county, and local site permits" by September 1, 2026. *Id.* And June 1, 2027 is the "Required Project In-Service Date." *Id.* That means that by June 2027, PSEG "must . . . demonstrate," among other things, that the Project "is completed in accordance with the Scope of Work in Schedules B" of the DEA and that it "is under Transmission Provider operational dispatch." *Id.* In short, especially given the size of the project and the

[2] Citations to page numbers refer to the number appearing in the CM/ECF header for this and the other filings referenced herein, which may not align with a document's original page numbering.

various regulatory approvals that PSEG must obtain, PSEG contends that time is of the essence.

B. Public Service Commission proceedings

To construct a high-voltage overhead transmission line in Maryland, one must first obtain a Certificate of Public Convenience and Necessity from the PSC. Md. Code Ann., Pub. Util. § 7-207(b)(1)(i). Without a CPCN, "a person may not begin construction . . . or exercise a right of condemnation with the construction." *Id.* § 7-207(b)(1)(i), (iii). PSEG, which is headquartered in Newark, New Jersey, ECF No. 3 ¶ 3, began the process for seeking issuance of a CPCN on December 31, 2024, when it filed an application with the PSC pursuant to Md. Code Ann., Pub. Util. ("PUA") § 7-207. *In re Application of PSEG Renewable Transmission LLC*, Case No. 9773 (Md. Pub. Serv. Comm'n 2024).[3]

As noted above, PJM has directed PSEG to construct a transmission line from Doubs Station in Frederick County and BGE's Conastone Station in northern Baltimore County. Part of the PSC's role as part of the larger regulatory review process is to decide whether a "need" for the project has been shown, and whether to approve the specific route that PSEG has proposed. PSEG's CPCN application included a proposed route for the project. PSEG states that its proposed route "was determined after several months of study and evaluation that included the consideration and analysis of multiple alternative routes to determine the least impactful route based on

[3] The filings in the PSC proceeding are available at https://perma.cc/L29V-WSA4.

environmental, social, land use, and engineering criteria." ECF No. 3 ¶ 17. The PSC's review is ongoing.

An application for a CPCN for a transmission line must include certain "environmental, natural resources, and socioeconomic information," COMAR 20.79.01.06(K), including a "summary of the environmental and socioeconomic effects of the construction and operation of the project, including a description of the unavoidable impacts and recommended mitigation," a "copy of all studies of the environmental impact of the proposed project prepared by the applicant," and a "statement of the ability to conform to the applicable environmental standards." COMAR 20.79.04.04(B)-(D). The General Assembly has assigned responsibility for determining whether those requirements are met—or whether licensing conditions are necessary to address any anticipated environmental and socioeconomic impacts—to the Power Plant Research Program, the PPRP, which is a division of the Maryland Department of Natural Resources. Md. Code Ann., Nat. Res. § 3-303; ECF No. 3 ¶ 19. In connection with a CPCN application, PPRP acts on behalf of not only the Maryland Department of Natural Resources but also the Maryland Departments of Environment, Agriculture, Commerce, Planning, and Transportation, as well as the Maryland Energy Administration. *See* Md. Code Ann., Nat. Res. § 3-303 *et seq.*; ECF No. 3 ¶ 19 n.3.

On January 10, 2025, the PSC directed PPRP to report, by March 26, 2025, as to whether PPRP considered PSEG's application to have satisfied those regulatory requirements. ECF No. 3-4 at 3. On March 26, PPRP sent its report to the PSC. ECF No. 3-5.

PPRP reported that it lacked sufficient information to make the requisite determination with respect to two categories of information.

First, PPRP requested additional information under COMAR 20.79.04.03, which requires a "description of each alternative route considered for the transmission line," including an "estimate of the capital and annual operating cost of each alternative route" and a "statement of the reason why each alternative route was rejected." PPRP acknowledged that PSEG's application included a "detailed" Routing Study that "describes how PSEG chose its proposed route from the alternatives considered," "discusses how PSEG identified the alternative routes," and "provides summary tables of the metrics evaluated when considering environmental criteria, land use criteria, social criteria, engineering criteria, and cost for each of the ten alternative routes." ECF No. 3-5 at 3. But PPRP requested that PSEG further explain "why each of the alternative routes other than the proposed route . . . were rejected"; "how each of the evaluation criteria listed in Table 1 [of the Routing Study] impacted the decision to reject alternative routes"; how PSEG determined whether or when an alternative route would have required "special design" or "unreasonable costs"; why PSEG rejected two routes that had "the highest percentage of the length of the route paralleling 138kV or greater existing transmission line corridors"; and why existing lines could not be "used or rebuilt to accommodate the Project." *Id.* at 3-4. PPRP also requested clarification regarding certain terminology in the Routing Study. *Id.* at 4. That aspect of PPRP's March 26 request is not at issue in this case.

The second category as to which PPRP concluded that PSEG's application was "incomplete" was "in meeting the requirements of COMAR 20.79.04.04 (B) and (C)." ECF No. 3-5 at 5. Those sections require that a CPCN application include the following:

> B. A summary of the environmental and socioeconomic effects of the construction and operation of the project, including a description of the unavoidable impacts and recommended mitigation; [and]
>
> C. A copy of all studies of the environmental impact of the proposed project prepared by the applicant.

COMAR 20.79.04.04.

PPRP explained that PSEG's application "lacks a sufficient summary of the environmental and socioeconomic effects from the construction and operation of the Project, *including field studies*, which are necessary to meet the requirements of COMAR 20.79.04.04(B) and (C)." ECF No. 3-5 at 5 (emphasis added). PPRP described field studies as "imperative to verify and augment initial desktop information to confirm that the Project's effects are correctly documented, ensuring that all unavoidable impacts are accurately evaluated and that appropriate mitigation is proposed." *Id.* PPRP saw this as "especially important for this Project given its significant length and impacts to land uses, which will be necessary for its construction and operation." *Id.* "Without field-based information, PPRP cannot fully evaluate the Project's impacts to Maryland's socioeconomic and natural resources." *Id.*

PPRP went on to acknowledge that some property owners were denying "necessary access to conduct field studies," which is why PSEG had put "considerable effort into providing as much desktop-based environmental information as is currently available." *Id.* But PPRP reiterated that it saw no option other than to direct PSEG to obtain access to properties in order to conduct "field studies," specifically to provide sufficient information for PPRP to "determine whether the proposed location of the ROW and transmission line poles have been positioned such that they best avoid and/or mitigate environmental and socioeconomic impacts and comply with relevant laws." *Id.*

PPRP went on to identify "five types of field studies/surveys" that it considered to be "necessary" for it to make those determinations. *Id.* For example, PPRP explained that "the desktop studies provided in the Application are limited to the proposed 150-foot-wide ROW, instead of the 550-foot study corridor." *Id.* at 6. Thus, PPRP lacked sufficient information to decide whether environmental impact (such as on streams, wetlands, or forests) could be "less impactful" if the right-of-way or "pole placement" were slightly modified by "a shift of the ROW or pole placement of up to 275 feet on either side of the centerline of the current 150-foot wide ROW." *Id.* PPRP acknowledged and agreed that PSEG needed some "flexibility to adjust the centerline up to 275 feet on each side of the proposed centerline," but was not in a position to articulate the contours of such flexibility "until field-based studies are completed for the Proposed Route." *Id.*

PPRP directed PSEG to conduct some of the required studies or surveys on "all parcels within the Project ROW [Right of Way]," while others "are only necessary for parcels that meet specific requirements." *Id.* at 5. PPRP also expressed support for the CPCN process continuing while PSEG completes the supplemental studies. *Id.* at 7 ("While PPRP considers PSEG's CPCN Application to be administratively incomplete, PPRP is not opposed to scheduling a prehearing conference for the purpose of considering motions to intervene and to set a limited procedural schedule.").

C. PSEG's efforts to obtain property access to conduct the surveys

The Maryland General Assembly provides a statutory right of entry onto property—including over a property owner's objection—for any state instrumentality, or any other "body politic or corporate having the power of eminent domain," so long as that entity first makes "every real and bona fide effort to notify the owner or occupant in writing with respect to the proposed entry." Md. Code Ann., Real Prop., § 12-111. That right of entry is limited in scope. The statute authorizes only "[c]ivil engineers, land surveyors, real estate appraisers, and their assistants" to enter property, and only to conduct specified tasks, all of which are tied to questions related to the potential exercise of the power of eminent domain. *Id.* § 12-111(a). Specifically, such engineers, surveyors and appraisers may:

> (1) Enter on any private land to make surveys, run lines or levels, or obtain information relating to the acquisition or future public

use of the property or for any governmental report, undertaking, or improvement;

(2) Set stakes, markers, monuments, or other suitable landmarks or reference points where necessary; and

(3) Enter on any private land and perform any function necessary to appraise the property.

Id.

The statute also provides a procedure for if such persons are "refused permission" to conduct such surveys. The state, or other authorized entity, "may apply to a law court of the county where the property, or any part of it, is located for an order directing that the person be permitted to enter on and remain on the land to the extent necessary to carry out the purposes authorized by this section." *Id.* § 12-111(b). The statute also expressly provides that if a survey authorized by § 12-111 results in damage to land or personal property, the property owner "has a cause of action for damages against the civil engineer, surveyor, real estate appraiser, or assistant and against the State, its instrumentality, or the body politic or corporate on whose behalf the person inflicting the damage was acting." *Id.* § 12-111(c). The statute also makes it a crime to damage or remove markers laid during an authorized survey, and provides that any person "who has knowledge of an order issued pursuant to subsection (b) and who obstructs any civil engineer, surveyor, real estate appraiser, or any of their assistants acting under the authority of the order may be punished as for contempt of court." *Id.* § 12-111(d), (e).

In light of the authority and procedures set forth in § 12-111, upon receipt of PPRP's March 26 letter,

PSEG immediately set about making efforts to notify the owners and occupants of affected properties. PSEG has described its efforts, with respect to each of the Respondents named in this case, in 72 declarations executed by Roger Trudeau, who is a Corporate Real Estate Transactions Manager for PSEG (ECF Nos. 4 through 29 & ECF Nos. 31 through 73). PSEG incorporated those declarations by reference into its complaint. ECF No. 1 ¶ 264. In those declarations, Mr. Trudeau explains that PSEG hired Contract Land Staff (CLS) to "support the real estate efforts pertaining to the [Piedmont Project]," including "obtaining voluntary rights of temporary access to conduct field surveys." *E.g.*, ECF No. 4 ¶ 7. CLS keeps track of its contacts with property owners in a system called CLSLiNK. *Id.* The Trudeau declarations describe and attach CLSLiNK reports containing information about each of CLS's contacts with the pertinent Respondents.

The first declaration, which pertains to property owned by Robert and Alene Stickles in Manchester, Maryland, is representative of the other Trudeau declarations. On October 28, 2024, PSEG sent letters to Mr. and Ms. Stickles. ECF No. 4-2 at 8-11. The letter explained that PJM had "determined there is a need for significantly increased transmission capacity into Maryland and the surrounding region to ensure reliability," and that PJM had, among other projects, selected PSEG to "address these reliability concerns" by building the Piedmont Project transmission line. ECF No. 4-2 at 8, 10. The letter (the "Initial Letter") went on as follows (all bolding in original):

> You are receiving this letter because public records indicate you own property along the

proposed route for the 150-foot wide right of way proposed for this project. Please note that at this time, PSEG is not seeking to buy an easement from you, but PSEG would like to begin discussions with you regarding the process and timing of purchasing an easement. PSEG will purchase a permanent easement across a portion of your land for the approved route, only if approved by the Maryland Public Service Commission.

PSEG will send a letter to you during the week of November 18 to introduce the land agent assigned to you. This agent will be your direct real estate contact throughout this project.

In the interim, PSEG would like to provide you with additional information below.

Right of Entry (ROE). This is the first step in the real estate acquisition process. PSEG will be seeking temporary access to your property to perform studies necessary to verify existing site conditions and to validate public data. The ROE is not an easement and is only temporary.

Portion of Property. The final right of way footprint is proposed to be about 150 feet wide. The property rights sought will be a permanent easement over a portion of the land, in other words, you will continue to own your property while granting certain property rights to PSEG for a fee.

Farming. The majority of the proposed route will be occupied by conductor lines (wires) above the property. The conductors will be connected to H-frame structures every 1,000 or so feet.

Therefore, not all property will have H-frame structures. This design allows the project route to be farming compatible in most circumstances, e.g., farm crops may be planted right up to the foundations of the structures, vegetation up to a height of 25 feet and using equipment up to a height of 20 feet, are permissible activities under the lines.

Compensation for Crop Yield Loss or Damage. While most of the proposed route is designed to be farming compatible there may be instances of crop yield loss. In those instances, PSEG will compensate you for that crop yield loss. Also, if damage occurs to crops or other non-restorable property during construction, PSEG will reimburse the landowner for those damages.

Property Valuation. PSEG will pay you for the property rights sought. Following the property studies performed under the ROE, your land agent will provide details specific to your property concerning values and compensation for the portion of land that will be needed for the easement. A local appraiser will perform a market appraisal to determine fair market value for the property rights needed for the easement. The information used in the appraisal will be provided to you. Once provided, PSEG encourages you to review that information closely and discuss any specific issues you may have or unique circumstances related to your property that may impact value with your land agent.

> For more information please visit the FAQ section of www.MPRP.com.
>
> Once again, PSEG will send a letter to you during the week of November 18 to introduce the land agent assigned to you. The agent will be your direct real estate contact throughout this project and will be able to answer your specific questions.
>
> Please be advised that only a PSEG/Contract Land Staff-badged representative has the authority to discuss the project with you.
>
> PSEG will continue to stay engaged with you as this process moves forward. If you have any questions, please email us at PSEG-MPRP@pseg.com or call the MPRP project hotline at 1-833-451-MPRP (6777).

Id. at 8-9 & 10-11.

On November 18, 2024, PSEG sent follow-up letters (the "Follow-Up Letters"), explaining that PSEG would be filing a CPCN application, and reiterating the request for "temporary access to your property to evaluate its suitability for the project." *Id.* at 3, 6. It explained, "Please note that a temporary right of entry is not an easement and does not grant permanent property rights or construction rights, and does not obligate you to grant an easement. PSEG will purchase easements for the project route only if approved by the Maryland Public Service Commission." *Id.* (bolding omitted).

PSEG followed up with the Stickles residents again on December 5, by phone. PSEG's records summarize the call as follows:

> Agent Warren LaRiviere spoke with Alene Stickles. She and her husband are opposed to the project. I explained that the current alignment is from desktop only and PSEG needs to validate its proposed alignment with field studies including soil samples for any locations where the towers may be, as well as cultural surveys. I said that we can also make considerations for tower placement (a little latitude due to line slack) and line placement if the current proposed is not palatable. She said she would discuss with her husband but don't think they would be in agreement with PSEG coming on the property. I told her I would appreciate that and call back mid-week next week.

ECF No. 4-1 at 1. PSEG called again on December 20, at which point Ms. Stickles "said no to granting a [right of entry]." *Id.*

In addition to the Initial Letters and Follow-Up Letters, as to some of the Respondents PSEG also sent them letters entitled "Temporary Right of Entry Form." One example is Roy Francis Sanders. ECF No. 5-2 (Temporary Right of Entry Form dated Nov. 27, 2024). The letter to Mr. Sanders reads as follows (all bolding and underlining in original):

> Dear Roy Francis Sanders, et al.:
>
> PSEG Renewable Transmission LLC (**PSEG**) would like to evaluate your Property in connection with its upcoming application to the Maryland Public Service Commission for a Certificate of Public Convenience and Necessity (**CPCN**) for the Maryland Piedmont Reliability

Project (**MPRP**). This evaluation will require temporary access to your Property to conduct studies to determine whether the Property is suitable for the MPRP.

This document <u>does</u> <u>NOT</u> grant an easement or construction rights and <u>does NOT</u> obligate Owner to grant an easement.

1. **Monetary Consideration**. In consideration for this temporary right of entry, PSEG will pay Owner a one-time fee in the amount of **<u>ONE THOUSAND DOLLARS</u>** ($1,000.00). PSEG's agent, Contract Land Staff LLC, is authorized to provide check payment to Owner upon full execution.

2. **Temporary Right of Entry (ROE)**. Owner will allow PSEG, its employees, contractors, subcontractors, and agents, a temporary right of entry upon and across the Property for the purposes of conducting its preliminary analyses and site studies which may include but not be limited to: appraisals, property boundary and utility surveys, engineering studies, wetland delineation, environmental assessment/ investigation and geo-technical borings (**Preliminary Analysis**). PSEG will provide Owner or its designated representative with at least forty-eight (48) hours advance notice prior to initial entry on the Property by contacting _____at **phone**: _____or **email**: _____.

3. **Disturbance/Liability**. PSEG agrees, to the extent practicable, to conduct its Preliminary and activities pursuant to this ROE

> Owner harmless from any losses, claims, liabilities, damages, obligations, payments, costs and expenses arising directly as a result of the conduct of the activities permitted under this ROE.
>
> 4. **Duration/Term**. This temporary right of entry will begin upon full signing by all Parties and Maryland Public Service Commission or termination by PSEG.
>
> 5. **Permitting**. If necessary, PSEG, at its own cost and expense, shall obtain all permits and other approvals necessary for its Preliminary Analysis. Owner agrees to cooperate with PSEG to provide any needed owner consents, signatures or authorizations necessary for PSEG to submit applications for such permits PSEG will provide Owner with a copy of the application(s) filed.
>
> If acceptable, please countersign both copies of this document. Should you have any questions please feel free to contact **William Spradlin** at [contact information].

Id. at 4-5 (letter dated Nov. 27, 2024, signed by PSEG on Dec. 6, 2024).

The declarations reflect that PSEG made similar efforts with respect to each of the Respondents named in this case, as follows. In the "Letters" column, "I" refers to an Initial Letter, "F" refers to a Follow-Up Letter, and "TREF" refers to a Temporary Right of Entry Form.

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Property owner(s)	**Letters**	**Other contact(s)**	**Refused entry?**
Robert Stickles & Alene Stickles (ECF No. 4)	10/28/24 (I), 11/18/24 (F)	12/5/25, 12/20/24	Yes
Roy Francis Sanders & Allan Patrick Sanders (ECF No. 5)	10/28/24 (I), 11/18/24 (F), 11/27/24 (TREF), 12/3/24 (F), 1/9/25 (F)	12/16/24, 1/3/25, 1/6/25, 1/8/25, 1/23/25, 2/27/25, 3/3/25	Yes
Amy Gayle Youngblood (ECF No. 6)	10/28/24 (I), 11/18/24 (F), 11/27/24 (TREF), 12/3/24 (F), 2/10/25 (F)	12/10/24, 1/6/25, 1/16/25, 1/30/25, 2/3/25, 2/11/25, 2/14/25	Yes
Andrew D. McLean & Rebecca McLean (ECF No. 7)	10/28/24 (I), 11/18/24 (F)	12/18/24, 12/31/24, 1/7/25, 1/8/25	Yes
Ann F. Price-Davis & Michael A. Davis (ECF No. 8)	10/28/24 (I), 11/18/24 (F), 12/3/24 (F)	12/16/24, 1/21/25, 1/24/25	Yes
Arentz Family, LP (ECF No. 9)	10/28/24 (I), 11/18/24 (F), 12/3/24 (F)	12/5/24	Yes

Property owner(s)	Letters	Other contact(s)	Refused entry?
Marvin L. Kaltrider, Joyce E. Kaltrider, Austin L. Kaltrider, Marlin L. Kaltrider & Shawn L. Kaltrider (ECF No. 10)	10/28/24 (I), 11/18/24 (F)	12/20/24, 12/30/24, 12/31/24, 1/7/25, 1/13/25, 1/23/25	Yes
Barclay G. Caras & Pamela J. Caras (ECF No. 11)	10/28/24 (I), 11/18/24 (F), 12/3/24 (F)	12/12/24, 12/17/24, 1/7/25	Yes
Barney's Farm, LLC (ECF No. 12)	10/28/24 (I), 11/18/24 (F), 12/3/24 (F)	12/13/24, 1/8/25	Yes
Benjamin Eugene Nusbaum & Kenneth Eugene Nusbaum (ECF No. 13)	10/28/24 (I), 11/18/24 (F)	12/19/24, 1/7/25, 1/17/25, 1/23/25, 1/27/25	Yes
Betty Lou Miller & Carl E. Miller (ECF No. 14)	10/28/24 (I), 11/18/24 (F), 12/3/24 (F)	12/17/24, 1/8/25, 1/14/25, 1/23/25	Yes
Brandon Hill (ECF No. 15)	10/28/24 (I), 11/18/24 (F), 12/3/24 (F)	11/22/24	Yes
Bruce E. Doak & Gayle M. Doak (ECF No. 16)	10/28/24 (I), 11/18/24 (F), 11/27/24 (TREF)	12/16/24, 12/18/24, 12/19/24, 12/27/24	Yes
Bryan N. Hendrix & Constance M. Hendrix (ECF No. 17)	10/28/24 (I), 11/18/24 (F), 12/3/24 (F)	11/18/24, 12/10/24, 1/21/25	Yes

Property owner(s)	Letters	Other contact(s)	Refused entry?
C. William Knobloch, Jr. & Carol Knobloch Revocable Living Trust Agreement (ECF No. 18)	10/28/24 (I), 11/18/24 (F)	12/23/24, 12/27/24, 1/3/25	Yes
Carmen Cockey & Christopher D. Cockey (ECF No. 19)	10/28/24 (I), 11/18/24 (F)	12/18/24	Yes
Carol J. Fertitta & Joseph V. Fertitta, III (ECF No. 20)	10/28/24 (I), 11/18/24 (F)	12/20/24	Yes
Catherine M. Gestido & Eduardo E. Gestido (ECF No. 21)	10/28/24 (I), 11/18/24 (F)	12/18/24	Yes
Catherine V. Miller & Wayne D. Miller (ECF No. 22)	10/28/24 (I), 11/18/24 (F)	12/18/24, 12/30/24, 12/31/24, 1/2/25	Yes
Charles Gary Atkinson, Stephen Gordon Atkinson, & Indranee Kuruppunayake (ECF No. 23)	10/28/24 (I), 11/18/24 (F), 11/27/24 (TREF), 1/9/25 (F)	12/16/24, 1/9/25, 1/23/25	Yes
Charles William Bond & Morgan Davis Bond (ECF No. 24)	10/28/24 (I), 11/18/24 (F)	12/10/24, 12/12/24	Yes
Charlotte Ruth Bixler (ECF No. 25)	10/28/24 (I), 11/18/24 (F)	12/12/24, 12/16/24, 12/20/24, 12/27/24,	Yes

Property owner(s)	Letters	Other contact(s)	Refused entry?
		1/3/25, 1/9/25	
Cheryl Ann Geary & Paul Joseph Geary (ECF No. 26)	10/28/24 (I), 11/18/24 (F)	12/2/24	Yes
Chris N. Resh, Dorothy L. Donmoyer, Petrice Marie Donmoyer-Resh, & Robert L. Donmoyer (ECF No. 27)	10/28/24 (I), 11/18/24 (F)	12/16/24	Yes
Christine D. Eyring & John M. Eyring, Jr. (ECF No. 28)	10/28/24 (I), 11/18/24 (F)	12/6/24, 12/16/24	Yes
Daniel George Schwartz (ECF No. 29)	10/28/24 (I), 11/18/24 (F), 12/3/24 (F)	12/5/24, 12/12/24	Yes
Deborah H. Maeder & John D. Maeder (ECF No. 31)	10/28/24 (I), 11/18/24 (F)	12/20/24, 12/23/24, 12/30/24, 1/7/25	Yes
Dells Generation Farms, LLC (ECF No. 32)	10/28/24 (I), 11/18/24 (F)	12/5/24, 12/12/24	Yes
James R. Cook & Diane M. Cook (ECF No. 33)	10/28/24 (I), 11/18/24 (F), 11/27/24 (TREF), 1/29/25 (F)	12/5/24, 12/16/24, 12/17/24, 12/20/24, 12/27/24, 1/3/25, 1/9/25, 1/23/25, 1/29/25, 1/31/25,	Yes

Property owner(s)	Letters	Other contact(s)	Refused entry?
		2/10/25, 2/12/25	
Erich Steiger & Rebecca Scollan (ECF No. 34)	10/28/24 (I), 11/18/24 (F), 12/3/24 (F)	12/16/24, 1/7/25, 1/10/25	Yes
Thomas B. Collins & Tracy W. Collins (ECF No. 35)	10/28/24 (I), 11/18/24 (F), 12/3/24 (F)	12/20/24, 12/27/24	Yes
Erik J. Lentz (ECF No. 36)	10/28/24 (I), 11/18/24 (F)	11/27/24	Yes
Esther Johann Lentz-Buenger (ECF No. 37)	10/28/24 (I), 11/18/24 (F)	11/4/24, 11/25/24	Yes
Richard M. Doster, Jr. (ECF No. 38)	10/28/24 (I), 11/18/24 (F)	12/17/24, 1/7/25	Yes
Michael D. Hands, Jr. & Faith J. Weeks (ECF No. 39)	10/28/24 (I), 11/18/24 (F), 12/3/24 (F)	12/5/24, 12/9/24, 12/16/24, 1/4/25, 1/15/25	Yes
Fay Ann Miller & Kenneth E. Miller (ECF No. 40)	10/28/24 (I), 11/18/24 (F)	11/30/24, 12/9/24, 12/16/24	Yes
Phyllis A. Rehmeyer & Todd M. Rehmeyer (ECF No. 41)	10/28/24 (I), 11/18/24 (F)	12/16/24, 1/9/25, 1/14/25, 1/15/25, 1/17/25, 1/21/25	Yes
Francis L. Dell & Marian V. Dell (ECF No. 42)	10/28/24 (I), 11/18/24 (F)	12/23/24	Yes

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Property owner(s)	Letters	Other contact(s)	Refused entry?
Gary J. Brockmeyer & Nancy M. Brockmeyer (ECF No. 43)	10/28/24 (I), 11/18/24 (F)	12/20/24, 12/23/24	Yes
Groves Mill, LLC (ECF No. 44)	10/28/24 (I), 11/18/24 (F)	12/5/24, 12/9/24, 12/12/24	Yes
Helen L. Bull (ECF No. 45)	10/28/24 (I), 11/18/24 (F), 11/27/24 (TREF), 1/29/25 (F)	12/18/24, 12/30/24, 12/31/24, 1/7/25, 1/10/25, 1/23/25, 2/3/25, 2/5/25, 3/10/25	Yes
Henry Whitaker & Karen A. Schleper (ECF No. 46)	10/28/24 (I), 11/18/24 (F)	12/18/24	Yes
The Hoeckel Family Self-Settled Asset Protection Family Irrevocable Trust of September 28, 2023 (ECF No. 47)	10/28/24 (I), 11/18/24 (F), 12/3/24 (F)	12/12/24, 1/9/25, 1/14/25	Yes
Robert Keith Wilson & Pamela M. Wilson (ECF No. 48)	10/28/24 (I), 11/18/24 (F)	12/16/24, 12/30/24, 12/31/24, 1/7/25, 1/10/25	Yes
HZ Properties, LLC (ECF No. 49)	10/28/24 (I), 11/18/24 (F)	12/13/24	Yes

Property owner(s)	Letters	Other contact(s)	Refused entry?
Nancy P. Macbride (ECF No. 50)	10/28/24 (I), 11/18/24 (F), 11/27/24 (TREF), 2/25/25 (F)	12/5/24, 2/19/25, 2/25/25	Did Not Respond
James A. O'Donnell & Patricia J. O'Donnell (ECF No. 51)	10/28/24 (I), 11/18/24 (F)	12/12/24, 1/3/25, 1/9/25, 1/16/25, 1/28/25, 1/30/25	Yes
Joseph L. Gover & Raina C. Gover (ECF No. 52)	10/28/24 (I), 11/18/24 (F)	12/20/24, 2/20/25	Yes
Nancy Eileen Pierce (ECF No. 53)	10/28/24 (I), 11/18/24 (F)	12/20/24	Yes
Judith A. Fiedler (ECF No. 54)	10/28/24 (I), 11/18/24 (F)	12/10/24, 1/6/25	Yes
Morris L. Bohlayer & Sharon A. Bohlayer (ECF No. 55)	10/28/24 (I), 11/18/24 (F)	12/16/24, 1/10/25	Yes
Zhejun Fan & Julia Lu (ECF No. 56)	10/28/24 (I), 11/18/24 (F), 12/3/24 (F)	12/5/24, 12/17/24	Yes
Julius J. Pitrone (ECF No. 57)	10/28/24 (I), 11/18/24 (F), 12/3/24 (F)	12/5/24	Yes
Justin Wright (ECF No. 58)	10/28/24 (I), 11/18/24 (F)	12/20/24, 1/3/25, 1/7/25, 1/13/25, 1/14/25	Yes

Property owner(s)	Letters	Other contact(s)	Refused entry?
Matthew Lee Dell (ECF No. 59)	10/28/24 (I), 11/18/24 (F)	12/19/24, 12/23/24	Yes
Matt Unkle & Tomi Unkle (ECF No. 60)	10/28/24 (I), 11/18/24 (F)		Yes
Keith Emerson Ensor & Marilyn Ann Ensor (ECF No. 61)	10/28/24 (I), 11/18/24 (F), 11/27/24 (TREF), 2/17/25 (F)	12/12/24, 1/6/25, 1/14/25, 1/27/25, 2/6/25, 2/18/25, 2/20/25	Yes
Mabel E. Wilson Revocable Deed of Trust Dated March 25, 1998 (ECF No. 62)	10/28/24 (I), 11/18/24 (F)	12/20/24, 1/10/25, 1/14/25	Yes
Kimberly A. Johnston (ECF No. 63)	10/28/24 (I), 11/18/24 (F), 12/3/24 (F)	12/20/24	Yes
Leslie Alfred White (ECF No. 64)	10/28/24 (I), 11/18/24 (F), 12/3/24 (F)	12/11/24	Yes
Lisa M. Ward & Zachary J. Ward (ECF No. 65)	10/28/24 (I), 11/18/24 (F)	12/19/24, 12/20/24	Yes
Thomas S. Gresock & Linda S. Gresock (ECF No. 66)	10/28/24 (I), 11/18/24 (F)	12/10/24, 1/6/25, 1/14/25	Yes
M & R, LLC (ECF No. 67)	10/28/24 (I), 11/18/24 (F)	12/16/24, 1/6/25, 1/17/25, 1/27/25, 1/30/25	Yes

Property owner(s)	Letters	Other contact(s)	Refused entry?
Panora Acres, Inc. (ECF No. 68)	10/28/24 (I), 11/18/24 (F), 12/3/24 (F)	12/20/24	Yes
Troyer Real Estate, LLC (ECF No. 69)	10/28/24 (I), 11/18/24 (F)	12/17/24	Yes
Peter and John Radio Fellowship, Inc. (ECF No. 70)	10/28/24 (I), 11/18/24 (F), 12/3/24 (F)	12/18/24, 1/2/25	Yes
RBC Real Estate I, LLC (ECF No. 71)	10/28/24 (I), 11/18/24 (F), 12/3/24 (F)	12/13/24, 1/8/25, 1/14/25, 2/4/25, 2/7/25	Yes
Troyer Farms, LLC (ECF No. 72)	10/28/24 (I), 11/18/24 (F), 12/3/24 (F)	12/17/24	Yes
School of Living (ECF No. 73)	10/28/24 (I), 11/18/24 (F), 12/3/24 (F)	12/18/24, 1/7/25	Yes
The Dug Hill Rod and Gun Club, Inc. (ECF No. 74)	10/28/24 (I), 11/18/24 (F), 12/3/24 (F)	12/5/24, 12/9/24, 12/12/24, 12/17/24, 1/3/25, 1/9/25, 1/13/25	Yes
Nancy E. Cramer (ECF No. 83)	10/28/24 (I), 11/18/24 (F)	12/20/24	Yes
Mohamad A. Kourani & Nada E. Kourani (ECF No. 84)	10/28/24 (I), 11/18/24 (F), 12/3/24 (F)	12/6/24	Yes

D. This case

After Respondents refused (and in some instances repeatedly refused) to allow temporary access to their properties for PSEG to conduct the surveys required by PPRP, PSEG filed this case on April 15, 2025. Its complaint asserts a single cause of action, for injunctive relief pursuant to Md. Code Ann., Real Property ("RP") § 12-111.

PSEG accompanied its complaint with a motion for a preliminary injunction. ECF No. 75. PSEG contends that it is likely to prevail on the merits because it qualifies as a "body politic or corporate" that has the "power of eminent domain" within the meaning of § 12-111(a). *Id.* at 19-24. It contends it has taken "real and bona fide efforts" to notify Respondents, and that those efforts are more than sufficient because not only has it repeatedly notified each Respondent, but each Respondent has acknowledged receipt and, further, has affirmatively refused PSEG entry to conduct the required field studies. *Id.* at 24-25. It contends that it is likely to suffer irreparable harm without preliminary relief because, among other things, "it will not be able to timely complete the surveys and gather the information requested by PPRP," and thereby cause delay of the type that the U.S. Court of Appeals for the Fourth Circuit in similar cases has held qualifies as irreparable harm. *Id.* at 25-31. And it contends that the balance of equities weighs in favor of preliminary relief, and that granting preliminary relief would be in the public interest. *Id.* at 31-32.

Most Respondents have engaged counsel, entered appearances, and filed motions to dismiss and briefs in opposition to PSEG's motion for a preliminary injunction. ECF No. 88 (brief in opposition to

preliminary injunction by Peter and John Radio Fellowship, Inc.); ECF No. 89 (motion to dismiss by Arentz Family *et al.*); ECF No. 92 (brief in opposition to preliminary injunction by Arentz Family *et al.*); ECF No. 94 (brief in opposition to preliminary injunction by Dells Generation Farms, LLC *et al.*); ECF No. 95 (motion to dismiss and opposition to preliminary injunction by Brandon Hill *et al.*); ECF No. 101 (motion to dismiss by Peter and John Radio Fellowship, Inc.). The Arentz Family group has also filed a motion to defer consideration of PSEG's motion pending the Court's ruling on Respondents' motions to dismiss. ECF No. 93. Two additional Respondents subsequently filed a notice joining and adopting several of those motions. ECF No. 112.

PSEG, for its part, filed a response to the motions to dismiss, ECF No. 103, a reply in support of its motion for a preliminary injunction, ECF No. 105, and an opposition to the Arentz Family group's motion to defer consideration of the preliminary injunction motion, ECF No. 106. PSEG also filed a chart tracking which Respondents have appeared, moved to dismiss, etc. ECF No. 104.

The Court, having previously set a briefing schedule and scheduled a preliminary injunction hearing on May 19, 2025, ECF No. 108, held a status conference on May 8, 2025, regarding the scope and structure of the hearing. Respondents requested to postpone consideration of the motion on PSEG's motion for a preliminary injunction until after a ruling on Defendants' motion to dismiss and after a period of discovery. The Court denied that request, and clarified that the hearing set for May 19 would be on all pending motions, but also granted leave for any

party who wished to submit additional evidence or argument to do so in advance of the hearing.

In advance of the May 19 hearing, Respondents filed additional evidence, including FERC stipulations and agreements related to the continued operation of the Brandon Shores Power Plant and the H.A. Wagner Generating Station, ECF Nos. 125-1 & 125-2, declarations of two proffered experts, one related to certain incentives that FERC has granted to PSEG, ECF No. 125-3, and the other related to the likelihood that PSEG will meet its construction goals, ECF No. 125-4, and a declaration from counsel regarding discovery that Respondents would seek if PSEG's complaint is not dismissed, ECF No. 125-5.

II. RESPONDENTS' MOTIONS TO DISMISS

A. Legal Standard

A complaint must contain "a short and plain statement of the claim showing the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). When a complaint fails "to state a claim upon which relief can be granted," even assuming the truth of the alleged facts, the defendant may move to dismiss the complaint. Fed. R. Civ. P. 12(b)(6).

To withstand a motion to dismiss, the complaint's "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The pleadings must contain sufficient factual allegations to state a facially plausible claim for relief. *Id.* at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S.

662, 678 (2009) (citing *Twombly*, 550 U.S. at 556). As noted above, when considering such a motion, the Court must "accept as true all of the factual allegations contained in the complaint and draw all reasonable inferences in favor of the plaintiff." *King v. Rubenstein*, 825 F.3d 206, 212 (4th Cir. 2016) (citing *E.I. du Pont de Nemours & Co. v. Kolon Indus., Inc.*, 637 F.3d 435, 440 (4th Cir. 2011)).

Respondents argue PSEG's complaint does not state a claim on which relief can be granted. Not all Respondents assert all of the arguments addressed below; these are the arguments that one or more Respondent assert. For the following reasons, none of those reasons provides a basis for dismissal, and the motions to dismiss will be denied.

B. Section 12-111 authorizes surveys and studies of the type required by PPRP

PSEG has brought its claim under Maryland Code, Real Property, § 12-111, which, as explained above, authorizes any "body politic or corporate having the power of eminent domain" to "[e]nter on any private land" to, among other things, "make surveys, run lines or levels, or obtain information relating to the acquisition or future public use of the property or for any governmental report, undertaking, or improvement," so long as the agency or company has made "every real and bona fide effort to notify the owner or occupant in writing with respect to the proposed entry." Md. Code Ann., Real Property, § 12-111(a). PSEG contends § 12-111 authorizes it to enter Respondents' properties to conduct the surveys required by PPRP. Respondents contend that although PSEG *seeks* an order from the PSC

authorizing eminent domain for the construction of the new transmission line, PSEG does not *yet* "hav[e] the power of eminent domain," and thus PSEG has not stated a claim on which relief can be granted under § 12-111.[4]

PSEG's construction of the statute is the only one consistent with the text, statutory and regulatory context, legislative history, and purpose of § 12-111. For the following reasons, PSEG is a "body . . . corporate having the power of eminent domain" within the meaning of the statute.

As always, the first and most important step in interpreting a statute is its text. *Scriber v. State*, 437 Md. 399, 410 (2014) (quoting *Stoddard v. State*, 395 Md. 653, 661 (2006)). Section 12-111(a) provides in full as follows:

> Civil engineers, land surveyors, real estate appraisers, and their assistants acting on behalf of the State or of any of its instrumentalities or any body politic or corporate having the power of eminent domain after every real and bona fide effort to notify the owner or occupant in writing with respect to the proposed entry may:
>
> (1) Enter on any private land to make surveys, run lines or levels, or obtain information relating to the acquisition or future public use of the property or for

[4] The Hill Respondents frame this argument as one of "standing"; it is not an Article III standing argument, but rather an argument that PSEG has not stated a claim on which relief can be granted because "[n]o power of eminent domain has been conveyed on PSEG by the PSC, nor has PSEG established that this is likely to happen." ECF No. 95-1 at 13.

any governmental report, undertaking, or improvement;

(2) Set stakes, markers, monuments, or other suitable landmarks or reference points where necessary; and

(3) Enter on any private land and perform any function necessary to appraise the property.

RP § 12-111(a). Several aspects of the text strongly reveal that the General Assembly intended the statute to apply to circumstances like the one here.

First, the phrase "having the power of eminent domain" is expressly in the context of an agency or other entity seeking "*acquisition* or *future* public use of the property." *Id.* (emphases added). Under Respondents' proposed construction, only entities that have *already* been granted authorization to take property through eminent domain would be eligible to enter property to make surveys, etc. But that would render meaningless the reference to obtaining information for a future acquisition or future public use of the property. Just as with respect to federal statutes, under Maryland law the General Assembly is presumed to "intend[] its enactments to operate together as a consistent and harmonious body of law," and thus courts "seek to reconcile and harmonize the parts of a statute, to the extent possible consistent with the statute's object and scope." *Town of Upper Marlboro v. Prince George's Cnty. Council*, 480 Md. 167, 193 (2022) (citation omitted). The General Assembly clearly did not consider an entity to only be entitled to authority to enter property under § 12-111 if the property at issue has already been taken through eminent domain.

Second, the statute expressly authorizes "surveys" of property, not only for "acquisition or future public use of the property" but also "for any governmental report, undertaking, or improvement." RP § 12-111(a). The PPRP is a division of the Maryland Department of Natural Resources. In connection with a CPCN application, the PPRP acts on behalf of not only the Department of Natural Resources but also the Maryland Departments of Environment, Agriculture, Commerce, Planning, and Transportation, as well as the Maryland Energy Administration. *See* Md. Code Ann., Nat. Res. § 3-303 *et seq.*; ECF No. 3 ¶ 19 n.3. Here, PPRP, on behalf of those various agencies, has directed that PSEG conduct field studies so that PPRP can itself conduct the evaluation that, in turn, is mandated by law. *See* Md. Code Ann., Nat. Res. § 3-306(b)(1) (requiring PPRP to "complete an independent environmental and socioeconomic project assessment report"); *id.* § 3-306(b)(2) (requiring PPRP to submit proposed licensing conditions within six months of an application's completion); COMAR 20.79.04.04(B) & (C) (quoted above, describing the portions of a CPCN application pertinent to PPRP's review). And PPRP itself has determined that the field studies at issue are "necessary" for PPRP to discharge those obligations. *See e.g.*, ECF No. 3-5 at 5 ("[T]he field-based studies listed below *are necessary* and have yet to be conducted for the proposed route and, thus, are not included in the Application.") (emphasis added).

Third, the field studies are to be conducted at the direction of, and in some senses on behalf of, state agencies. Respondents do not dispute that "the State" and its "instrumentalities" qualify as entities that

have "the power of eminent domain." Respondents also do not dispute that PPRP is an instrumentality of the state. Here, PPRP is the entity that has directed that the studies at issue happen, and that they happen on Respondents' property. Thus, PSEG, in conducting the surveys and effectuating PPRP's directive, is at least in part acting "on behalf of the State or [one] of its instrumentalities." Respondents argue that PSEG does not qualify as an "agent" of PPRP, DNR, or any other State agency. ECF No. 89-1. PSEG may or may not be an "agent" under agency law principles, but that is beside the point for purposes of interpreting § 12-111. Here, PPRP is a government agency, and is the entity that has directed that PSEG conduct the studies that PPRP needs to determine whether the project complies with the statutory and regulatory requirements that are within PPRP's purview.

Fourth, the other sections of § 12-111 buttress the conclusion that PSEG qualifies as a "having the power of eminent domain" within the meaning of § 12-111(a). Subsection (b), for example, envisions the scenario—which has arisen here—that a civil engineer, surveyor or appraiser has been "refused permission to enter or remain" on property that has been proposed for the exercise of eminent domain. That section authorizes an order permitting the relevant persons "to enter on and remain on the land *to the extent necessary* to carry out the purposes authorized by this section" (emphasis added). Section 12-111 does not authorize the exercise of eminent domain itself—which is ordinarily a permanent or indefinite act—but rather the exercise of surveys and the like, for the purpose of determining *whether* eminent domain will be

exercised. By authorizing entry "to the extent necessary" to, for example, "make surveys" or "obtain information relating to the acquisition or future public use of the property or for any governmental report, undertaking, or improvement," subsection (b) further confirms that the General Assembly considered entities like PSEG to qualify as entities "having the power of eminent domain" within the meaning of subsection (a).

Several other considerations, beyond the four corners of the statute, also strongly support the conclusion that PSEG qualifies as an entity "having the power of eminent domain" within the meaning of § 12-111.

PSEG is an electric transmission line development company, and has already been authorized by PJM and FERC, at least preliminarily, to move forward with the project. Under the Federal Power Act, 16 U.S.C. § 791a *et seq.*, Congress provided FERC with broad powers and authority to regulate "the transmission of electric energy in interstate commerce." 16 U.S.C. § 824(a). FERC, in turn, has charged PJM with planning and maintaining the electric transmission system for its region in accordance with FERC-mandated reliability criteria and standards. *See* FERC Order No. 1000, 136 FERC ¶ 16,051. PJM, in turn, has selected PSEG to construct the transmission line, and has entered into the detailed Designated Entity Agreement with PSEG, ECF No. 3-1, that imposes an in-service deadline of June 1, 2027, *id.* at 21. And FERC has issued an order formally accepting the filing of the PJM-PSEG agreement (although such acceptance for

filing does not "constitute approval" of the project). ECF No. 3-3.

Respondents argue, in essence, that until the PSC approves the CPCN application, PSEG cannot be the type of company that the General Assembly considered to be of the type "having the power of eminent domain." *See* ECF No. 95-1 at 13-14; ECF No. 92-1 at 13-16. The construction of new transmission lines frequently requires the exercise of eminent domain. The Court need not (and does not) decide whether PSEG would have qualified as "having the power of eminent domain" for § 12-111 at the very outset—before its selection by PJM, before FERC's acceptance of the Designated Entity Agreement, and before PPRP's directive to conduct field studies. Here, given PSEG's business, the nature of the Piedmont Project, and given its selection by PJM for this project and PPRP's asserted need for PSEG to conduct field studies, PSEG qualifies as a "having the power of eminent domain" within the meaning of § 12-111.

The provisions of other statutes further confirm this conclusion. Under Public Utility Article section 7-207, until a CPCN has been issued, a transmission line carrying a voltage exceeding 69,000 volts cannot begin to be constructed, and no property can be "acquire[d] by condemnation, in accordance with Title 12 of the Real Property Article." Md. Code Ann., Pub. Util. Art. 7-207(b)(3). Title 12 is the portion of the Real Property code that governs "Eminent Domain." Md. Code Ann., Real Prop. § 12-101 *et seq.* In other words, as a matter of law no eminent domain can be exercised until *after* a CPCN has issued. Under Respondents' proposed statutory construction, a § 12-111 survey, in order to assess (as here) whether a CPCN should be

issued, could not be conducted until after an entity could begin actual condemnation proceedings. That is clearly not what the General Assembly had in mind.

And in *Transource Maryland, LLC v. Scott et al.*, No. 12-C-18-000549 (Harford Cnty. Cir. Ct. June 24, 2018), the most analogous case any of the parties have identified, the Harford County Circuit Court (then-Judge, now-Justice Eaves) granted a petition by Transource Maryland, a subsidiary of a transmission line construction company, for an order authorizing entry under § 12-111. ECF No. 75-5 (memorandum opinion). The court there expressly analyzed whether a § 12-111 petition may be granted "before the Maryland Public Service Commission issues the Petitioner a Certificate of Public Convenience and Necessity." *Id.* at 4. It held that § 12-111 authorizes entry before issuance of a CPCN, and "[n]o other reading makes sense." *Id.* at 9.

Respondents' remaining arguments do not counsel otherwise.

First, Respondents argue that "'statutes of eminent domain are to be strictly construed.'" ECF No. 89-1 at 16 (quoting *Davis v. Bd. of Educ. of Anne Arundel Cnty.*, 166 Md. 118 (1934)). But this case is not about whether the Piedmont Project should be approved and a CPCN be issued and eminent domain be exercised. This case is only about whether, under § 12-111, PSEG is entitled to conduct certain studies as directed by PPRP.

Second, Respondents argue that PSEG cannot qualify under § 12-111 because PSEG, and its land agent (CLS) were "not registered to do business in Maryland." ECF No. 89-1 at 14-15. But § 12-111 does not limit the pertinent corporate entities to those

based in Maryland or registered to do business in Maryland.

Third, Respondents argue that even if PSEG has the power of eminent domain within the meaning of § 12-111, "a significant portion of the relief PSEG-RT is requesting is not available." ECF No. 89-1 at 20. That argument refers to a "Temporary Right of Entry Form" that PSEG provided to some property owners. That form, which is quoted above, included, in a section entitled "Temporary Right of Entry," that by signing the form the property owner "will allow PSEG . . . a temporary right of entry upon and across the Property for the purposes of conducting its preliminary analyses and site studies which may include but not be limited to . . . geo-technical borings." *E.g.*, ECF No. 5-2 at 4. But PSEG does not seek authority to conduct any such geotechnical surveys. The inclusion of that type of survey, in a draft form, as a potential type of study that "may" have been conducted—but that PSEG now disclaims—provides no basis for denying PSEG entry to which it is entitled under § 12-111.

For these reasons, PSEG qualifies as a corporate entity "having the power of eminent domain" within the meaning of the statute.

C. PSEG has alleged facts constituting the "bona fide effort[s] to notify" required by § 12-111

As explained above, an agency or company "having the power of eminent domain" does not automatically or immediately have the right to enter property to conduct the types of surveys and studies authorized by § 12-111. Before entering, such agency or company

must make "every real and bona fide effort to notify the owner or occupant in writing with respect to the proposed entry." Md. Code, Real Property, § 12-111(a). Respondents argue that PSEG has not alleged facts sufficient to state a claim that it has made "every real and bona fide effort to notify the owner or occupant in writing with respect to the proposed entry." ECF No. 39-1 at 24-25; ECF No. 95-1 at 14-20.

As an initial matter, for purposes of a motion to dismiss, a court must accept a plaintiff's factual allegations as true, and here PSEG has alleged with specificity, through the Trudeau declarations—which PSEG incorporated by reference in its complaint—the notifications that PSEG has provided to each owner. *See* ECF No. 1 ¶ 264. Beyond that, the complaint and the documents incorporated therein reflect that "each Respondent has refused consent for the Company to enter their property." *Id.*

Nonetheless, Respondents argue that the written notices that PSEG issued were deficient because they "never identified PSEG-RT as the entity seeking entry onto private properties," an "omission" they describe as "even more significant given the fact that PSEG-RT was not registered to do business in Maryland at the time of these communications." ECF No. 89-1 at 24. This argument is contradicted by Respondents' next argument, where they acknowledge that the notices "stat[ed] that 'PSEG' wanted temporary access 'to perform studies;' (e.g., ECF 71-2 at 8) or 'to evaluate [the property's] suitability for the project.'" ECF No. 89-1 at 25. In any event, the notices, on their face, expressly gave notice to the property owners that (1) PSEG is the entity working to develop the Piedmont Project; (2) PJM had selected the Piedmont

Project because of a need for increased transmission capacity; (3) PSEG is in the process of seeking approval from the PSC to build the project; (4) the recipients were receiving the letters because public records indicate that they own property along the proposed route for the 150-foot-wide right of way for the project; (5) PSEG was "seeking temporary access to [the] property to evaluate its suitability for the project"; and (6), of particular pertinence, that PSEG was seeking temporary access to the property "*to perform studies* necessary to verify existing site conditions and to validate public data." *See, e.g.*, ECF No. 4-2 at 6-11 (emphasis added).

Respondents also argue that some of PSEG's notices were deficient because they "sought a right of entry to perform a number of different surveys or studies, including 'geo-technical borings,' which are not permitted under RP § 12-111(a)." ECF No. 29-1 at 25. For the subset of Respondents who received a Temporary Right of Entry Form, those forms did include language that referred to "geo-technical borings," as noted above. But in seeking relief in this case, as noted above, PSEG does *not* contend that it is authorized to conduct "geo-technical borings," has expressly disclaimed any intention of conducting any "geo-technical borings" (other than potentially some tests on small soil samples), and does not seek any order authorizing it to do so. The relevant question here is whether PSEG's writings gave Respondents notice of the type of studies that PSEG *does* intend to do—namely those the PPRP has required it to do. For the reasons explained above, the written notices clearly did so.

Finally, Respondents rely heavily on the requirement in § 12-111 that PSEG make "*every* real and bona fide effort to notify [Respondents] in writing with respect to the proposed entry." RP § 12-111(a) (emphasis added). The upshot of Respondents' argument seems to be that if there are more written notices that PSEG hypothetically could have sent to Respondents, then PSEG cannot have made "every" effort to notify Respondents. But that cannot be what the General Assembly meant in § 12-111(a). The plain language of § 12-111(a), particularly when § 12-111 is read as a whole, makes clear that when the state or another "body politic or corporate" has "the power of eminent domain" within the meaning of the statute, it may not begin to conduct surveys, set stakes or markers, or take the other steps authorized by § 12-111 until after it has given the property owners notice, in writing, about the proposed entry. The statute does not require an endless notification loop. Here, as to each Respondent, PSEG has issued notice, in writing, to each Respondent, about the proposed entry. That is all that § 12-111 requires.

For these reasons, PSEG's complaint more than adequately alleges that it has made "every real and bona fide effort to notify the owner or occupant in writing with respect to the proposed entry" as required by Maryland Code, Real Property, § 12-111(a).

D. Abstention is not warranted

Respondents argue that, regardless of whether PSEG is entitled to a right of entry under § 12-111, this Court should "decline to exercise jurisdiction" under the abstention doctrine originally set forth in

Burford v. Sun Oil Co., 319 U.S. 315, 318 (1943). ECF No. 89-1 at 26-31. "*Burford* permits abstention when federal adjudication would 'unduly intrude' upon 'complex state administrative processes' because either: (1) 'there are difficult questions of state law . . . whose importance transcends the result in the case then at bar'; or (2) federal review would disrupt 'state efforts to establish a coherent policy with respect to a matter of substantial public concern.'" *Martin v. Stewart*, 499 F.3d 360, 364 (4th Cir. 2007) (quoting *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 361-63 (1989)).

Respondents argue that *Burford* abstention is warranted for five reasons. First, they argue that "the PSC is currently considering whether PSEG-RT's application is incomplete" but "in this action, PSEG-RT asks this Court to find that such information is required for its application, *and* that it will suffer irreparable harm if it cannot enter Respondents' properties to obtain it." ECF No. 89-1 at 26, 27. Second, Respondents argue that "if PSEG-RT's application is held to be complete, the PSC will determine whether to approve it, *i.e.,* whether the proposed transmission line is needed and in the public's interest," and in this case, as part of the preliminary injunction analysis, PSEG "asks this Court to prematurely conclude that the proposed transmission line is in fact needed and in the public's interest." *Id.* at 28. Third, Respondents argue that "the PSC must determine the appropriate location and timing of the project" but here PSEG "asks this Court to find that it must enter Respondents' properties now, or it will suffer irreparable consequences." *Id.* at 28-29. Fourth, Respondents argue that "this case is akin to an

eminent domain proceeding" and eminent domain is "a fundamentally local issue regulated by the state." *Id.* at 29 (citing cases). Fifth, Respondents argue that because the Federal Power Act expressly "extend[s] only to those matters which are not subject to regulation by the States," 16 U.S.C. § 824(a), and in Maryland the PSC has exclusive authority to regulate the construction and location of transmission lines in the state," Md. Code Ann., Pub. Util. § 2-113, the regulatory structure itself counsels in favor of abstention.

There is no question that the underlying disputes in this case are largely governed by state law and administered by state agencies. And the fact that PSEG's claim arises in the context of a proceeding that, if PSEG prevails, may result in the exercise of eminent domain, is another factor that arguably militates in favor of abstention. But "[a]bstention doctrines," including *Burford*, "constitute extraordinary and narrow exceptions to a federal court's duty to exercise the jurisdiction conferred on it." *Martin*, 499 F.3d at 363 (cleaned up). Under *Burford*, courts must "balance the state and federal interests to determine whether the importance of difficult state law questions or the state interest in uniform regulation *outweighs* the federal interest in adjudicating the case at bar," *id.*—a balance that "only rarely favors abstention." *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 728 (1996).

Respondents have not shown that this case rises to the type of "extraordinary and narrow" circumstances that justify *Burford* abstention. As for the first *Burford* category ("difficult questions of state law . . . whose importance transcends the result in the case

then at bar"), this Court's interpretation of § 12-311 may very well inform subsequent cases. But that alone would not support abstention; cases in federal court routinely involve interpretations of state law.

Respondents also have not shown that this Court's adjudication of this case would "disrupt state efforts to establish a coherent policy with respect to a matter of substantial public concern." *See Martin*, 499 F.3d at 364. The PSC's regulatory review process, aided by the PPRP's expertise, is ongoing. This Court's adjudication of PSEG's complaint and request for an injunction would not "disrupt" any of those state agencies or their reviews or proceedings; if anything, this Court's prompt adjudication of the case will *aid* those state agencies in discharging their statutory and regulatory obligations.

At bottom, Respondents' request that this Court take the "extraordinary" step of abstaining in this case is based on their concern that doing so risks treading on matters of exclusive and sensitive state authority. Those concerns do not justify abstention because the issues before this Court are discrete and narrow. Deciding that PSEG has the "power of eminent domain" *for purposes of § 12-111* has no bearing on whether the PSC should *grant* PSEG's application for a CPCN, but rather solely on whether PSEG has a right under state law to move forward with the studies the PPRP has directed PSEG to conduct. Similarly, although one of the factors the Court considers in connection with PSEG's motion for a preliminary injunction (discussed below) is whether an injunction is in the "public interest," *Frazier v. Prince George's Cnty., Md.*, 86 F.4th 537, 543 (4th Cir. 2023), that remains a discrete analysis that is focused

on whether permitting PSEG to conduct the state-mandated studies is in the public interest, not whether construction of the Piedmont Project is in the public interest, which is for state authorities to decide, not this Court.

For these reasons, Respondents have not shown that the complaint should be dismissed on *Burford* grounds.

E. The complaint is not subject to dismissal on exhaustion grounds

Next, Respondents argue that PSEG has "failed to exhaust the PSC's special administrative remedies." ECF No. 89-1 at 31. By this, Respondents mean two things.

First, Respondents frame as an "exhaustion" issue the fact that the PSC "has not yet determined that PSEG-RT's application is incomplete and, therefore, has not yet decided whether PSEG-RT (or anyone else, for that matter) needs to enter Respondents' properties." *Id.* But that turns the § 12-111 process on its head. PPRP has concluded that the field studies it has directed are necessary for it to determine *whether* PSEG's application is administratively complete.

Second, Respondents try a different tack, contending that despite PPRP deeming PSEG's application *incomplete* due to the lack of field studies, the PSC and/or PPRP may deem PSEG's application "complete" even *without* field studies, and that will mean that, for § 12-111 purposes, an order granting access to Respondents' properties will not be "necessary to carry out the purposes authorized by [§ 12-111]." *Id.* But PSEG's allegations, and the current record, establish that PPRP's position is that field

studies *are* necessary for the CPCN process to move forward.

F. Respondents have not shown that additional, non-named property owners must be joined under Rule 19

Respondents next argue that one property owner along the proposed right-of-way who has not been named as a respondent, Ms. Congxin Xie, must be joined as a party, and because she—like PSEG—is a citizen of New Jersey, and thus her joinder would destroy diversity jurisdiction, requiring dismissal. ECF No. 89-1 at 32-37.

Federal Rule of Civil Procedure 19 provides certain rules for when a person who is not a party must be joined as a party. Rule 19(a) applies where the person "is subject to service of process" and where joinder of that person "will not deprive the court of subject-matter jurisdiction." Rule 19(b) applies where a person is "required to be joined if feasible" but that person "cannot be joined." Under Rule 19(b), "[i]f a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed." Fed. R. Civ. P. 19(b). The rule then lays out "factors for the court to consider" in deciding whether, in the absence of joinder, the case should be dismissed. *Id.* These factors "include":

(1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;

(2) the extent to which any prejudice could be lessened or avoided by:

(A) protective provisions in the judgment;

(B) shaping the relief; or

(C) other measures;

(3) whether a judgment rendered in the person's absence would be adequate; and

(4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

Id. Under Federal Rule of Civil Procedure 12(b)(7), Respondents bear the burden to "show that the person who was not joined is needed for a just adjudication." *Am. Gen. Life & Accident Ins. Co. v. Wood*, 429 F.3d 83, 92 (4th Cir. 2005).

Respondents' argument boils down to its assertion that because Ms. Xie owns a property that is "in the path of the [Piedmont Project] and is the proposed site for two H-frame transmission structures" and thus "is situated in a similar position to the Respondents named in this case," and because "any order in PSEG-RT's favor in this case necessarily increases the likelihood that it will gain access to [Ms. Xie's] Property in the future," ECF No. 89-1 at 35-36, "in equity and good conscience, the action . . . should be dismissed." Fed. R. Civ. P. 19(b).

These circumstances come nowhere close to justifying dismissal under Rules 19(b) or 12(b)(7). PSEG has expressly disclaimed any intention to seek an order in this case directed at any property owner who has not been named and served as a respondent in this case. An order authorizing PSEG to enter the named Respondents' properties would not prevent the Court from "accord[ing] complete relief among existing parties." Fed. R. Civ. P. 19(a)(1)(A). Disposing of the

claims in this case also would not "impair or impede" Ms. Xie's "ability to protect [her] interest" within the meaning of Rule 19(a)(1)(B). In the event a subsequent proceeding was filed related to conducting studies on Ms. Xie's property, she could assert any defenses she believes she has; although a decision by this Court may be cited as "persuasive authority" in such a proceeding, ECF No. 89-1 at 35, Respondents cite no authority for the proposition that such potential effect would justify *dismissal* of this complaint under Rule 19(b).

G. Venue is proper in this Court

Finally, the Hill Respondents argue that PSEG "filed this case in the wrong court," and that § 12-111 confers jurisdiction exclusively on the state courts of Maryland. ECF No. 95-1 at 20-25. None of the other Respondents make this argument; the Arentz Family Respondents, for example, expressly disclaim any argument that this Court lacks subject matter jurisdiction. *See* ECF No. 89-1 at 29 n.12 (agreeing that § 12-111 "does not divest this Court of diversity jurisdiction . . . ."). And for good reason. Although a federal court sitting in diversity looks to state law to define the substantive rights of the parties, a state "cannot limit the subject matter jurisdiction of federal courts, even in diversity cases." *Wideman v. Innovative Fibers LLC*, 100 F.4th 490, 496-97 (4th Cir. 2024). Here, complete diversity of citizenship undisputedly exists between the parties, and thus this Court has subject matter jurisdiction over the case. There is also no basis for this Court to dismiss on *forum non conveniens* grounds, as the Hill Respondents argue in passing. ECF No. 95-1 at 22 (arguing, "this Court

could dismiss the Petition by applying the doctrine of *forum non conveniens* . . . .").

* * *

For these reasons, all of Respondents' motions to dismiss (ECF Nos. 89, 95, 101) will be denied.

III. PSEG'S MOTION FOR A PRELIMINARY INJUNCTION

That leaves the question of whether PSEG is entitled to a preliminary injunction.

A. Legal standard

To obtain a preliminary injunction, a plaintiff must establish four factors: (1) that they are likely to succeed on the merits; (2) that they are likely to suffer irreparable harm absent relief; (3) that the balance of equities favors them; and (4) that an injunction is in the public interest. *Frazier v. Prince George's Cnty.*, 86 F.4th 537, 543 (4th Cir. 2023) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). A party seeking preliminary injunctive relief must satisfy all four factors. *Real Truth About Obama, Inc. v. FEC*, 575 F.3d 342, 347 (4th Cir. 2009), *vacated on other grounds*, 559 U.S. 1089 (2010). And a preliminary injunction, being an "extraordinary remedy," may "only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22 (citing *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)).

B. Likelihood of success on the merits

PSEG's complaint asserts a single cause of action: for injunctive relief pursuant to § 12-111. As discussed

in detail above, so long as PSEG (1) qualifies as a "body politic or corporate having the power of eminent domain" within the meaning of the statute, and (2) makes "every real and bona fide effort to notify the owner or occupant in writing with respect to the proposed entry," then it is entitled to "[e]nter on any private land" to, among other things, "make surveys, run lines or levels, or obtain information relating to the acquisition or future public use of the property or for any governmental report, undertaking, or improvement." Md. Code Ann., Real Property, § 12-111(a).

The first element of the cause of action presents what is largely a question of law. And for the reasons discussed above, PSEG qualifies as a "body . . . corporate having the power of eminent domain" within the meaning of the statute.

The second element that PSEG must satisfy to have a right to enter Respondents' properties to conduct the studies required by PPRP is whether its efforts to "notify" Respondents' "in writing" with respect to the "proposed entry" are adequate. That is a mixed question of fact and law, turning on (a) what steps PSEG has taken to give such written notice, and (b) whether those steps are sufficient under the statute. As for the factual question, Respondents do not seriously dispute that all of the letters set forth in the table above (§ I.C) were sent, and were received by Respondents. The Court need not decide whether PSEG has definitively established that it sent the written notices to Respondents; the question at this time is whether PSEG has shown a likelihood that it sent the written notices and that they satisfied the

statutory requirements. PSEG has clearly made that showing.

The Court is sensitive to the fact that the relief PSEG is seeking in the form of a preliminary injunction is largely congruent with the final relief that PSEG seeks through its complaint as final relief. Accordingly, the Court has scrutinized the underlying evidence, including not only the written notices, but also the records of oral communications between PSEG and CLS representatives, on one hand, and Respondents, on the other. Respondents apparently dispute some of the precise oral communications that occurred, or whether they occurred. But PSEG obviously need not show that Respondents *agreed* to allow the surveys to be conducted; that dispute is what gave rise to this litigation. And as discussed above, although § 12-111 refers to "every real and bona fide effort" being required to "notify" a landowner, that does not mean PSEG must cycle through endless written notices; here, PSEG has issued at least two written notices to each Respondent. Indeed, with respect to every Respondent but one, the Respondents affirmatively refused PSEG's requests, thereby acknowledging receipt of the written notice. PSEG has readily shown a likelihood of success on the merits of its claim that it has complied with the notification required by § 12-111.

With respect to most of the other defenses Respondents have lodged—on venue, exhaustion, abstention, and joinder grounds—those arguments fail for the reasons discussed above.

Finally, Respondents argue that PSEG has not shown a likelihood of success on the merits because entering Respondents' land to conduct the studies

PPRP has requested itself constitutes a taking, for which just compensation would have to be paid. The only case Respondents cite for this proposition is *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021). There, the Supreme Court explained that "a physical appropriation is a taking whether it is permanent or temporary," and the "duration of an appropriation—just like the size of an appropriation . . . —bears only on the amount of compensation." *Id.* at 153. But as the *Cedar Point* Court itself explained, "many government-authorized physical invasions will not amount to takings because they are consistent with long-standing background restrictions on property rights," consistent with "traditional common law privileges to access private property," including "enter[ing] property in the event of public or private necessity." *Id.* at 160-61 (citing Restatement (Second) of Torts §§ 196, 197 (1964)). In other words, *entry* by a government agency or at government direction (or "invasion" in the language of *Cedar Point*) does not necessarily constitute an "appropriation."

While "the right to exclude is one of the essential sticks in the bundle of property rights," common law "has long recognized exceptions to the right." *Klemic v. Dominion Transmission, Inc.*, 138 F. Supp. 3d 673, 688 (W.D. Va. 2015). One such exception is the right of a public utility "to enter upon privately owned land for the purpose of making surveys preliminary to instituting a proceeding for taking by eminent domain." *Id.* (citing Restatement (Second) of Torts §§ 159, 191-211 (1964)). In *Cedar Point*, the intrusion at issue was held to constitute a taking because the government had "appropriated a right of access to the growers' property, allowing union organizers to

traverse it at will for three hours a day, 120 days a year"—in other words, to conduct disruptive activities on businesses' own properties, up to 360 hours per year, year after year. *Id.* at 152. The right of entry that PSEG seeks here, and to which § 12-111 entitles it, comes nowhere close to the frequent, extended physical presence at issue in *Cedar Point*—especially because § 12-111 itself requires that if PSEG "damages or destroys any land or personal property," it must pay the property owner to repair the damage. Md. Code Ann., Real Prop., § 12-111(c).

For these reasons, PSEG has made a strong showing that it is likely to succeed on the merits.

C. Irreparable harm

A party seeking a preliminary injunction must next "demonstrate a likelihood of irreparable injury—not just a possibility—in order to obtain preliminary relief," in other words "that irreparable injury is *likely* in the absence of an injunction." *Winter*, 555 U.S. at 21. "To establish irreparable harm, the movant must make a 'clear showing' that it will suffer harm that is 'neither remote nor speculative, but actual and imminent.'" *Mountain Valley Pipeline, LLC v. 6.56 Acres of Land, Owned by Sandra Townes Powell*, 915 F.3d 197, 216 (4th Cir. 2019) (quoting *Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d 802, 812 (4th Cir. 1991)). Irreparable means the injury "cannot be fully rectified by the final judgment after trial." *Id.* (quoting *Stuller, Inc. v. Steak N Shake Enters.*, 695 F.3d 676, 680 (7th Cir. 2012)).

PSEG argues it will suffer three types of irreparable harm absent a preliminary injunction. They overlap, but are conceptually distinct. First,

PSEG argues that if the project is delayed, "it will not be able to timely complete the surveys and gather the information requested by PPRP," thereby "prevent-[ing] [PSEG's] CPCN application from proceeding to a final resolution with enough time that [PSEG] may begin constructions on the MPRP in January 2026," as required under the DEA. ECF No. 75-1 at 25. In other words, PSEG argues that delay in and of itself, even if unaccompanied by concrete costs or other harm, would satisfy the irreparable harm standard. Second, PSEG argues that not only will delay in conducting the PPRP-required surveys cause delays in the CPCN process and thereby delay completion of the project, but those delays themselves will cause irreparable monetary harm in the form of "anticipated financial losses attributable to a construction delay," that PSEG could not recover, through this litigation or otherwise. *Id.* at 29-30. Third, PSEG argues that it will suffer irreparable harm because Defendants "are preventing [PSEG] from freely exercising its statutory right to enter their properties," and "[w]here a plaintiff has lost or will lose a right that is codified and guaranteed by state, the loss of the right is not compensable in any future proceeding, and the plaintiff has no way of otherwise restoring the lost right, the plaintiff has shown irreparable harm." ECF No. 167 at 13.[5]

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[5] PSEG also points to out-of-pocket expenses it has *already* incurred as another form of irreparable harm. Because the Court concludes below that PSEG has shown that it is likely to suffer irreparable harm going forward if a preliminary injunction is not issued, the Court need not and does not decide whether costs that PSEG has already incurred, and that it contends would not be recoverable or reimbursable, constitute irreparable injury that

The Fourth Circuit has repeatedly held that where a large public infrastructure project would be delayed in the absence of a preliminary injunction, and where those delays would likely result in economic losses that would be unrecoverable in the litigation, such delay-related costs qualify as irreparable harm under the preliminary injunction legal framework. *Mountain Valley Pipeline,* 915 F.3d at 216-19; *East Tennessee Natural Gas Co. v. Sage*, 361 F.3d 808, 828-29 (4th Cir. 2004). In *Mountain Valley* and *Sage,* the projects were natural gas pipelines that FERC had approved; land was to be taken by eminent domain, but there remained disputes about what compensation would be paid. *Mountain Valley*, 915 F.3d at 209; *Sage*, 361 F.3d at 820. In those cases, the developers faced substantial out-of-pocket costs, and lost revenue, during any period of time in which they would be forced to delay construction of the pipelines. *Mountain Valley*, 915 F.3d at 217-18; *Sage*, 361 F.3d at 829-30. The Fourth Circuit held that those costs, and lost revenues, were irreparable harm that entitled those plaintiffs to preliminary injunctions permitting them to begin construction.

In some respects, as Respondents point out, *Mountain Valley* and *Sage* are distinguishable. First, the *Mountain Valley* and *Sage* plaintiffs had already been granted the right to take land by eminent domain, whereas here the PSC is in the process of deciding whether to grant that right (and is waiting to do so until PPRP weighs in). Second, unlike in

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would further support a preliminary injunction. The Court focuses herein on *future* injuries that PSEG contends it would incur (and that it would not otherwise recover or be reimbursed for) if a preliminary injunction does not issue.

Mountain Valley and *Sage*, at least some of the out-of-pocket costs that PSEG has incurred, or may incur, may be reimbursed by FERC under certain "incentives" that FERC has granted for the project. *See* ECF No. 125-3 (declaration of Scott Molony, former FERC Chief Accountant, attaching and describing an August 2024 FERC order granting PSEG certain "incentives," including the possibility of being reimbursed certain out-of-pocket costs); ECF No. 167 at 11-12 (PSEG's response to the Molony declaration).[6] In addition to arguing those distinctions from *Mountain Valley* and *Sage*, Respondents argue that "[e]conomic losses generally do not constitute irreparable harm," and "[e]ven if this were a rare case in which monetary damage alone could constitute irreparable injury, PSEG-RT is unlikely to suffer any economic losses under any circumstance." ECF No. 92-1 at 25 (citing *Hughes Network Sys., Inc. v. InterDigital Communications Corp.*, 17 F.3d 691, 694 (4th Cir. 1994)).

Notwithstanding these distinctions from *Mountain Valley* and *Sage*, PSEG has shown irreparable harm sufficient to justify issuance of a preliminary injunction, specifically in the form of lost revenues that PSEG would incur in the absence of an injunction (the second of the three categories listed above).

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[6] The question of whether, or how, the FERC incentives inform the preliminary injunction analysis arose just before the preliminary injunction hearing, through Respondents' supplemental filing on May 15, 2025. ECF No. 125. The Court granted all parties the opportunity to submit supplemental briefs or evidence on that issue. The parties did so on May 27 at [sic] 29, and June 2 and 5. ECF No. 167 (PSEG); ECF Nos. 247 & 253 (Arentz Respondents); ECF No. 248 (Hill Respondents); ECF No. 249 (Dell Respondents); ECF No. 250 (Peter and John Radio Fellowship).

"[W]hen economic losses would *not* be recoverable at the end of litigation . . . that is enough to take [a] case out of the ordinary presumption against treating economic losses as irreparable injury." *Mountain Valley*, 815 F.3d at 218. In *Mountain Valley* and *Sage*, the Fourth Circuit held that "prospective economic injuries flowing from a delay in pipeline construction" qualified as irreparable injury, justifying a preliminary injunction. *Id.*; *Sage*, 361 F.3d at 828-29. That component of the irreparable harm in those cases applies squarely here.

Like in *Mountain Valley*, PSEG has asserted that it will incur prospective financial losses such as loss of revenue and carrying costs as a result of delaying or possibly missing the deadline to construct the Piedmont Project. *See* ECF No. 75-1 at 29-30 ("The Company will also suffer irreparable harm in the form of monetary harm if its construction of the MPRP is delayed.") (citing *Mountain Valley*, 915 F.3d at 217-19). If the project is delayed, PSEG is likely to lose any revenue it would otherwise have received had PSEG been able to meet the June 1, 2027 in-service deadline. In short, PSEG has established that, in the absence of conducting these surveys, PSEG risks a level of delay that will almost certainly entail some prospective financial harms.

Because PSEG has shown that the project could be substantially delayed in the absence of an injunction, and that it likely will suffer substantial monetary harm from anticipated future financial losses (such as loss of revenue) as a result of the delay, PSEG has

satisfied the irreparable harm element for a preliminary injunction.[7]

D. Balance of Equities

"In deciding whether to grant injunctive relief, the Court must weigh the balance of the equities and the relative harms to the parties." *ClearOne Advantage, LLC v. Kersen*, 710 F. Supp. 3d 425, 437 (D. Md. 2024) (citing *Scotts Co. v. United Inds. Corp.*, 315 F.3d 264, 283 (4th Cir. 2002)). Respondents argue that the balance of equities tips in their favor because (1) "[i]ndefinite access to sensitive farmland could result in biosecurity breaches . . . [or] physical damage," (2) some Respondents may be interrupted in conducting other business on their properties, such as summer camps and retreat centers, and (3) Respondents may not receive compensation for PSEG's entries to conduct the studies. ECF No. 92-1 at 28-34.[8] PSEG contends that the order it seeks is for a "temporary, limited, non-invasive survey access right," and the harms that Defendants allege they will suffer would be a result of the construction of the transmission line itself (for which any affected

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[7] As noted above, PSEG adds that it is likely to suffer *additional* irreparable harms, beyond the likely loss of revenue, in the absence of a preliminary injunction. Because PSEG has satisfied the irreparable harm element on the basis of future lost revenue alone, the Court need not and does not decide whether these additional asserted forms of future injury bolster PSEG's entitlement to a preliminary injunction.

[8] On the last point, although PSEG has offered compensation to property owners who agree to permit access, *see, e.g.*, ECF No. 5-2 at 4, PSEG's position is that no compensation is *required* because a limited entry to conduct the studies that PPRP has ordered do not constitute a taking.

property owners would receive just compensation), not the narrow right of entry to conduct studies that they seek to exercise here. ECF No. 105-1 at 8-9. PSEG further asserts that it only seeks the type of access permitted under § 12-111; it is not seeking authorization to conduct invasive geotechnical surveys. *Id.* at 10 n.7.

As discussed above, PSEG has made a strong showing that it is likely to succeed on the merits, and PSEG has also shown that it will suffer prospective financial losses that constitute irreparable harm if the preliminary injunction is not granted. On balance, given that (1) the studies PSEG seeks to conduct would be minimally invasive, (2) PSEG only seeks a temporary right of entry (not permanent), and (3) Respondents may file a cause of action for damages in the event that any land or personal property is damaged or destroyed as a result of the surveys, the balance of equities tips in PSEG's favor.

E. Public Interest

Finally, PSEG contends that preliminary relief is in the public interest because "[i]f the MPRP is not timely constructed and placed into operation, the reliability of an electric grid that serves millions of residential and commercial electricity consumers will be put at risk." ECF No. 75-1 at 32. Respondents , on the other hand, contend that granting preliminary relief "would subvert the ongoing CPCN administrative process," and "shift financial risks onto the public inappropriately." ECF No. 88 at 41. Respondents further cite to "the public opposition to the MPRP" as "underscor[ing] where the public interest truly lies." *Id.*

As the Fourth Circuit held in *Mountain Valley* and *Sage*, advancing projects like this one is generally in the public interest. *Mountain Valley*, 915 F.3d at 221-222; *Sage*, 361 F.3d at 830. In *Sage*, the Fourth Circuit found that, independent of FERC's approval, the construction of the interstate gas pipeline at issue there not only "serves the public interest because, among other things, it will bring natural gas to portions of southwest Virginia for the first time," but also "[o]n a larger scale, the pipeline will make gas available for electric power generation plants, [and a] delay in construction would postpone these benefits." *Sage*, 361 F.3d at 830. *Mountain Valley* echoed this conclusion and clarified that it is "not to say . . . that a FERC certificate necessarily will be dispositive of the public interest inquiry under *Winter*." *Mountain Valley*, 915 F.3d at 222. The relief PSEG seeks here is narrow and temporary. And most importantly, the PPRP, which is an arm of the Maryland Department of Natural Resources, and which the General Assembly has tasked with assessing environmental and socioeconomic effects of projects like this one, *see* Md. Code Ann., Nat. Res. § 3-303, has determined that conducting the studies at issue here is necessary for it to discharge its statutory duties. The Court sees no reason to second-guess the PPRP's determination that conducting these studies would be in the public interest. In short, PSEG has shown that issuance of a preliminary injunction is in the public interest.[9]

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[9] The Court need not, and does not, opine on whether construction of a transmission line, and specifically on the route proposed by PSEG, would be in the public interest. That is a determination for the PSC to make; it is not an issue presented by PSEG's petition in this case.

IV. CONCLUSION

For these reasons, PSEG has stated a cognizable claim under Maryland Code, Real Property § 12-111, for entry onto Respondents' properties to conduct the studies set forth in the PPRP's March 26, 2025 letter (ECF No. 3-5), and Respondents have not identified any valid basis for dismissal of the complaint. Accordingly, Respondents' motions to dismiss (ECF Nos. 89, 95 & 101) will be denied. And because PSEG has shown a likelihood of success on the merits and irreparable harm, and because the balance of equities and public interest support issuance of a preliminary injunction, PSEG's motion for a preliminary injunction (ECF No. 75) will be granted. A separate order and preliminary injunction follow.

Date: June 20, 2025

/s/
Adam B. Abelson
United States
District Judge

Filed: June 20, 2025

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

PSEG RENEWABLE TRANSMISSION LLC, *Plaintiff*, v. ARENTZ FAMILY, LP, *et al.*, *Defendants*	Case No. 25-cv-1235-ABA

ORDER

Upon consideration of the Motion for Preliminary Injunction filed by Plaintiff PSEG Renewable Transmission LLC ("PSEG") (ECF No. 75), Defendants' memoranda in opposition (ECF Nos. 88, 92, 95), Plaintiffs' reply brief (ECF No. 105), the supplemental briefs (ECF Nos. 167, 247, 249, 250, 253), as well as Defendants' motions to dismiss (ECF Nos. 89, 95, 101), and the exhibits to those submissions, and having held a hearing on May 19, 2025, and for the reasons set forth in the accompanying Memorandum Opinion, it is hereby ORDERED as follows:

1. Plaintiff's Motion for Preliminary Injunction (ECF No. 75) is GRANTED;
2. Defendants' Motions to Dismiss (ECF Nos. 89, 95, 101) are DENIED;
3. Defendants' Motion to Defer Consideration (ECF No. 93) is DENIED as MOOT;

4. The parties shall file status reports every 30 days beginning from the date of this Order, beginning July 21, 2025; and
5. Within seven days of this Order, PSEG shall serve a copy of this Preliminary Injunction, Order, and Memorandum Opinion by certified mail on each Respondent.

Date: June 20, 2025

/s/
Adam B. Abelson
United States
District Judge

Filed: June 20, 2025

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

PSEG RENEWABLE TRANSMISSION LLC, *Plaintiff*, v. ARENTZ FAMILY, LP, *et al.*, *Defendants*	Case No. 25-cv-1235-ABA

PRELIMINARY INJUNCTION

Pursuant to Federal Rule of Civil Procedure 65, it is hereby ORDERED as follows:

1. For a period from the date of this Order until PSEG's application for a Certification of Public Convenience and Necessity, currently pending as Case No. 9773 before the Maryland Public Service Commission, is granted or denied, PSEG shall be permitted to enter onto the properties of Respondents and to remain on the property to the extent reasonably necessary to make surveys, run lines or levels, or obtain information relating to the acquisition and future use of the properties in connection with the Maryland Piedmont Reliability Project; and
2. PSEG shall give any Respondent not less than 24 hours' notice that PSEG will enter onto the Respondent's property by taping a notice on the front door of the Respondent (but PSEG

may give one notice for entry on multiple days).

Date: June 20, 2025

/s/
Adam B. Abelson
United States
District Judge

Filed: July 11, 2025

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

PSEG RENEWABLE TRANSMISSION LLC, *Plaintiff*, v. ARENTZ FAMILY, LP, *et al.*, *Defendants*	Case No. 25-cv-1235-ABA

MEMORANDUM OPINION AND ORDER

On June 20, 2025, the Court granted Petitioner PSEG Renewable Transmission LLC's ("PSEG's") motion for a preliminary injunction. ECF No. 256 (preliminary injunction); ECF No. 255 (order); ECF No. 254 (memorandum opinion). Respondents have filed a motion to stay the preliminary injunction, ECF No. 258, which PSEG has opposed, ECF No. 263.

Courts have "inherent" authority to hold an order in abeyance pending appeal, a grant of authority "preserved" by the All Writs Act, which authorizes federal courts to "'issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.'" *Nken v. Holder*, 556 U.S. 418, 427, 433 (2009) (quoting 28 U.S.C. § 1651(a)). "A stay is not a matter of right"; a party requesting a stay "bears the burden of showing that the circumstances justify" a stay, *id.* at 433-34, based on a consideration of "(1) whether the stay applicant has made a strong showing that he is likely

to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Id.* at 426 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)).

As an initial matter, the parties dispute whether the preliminary injunction preserves or alters the "status quo." This argument does not pertain directly to any of the *Nken* factors, but rather to what standard applies to PSEG's motion for a preliminary injunction or Respondents' motion to stay. Respondents describe the preliminary injunction as "mandatory" as opposed to "prohibitory," and argue the preliminary injunction altered the status quo, which Respondents contend requires PSEG to show "extraordinary circumstances" to avoid a stay. ECF No. 258-1 at 7-8 (quoting *2311 Racing LLC v. Nat'l Ass'n for Stock Car Auto Racing, LLC*, 139 F.4th 404, 408 (4th Cir. 2025)); *see also id.* at 8 (Respondents arguing, "Prior to June 20, 2025, PSEG could not enter Respondents properties. Now it can."). PSEG argues that *granting* a stay would alter the status quo, and that this Court's preliminary injunction qualifies as "prohibitory" because "the right of entry provided for in RP § 12-111 is self-executing" and it was Respondents who, by refusing PSEG entry to conduct the studies, were "interfer[ing] with the Company's exercise of its statutory right." ECF No. 263 at 9; *see also id.* (PSEG: "Respondents refused to allow PSEG to exercise its statutory right, but that refusal did not alter PSEG's statutory right of entry.").

This Court already explained why PSEG has shown an entitlement to a preliminary injunction

even though the order confirming its right to access Respondents' property is "largely congruent with the final relief that PSEG seeks through its complaint as final relief." ECF No. 254 at 43. But also, this dispute over how to characterize the "status quo" is largely beside the point with respect to the motion to stay. Whether the injunction is properly characterized as mandatory or prohibitory, or preserving the status quo or altering it, the standard for a stay pending appeal is the one articulated in *Nken*. And for largely the reasons already articulated in this Court's memorandum opinion granting PSEG's motion for a preliminary injunction, Respondents have not shown that the *Nken* factors justify a stay pending appeal.

As for Respondents' reliance on *2311 Racing LLC*, the analogy Respondents seek to draw is inapt. That was an antitrust case, where two NASCAR teams alleged that a provision in a NASCAR charter agreement that required releasing claims arising from past conduct violated Section 2 of the Sherman Act. 139 F.4th at 407. The teams sought a preliminary injunction ordering a rewriting of the charter agreement to excise the complained-of release provision, and permitting the teams to compete under that judicially modified contract. *Id.* That clearly constituted a "mandatory" injunction that "alter[ed], rather than preserve[d], the status quo." *Id.* at 408 (quoting *Taylor v. Freeman*, 34 F.3d 266, 270 n.2 (4th Cir. 1994)). The status quo would have been either that the teams would (a) agree to the charter agreement and compete under its terms, or (b) forego racing and preserve their right to sue NASCAR based on past conduct.

Here, for the reasons the Court has explained, § 12-111 entitles PSEG, after giving actual notice (which it

indisputably has done), to temporarily enter properties along the proposed Piedmont Project route to, among other things, "make surveys, run lines or levels, or obtain information relating to the acquisition or future public use of the property or for any governmental report, undertaking, or improvement." Md. Code Ann., Real Property § 12-111(a)(1). That legal entitlement is particularly clear given that PSEG has been directed to conduct those studies by the state agency responsible for assessing the "environmental, natural resources, and socioeconomic" impact of the project. *See* ECF No. 254 at 7 (quoting COMAR 20.79.04.04(B)-(D)). The preliminary injunction this Court has granted simply confirms PSEG's preexisting legal entitlement to conduct the studies at issue; the status quo has been preserved, not altered. But even if framed as a modification of the status quo such that it constitutes "[m]andatory preliminary injunctive relief," *Taylor*, 34 F.3d at 270 n.2, PSEG has satisfied that standard, for the same reasons the Court has previously explained.

Respondents' remaining arguments for a stay fail to satisfy the *Nken* standard.

With respect to their likelihood of success on appeal, although Respondents re-argue their proposed interpretation of § 12-111, ECF No. 258-1 at 11-14, this Court has already concluded that PSEG has shown the far more persuasive interpretation of the statute, ECF No. 254 at 25-32, and that the evidence clearly establishes that PSEG gave actual notice as required, *id.* at 12-22. Respondents contend that the Court "did not address whether and when, under PU § 7-207, the State of Maryland delegates the power of eminent domain to a transmission line developer."

ECF No. 258-1 at 12. Not so. The Court explained the relationship and respective interpretations of Real Property § 12-111 and Public Utility § 7-207, including that the text and structure of § 7-207 confirm that § 12-111 does not require that an entity like PSEG have already been granted the power to acquire land by condemnation before § 12-111 authorizes the types of studies at issue here. ECF No. 254 at 6, 26-31. Respondents have not shown a likelihood of success on the merits of their appeal.

As for whether Respondents "will be irreparably injured absent a stay," *Nken*, 556 U.S. at 426, Respondents do not attempt to make any such showing in their motion. Insofar as they rely on the harms they previously articulated in opposing entry of a preliminary injunction, the Court has already explained why the balance of harms weighs in PSEG's favor. ECF No. 254 at 49-50. As to "whether issuance of the stay will substantially injure" PSEG, *see Nken*, 556 U.S. at 426, for the same reasons PSEG has shown it would suffer irreparable harm in the absence of a preliminary injunction, ECF No. 254 at 45-49, it has shown that it will be substantially injured if the preliminary injunction were stayed.

Finally, the public interest factors weigh against a stay for the same reasons they weigh in favor of issuance of the preliminary injunction. *Id.* at 50-51. Respondents argue that, in considering the public interest, the Court should give limited weight to the Power Plant Research Program's conclusion that the studies at issue are necessary for it to conduct its statutorily mandated review. *See* ECF No. 258-1 at 15 (arguing that the PPRP "merely recommended that the PSC deem PSEG's CPCN application incomplete

because, among various reasons, the application omitted [certain] field-based surveys"). But that is a semantic distinction. The *reason* the PPRP declined to green-light the project was because it determined that, until those studies are completed, it will be unable to fully assess the environmental impact of locating the transmission line along the currently proposed route.

For these reasons, Respondents' motion to stay pending appeal is denied. Although Respondents have not shown a basis for a stay pending appeal, there are two modifications to the preliminary injunction that they have requested and to which PSEG, at least in part, does not object.

First, Respondents request a monetary bond, and propose an amount of $1 million, which translates to roughly $11,000 per property. ECF No. 258-1 at 17. PSEG argues that any bond should be limited to $1,000 per property, or $91,000. ECF No. 263 at 16-21. The Court will grant Respondents' unobjected-to request to add a bond requirement to the preliminary injunction. But Respondents have not shown that a bond remotely in the range they propose is justified. A property owner is entitled to monetary damages if an engineer, surveyor or appraiser "damages or destroys any land or personal property." Md. Code Ann., Real Prop., § 12-111(c). Respondents have made no showing that conducting the limited studies at issue poses any likelihood of damage to the properties, let alone in an amount exceeding $1,000 per property. *See Hoechst Diafoil Co. v. Nan Ya Plastics Corp.*, 174 F.3d 411, 421 n.3 (4th Cir. 1999) (directing courts, in selecting an amount for a bond, to consider "the potential incidental and consequential costs as well as

either the losses the unjustly enjoined or restrained party will suffer during the period he is prohibited from engaging in certain activities or the complainant's unjust enrichment caused by his adversary being improperly enjoined or restrained") (quoting 11A Charles Alan Wright *et al.*, Federal Practice & Procedure § 2954, at 292 (2d ed. 1995)). The bond will be set at $100,000.

Second, Respondents request that the Court "clarify" that the Preliminary Injunction is limited to permitting PSEG "access rights to conducting non-invasive surveys on a temporary and limited basis." ECF No. 258-1. Respondents are correct that the scope of PSEG's rights are limited to those authorized by § 12-111. The Court will amend the preliminary injunction to clarify that the activities PSEG may conduct are limited to those authorized by the statute.

CONCLUSION AND ORDER

For the foregoing reasons, Respondents' motion to Stay Preliminary Injunction Pending Appeal, ECF No. 258, is GRANTED IN PART AND DENIED IN PART. The request to stay pending appeal is DENIED. The request to modify the preliminary injunction to require payment of a bond is granted (but for an amount smaller than Respondents request), and their request to clarify the preliminary injunction is granted. A separate Amended Preliminary Injunction follows.

Date: July 11, 2025

/s/
Adam B. Abelson
United States
District Judge

Filed: July 11, 2025

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

PSEG RENEWABLE TRANSMISSION LLC, *Plaintiff*, v. ARENTZ FAMILY, LP, *et al.*, *Defendants*	Case No. 25-cv-1235-ABA

AMENDED PRELIMINARY INJUNCTION

Pursuant to Federal Rule of Civil Procedure 65, it is hereby ORDERED as follows:

1. For a period from the date of this Order until PSEG's application for a Certification of Public Convenience and Necessity, currently pending as Case No. 9773 before the Maryland Public Service Commission, is granted or denied, PSEG shall be permitted to enter onto the properties of Respondents and to remain on the property to the extent reasonably necessary to make surveys, run lines or levels, or obtain information relating to the acquisition and future use of the properties in connection with the Maryland Piedmont Reliability Project, as identified by the Power Plant Research Program in its March 26, 2025 letter (ECF No. 3-5), and as authorized by Md. Code Ann., Real Prop., § 12-111.

2. PSEG shall give any Respondent not less than 24 hours' notice that PSEG will enter onto the

Respondent's property by taping a notice on the front door of the Respondent (but PSEG may give one notice for entry on multiple days).

3. PSEG shall file proof of bond in the amount of $100,000, within 14 days of this order, to cover any "costs and damages sustained by any party found to have been wrongfully enjoined or restrained," *see* Fed. R. Civ. P. 65(c).

Date: July 11, 2025

/s/
Adam B. Abelson
United States
District Judge

Federal Rule of Civil Procedure 65(a), (c)-(d)

(a) PRELIMINARY INJUNCTION.

(1) *Notice.* The court may issue a preliminary injunction only on notice to the adverse party.

(2) *Consolidating the Hearing with the Trial on the Merits.* Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial. But the court must preserve any party's right to a jury trial.

* * *

(c) SECURITY. The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained. The United States, its officers, and its agencies are not required to give security.

(d) CONTENTS AND SCOPE OF EVERY INJUNCTION AND RESTRAINING ORDER.

(1) *Contents.* Every order granting an injunction and every restraining order must:

(A) state the reasons why it issued;

(B) state its terms specifically; and

(C) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required.

(2) *Persons Bound.* The order binds only the following who receive actual notice of it by personal service or otherwise:

(A) the parties;

(B) the parties' officers, agents, servants, employees, and attorneys; and

(C) other persons who are in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B).

28 U.S.C. § 2072(a)-(b)

§ 2072. Rules of procedure and evidence; power to prescribe

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals.

(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

Md. Code Ann., Real Prop. § 12-111(a)-(e)

§12-111.

(a) Civil engineers, land surveyors, real estate appraisers, and their assistants acting on behalf of the State or of any of its instrumentalities or any body politic or corporate having the power of eminent domain after every real and bona fide effort to notify the owner or occupant in writing with respect to the proposed entry may:

(1) Enter on any private land to make surveys, run lines or levels, or obtain information relating to the acquisition or future public use of the property or for any governmental report, undertaking, or improvement;

(2) Set stakes, markers, monuments, or other suitable landmarks or reference points where necessary; and

(3) Enter on any private land and perform any function necessary to appraise the property.

(b) If any civil engineer, surveyor, real estate appraiser, or any of their assistants is refused permission to enter or remain on any private land for the purposes set out in subsection (a) of this section, the person, the State, its instrumentality, or the body politic or corporate on whose behalf the person is acting may apply to a law court of the county where the property, or any part of it, is located for an order directing that the person be permitted to enter on and remain on the land to the extent necessary to carry out the purposes authorized by this section.

(c) If a civil engineer, surveyor, real estate appraiser, or any of their assistants enters on any private land under the authority of this section or any

court order passed pursuant to it, and damages or destroys any land or personal property on it, the owner of the property has a cause of action for damages against the civil engineer, surveyor, real estate appraiser, or assistant and against the State, its instrumentality, or the body politic or corporate on whose behalf the person inflicting the damage was acting.

(d) Any landowner or other person who willfully obliterates, damages, or removes any stake, marker, monument, or other landmark set by any civil engineer, surveyor, or real estate appraiser or any of their assistants acting pursuant to this section, except if the stake, marker, monument, or other landmark interferes with the proper use of the property, is guilty of a misdemeanor and on conviction shall be fined not more than $500.

(e) Any person who has knowledge of an order issued pursuant to subsection (b) and who obstructs any civil engineer, surveyor, real estate appraiser, or any of their assistants acting under the authority of the order may be punished as for contempt of court.

Md. Code Ann., Pub. Util. § 7-207(b)(3)

(b)(3)(i) Except as provided in paragraph (4) of this subsection, unless a certificate of public convenience and necessity for the construction is first obtained from the Commission, a person may not begin construction of an overhead transmission line that is designed to carry a voltage in excess of 69,000 volts or exercise a right of condemnation with the construction.

(ii) For construction related to an existing overhead transmission line, the Commission may waive the requirement in subparagraph (i) of this paragraph for good cause.

(iii) Notwithstanding subparagraph (i) of this paragraph and subject to subparagraph (iv) of this paragraph, the Commission may issue a certificate of public convenience and necessity for the construction of an overhead transmission line only if the applicant for the certificate of public convenience and necessity:

1. is an electric company; or
2. is or, on the start of commercial operation of the overhead transmission line, will be subject to regulation as a public utility by an officer or an agency of the United States.

(iv) The Commission may not issue a certificate of public convenience and necessity for the construction of an overhead transmission line in the electric distribution service territory of an electric company to an applicant other than an electric company if:

1. the overhead transmission line is to be located solely within the electric distribution service territory of that electric company; and

2. the cost of the overhead transmission line is to be paid solely by that electric company and its ratepayers.

(v) 1. This subparagraph applies to the construction of an overhead transmission line for which a certificate of public convenience and necessity is required under this section.

2. On issuance of a certificate of public convenience and necessity for the construction of an overhead transmission line, a person may acquire by condemnation, in accordance with Title 12 of the Real Property Article, any property or right necessary for the construction or maintenance of the transmission line.