

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 90
Finance

(Senator Feldman)

Electric Facilities - Study and Procedures

This bill requires the Public Service Commission (PSC) to set a date by which the Department of Natural Resources (DNR) and the Maryland Department of the Environment (MDE) must submit specified materials for a hearing on a certificate of public convenience and necessity (CPCN). PSC may waive the due date only for undue hardship or on agreement of the parties to the proceeding. A provision that allows State agencies to participate in a CPCN hearing and to modify recommendations after the hearing is removed. Specified local government offices are authorized to submit written reports on the consistency of CPCN applications with local comprehensive plans and zoning at the hearing; however, local governments are prohibited from taking specified adverse actions related to CPCN projects. Separately, the bill excludes the installation of specified visual buffering from the definition of “construction” for purposes of the CPCN process.

Fiscal Summary

State Effect: The bill does not materially affect State finances; operational effects are generally limited to the increased standard for reporting deadline waivers and the removal of State agency authorization to participate in CPCN hearings.

Local Effect: The bill does not materially affect local government finances or operations.

Small Business Effect: Minimal.

Analysis

Bill Summary: A county or municipality in which a generating station or qualified generator lead line that has received a CPCN is proposed to be located may not unreasonably withhold, condition, or delay issuance of site plan approval or any other permit or approval to the project. Likewise, a county or municipality may not implement a site plan approval or other permit or approval requirement that is inconsistent with or more stringent than the licensing requirements of a CPCN issued to the project.

Current Law: Within 60 days after a CPCN application has been filed with PSC, the Secretary of Natural Resources must require DNR to complete any additional study and investigation concerning the application, and the Secretary of the Environment must require MDE to study and investigate the necessity for dredging and filling at the proposed plant site and water appropriation or use. The secretaries must jointly forward the results of the study and investigation, together with a recommendation that the CPCN be granted, denied, or granted with any condition deemed necessary, to the PSC chairman.

The results and recommendations must be open for public inspection and be presented by the secretaries or their designees at the public CPCN hearing PSC holds as required under the Public Utilities Article. Within 15 days from the conclusion of the hearing, and based on the evidence presented, the secretaries must jointly present their final recommendation to the PSC chairman, including, but not limited to, any specific conclusions as to any private wetlands involved and any specific conclusions as to any water use or restriction of water use involved.

For general information on the CPCN process, please see the **Appendix – Certificate of Public Convenience and Necessity**.

State Fiscal Effect: The bill does not materially affect State finances, however, both PSC and MDE indicate that the “undue hardship” requirement for a waiver of CPCN reporting deadlines is an increased standard from current practice. MDE has expressed concern that the bill’s changes may limit its ability to provide comprehensive information to PSC during the CPCN process.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 103 (Delegate Brooks) - Economic Matters.

Information Source(s): Public Service Commission; Maryland Department of the Environment; Department of Natural Resources; Office of People's Counsel; Anne Arundel, Charles, Frederick, and Montgomery counties; City of Havre de Grace; Department of Legislative Services

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Appendix – Certificate of Public Convenience and Necessity

General Overview

The Public Service Commission (PSC) is the lead agency for licensing the siting, construction, and operation of power plants and related facilities in the State through Certificates of Public Convenience and Necessity (CPCN). The CPCN process is comprehensive and involves several other State agencies, including the Department of Natural Resources (and its Power Plant Research Program), and the Maryland Department of the Environment.

Subject to limited exemptions described below, a person may not begin construction in the State of a generating station, overhead transmission line, or a qualified generator lead line unless a CPCN is first obtained from PSC. “Generating station” is not defined in statute; however, the PSC definition in regulation excludes a facility with up to two megawatts of capacity if it meets other specified requirements.

The CPCN process, detailed further below, involves the notification of specified stakeholders, the holding of public hearings, the consideration of recommendations by State and local government entities, and the consideration of the project’s effects on various aspects of the State infrastructure, economy, and environment.

In December 2020, PSC initiated a rulemaking (RM 72) to revise regulations governing CPCNs for generating stations.

Notification Process

On receipt of a CPCN application, PSC – or the CPCN applicant, if required by PSC – must immediately provide notice to specified recipients, including the executive and governing body of affected local governments, affected members of the General Assembly, and other interested persons. When providing the notice, PSC must also forward the CPCN application to each appropriate unit of State and local government for review, evaluation, and comment and to each member of the General Assembly that requests a copy.

Public Hearing and Comment

PSC must provide an opportunity for public comment and hold a public hearing on a CPCN application in each county and municipality in which any portion of the construction of a generating station, overhead transmission line, or qualified generator lead line is proposed to be located. PSC must hold the hearing jointly with the governing body of the county or municipality, and must provide weekly notice during the four weeks prior to the hearing,

both in a newspaper and online. PSC must also coordinate with each local government to identify additional options for providing notice of the hearing through other types of media. PSC must ensure presentation and recommendations from each interested State unit, and must allow representatives of each State unit to sit during hearing of all parties. PSC must then allow each State unit 15 days after the conclusion of the hearing to modify the unit's initial recommendations.

Public Service Commission Considerations

PSC must take final action on a CPCN application only after due consideration of recommendations of the governing body of each county or municipality in which any portion of the project is proposed to be located and various aspects of the State infrastructure, economy, and environment. For example, PSC must consider the effect of the project on the stability and reliability of the electric system and, when applicable, air and water pollution. There are additional considerations for an overhead transmission line, including the need to meet existing and future electric demand.

Generating Station Exemptions

There are three general conditions under which a person constructing a generating station may apply to PSC for an exemption from the CPCN requirement:

- the facility is designed to provide onsite generated electricity, the capacity is up to 70 megawatts, and the excess electricity can be sold only on the wholesale market pursuant to an interconnection, operation, and maintenance agreement with the local electric company;
- at least 10% of the electricity generated is consumed onsite, the capacity is up to 25 megawatts, and the excess electricity is sold on the wholesale market pursuant to an interconnection, operation, and maintenance agreement with the local electric company; or
- the facility is wind-powered and land-based, the capacity is up to 70 megawatts, and the facility is no closer than a PSC-determined distance from the Patuxent River Naval Air Station, among other requirements.

However, PSC must require a person that is exempted from the CPCN requirement to obtain approval from the commission before the person may construct a generating station as described above. The application must contain specified information that PSC requires, including proof of compliance with all applicable requirements of the independent system operator.