

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 1025 (Senator Brooks)
 Education, Energy, and the Environment

Public Utilities – Distributed Generation Certificate of Public Convenience and Necessity

This bill establishes a distributed generation certificate of public convenience and necessity (DGPCPN) that authorizes an applicant, on issuance of a DGPCPN by the Public Service Commission (PSC), to construct and operate a “distributed solar energy generating system” (as defined below). If a DGPCPN is approved for an eligible solar energy generating system, the applicant is exempt from having to obtain a certificate of public convenience and necessity (CPCN). The bill specifies implementation timelines for PSC and the Power Plant Research Program (PPRP) within the Department of Natural Resources (DNR). A DGPCPN must be processed by PPRP and PSC in accordance with specified requirements and timelines. The bill may not be applied or interpreted to have any effect on the construction or modification of any solar energy generating system for which a CPCN or other required approval was obtained before the effective date of the regulations adopted by PSC for DGPCPNs. **The bill takes effect July 1, 2024.**

Fiscal Summary

State Effect: Special fund expenditures for PSC increase by \$117,000 in FY 2025; future years are annualized and reflect additional staff in FY 2026, inflation, and ongoing costs. Special fund revenues for PSC increase correspondingly from fees and assessments. General/special fund expenditures for DNR increase by \$1.1 million in FY 2025; future years are annualized and reflect inflation, a reduction in consultant expenses, and ongoing costs.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
SF Revenue	\$117,000	\$301,200	\$307,700	\$321,000	\$334,900
SF Expenditure	\$117,000	\$301,200	\$307,700	\$321,000	\$334,900
GF/SF Exp.	\$1,063,200	\$558,900	\$574,600	\$590,700	\$607,700
Net Effect	(\$1,063,200)	(\$558,900)	(\$574,600)	(\$590,700)	(\$607,700)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill is not anticipated to materially affect local government operations or finances.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Definitions

A “DGPCPN” means a certificate issued by PSC that authorizes the construction and operation of a distributed solar energy generating system. A “distributed solar energy generating system” means a community solar energy generating system, as defined, that (1) has a capacity to produce at least two megawatts (MW) but not more than five MW of alternating current and (2) is not located within a municipality.

Distributed Generation Certificate of Public Convenience and Necessity

A person may not begin construction of a distributed solar energy generating system in the State unless the person first obtains a DGPCPN from PSC. However, a person is not required to obtain a DGPCPN until PSC formally adopts regulations for DGPCPNs, which must occur by no later than July 1, 2025.

When a person submits an DGPCPN application to PSC, the person must also submit a copy of the application to PPRP and the governing body of the county where the distributed solar energy generating system is proposed to be located.

Duties of the Power Plant Research Program

By January 1, 2025, after giving notice and opportunity for public comment, PPRP must develop and submit to PSC proposed standard siting requirements, design requirements, and licensing conditions for the issuance of a DGPCPN. In developing the requirements and conditions, PPRP must consider the following:

- achievement of the State’s climate and renewable energy commitments;
- reasonable setbacks and landscape screening requirements;
- environmental preservation, including forest conservation except where necessary to reduce solar panel shading, facilitate interconnection infrastructure, and ensure adequate site access;

- stormwater management, erosion and sediment control, and site stabilization;
- minimization and mitigation of effects on historic sites;
- public safety;
- industry best practices; and
- licensing conditions previously adopted by PSC for solar energy generating systems.

Within 90 days after a DGPCPN application is filed with PSC, PPRP must (1) determine whether the distributed solar energy generating system satisfies the standard siting and design requirements and standard licensing conditions for the DGPCPN and (2) notify PSC in writing as to the determination it has made, including how an application that is determined not to satisfy those requirements and conditions can cure the deficiency. In making its determination, PPRP must consider public comments received by PSC.

Duties of the Public Service Commission

By July 1, 2025, PSC must adopt regulations to (1) implement standard siting and design requirements and standard licensing conditions for a DGPCPN; (2) specify the application form; and (3) specify its procedure for processing a DGPCPN application, which may include an expedited hearing before a public utility law judge. In adopting these regulations, PSC must consider the proposed standard siting and design requirements and the proposed standard licensing conditions developed by PPRP.

PSC must provide an opportunity for public comment and hold a public hearing on an application for a DGPCPN in each county where any portion of the construction of the distributed solar energy generating system is proposed to be located. PSC may hold the public hearing virtually, rather than in person, if the commission provides a comparable opportunity for public comment and participation in the hearing.

Within 45 days after PPRP makes a determination on a DGPCPN application, PSC must schedule an administrative meeting or an expedited hearing before a public utility law judge to consider the application. At the administrative meeting or expedited hearing, PSC or the public utility law judge must determine whether the proposed distributed solar energy generating system satisfies the standard siting and design requirements. If PSC or the judge determine that the proposed system satisfies the requirements, PSC must grant a DGPCPN to the applicant, subject to the standard licensing conditions. If, however, PSC or the judge determine that the proposed system does not satisfy the requirements, PSC must provide the applicant a written explanation of why the system does not satisfy the requirements and how the applicant can cure the deficiency.

Current Law:

Certificates of Public Convenience and Necessity

PSC is the lead agency for licensing the siting, construction, and operation of power plants and related facilities in the State through the CPCN process, which is a comprehensive process involving several other State agencies, including DNR and its PPRP and the Maryland Department of the Environment (MDE). Subject to limited exemptions, a person may not begin construction in the State of a generation facility with a capacity of more than two MW unless a CPCN is first obtained from PSC.

The Supreme Court of Maryland, in *Bd. of Cty. Commissioners of Washington Cty. v. Perennial Solar, LLC*, 464 Md. 610 (2019), held that State law impliedly preempts local zoning regulation of solar energy generating systems that require a CPCN.

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

Community Solar Energy Generating Systems

A community solar energy generating system, as defined in statute, is a system that, in addition to other requirements, (1) has a generating capacity that does not exceed five MWs; (2) has at least two subscribers; and (3) credits its generated electricity, or the value of its generated electricity, to the bills of the subscribers to that system through virtual net energy metering.

State Fiscal Effect: Both DNR and PSC anticipate significant operational effects to establish the DGPCN process within the timelines specified in the bill, and both agencies anticipate the need for ongoing costs associated with DGPCN approvals. The Department of Legislative Services (DLS) advises that the estimates provided below assume that the total number of project applications that DNR and PSC must review increase under the bill. It is anticipated that some smaller solar projects, which would not have been required to go through the CPCN process, scale up to the new capacity limits established under the DGPCN process and choose to apply for a DGPCN. DLS notes that, to the extent the bill simply shifts projects that would have otherwise gone through the CPCN process to the DGPCN process, the bill's net effect on DNR and PSC expenditures is lower.

Department of Natural Resources

DNR advises that the bill's requirements have significant fiscal and operational impacts on PPRP, particularly in the near term. In order for PPRP to develop proposed standard siting requirements, design requirements, and licensing conditions for DGPCNs by

January 1, 2025, DNR advises that PPRP must shift some of its current staff from reviewing CPCN applications to working on the development of those requirements and conditions. DNR, therefore, advises that it must hire additional staff to continue processing CPCN applications in a timely manner. DNR also advises that it needs to hire an additional attorney to provide legal support related to DGPCNs.

According to DNR, PPRP requires significant support from outside consultants to develop the requirements and conditions for DGPCNs and do so within six months of the bill's effective date. After a significant one-time increase in consultant expenses in fiscal 2025, DNR anticipates that consultant expenses will normalize but still increase from current levels, as PPRP will need consultants to provide ongoing technical expertise on any DGPCN applications received.

Accordingly, general/special fund expenditures for DNR increase by \$1,063,166 in fiscal 2025, by \$558,850 in fiscal 2026, and by similar amounts in future years. This estimate reflects the cost of hiring two site assessors within PPRP to assist with completing evaluations of CPCN applications (thereby allowing PPRP to reassign more experienced site assessors to work on implementing the bill's requirements), as of July 1, 2024, and one attorney to provide legal support related to the implementation of the DGPCN process, as of January 1, 2025. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses, in addition to consulting expenses of \$750,000 in fiscal 2025 and *at least* \$200,000 in fiscal 2026 and subsequent years. Consulting expenses in fiscal 2026 and future years may be higher to the extent that PPRP must review more than 10 DGPCN applications each year.

	<u>FY 2025</u>	<u>FY 2026</u>
Positions (New)	3.0	0.0
Salaries and Fringe Benefits (Total)	\$285,728	\$350,124
Consultant Expenses	750,000	200,000
Other Operating Expenses	<u>27,438</u>	<u>8,726</u>
Total DNR Expenditures	\$1,063,166	\$558,850

Future year expenditures reflect (1) salaries with annual increases and employee turnover; (2) annual increases in ongoing operating expenses; and (3) ongoing consultant costs of *at least* \$200,000 annually.

In general, special funds from the Environmental Trust Fund (ETF) are used to fund PPRP's operations. However, DNR indicates that general funds may be required to cover part of or all the expenses that PPRP incurs under the bill because the department anticipates that a revenue shortfall could materialize in ETF as soon as fiscal 2025.

Public Service Commission

PSC advises that the incremental workload generated by the bill cannot be absorbed within existing resources and that it needs additional staff to (1) assist with drafting regulations for DGCPCs; (2) review the DGPCN applications submitted under the bill; and (3) provide litigation support in the DGPCN proceedings resulting from the bill.

Accordingly, special fund expenditures for PSC increase by \$117,007 in fiscal 2025, by \$301,233 in fiscal 2026, and by similar amounts in future years. This estimate reflects the cost of hiring the following staff: (1) on January 1, 2025, one regulatory economist to assist with drafting DGPCN regulations and review DGPCN applications; (2) on January 1, 2025, one staff attorney to assist with drafting DGPCN regulations and provide litigation support in related DGPCN proceedings; and (3) on July 1, 2025, one engineer to review DGPCN applications. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

	<u>FY 2025</u>	<u>FY 2026</u>
Positions (New)	2.0	1.0
Salaries and Fringe Benefits (Total)	\$97,635	\$286,061
Other Operating Expenses	<u>19,372</u>	<u>15,172</u>
Total PSC Expenditures	\$117,007	\$301,233

Future year expenditures reflect salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Generally, PSC is funded through an assessment each fiscal year on the public service companies that it regulates. However, pursuant to current regulations, PSC collects an application of \$500 for each CPCN submitted. Under the bill, PSC may choose to establish an application fee for DGPCNs; however, PSC has not indicated whether it intends to do so and, if it does, what the fee level would be. For purposes of this analysis, it is assumed that PSC sets a fee for DGPCN applications that is at least equivalent to the \$500 fee for CPCN applications. Moreover, the analysis assumes that the fee revenues that PSC collects for DGPCN applications are likely minimal and offset revenues generated from the standard assessment. Accordingly, special fund revenues for PSC increase correspondingly from application fees and assessments imposed on public service companies.

Maryland Department of the Environment

While the bill may reduce the number of CPCN applications that MDE reviews, the bill is not anticipated to materially affect MDE's operations or finances.

Small Business Effect: Small businesses engaged in the development of distributed solar energy generating systems benefit from the bill's expedited review process for DGPCPN applications relative to the current CPCN process. Additionally, to the extent that additional solar energy generating systems are built in the State as a result of the bill, small businesses that participate in the construction and/or maintenance of such systems benefit.

Additional Comments: PPRP and PSC have identified several operational concerns with the process established by the bill for DGPCPN applications, generally related to insufficient review timelines and a lack of process specificity. For example, PPRP notes that the bill (1) only gives PPRP six months to develop standard siting and design requirements to address each solar case that could be developed across the State's environmentally diverse jurisdictions and (2) assumes that an applicant will submit a complete application but does not establish a pre-application process to ensure an applicant has reached out to reviewing State agencies or has identified other issues.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 1046 (Delegate Clippinger) - Economic Matters.

Information Source(s): Anne Arundel, Baltimore, and Frederick counties; Maryland Department of the Environment; Department of Natural Resources; Office of People's Counsel; Public Service Commission; 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 qualified generator lead line unless a CPCN is first obtained from PSC.

State law provides that a “generating station” excludes a facility with up to 2 megawatts of capacity if it meets other specified requirements. Additionally, pursuant to Chapter 460 of 2023, a generating station excludes a combination of two or more co-located or adjacent facilities used for electricity production from solar photovoltaic systems or specified eligible customer-generators that have a maximum cumulative capacity of 14 megawatts (including maximum individual capacities of 2 megawatts) and meet other 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. Updated regulations became effective in September 2021. Among other changes, the regulations contain additional information requirements – to assist in project evaluation – and allow for electronic submission and distribution of application materials.

Notification Process

Upon 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 who 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, and must further coordinate with each local government to identify additional hearing notification options. PSC must ensure presentation and recommendations from each interested State unit and must allow representatives of each State unit to sit during the 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 (1) recommendations of the governing body of each county or municipality in which any portion of the project is proposed to be located; (2) various aspects of the State infrastructure, economy, and environment; and (3) the effect of climate change on the project. 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 specifically for a generating station or an overhead transmission line. For example, PSC must consider the impact of a generating station on the quantity of annual and long-term statewide greenhouse gas emissions.

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 a specified 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 a specified 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 who 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.