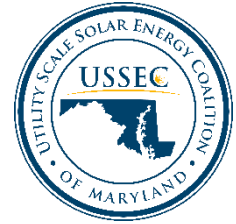


# UTILITY-SCALE SOLAR ENERGY COALITION OF MARYLAND



## **HB 1390**

### **Certificate of Public Convenience and Necessity - Electric Facilities - Study and Procedures FAVORABLE**

March 5, 2020

Chairman Dereck Davis  
Economic Matters Committee  
House of Delegates

Chair Davis and Members of the Committee,

The Maryland Utility Scale Solar Energy Coalition, or USSEC, urges your **support for HB 1390**.

Solar projects over 2 MW are required to seek a CPCN permit from the state PSC. This is a lengthy, costly, and robust process that typically involves the following steps:

1. Pre-Application Activities
2. CPCN Application Submittal
3. First Public Hearing
4. Local Permitting Application (required by PPRP)
5. PPRP Environmental Review & Proposed Permitting Conditions
6. Second Public Hearing
7. Evidentiary Hearing
8. Permitting Decision by PSC
9. Post-CPCN Approval Activities

HB 1390 seeks to address a number of issues with the current CPCN process. For illustrative purposes, we walk through an example of what real projects under development in Maryland have gone through and the challenges they've faced under the existing CPCN process.

First, as you all know, in 2018 the General Assembly passed legislation that strengthened the local voice as part of the state CPCN permitting process. USSEC worked with MACo on that legislative language which was intended to defuse some of the concerns about the CPCN process which preempts local siting of larger solar projects. HB 1390 makes no changes to the 2018 legislation.

### **Pre-Application Activities**

A solar project seeking a CPCN permit typically first starts locally with meetings in the host community including neighbors, interested landowners, and preliminary meetings with the local government for a

period of 2 or more years before a project may be deemed viable to start the permitting process. Many projects will die prior to submitting a permitting application due to myriad siting constraints (ex. Transmission capacity constraints, location and number of conservation easements, insufficient interest among landowners, environmentally sensitive constraints, wetlands, floodplains, cultural resource constraints, land cost constraints, etc.)

### **CPCN Application Submittal**

Prior to submitting a CPCN application, independent experts are hired to survey various elements of the desired site and to provide a preliminary design that defines the Limit of Disturbance (LOD) for a proposed project, all of which are compiled in a lengthy Environmental Report Document (ERD) which is submitted to the PSC and PPRP, along with a \$10,000 application fee, to kick off the CPCN process. The ERD and all other aspects of a proposed project application and proceedings are posted online on the PSC's website.

### **First Public Hearing**

The CPCN process typically starts with a public hearing in the host community at which the Applicant provides a presentation of the proposed project and the presiding PULJ hears and records public comments. The public hearing is noticed in advance in the local paper, on social media, on the Applicant's website, on the PSC's website, and with signs in the community prior to the hearing.

### **Local Permitting Requirement**

At this stage, PPRP typically requires that the applicant show that they have applied for and fully gone through the local permitting process. This is despite the fact that a local siting decision has been deemed legally void for such projects by the Maryland Court of Appeals. PPRP has pointed to the lack of a formal process by which local governments can provide input into the CPCN process, despite the fact that local governments routinely participate as interested parties or intervenors in the CPCN process.

**HB HB 1390 would address this dynamic by further enabling the local planning and zoning office to provide a report to PPRP and the PSC on a proposed project's conformity with local siting and zoning. Additionally, the local government's planning department is automatically added as an interested party to directly receive all PSC notices and communications.**

### **PPRP Environmental Review & Proposed Permitting Conditions**

A CPCN applicant that elects to go through the local process may face a year or longer delay and significant costs before a siting decision is made locally, at which point the lengthy CPCN process can commence. PPRP then uses the legally void local siting decision along with other agency and public input to assess the merits of the application and provide a recommendation to the PSC to deny or approve the proposed project.

Historically, if PPRP elects to recommend denial to the PSC, PPRP has also declined to submit its independent environmental review and permitting conditions for PSC consideration. As PPRP's independent environmental review and permitting conditions are integral to the PSC's review of a CPCN application, PPRP's refusal to submit these documents allows it to exert significant leverage over the process. For instance, PPRP may recommend denial of a CPCN based on the recommendation of the local jurisdiction, but the contents of its environmental review may otherwise be favorable to the project under

other CPCN review factors. By withholding its environmental review from the PSC, PPRP is able to withhold favorable information from the PSC that would otherwise be a detriment to its overall position on the CPCN.

PPRP has used a variety of justifications for this practice, including the claim that without local input permitting conditions cannot be devised. This runs counter to the fact that in cases where local governments elect to simply participate in the CPCN process rather than run a separate local process, PPRP has provided the PSC with recommended permitting conditions. PPRP has also pointed to ambiguous language in the statute that does not make it clear that permitting conditions are to be provided to the PSC even if PPRP's recommendation is to deny a permit.

**To ensure a fair process, HB 1390 would require PPRP to provide the PSC with an independent environmental review (called a Project Assessment Report) and proposed permitting conditions regardless of PPRP's recommendation of approval or denial.**

### **Second Public Hearing and Evidentiary Hearing**

Once a project makes it this far, a second local public hearing is held to once again gather public input on the project and proposed permitting conditions. An evidentiary hearing is then held and the PULJ typically issues a ruling either approving or denying the CPCN after legal briefs are submitted.

### **Post-CPCN Activities**

A project that makes it this far in the process and receives an approval by the PSC now faces the possibility that permitting conditions recommended by PPRP do not match the legally void permitting conditions of the local government. Once a CPCN is granted, the local government is charged with reviewing and approving the project site plan, and local governments have used this opportunity to delay projects that they were not able to prevent through the PSC siting process, or to impose conditions different or more strict than those imposed by the PSC. Both dynamics are flaws in the CPCN process that create public confusion, impose significant costs and delays, and overall frustrate the intent of the General Assembly to empower the PSC with ultimate authority over the permitting of such projects.

**HB 1390 would prohibit the use of the site plan review process or other subsequent discretionary permitting processes to unreasonably delay or impose different permitting conditions than those imposed by the PSC for an approved CPCN.**

### **Other Items**

As illustrated above, the current CPCN process can result in a permitting timeline that could last 2 or more years, during which time applicants have no clarity on permitting conditions that could allow them to progress development plans pending an ultimate permitting decision. This is despite the fact that the vast majority of permitting conditions on solar projects are "standard" conditions that are carbon-copies of conditions on prior projects.

**HB 1390 would call on the PSC to define certain standard conditions that would apply equally to all CPCN projects so that developers can more efficiently plan and ultimately expedite the development of permitted solar projects.**

Finally, one small but important element of a common CPCN condition pertains to how a CPCN treats installation of vegetative screening landscaping, which is designed to limit the visual impact of a solar project on the neighboring community. Currently, installation of such landscaping triggers the start of construction under a CPCN. However, it is often in the public interest to install such landscaping before construction, potentially significantly sooner than construction start, in order to allow time for plants to become established, grow, and maximize their effectiveness at screening solar project construction and operation from sight.

**HB 1390 would allow for installation of vegetative landscape buffer as part of a CPCN without triggering the start of construction.**

In conclusion, we hope you agree that **it does not make sense for the state to require CPCN projects apply for a legally void local permitting decision** rather than incorporate local input into the comprehensive state process. HB 1390 actually strengthens the local voice in the CPCN process by creating a defined avenue by which the local jurisdiction provides input on zoning and comprehensive plan consistency. HB 1390 preserves the existing requirement for the Commission to give "due consideration" to local zoning and the comprehensive plan, and under PSC precedent, the recommendation of the local jurisdiction would continue to enjoy "significant weight" under this bill.

Finally, in response to concerns expressed by MDE, the PSC, and the utilities about certain aspects of HB 1390, we have included a number of amendments that address each of these concerns as discussed in the enclosed memo.

We urge you to support HB 1390 and thank you for your time and consideration.

Isaac Meyer on behalf of the Maryland Utility Scale Solar Energy Coalition

