Department of Legislative Services

Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1112 (Delegate Charkoudian)

Economic Matters Education, Energy, and the Environment

Public Service Commission - Energy Storage Devices - Acquisition and Deployment

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This bill requires the Public Service Commission (PSC) to determine whether the deployment of one or more energy storage devices could help to avoid or limit a reliability-must-run (RMR) agreement with an energy generating system, could prevent added costs to ratepayers, and is in the public interest, subject to specified requirements. PSC must take specified actions if the commission determines that the use of one or more energy storage devices, alone or as a part of a comprehensive package, will avoid or limit an RMR agreement and is in the public interest. PSC must give priority and expedited handling of applications for certificates of public convenience and necessity (CPCNs) for projects that the commission orders under the bill, as specified. The bill also specifies various conditions and requirements related to utility cost recovery. **The bill takes effect June 1, 2024.**

Fiscal Summary

State Effect: No effect in FY 2024. Special fund expenditures for PSC increase by approximately $550,000 annually beginning in FY 2025. Special fund expenditures for the Office of People's Counsel (OPC) increase by up to approximately $75,000 annually beginning in FY 2025. All expenditures reflect consultant costs. Special fund revenues for PSC and OPC increase correspondingly from assessments imposed on public service companies. The potential effect on electricity rates is discussed in the Additional Comments section below.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
SF Revenue	$625,000	$625,000	$625,000	$625,000	$625,000
SF Expenditure	$625,000	$625,000	$625,000	$625,000	$625,000
Net Effect	$0	$0	$0	$0	$0

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

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

Small Business Effect: Minimal. The bill applies in a limited number of circumstances.

Analysis

Bill Summary: PSC must make the determination on the deployment of one or more energy storage devices any time (1) OPC, the Maryland Energy Administration, an investor-owned electric company, or any other party submits a notice to PSC providing evidence that an energy generating system is likely to be deactivated and may negatively impact system reliability or (2) that PJM Interconnection, LLC, in response to a deactivation notice regarding an energy generating system, determines that deactivation of the system would negatively impact system reliability.

Before making a determination, PSC must request that PJM provide, and require each investor-owned electric company to provide, specified information related to the potential RMR agreement.

In making a determination, PSC must consider (1) the cost-effectiveness of deploying energy storage devices compared to allowing an RMR agreement to proceed, as specified; (2) the lead time required to procure the necessary materials, components, equipment, and labor to deploy the energy storage devices; (3) the permits and other necessary federal, State, or local authorizations; (4) operational and other relevant details of projects approved by PJM to ensure reliability following the retirement of an energy generating system; and (5) any other factors PSC considers relevant.

If PSC determines that the use of one or more energy storage devices, alone or as a part of a comprehensive package, will avoid or limit an RMR agreement and is in the public interest, PSC must notify PJM of the determination and request that PJM confirm the likelihood of an RMR agreement, as specified. On receipt of written confirmation, PSC must (1) issue an order directing an investor-owned electric company to construct, acquire, lease, or contract for one or more energy storage devices as needed to satisfy the reliability concern that would have otherwise been met with an RMR agreement; (2) engage in periodic communication and coordination with PJM, as specified; and (3) authorize appropriate cost recovery. PSC must give priority and expedited handling of applications for CPCNs for projects that the commission orders under the bill, as specified; PSC must adopt related regulations by December 1, 2024.

In ordering the acquisition of energy storage devices, PSC must determine which of the following models best serves the public interest:

- a “utility-only” model under which the electric company would own the project, control the project for electric transmission or distribution system reliability, and, if appropriate, operate the project in wholesale markets or for other applications when not providing electric transmission or distribution system services;

- a “third-party ownership” model under which an investor-owned electric company would (1) contract with a third party for a project that is owned by the third party and that provides electric transmission or distribution system reliability and (2) if appropriate, allow the third party to operate the project in wholesale markets or for other applications when the project is not providing electric transmission or distribution system services; or
- any other options or combination of options that PSC determines is beneficial to electricity customers.

Each contract entered into under the bill for the construction of energy storage devices or facilities must require all contractors and subcontractors on a contract to (1) pay the prevailing wage as determined by the Maryland Department of Labor (MDL) and (2) hire registered apprentices to perform at least 12.5% of the total work hours required for the construction of the battery storage device or facility.

An investor-owned electric company that is ordered to deploy one or more energy storage devices under the bill must seek cost recovery for the devices as a transmission asset with the Federal Energy Regulatory Commission (FERC) and in a manner reasonably anticipated to maximize customer value. Subject to PSC approval, an investor-owned electric company may recover from its customers any prudently incurred costs not approved for cost recovery by FERC; an investor-owned electric company that does so must operate the energy storage devices in a way that maximizes customer value. Additionally, under specified circumstances, an investor-owned electric company is entitled to seek recovery of its verifiable and prudently incurred costs even if the energy storage device is not deployed in time to avoid or limit an RMR agreement.

Subject to PSC approval, an investor-owned electric company may operate an energy storage device in wholesale markets or other applications when the device is not providing electricity to the transmission or distribution system.

Current Law: PSC must supervise and regulate public service companies subject to its jurisdiction to (1) ensure their operation in the interest of the public and (2) promote adequate, economical, and efficient delivery of utility services in the State without unjust discrimination. In doing so, PSC must consider the public safety, the economy of the State, the maintenance of fair and stable labor standards for affected workers, the conservation of natural resources, the preservation of environmental quality, the achievement of the State’s climate commitments for reducing greenhouse gas emissions, and the protection of a public service company’s infrastructure against cybersecurity threats. PSC must also enforce compliance with legal requirements by public service companies.

In order to meet long-term, anticipated demand in the State for standard offer service and other electricity supply, PSC may require or allow an investor-owned electric company to construct, acquire, or lease, and operate, its own generating facilities, and transmission facilities necessary to interconnect the generating facilities with the electric grid, subject to appropriate cost recovery.

Chapter 570 of 2023 requires PSC to establish the Maryland Energy Storage Program and establish targets for the cost-effective deployment of new energy storage devices in the State with a goal of achieving at least a cumulative total of 750 megawatts by the end of the 2027 PJM delivery year, 1,500 megawatts by the end of the 2030 PJM delivery year, and 3,000 megawatts by the end of the 2033 PJM delivery year. If a target cannot be met cost effectively, the target must be reduced to the maximum cost-effective amount for the relevant delivery year. The program must be implemented by July 1, 2025, as specified.

PSC is the lead agency for licensing the siting, construction, and operation of power plants and related facilities in the State through CPCNs. For additional information on the CPCN process, see the **Appendix – Certificate of Public Convenience and Necessity**.

State Fiscal Effect:

Energy Storage Device Deployment to Mitigate Reliability-Must-Run Agreements

PSC advises that it requires consultants to assist with the required determinations on the potential deployment of energy storage devices and to address the related labor requirements for energy storage projects. There is also an associated operational effect on existing PSC staff with each analysis.

The exact timing and number of deactivation notices cannot be predicted, but PSC advises that multiple potential deactivations are routinely declared. Based on past experience, PSC advises that it anticipates consultant costs of approximately $550,000 on an annual basis: $500,000 related to the determinations; and $50,000 related to the labor requirements. OPC also advises that consultant costs of approximately $75,000 annually may be required to participate in the related proceedings over the next several years. Despite the bill's June 1, 2024 effective date, this estimate assumes costs are not incurred until fiscal 2025, as it will take some time to engage any consultants.

Accordingly, beginning in fiscal 2025, special fund expenditures for PSC increase by approximately $550,000 annually, and special fund expenditures for OPC increase by up to approximately $75,000 annually. Actual amounts in any given year will depend on the timing and extent of deactivation notices (or expected deactivation notices).

Generally, PSC and OPC are funded through an assessment each fiscal year on the public service companies that PSC regulates. Accordingly, special fund revenues for PSC and OPC increase correspondingly from assessments imposed on public service companies.

MDL did not indicate any fiscal or operational effects due to the bill.

Expedited Certificates of Public Convenience and Necessity

PSC advises that, currently, energy storage devices do not require a CPCN – so the bill's requirement for an expedited CPCN review has no effect and is not reflected in this estimate. However, if energy storage devices are subsequently required to obtain CPCNs, PSC requires up to three additional staff at an annual cost of approximately $300,000 to $350,000. Expedited CPCNs may also affect the Maryland Department of the Environment and the Department of Natural Resources, both of which participate in CPCN evaluations.

Additional Comments: An RMR agreement is a financial arrangement intended to delay the retirement of a generator unit that PJM has determined is needed for maintaining reliability until a long-term solution – for example, a new transmission line – can be completed. RMR agreements provide for an out-of-market compensation rate that is significantly higher than energy or capacity market prices, which is ultimately paid for by customers on their utility bills. Therefore, while the actual effect on electricity rates due to the bill is unknown, the bill seeks to limit the rate impacts of RMR agreements, which may reduce electricity rates relative to what they otherwise would be.

Additional Information

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

Designated Cross File: None.

Information Source(s): Maryland Department of Labor; Office of People's Counsel; Public Service Commission; Maryland Energy Administration; Maryland Department of the Environment; Department of Legislative Services

Fiscal Note History:	First Reader - March 5, 2024
km/lgc	Third Reader - March 25, 2024
	Revised - Amendment(s) - March 25, 2024
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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.