

**SB 1073**

**Department of Legislative Services**  
Maryland General Assembly  
2012 Session

**FISCAL AND POLICY NOTE**  
**Revised**

Senate Bill 1073

(Senator Middleton)

Finance

Economic Matters

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**Electricity - Construction of Overhead Transmission Lines and Wind Generating Stations**

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This bill authorizes the Public Service Commission (PSC) to waive the Certificate of Public Convenience and Necessity (CPCN) requirement for construction relating to existing overhead transmission lines for good cause. The bill also requires PSC to waive the CPCN requirement under specified circumstances of limited construction. An electric company is authorized to complete specified construction to avoid an imminent safety hazard or reliability risk. The bill also provides for CPCN review for small wind energy generating stations that are within a certain distance of the Patuxent River Naval Air Station, as determined by regulations adopted by PSC in coordination with the U.S. Navy.

The bill takes effect June 1, 2012.

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**Fiscal Summary**

**State Effect:** PSC can implement the bill with existing budgeted resources. Additional CPCN exclusions will not materially affect State finances.

**Local Effect:** None.

**Small Business Effect:** None. The bill does not directly affect small businesses.

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## Analysis

### **Bill Summary:**

#### *Construction Related to an Existing Overhead Transmission Line*

PSC may, for good cause, waive the CPCN requirement for the construction related to an existing 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. PSC must waive the CPCN requirement for construction relating to an existing overhead transmission line designed to carry a voltage in excess of 69,000 volts if PSC finds that the construction does not (1) require the electric company to obtain new real property or additional rights of-way through eminent domain; or (2) require larger or higher structures to accommodate increased voltage or larger conductors. The bill also authorizes an electric company to undertake construction related to an existing overhead transmission line, including repairs, necessary to avoid an imminent safety hazard or reliability risk, and requires the electric company to file a report with PSC describing the completed construction or repairs within 30 days after the work is completed.

#### *Wind Energy Generating Stations*

The bill also limits the existing CPCN exemption for specified land-based wind energy generating stations with a capacity not exceeding 70 megawatts. Specifically, to be exempt from the requirement to obtain a CPCN, the generating station's wind turbines must not be located within a specified distance from the Patuxent River Naval Air Station, as determined by regulations adopted by PSC in coordination with the Commander, Naval Air Warfare Center Aircraft Division. The distance determined by regulation must not be greater than is necessary to encompass an area in which utility-scale wind turbines could create Doppler radar interference for missions at the station and must not be greater than 46 miles, measured from a specified location in the station. The distance requirement under the regulation must be subject to modification if necessary to reflect changes in missions or technology at the station or to changes in wind energy technology.

### **Current Law:**

#### *Certificate of Public Convenience and Necessity*

State law specifies that an individual must be granted a CPCN from PSC before beginning 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. A person that seeks to construct or modify a generating facility larger than

70 megawatts must also obtain a CPCN from PSC. “Construction” in relation to CPCN requirements in State law means any physical change at a site, including fabrication, erection, installation, or demolition. It also includes the entry into a binding agreement or contractual obligation to purchase specified equipment exclusively for construction in the State. Construction does not include a change that is needed for the temporary use of a site or route for nonutility purposes or for use in securing specified geological data.

PSC regulations address both the CPCN process in general and the CPCN process for overhead transmission lines. Specifically, “modification” to an existing overhead transmission line, which requires a CPCN, means (1) obtaining new real property or additional rights-of-way through eminent domain; or (2) construction requiring larger or higher structures to accommodate increased voltage or larger conductors.

An application for CPCN is reviewed before a hearing examiner in a formal adjudicatory process that includes written and oral testimony, cross examination, and the opportunity for full public participation. The CPCN process constitutes permission to construct the facility and incorporates several required permits, including air quality and water appropriation. The CPCN licensing process provides an opportunity for the State to examine all the significant aspects and impacts of a proposed generation facility or transmission line, including the interrelations between various impacts and cumulative effects.

#### *CPCN Exemptions*

Chapter 163 of 2007 authorized PSC to exempt a person from the CPCN requirement if the following conditions are met: (1) the wind-powered station is land-based; (2) the generating capacity is 70 megawatts or less; (3) the excess electricity is sold on the wholesale market pursuant to an interconnection, operation, and maintenance agreement with the local electric company; and (4) PSC provides an opportunity for public comment at a public hearing.

There are two other conditions in which an electric generating facility may apply to PSC for approval without obtaining a CPCN: (1) the facility is designed to provide on-site generated electricity, the capacity does not exceed 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; or (2) the capacity of the generating station does not exceed 25 megawatts, at least 10% of the electricity generated is consumed on-site, and the excess electricity is sold on the wholesale market pursuant to an interconnection, operation, and maintenance agreement

with the local electric company. The Code of Maryland Regulations (COMAR 20.79.01.02) specifies that a small generating station under 373 kilowatts does not need prior approval of PSC.

## **Background:**

### *Construction Related to Existing Overhead Transmission Lines*

In a September 9, 2010, decision on *Baltimore Gas and Electric Company Request for Waiver of CPCN Requirements for Planned Transmission Modification on Bagley Transmission Line*, PSC strictly interpreted the current law requiring CPCNs for transmission line construction. Baltimore Gas and Electric (BGE) requested a waiver from the CPCN requirement, arguing that a proposed project on the Bagley transmission line qualified as a “modification” under PSC regulations, as PSC regulations (COMAR 20.79.01.07) allow the commission to waive the CPCN requirement in its discretion.

However, “modification” in PSC regulations includes specified types of construction, and PSC indicated in its decision letter that the “modification” proposed by BGE included “construction” as defined in current law. PSC denied the CPCN exemption request, indicating that if the project is defined as construction under current law, then an electric company must be granted a CPCN, as there is no provision allowing PSC to waive the statutory requirement in this case.

### *Patuxent River Naval Air Station – CPCN Exemptions*

The Patuxent River Naval Air Station was commissioned in 1943 to consolidate air testing facilities. One of the station’s primary functions is air and ground test and evaluation. The station has a large air test range, and is equipped to determine the radar signatures of aircraft so that potential weaknesses and vulnerabilities can be mitigated before an aircraft is deployed in combat. The Navy has expressed concerns relating to large wind turbines’ potential to interfere with the station’s radar systems. Navy officials have actively sought engagement in the siting and planning process of wind farm projects in southern Maryland and the Eastern Shore for this reason.

The bill addresses this issue by removing the CPCN exemption for specified wind farms not exceeding 70 megawatts within a certain range of the station, up to a maximum of 46 miles. Legislative Services notes that this is an area that stretches east to Salisbury, north to portions of Annapolis, and covers nearly the entirety of the southern Maryland counties, as shown in **Exhibit 1**.

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**Exhibit 1**  
**Maximum Geographic Range – CPCN Requirement – SB 1073**  
**46 Mile Radius from Location 38.29667N, 76.37668W**



Note: Areas in Virginia and Delaware are not affected by the bill.

Source: ArcGIS; Department of Legislative Services

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 1427 (Delegates Jameson and Schuh) - Economic Matters.

**Information Source(s):** Public Service Commission, *The Baltimore Sun*, Naval Air Station Patuxent River, ArcGIS, Department of Legislative Services

**Fiscal Note History:** First Reader - March 16, 2012  
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