

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 777

(Delegate Brooks)

Economic Matters

Education, Health, and Environmental Affairs

Power Plant Research Program – Review of Application for Certificate of Public Convenience and Necessity – Alterations

This bill establishes a six-month deadline for the Maryland Department of the Environment (MDE) and the Department of Natural Resources (DNR) to review and make recommendations on a completed application for a certificate of public convenience and necessity (CPCN). The bill also adds additional specificity for evaluations and recommendations made by the two departments. The Public Service Commission (PSC) determines when a CPCN application is complete and may waive the six-month deadline for good cause or on agreement of the parties to the proceeding. A provision that allows State agencies to modify recommendations after the public CPCN hearing is removed.

Fiscal Summary

State Effect: Special fund expenditures for DNR increase by \$316,900 in FY 2022. Future years reflect annualization and the elimination of one-time costs. Revenues are not affected.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	316,900	498,900	505,000	512,300	519,800
Net Effect	(\$316,900)	(\$498,900)	(\$505,000)	(\$512,300)	(\$519,800)

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.

Analysis

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. There is no statutory deadline for submission of the results to PSC.

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 Expenditures: DNR advises that its Power Plant Research Program (PPRP) requires two additional staff and additional consultant support to meet the bill's enhanced CPCN evaluation timelines. This is because the six-month time limit is insufficient for more complex CPCN evaluations to be completed with existing resources. PPRP is funded through an assessment on electricity used in the State, which accrues to the Environmental Trust Fund. Other changes in the bill, such as adding specificity to the process, were not stated causes of increased costs. MDE did not indicate the need for additional resources due to the enhanced evaluation timeline or otherwise. The bill does not materially affect PSC's role in the CPCN process.

Accordingly, special fund expenditures for DNR increase by \$316,856 in fiscal 2022, which accounts for the bill's October 1, 2021 effective date. This estimate reflects the cost of hiring two site assessors to assist PPRP in meeting the bill's enhanced CPCN evaluation timeline. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses, in addition to \$150,000 in consulting expenses for the same purpose.

Positions	2.0
Salaries and Fringe Benefits	\$155,693
Consultant Costs	150,000
Other Operating Expenses	<u>11,163</u>
Total FY 2022 DNR Expenditures	\$316,856

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses, in addition to \$300,000 in annual consulting costs.

As noted above, these costs are due to meeting the enhanced CPCN evaluation timeline. To the extent that PSC waives the requirement for good cause, particularly for complex CPCN cases, implementation costs for DNR are less.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 417 (Senator Pinsky) - Education, Health, and Environmental Affairs.

Information Source(s): Maryland Department of the Environment; Department of Natural Resources; Public Service Commission; Department of Legislative Services

Fiscal Note History: First Reader - February 8, 2021
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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.