

May 28, 2021

The Honorable Bill Ferguson
President of the Senate
H-107 State House
Annapolis, Maryland 21401

The Honorable Adrienne A. Jones
Speaker of the House
H-101 State House
Annapolis, Maryland 21401

Dear Mr. President and Madam Speaker:

In accordance with Article II, Section 17 of the Maryland Constitution, I have vetoed House Bill 777 and Senate Bill 417 – *Power Plant Research Program – Review of Application for Certificate of Public Convenience and Necessity – Alterations*.

In general, I support the intent of HB 777 / SB 417 to have the Power Plant Research Program (PPRP) complete its review of applications for Certificate of Public Convenience and Necessity (CPCN) within six months for the construction or modification of solar generating stations. Unfortunately, the legislation also mandates a timeline of six months for PPRP to provide environmental review and mitigation recommendations for *all other* CPCN applications. This is unreasonable, needlessly puts state agencies in jeopardy of noncompliance, and leaves Maryland's natural resources at risk.

HB 777/SB 417 imposes a six-month deadline for review of all CPCN cases including hydroelectric, natural gas, nuclear, wind energy, and transmission cases. The environmental complexity of the vast majority of these cases requires a longer review period than six months in order for PPRP to adequately meet its mission. The "Good Cause" waiver provision does not solve this problem because it does not allow for routine exemptions of far more complex projects — such as transmission line cases — which take longer than six months to review.

It is not the Public Service Commission's (PSC) practice to grant any waiver requests on a routine basis for reviews that require greater scrutiny. Rather, the PSC considers project-specific circumstances. Considerations that may apply in one project application setting, based on a specific set of facts, might not apply to a different project. If a waiver is requested under HB 777 / SB 417, the burden is on the

requesting party to establish the specific basis for seeking the waiver and demonstrate “good cause” to modify or suspend the procedural schedule. Given that a waiver is never guaranteed, a six-month time frame is unreasonable and irresponsible for all non-solar CPCN cases. Additionally, it would be difficult for the PSC to proceed with consideration of a CPCN case without the completion of PPRP’s important environmental mitigation work and recommendations.

The importance of making the right decision on this public utility policy is that PPRP coordinates the statewide review of CPCNs to mitigate projects’ environmental impacts to rare, threatened, or endangered species; streams; wetlands; forests; birds; water quality; and many others. Other considerations for mitigation include sea level rise and climate change. PPRP is the State’s only intervenor in CPCN cases that analyzes environmental impacts and that has standing to move recommended mitigation conditions to the PSC. Further, as Maryland looks to the future of clean and renewable energy, emerging technologies seeking a CPCN — with new and unique impacts — will have no guarantee that the six-month deadline would be waived.

Before the General Assembly began work on HB 777/SB 417, the PSC took swift action to streamline the CPCN process. Participating stakeholders included state agencies, solar developers, Maryland Association of Counties, and Maryland Municipal League. Their work culminated with the conducting of Rulemaking 72 in March 2021. The PSC has now approved revised regulations, which include significant procedural improvements to the CPCN application process for generating stations and make the wide reach of HB 777 / SB 417 premature and unnecessary.

Finally, while HB 777/SB 417 was assigned to the House Economic Matters Committee — the committee that deals exclusively with CPCN issues — the parallel Senate Finance Committee was given no opportunity to consider the impact or reasonableness of establishing this timeline across the board. The legislation was instead considered exclusively in a committee that does not have public utility policy in its purview.

For these reasons, I have vetoed House Bill 777 and Senate Bill 417.

Sincerely,

Lawrence J. Hogan, Jr.
Governor