

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 440

(Delegate Clippinger)

Economic Matters

Finance

**Electricity - Community Solar Energy Generating Systems - Net Energy
Metering and Generating Capacity**

This bill increases the maximum generating capacity of a community solar energy generating system (from 2 megawatts to 5 megawatts). The bill likewise increases the maximum allowable generating capacity of a community solar energy generating system for the system to be eligible for net-energy metering credits (from 2 megawatts to 5 megawatts). Lastly, the bill specifies that a community solar energy generating system is not a generating station only if the generating capacity of the community solar energy generating system does not exceed 2 megawatts. As a result, the bill requires that a community solar energy generating system that exceeds 2 megawatts obtain a Certificate of Public Convenience and Necessity (CPCN) for its construction.

Fiscal Summary

State Effect: To the extent the bill results in additional CPCN applications, special fund expenditures for the Power Plant Research Program (PPRP) in the Department of Natural Resources (DNR) increase by approximately \$75,000 for each additional CPCN application that must be evaluated. The bill likely does not otherwise materially affect State finances or operations, as discussed below.

Local Effect: To the extent the bill results in additional CPCN applications, affected local governments must provide feedback and recommendations regarding site placement as part of the CPCN approval process. It is assumed that affected local governments can handle any increase in workload with existing resources.

Small Business Effect: Minimal.

Analysis

Current Law:

Community Solar Energy Generating Systems

Chapters 346 and 347 of 2015 required the Public Service Commission (PSC) to establish a three-year Community Solar Energy Generating System Pilot Program, subject to specified conditions. Chapters 461 and 462 of 2019 extended the pilot program through December 31, 2024.

A community solar energy generating system, as defined in statute, is a system that, in addition to other requirements:

- has a generating capacity that does not exceed 2 megawatts as measured by the alternating current rating of the system's inverter;
- has at least two subscribers, but no limit to the maximum number of subscribers; and
- credits its generated electricity, or the value of its generated electricity, to the bills of the subscribers to that system through virtual net energy metering.

Subscribers must be in the same electric service territory as the system. Investor-owned electric companies must participate in the program; large electric cooperatives and municipal utilities may choose to participate.

Under PSC regulations, a system may have up to 350 accounts, unless the electric company has developed an automated billing function, in which case there is no limit. PSC regulations also increase authorized capacity additions each year.

Net Energy Metering

Generally, net energy metering is the measurement of the difference between the electricity that is supplied by an electric company and the electricity that is generated by an eligible customer-generator and fed back to the electric company over the eligible customer-generator's billing period. The generating capacity of an eligible customer-generator for net metering may be up to 2 megawatts. Eligible energy sources are solar, wind, biomass, micro combined heat and power, fuel cell, and certain types of hydroelectric. PSC must require electric utilities to develop and make net metering tariffs available to eligible customer-generators. There is a statewide net metered capacity limit of 3,000 megawatts.

Certificate of Public Convenience and Necessity

Generally, a community solar energy generating system is not an electric company, an electricity supplier, or a generating station and therefore does not require a CPCN. As a result, the placement of community solar generating systems is controlled through local zoning processes.

For general information on the CPCN process, please see the **Appendix – Certificate of Public Convenience and Necessity**.

State Fiscal Effect: Special fund expenditures for PPRP increase to review and evaluate any additional CPCN applications that are submitted as a result of the bill. A typical CPCN application costs PPRP between \$125,000 and \$175,000 to evaluate. However, given the relatively small maximum project size of 5 megawatts for community solar energy generating systems, PPRP advises that the review of each additional CPCN resulting from the bill likely costs approximately \$75,000. The exact number of additional CPCN applications that PPRP must evaluate each year as a result of the bill cannot be reliably estimated at this time. Although the number of applications could be significant given the large available capacity within the Community Solar Energy Generating System Pilot Program, the cost and difficulty involved with the CPCN process likely discourages applications for community solar energy generating systems in excess of 2 megawatts, as discussed in the Additional Comments section below. *For illustrative purposes only*, if the bill results in three additional CPCN applications annually, special fund expenditures for PPRP increase by \$225,000 annually.

To the extent the bill results in additional CPCN applications, PSC experiences an increase in workload for public utility law judges to oversee required hearings and for PSC staff, attorneys, and engineers to provide required testimony and briefings. However, PPRP is anticipated to undertake a large portion of the work relating to the evaluation of the additional CPCNs. Thus, PSC can likely handle the additional workload with existing resources, especially if the additional number of CPCN applications is small. PSC further advises that the bill may result in an increase in Community Solar Energy Generating System Pilot Program related filings, but that PSC can accommodate the workload with existing resources.

Similarly, the Maryland Energy Administration (MEA) advises that, while its workload may increase to work on any rulemaking resulting from the bill's changes, it can likely handle any increase in workload with existing resources.

According to the most recent net metering annual [report](#) from PSC, the level of installed capacity is approximately 30% of the 3,000 megawatt limit. As of June 30, 2021, 888 megawatts out of 3,000 megawatts were installed – an 8% increase from the previous

year. As the bill only alters the maximum project size for community solar generating system net metering eligibility and does not alter the statewide cap, State finances are likely not materially affected.

Small Business Effect: To the extent the 5-megawatt capacity limit for an eligible community solar energy generating system allows larger community solar energy generating systems to use more of the total allowed capacity, the number of developers able to participate in the program may be reduced.

Additional Comments: Community solar energy generating system applications between 2 and 5 megawatts likely require significant additional time and resources on the part of applicants because such projects must go through the CPCN process. MEA further notes that the average CPCN application process can cost upwards of \$100,000 to the applicant. DNR similarly notes that the CPCN process is expensive with application, attorney, and consultant costs required to conduct environmental reviews and go through the hearing process. The additional burden imposed by completing the CPCN process may significantly reduce the number of additional 2- to 5-megawatt community solar energy generating system applications or incentivize splitting large projects into multiple smaller 2-megawatt projects.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 110 (Senator Kramer) - Finance.

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

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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. “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. 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.