

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 1188

(Delegate Atterbeary)

Economic Matters

Education, Energy, and the Environment

Public Utilities - Certificate of Public Convenience and Necessity and Meter Aggregation

This bill defines “generating station” in the Public Utilities Article and in so doing establishes that generating units or facilities that meet specified requirements may be constructed without obtaining a Certificate of Public Convenience and Necessity (CPCN) from the Public Service Commission (PSC). Subject to those requirements, up to 14 megawatts of capacity can be installed without a CPCN. The bill also (1) makes a conforming change to align the capacity limit for generating stations with a requirement for certain solar systems to file an application for approval to construct a generating station with PSC and provide a 1.0% deposit and (2) codifies and expands the applicability of a requirement in PSC regulations that an electric company provide meter aggregation for certain eligible customer-generators. The bill specifies the intent of the General Assembly that the bill apply only to solar energy generating facilities and eligible customer-generators under the State’s net metering law.

Fiscal Summary

State Effect: The bill does not materially affect State government operations or finances, although PSC, the Department of Natural Resources, and the Maryland Department of the Environment may have fewer CPCN applications to review.

Local Effect: Potential significant impact on local government expenditures, as discussed below. Local revenues are not affected.

Small Business Effect: Minimal.

Analysis

Bill Summary: A generating station, as defined, does not include a generating unit or facility that is used to produce electricity, has a capacity of up to 2 megawatts, and is installed with equipment that prevents the flow of electricity to the electric grid during times when the electric grid is out service. (This portion of the definition generally aligns with the existing definition in regulation.)

Additionally, a generating station does not include a combination of two or more generating units or facilities, located on the same property or adjacent properties, that (1) are used to produce electricity from a solar photovoltaic system or an eligible customer-generator that is subject to the State's net metering law; (2) have individual capacities of up to 2 megawatts and a cumulative capacity of more than 2 megawatts, but not more than 14 megawatts; (3) are separately metered by the electric company; and (4) do not export electricity for sale on the wholesale market under an agreement with PJM Interconnection, LLC.

An electric company is required to provide meter aggregation for an eligible customer-generator that submits a request, in writing, to the electric company for the provision of meter aggregation and (1) uses electrical service for agriculture; (2) is a nonprofit organization; (3) is a municipal or county government (or an affiliated organization); (4) is a unit of State government; or (5) is a public senior higher education institution. When an eligible customer-generator requests meter aggregation, the electric company must require the customer-generator to provide written allocation instructions describing how to distribute its excess generation credits to each account before the commencement of any meter aggregation. (Much of this requirement also aligns with PSC regulations, except for the addition of units of State government and public senior higher education institutions).

Current Law: "Generating station" is not defined in statute; however, PSC regulations (COMAR 20.79.01.02) define a "generating station" as property or facilities located in Maryland constituting an integral plant or generating unit for the production of electric energy, including any new production unit that would be added to an existing production plant. A generating station does not include a facility with up to 2 megawatts of capacity that has equipment installed to prevent the flow of electricity to the electric system during times when the system is out of service.

For general information on the CPCN process, including information related to CPCN exemptions affected by the bill, please see the **Appendix – Certificate of Public Convenience and Necessity**.

Net Metering

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. PSC must require electric utilities to develop and make net metering tariffs available to eligible customer-generators. Generally, the generating capacity of an eligible customer-generator for net metering may be up to 2 megawatts. However, solar energy generating facilities on contiguous parcels of land and community solar systems may be up to 5 megawatts. There is a statewide net-metered capacity limit of 3,000 megawatts.

An "eligible customer-generator" means a customer that owns and operates, leases and operates, or contracts with a third party that owns and operates a biomass, micro combined heat and power, solar, fuel cell, wind, or closed conduit hydroelectric generating facility that is (1) located on the customer's premises or contiguous property; (2) interconnected and operated in parallel with an electric company's transmission and distribution facilities; and (3) intended primarily to offset all or part of the customer's own electricity requirements.

PSC regulations require an electric company to provide meter aggregation for an eligible customer-generator that submits a request, in writing, to the electric company for the provision of meter aggregation and (1) uses electrical service for agriculture; (2) is a nonprofit organization or a nonprofit business; or (3) is a municipal or county government or its affiliated organizations. The electric company must require the customer-generator to provide written allocation instructions detailing how to distribute its excess generation credits to each account before the commencement of any meter aggregation.

Local Expenditures: The bill's impact on local expenditures cannot be reliably estimated; however, in some jurisdictions, the impact may be significant. The impact varies by local jurisdiction and depends on a variety of factors, including a jurisdiction's geography, its existing approach to electric generation projects, and the number and type of electric generating stations under consideration for construction in the jurisdiction.

The bill enables a developer to bypass the CPCN process for a project that has more than 2 megawatts of capacity (up to a maximum of 14 megawatts of capacity) by proposing to build multiple generating units that have individual capacities of up to 2 megawatts and are separately metered and meet other requirements. It is unknown to what extent developers will attempt to use this exemption, but the number of developers that do so could be significant (particularly for solar generation projects).

To the extent that the number of applications for CPCNs decreases under the bill, a local jurisdiction may have fewer CPCN cases to intervene in. On the other hand, if the bill's changes lead to a significant increase in the number of electric generation projects in the State that bypass the CPCN process, a local government may feel compelled to more actively regulate and/or scrutinize such projects within its jurisdictional limits. A local government could incur significant expenditures if it (1) imposes new requirements on developers of electric generation projects; (2) employs engineers and other personnel to study and review prospective electric generation projects; or (3) hires external consultants to study a project's possible environmental, economic, and/or socioeconomic impacts.

Additional Information

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

Designated Cross File: SB 931 (Senator Hester) - Education, Energy, and the Environment.

Information Source(s): Department of Natural Resources; Office of People's Counsel; 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 2 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.