

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 489 (Senator Brooks)
Education, Energy, and the Environment

Public Service Commission - Certificates of Public Convenience and Necessity -
Local Permits

This bill specifies that a county or municipality has the authority to approve or deny any local permit required under a certificate of public convenience and necessity (CPCN) issued by the Public Service Commission (PSC). A county or municipality must approve or deny such a permit within a reasonable time and in accordance with local laws, to the extent that local laws are not preempted by State law. A county or municipality is prohibited from conditioning the approval of a local permit required under a CPCN on receipt of a conditional use approval, a special exception approval, or a floating zone approval for any aspect of a generating station, an overhead transmission line, or a qualified lead line proposed to be constructed under the CPCN.

Fiscal Summary

State Effect: The bill does not directly affect State government finances or operations.

Local Effect: The bill affects local government finances and operations to the extent that counties and municipalities must process permits required under a CPCN and do so within a reasonable amount of time and without zoning conditions they might have otherwise included. The overall effect on any particular local government is likely minimal.

Small Business Effect: Minimal.

Analysis

Current Law: PSC is the lead agency for licensing the siting, construction, and operation of power plants and related facilities in the State through the CPCN process, which is a

comprehensive process involving several other State agencies, including the Department of Natural Resources and its Power Plant Research Program and the Maryland Department of the Environment.

Generally, 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. The application process involves notifying specified stakeholders, public hearings, the consideration of recommendations by State and local government entities, and the project's effect on various aspects of the State infrastructure, economy, and environment.

PSC must take final action on a CPCN application only after due consideration of the recommendations of the governing body of each county or municipality in which any portion of the project is proposed to be located and the effect of the project on various aspects of the State infrastructure, economy, and environment. For a generating station specifically, PSC must provide due consideration of (1) a CPCN application's consistency with the comprehensive plan and zoning of each county or municipality where any portion of the generating station is proposed to be located and (2) the efforts to resolve issues presented by a county or municipality pertaining to a proposed generating station located within its geographic lines.

The Supreme Court of Maryland, in *Bd. of Cty. Commissioners of Washington Cty. v. Perennial Solar, LLC*, 464 Md. 610 (2019), held that State law impliedly preempts local zoning regulation of solar energy generating systems that require a CPCN.

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

Additional Comments: PSC advises that the bill addresses an emerging regulatory gap occasioned by the Supreme Court of Maryland's decision in *Perennial Solar* between PSC's exclusive authority over the siting of generating stations in the State and local authority over the issuance of permits by counties and municipalities. The bill clarifies that local governments do indeed have the authority to issue the permits and approvals required under a CPCN; as a result, PSC notes that the bill may eliminate a source of delay for renewable energy projects being developed in the State.

Additional Information

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

Designated Cross File: HB 692 (Delegate Crosby) - Economic Matters.

Information Source(s): Public Service Commission; Department of Natural Resources; Baltimore, Montgomery, and Frederick counties; City of Havre de Grace; Department of Legislative Services

Fiscal Note History: First Reader - February 15, 2023
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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.