

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 739

(Delegate Ghrist, *et al.*)

Economic Matters

Public Utilities - Solar Energy Generating Stations - Local Approval

This bill specifies that, notwithstanding any other provision of law, the Public Service Commission (PSC) may not approve a Certificate of Public Convenience and Necessity (CPCN) for a solar energy generating station unless each county or municipality where any portion of the generating station is proposed to be located has provided PSC with written approval for the construction of the generating station.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State finances or operations, as discussed below.

Local Effect: The bill is not anticipated to materially affect local finances or operations, as discussed below.

Small Business Effect: Potential meaningful.

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 (DNR) 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. However, a generating station does not include a facility (including a solar facility) used for electricity production with a capacity of up to 2 megawatts that is installed with equipment that prevents the flow of electricity to the electric grid during time periods when the grid is out of service. It also does not include certain co-located or adjacent solar facilities with a maximum cumulative capacity of 14 megawatts.

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; the effect of the project on various aspects of the State infrastructure, economy, and environment; the effect of climate change on the project; and, for a generating station only, other specified information.

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. Chapter 515 of 2023 established that a county or municipality has the authority to approve or deny any local permit required under a CPCN issued by 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.

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

State Fiscal Effect: The bill likely results in a decrease in the number of CPCN applications filed and/or approved annually with PSC. However, any decrease in CPCN applications and approvals is not anticipated to materially affect the finances or operations of PSC or DNR.

PSC advises that county governments have frequently opposed the development of solar farms within their boundaries. Thus, PSC anticipates a material decrease in the number of CPCNs it grants annually for solar projects as a result of the bill's requirement that local governments acquiesce to the construction of such projects before CPCNs may be approved for them.

The Department of Legislative Services advises that the bill may dissuade some developers from seeking CPCNs for solar projects altogether. However, the extent to which CPCN applications for solar projects decrease as a result of the bill cannot be reliably estimated at this time. The bill's impact on the volume of solar CPCN applications depends on numerous unknown factors, including the extent to which developers (1) attempt to shift solar projects requiring CPCN approval to jurisdictions within the State that are more amenable to accommodating solar farms; (2) are willing to negotiate with and provide concessions to local governments to win their approval; and (3) retrain their focus on building smaller scale solar projects that do not require CPCN approval.

This analysis does not include any effects related to the State Renewable Energy Portfolio Standard, such as solar renewable energy credit prices and alternative compliance payments, which may be affected if in-state solar energy capacity meaningfully decreases from what it otherwise would have been.

Local Fiscal Effect: The Maryland Municipal League (MML) advises that the bill grants local governments greater authority over the approval and siting of solar energy projects. According to MML, local governments may incur minor additional costs to review CPCN applications, conduct public hearings, and coordinate with PSC. However, the Maryland Association of Counties advises that the bill has a negligible impact on county governments. Moreover, Howard and Prince George's counties advise that the bill does not impact their finances.

Small Business Effect: To the extent that fewer CPCNs are approved for solar energy generating stations as a result of the bill, small businesses involved in the construction and operation of such generating stations may experience reduced demand for their services.

Additional Information

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

Designated Cross File: SB 478 (Senator Gallion, *et al.*) - Education, Energy, and the Environment.

Information Source(s): Howard and Prince George's counties; Maryland Association of Counties; Maryland Municipal League; Maryland Department of the Environment; Department of Natural Resources; Office of People's Counsel; Public Service Commission; Department of Legislative Services

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js/smr

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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.

State law provides that a “generating station” excludes:

- a facility used for electricity production with a capacity of up to 2 megawatts that is installed with equipment that prevents the flow of electricity to the electric grid during time periods when the grid is out of service;
- a combination of two or more co-located or adjacent facilities used for electricity production from solar photovoltaic systems or specified eligible customer-generators that have a maximum cumulative capacity of 14 megawatts, including maximum individual capacities of 2 megawatts (subject to satisfying other requirements); and
- a facility, or a combination of two or more facilities, used for electricity production for the purpose of onsite emergency backup for critical infrastructure when service from the electric company is interrupted and conducting necessary test and maintenance operations (subject to satisfying other 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 and must consider alternative routes and related costs for the construction of a new overhead transmission line.

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.