

SB 741_First Solar_Fav

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Position: FAV



Senate Finance Committee
3 East
Miller Senate Office Building
Annapolis, MD 21401

February 24, 2020

RE: **Support of SB 741**; Certificate of Public Convenience and Necessity – Electric Facilities Study and Procedures

Chair Kelley and Members of the Committee,

My name is Rebecca Campbell and I am the Manager of Government Affairs for First Solar Inc. I appreciate the opportunity to submit written testimony regarding SB 741. I would like to express my strong **support** of this bill.

First Solar is the largest American solar photovoltaic (PV) panel manufacturer and the largest manufacturer of PV panels in the western hemisphere. We are one of the world's top ranked utility-scale solar developers and our projects are cost competitive with conventional energy sources today. With more than 25 gigawatts of modules sold, First Solar has a demonstrated history of financial stability and manufacturing success. First Solar solutions diversify the energy portfolio and reduce the risk of fuel-price volatility while delivering a levelized cost of electricity that is competitive with fossil fuels. Our renewable energy systems protect and enhance the environment. On a lifecycle basis, First Solar PV panels have the smallest carbon footprint, lowest water use and fastest energy payback time of any PV technology on the market. At present, First Solar has built two of the largest operational solar projects in Maryland: MD Solar, a 20 megawatt (MW) installation at the Maryland Correctional Facility in Hagerstown, and the 14 MW installation at Mount St. Mary's University.

SB 741 Creates a More Transparent, Efficient CPCN Process for Maryland's Rapidly Growing Solar Industry

The passage of CEJA in 2019 set Maryland on an impressive path towards one of the most aggressive goals for solar deployment in the country. However, in order to achieve its goals, it is essential for solar developers to have a fair, transparent, and efficient permitting process. The current CPCN process contains duplicative and inefficient elements that are currently increasing project costs and causing significant delays. SB 741 seeks to clarify and streamline this process. For example, while the determination in the Washington County vs. Perennial Solar case clearly declared that the PSC has final siting authority over solar projects¹, it continues to be PPRP's practice to require solar developers to seek local permitting – even though local permits would be deemed legally void. Instead, SB 741 acknowledges the importance of local input by creating a defined, formal process for local zoning officials to provide feedback to the PSC during the CPCN procedure, while eliminating the time-consuming, wasteful, and

¹ Board of County Commissioners of Washington County, Maryland v. Perennial Solar, LLC
<https://www.courts.state.md.us/data/opinions/coa/2019/66a18.pdf>



unnecessary process of requiring solar developers to seek local permits. SB 741 also creates greater transparency for PPRP's environmental review process and seeks to establish streamlined, consistent standard permit conditions for common project considerations such as setbacks, visual buffers, storm water management guidelines, and decommissioning plans.

With the passage of CEJA, Maryland is poised to become a leading solar market. However, the current CPCN process contains inefficiencies that are adding significant costs and time to the development of utility-scale solar projects. SB 741 will streamline and improve upon this process, thus helping to ensure that Maryland is on a path towards successfully achieving its energy goals. I respectfully request a favorable ruling on this piece of legislation.

Thank you for your attention to this matter and for your consideration of my testimony.

Respectfully,
Rebecca Campbell

A handwritten signature in grey ink that reads "Rebecca Campbell".

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SB 741_Urban Grid_Fav

Uploaded by: Crawford, James

Position: FAV



Senate Finance Committee
February 25, 2020

Certificate of Public Convenience and Necessity – Electric Facilities – Study and Procedures (SB 741)

Favorable

Mr. Chairman and members of the Committee, Urban Grid Solar is a developer of utility-scale solar farms. Since our founding in 2011, we have been working and investing in Maryland. Urban Grid Solar is strongly committed to enhancing economic opportunities and bringing clean energy to Maryland.

On behalf of the Urban Grid Solar team, we wish to express our **support for SB 741**, which streamlines and clarifies the CPCN process in order to meet our in-state solar deployment goals, while also preserving and expanding the local voice on a project’s consistency with local zoning and comprehensive planning.

Under current law, as has been reaffirmed by the Court of Appeals’ recent *Perennial* decision, the PSC holds final siting authority for projects greater than 2MW in size. The PSC is required to give due consideration to local planning and zoning during their fact-based review process administered by the DNR’s PPRP. Despite that, certain elements of the CPCN process have become muddled and overlapping, leading to unnecessary costs and complexities. **SB 741 ensures that the CPCN process is as fair and timely as possible so that Maryland can meet its solar deployment goals.**

In the CPCN process, the PSC is required to give due consideration to a project’s consistency with local zoning and comprehensive planning as well as the applicant’s work towards addressing local concerns. The PSC gives significant consideration to recommendations made by the local jurisdiction in streamlining the CPCN process, **SB 741 does not make changes that would jeopardize local voices in the CPCN process.**

Currently, the PSC holds the authority to make the ultimate siting decision, but places significant weight on the PPRP’s environmental review and recommended permitting conditions to help give the PSC a full picture on a project’s impacts, if any. However, PPRP is not required by law to submit their review and proposed permitting conditions for all projects. Historically, PPRP has elected to not submit their environmental review or proposed permitting conditions for projects on which the PPRP recommends denial. This means that any facts within the environmental review that might be favorable towards the project in other aspects of the CPCN review are withheld from the PSC. **To ensure that the PSC receives a holistic view of an applicant’s project, SB 741 would require PPRP to provide the PSC with an independent environmental review and proposed permitting conditions in all cases, regardless of PPRP’s stance on an applicant’s approval or denial.**

Even though the *Perennial* decision affirms that the PSC’s holds final authority on siting projects, PPRP continues to require that applicants pursue a local permitting decision. This parallel process means that applicants must spend significant time and resources in pursuing a CPCN in a way that the Court of Appeals found would “engender chaos and confusion.” **SB 741 would resolve this by creating a process allowing local officials to report to PPRP and the PSC on a project’s consistency with local planning and zoning, and automatically adding a local government’s planning department to the PSC’s notice list as an interested party.**



For these reasons, we thank you for your consideration and support SB741.

Sincerely,

James A Crawford Jr

James Crawford
VP - Development
Urban Grid Solar

CCAN Action Fund_FAV_SB741

Uploaded by: Hershkowitz, Steven

Position: FAV

**Testimony in Support of Senate Bill 741
Senate Finance Committee | February 25, 2020**

Steven Hershkowitz, CCAN Action Fund Maryland Director

The Chesapeake Climate Action Network (CCAN) Action Fund supports Senate Bill 741, legislation to remove unnecessary barriers for solar projects in the Certificate of Public Convenience and Necessity (CPCN) process. We thank Sen. Brian Feldman for sponsoring this legislation to help the Public Service Commission (PSC) meet solar requirements in the Clean Energy Jobs Act.

CCAN Action Fund and our grassroots network throughout Maryland is dedicated to achieving a net zero greenhouse gas emission economy by 2045, as is recommended by the United Nations Intergovernmental Panel on Climate Change (IPCC). To create this future, we must invest in frontline and historically disadvantaged communities, protect workers, create good-paying union jobs, and result in greater wealth and income equality.

Not only does our electricity sector make up about 30% of the state's climate pollution, but it is the key to reducing emissions in the other two large sources of greenhouse gases: transportation and buildings. Climate scientists have championed the concept of "electrify everything" as a way to eliminate the use of fossil fuels to power our cars and heat our buildings. But "electrify everything" is dependent on a zero emissions electricity grid.

The General Assembly took a huge step forward when it passed the Clean Energy Jobs Act last year, requiring 50% clean electricity by 2030, including a 14.5% "carve out" for solar energy. Unfortunately, red tape in the CPCN process is making it difficult for several solar projects to gain permitting approval without delay costs. For example, the Power Plant Research Program, the state entity responsible for advising the PSC on the environmental impact of new power plants, has been withholding recommendations and stalling the process. This legislation makes it clear that PPRP must provide environmental review and draft permitting conditions for all cases.

The bill does not change state law that requires the PSC to consider consistency with local zoning, as well as efforts of the CPCN applicant to address local concerns. The PSC must give "significant weight" to the recommendation of the local jurisdiction. For these reasons, SB 741 strikes the right balance between clean energy needs and local control. CCAN Action Fund urges a favorable report.

CONTACT

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Senator Feldman_FAV_SB741

Uploaded by: Senator Feldman, Senator Feldman

Position: FAV

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OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

January 7, 2020

The Honorable Brian J. Feldman
Senate of Maryland
James Senate Office Building, Room 104
Annapolis, Maryland 21401

Dear Senator Feldman:

You asked a series of questions relating to the Certificate of Public Convenience and Necessity (“CPCN”) application process for solar energy generating systems (“SEGS”) – in particular, the role that local land use interests play in the application process in light of the Court of Appeals’ holding in *Bd. of Cty. Commissioners of Washington Cty. v. Perennial Solar, LLC*, 464 Md. 610 (2019) (“*Perennial*”). Your specific questions and my answers appear below.

1. Can the Power Plant Research Program, as part of the CPCN process, require that SEGS go through a separate local siting and zoning process?

It is my view that the Maryland Department of Natural Resources’ Power Plant Research Program (“PPRP”) may request that a SEGS developer submit a proposed project to local zoning authorities for the purpose of evaluating its consistency with local zoning regulations and identifying local planning and zoning concerns.

Except as provided in Public Utilities Article (“PU”) § 7-207.1, a person may not begin construction of a generating station in the State without first obtaining a CPCN from the Public Service Commission (“PSC”). PU § 7-207(b)(1). The PSC may grant a CPCN only after reviewing State agencies and local government have an opportunity to review, evaluate, and comment on the application and after the PSC holds a public hearing in which local government may participate. PU § 7-207(c)(2)(i) and (d).

For generating stations that require a CPCN, “the final decision regarding whether to approve a generating station lies exclusively with the PSC.” *Perennial*, 464 Md. at 632. State law provides that the PSC shall take final action on a CPCN application only after “due consideration” of the following:

- (1) the recommendation of the governing body of each county or municipal corporation in which any portion of the construction of

the generating station, overhead transmission line, or qualified generator lead line is proposed to be located;

(2) the effect of the generating station, overhead transmission line, or qualified generator lead line on:

- (i) the stability and reliability of the electric system;
- (ii) economics;
- (iii) esthetics;
- (iv) historic sites;
- (v) aviation safety as determined by the Maryland Aviation Administration and the administrator of the Federal Aviation Administration;
- (vi) when applicable, air quality and water pollution; and
- (vii) the availability of means for the required timely disposal of wastes produced by any generating station; and

(3) for a generating station:

- (i) the consistency of the application with the comprehensive plan and zoning of each county or municipal corporation where any portion of the generating station is proposed to be located; and
- (ii) the efforts to resolve any issues presented by a county or municipal corporation where any portion of the generating station is proposed to be located.

PU § 7-207(e).

As part of the CPCN application process, PPRP coordinates with reviewing State agencies to evaluate a proposed generating station's potential impacts on environmental, cultural, and socioeconomic resources in Maryland, pursuant to Natural Resources Article § 3-304. That evaluation, which includes a review of the proposed generating station's consistency with local land use regulations, is included in a Project Assessment Report, which is submitted to the PSC along with the reviewing State agencies' recommendation to grant or deny the CPCN and, if the recommendation is to grant the CPCN, proposed recommended conditions of approval.

In *Perennial*, the Court of Appeals held that PU § 7-207 preempts by implication local zoning authority over the siting and location of generating stations that require a CPCN.

[PU § 7-207] is comprehensive and grants the PSC broad authority to determine whether and where SEGS may be constructed. Local land use interests are specifically designated by statute as requiring

“due consideration” by the PSC. This includes the recommendation of the governing body of each county or municipal corporation in which any portion of the construction of the generating station is proposed to be located, as well as due consideration by the PSC of the consistency of the application with the comprehensive plan and zoning for the respective local jurisdiction.

Under the plain language of the statute, local government is a significant participant in the process, and local planning and zoning concerns are important in the PSC approval process. However, the ultimate decision-maker is the PSC, not the local government or local zoning board. Although local zoning laws are preempted and therefore not directly enforceable by the local governments as applied to generating stations such as SEGS, they are nevertheless a statutory factor requiring due consideration by the PSC in rendering its ultimate decision.

464 Md. 610, 644-45.

It is my view that, for the purpose of evaluating a CPCN application, PPRP may request that a SEGS developer submit a proposed project to local zoning authorities as a part of the CPCN application in order to evaluate the project’s consistency with local zoning regulations and to identify local planning and zoning concerns. As the PSC remains the “the ultimate decision-maker” – with the power to grant a CPCN for a SEGS even when opposed by local authorities – such a request by PPRP is consistent with PU § 7-207 and the Court of Appeals’ *Perennial* decision. In fact, given the recent enactment of PU § 7-207(e)(3),¹ PPRP has adopted this approach in its more recent “completeness” reviews of CPCN applications for generating stations, which are required before the CPCN review process begins. *See e.g., PSC Case No. 9499, In the Matter of the Application of Morgnec Road Solar, LLC for a CPCN to Construct a 45.0 MW Solar Photovoltaic Generation Facility in Kent County, Maryland*, Docket Entry 15 (PPRP indicating deficiency in CPCN application) (Jan. 15, 2019).

2. Can PPRP delay or refuse to carry out its duties under the CPCN process, including providing a recommendation and proposed licensing conditions to the PSC, in deference to any local permit process?

See my response to Question #1. PPRP may delay its review of a CPCN application pending local zoning authority’s initial consideration of the project’s consistency with local zoning regulations.

¹ Ch. 392 Laws of Maryland 2017.

The Honorable Brian J. Feldman
January 7, 2020
Page 4

3. Can local governments delay or decline to process or review elements of SEGS that have been approved by the PSC, such as conditioning site plan review or providing discretionary permits required to construct or operate an approved SEGS?

Generally, the PSC adopts conditions to a CPCN that require local site plan approval or permitting. In the event that local authorities do not act, the developer could request that the PSC revisit and revise or modify those conditions, whichever is appropriate. Revisions or modification to initial CPCN conditions are consistent with PSC practice. *See, e.g., Case Number: 9380, In the Matter of the Application of Great Bay Solar I, LLC for a CPCN to Construct a 150.0 MW Solar Photovoltaic Generating Facility in Somerset County, Maryland* (revising approved licensing conditions for a SEGS), Maillog No. 226783 (Sept. 12, 2019); *In the Matter of the Application of Dominion Cove Point, LNG, LP for a CPCN to Construct a Generating Station at the Dominion Cove Point Liquefied Nat. Gas Terminal in Calvert Cty., Maryland, Modification to CPCN, No. 88565, 2018 WL 805669* (Feb. 6, 2018) (approving amendments to the licensing conditions of a previously granted CPCN).

Sincerely



David W. Stamper
Assistant Attorney General

SB 741_Bruce Burcat_MAREC

Uploaded by: Tashakkori, Cyrus

Position: FAV



Date: February 25, 2020

Testimony of Bruce Burcat, Executive Director
Mid-Atlantic Renewable Energy Coalition
Before the Senate Finance Committee

Senate Bill 741
Position: Support

I am Bruce Burcat the Executive Director of the Mid-Atlantic Renewable Energy Coalition (MAREC). I appreciate the opportunity to provide our comments to this Committee in support of Senate Bill 741

MAREC is an organization representing many of the leading utility-scale wind and solar developers and public interest organizations that support the development of renewable energy in the Mid-Atlantic region. Our members develop wind and solar farms in nine states in the PJM region. Unfortunately, when it comes to developing projects in Maryland, our members find the process to obtain certification to be cumbersome, costly and lengthy.

Of the nine states in the MAREC region, Maryland is one of the most challenging to successfully develop in-state sites for utility-scale solar projects, if not the most challenging. I know that you already have heard about some of the reasons for these challenges, like limited transmission capacity, conflicts with conservation easements, forests, wetlands and so forth. Compounding these types of challenges is the added element of requiring local permitting, which is redundant, creating inefficiency and an unduly lengthy process. While project permitting in other states generally take less than a year on average, project permitting in Maryland can exceed two years.

Local input before the Public Service Commission when considering the certification of a solar project is already an essential element of the process. The Commission CPCN process is thorough and comprehensive. Nevertheless, the dual permitting process that continues to exist

even after the Court of Appeals found that a separate local process was not legally justified creates a difficult situation for developers. As the Court stated that such a process “would engender chaos and confusion.” Senate Bill 741 would create a defined structure for local participation and would resolve the issue of dual permitting processes.

Solar businesses choose to develop in states that have reasonable processes for permitting their projects and have public policies supporting development. We know that developers have and will leave the state as a result of the current permitting regime. While Maryland has strong public policy supporting solar development, in order to meet the goals of the Clean Energy Jobs Act, it needs to act to improve the permitting process for projects.

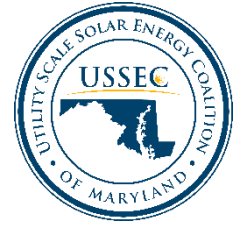
MAREC respectfully requests a favorable report on SB 741.

SB 741_USSEC_Favorable

Uploaded by: Tashakkori, Cyrus

Position: FAV

UTILITY-SCALE SOLAR ENERGY COALITION OF MARYLAND



Senate Bill 741

Certificate of Public Convenience and Necessity - Electric Facilities - Study and Procedures

FAVORABLE

February 25, 2020

Chair Delores Kelley
Finance Committee
Senate of Maryland

Chair Kelley and Members of the Committee,

The Maryland Utility Scale Solar Energy Coalition, or USSEC, urges your **support for SB 741**.

Solar projects over 2 MW are required to seek a CPCN permit from the state PSC. This is a lengthy, costly, and robust process that typically involves the following steps:

1. Pre-Application Activities
2. CPCN Application Submittal
3. First Public Hearing
4. Local Permitting Application (required by PPRP)
5. PPRP Environmental Review & Proposed Permitting Conditions
6. Second Public Hearing
7. Evidentiary Hearing
8. Permitting Decision by PSC
9. Post-CPCN Approval Activities

SB 741 seeks to address a number of issues with the current CPCN process. For illustrative purposes, we walk through an example of what real projects under development in Maryland have gone through and the challenges they've faced under the existing CPCN process.

First, as you all know, in 2018 the General Assembly passed legislation that strengthened the local voice as part of the state CPCN permitting process. USSEC worked with MACo on that legislative language which was intended to defuse some of the concerns about the CPCN process which preempts local siting of larger solar projects. SB 741 makes no changes to the 2018 legislation.

Pre-Application Activities

A solar project seeking a CPCN permit typically first starts locally with meetings in the host community including neighbors, interested landowners, and preliminary meetings with the local government for a

period of 2 or more years before a project may be deemed viable to start the permitting process. Many projects will die prior to submitting a permitting application due to myriad siting constraints (ex. Transmission capacity constraints, location and number of conservation easements, insufficient interest among landowners, environmentally sensitive constraints, wetlands, floodplains, cultural resource constraints, land cost constraints, etc.)

CPCN Application Submittal

Prior to submitting a CPCN application, independent experts are hired to survey various elements of the desired site and to provide a preliminary design that defines the Limit of Disturbance (LOD) for a proposed project, all of which are compiled in a lengthy Environmental Report Document (ERD) which is submitted to the PSC and PPRP, along with a \$10,000 application fee, to kick off the CPCN process. The ERD and all other aspects of a proposed project application and proceedings are posted online on the PSC's website.

First Public Hearing

The CPCN process typically starts with a public hearing in the host community at which the Applicant provides a presentation of the proposed project and the presiding PULJ hears and records public comments. The public hearing is noticed in advance in the local paper, on social media, on the Applicant's website, on the PSC's website, and with signs in the community prior to the hearing.

Local Permitting Requirement

At this stage, PPRP typically requires that the applicant show that they have applied for and fully gone through the local permitting process. This is despite the fact that a local siting decision has been deemed legally void for such projects by the Maryland Court of Appeals. PPRP has pointed to the lack of a formal process by which local governments can provide input into the CPCN process, despite the fact that local governments routinely participate as interested parties or intervenors in the CPCN process.

HB SB 741 would address this dynamic by further enabling the local planning and zoning office to provide a report to PPRP and the PSC on a proposed project's conformity with local siting and zoning. Additionally, the local government's planning department is automatically added as an interested party to directly receive all PSC notices and communications.

PPRP Environmental Review & Proposed Permitting Conditions

A CPCN applicant that elects to go through the local process may face a year or longer delay and significant costs before a siting decision is made locally, at which point the lengthy CPCN process can commence. PPRP then uses the legally void local siting decision along with other agency and public input to assess the merits of the application and provide a recommendation to the PSC to deny or approve the proposed project.

Historically, if PPRP elects to recommend denial to the PSC, PPRP has also declined to submit its independent environmental review and permitting conditions for PSC consideration. As PPRP's independent environmental review and permitting conditions are integral to the PSC's review of a CPCN application, PPRP's refusal to submit these documents allows it to exert significant leverage over the process. For instance, PPRP may recommend denial of a CPCN based on the recommendation of

the local jurisdiction, but the contents of its environmental review may otherwise be favorable to the project under other CPCN review factors. By withholding its environmental review from the PSC, PPRP is able to withhold favorable information from the PSC that would otherwise be a detriment to its overall position on the CPCN.

PPRP has used a variety of justifications for this practice, including the claim that without local input permitting conditions cannot be devised. This runs counter to the fact that in cases where local governments elect to simply participate in the CPCN process rather than run a separate local process, PPRP has provided the PSC with recommended permitting conditions. PPRP has also pointed to ambiguous language in the statute that does not make it clear that permitting conditions are to be provided to the PSC even if PPRP's recommendation is to deny a permit.

To ensure a fair process, SB 741 would require PPRP to provide the PSC with an independent environmental review (called a Project Assessment Report) and proposed permitting conditions regardless of PPRP's recommendation of approval or denial.

Second Public Hearing and Evidentiary Hearing

Once a project makes it this far, a second local public hearing is held to once again gather public input on the project and proposed permitting conditions. An evidentiary hearing is then held and the PULJ typically issues a ruling either approving or denying the CPCN after legal briefs are submitted.

Post-CPCN Activities

A project that makes it this far in the process and receives an approval by the PSC now faces the possibility that permitting conditions recommended by PPRP do not match the legally void permitting conditions of the local government. Once a CPCN is granted, the local government is charged with reviewing and approving the project site plan, and local governments have used this opportunity to delay projects that they were not able to prevent through the PSC siting process, or to impose conditions different or more strict than those imposed by the PSC. Both dynamics are flaws in the CPCN process that create public confusion, impose significant costs and delays, and overall frustrate the intent of the General Assembly to empower the PSC with ultimate authority over the permitting of such projects.

SB 741 would prohibit the use of the site plan review process or other subsequent discretionary permitting processes to unreasonably delay or impose different permitting conditions than those imposed by the PSC for an approved CPCN.

Other Items

As illustrated above, the current CPCN process can result in a permitting timeline that could last 2 or more years, during which time applicants have no clarity on permitting conditions that could allow them to progress development plans pending an ultimate permitting decision. This is despite the fact that the vast majority of permitting conditions on solar projects are "standard" conditions that are carbon-copies of conditions on prior projects.

SB 741 would call on the PSC to define certain standard conditions that would apply equally to all CPCN projects so that developers can more efficiently plan and ultimately expedite the development of permitted solar projects.

Finally, one small but important element of a common CPCN condition pertains to how a CPCN treats installation of vegetative screening landscaping, which is designed to limit the visual impact of a solar project on the neighboring community. Currently, installation of such landscaping triggers the start of construction under a CPCN. However, it is often in the public interest to install such landscaping before construction, potentially significantly sooner than construction start, in order to allow time for plants to become established, grow, and maximize their effectiveness at screening solar project construction and operation from sight.

SB 741 would allow for installation of vegetative landscape buffer as part of a CPCN without triggering the start of construction.

In conclusion, we hope you agree that **it does not make sense for the state to require CPCN projects apply for a legally void local permitting decision** rather than incorporate local input into the comprehensive state process. SB 741 actually strengthens the local voice in the CPCN process by creating a defined avenue by which the local jurisdiction provides input on zoning and comprehensive plan consistency. SB 741 preserves the existing requirement for the Commission to give "due consideration" to local zoning and the comprehensive plan, and under PSC precedent, the recommendation of the local jurisdiction would continue to enjoy "significant weight" under this bill.

We urge you to support SB 741 and thank you for your time and consideration.

PHI_UNF_SB741

Uploaded by: Lanier, Ivan

Position: UNF



An Exelon Company



An Exelon Company

February 25, 2020

112 West Street
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410-269-7115

OPPOSE – SB 741
Senate Bill 741 – Certificate of Public Convenience and Necessity –
Electric Facilities – Study and Procedures

Potomac Electric Power Company (Pepco) and Delmarva Power & Light Company (Delmarva Power) oppose **Senate Bill 741 – Certificate of Public Convenience and Necessity – Electric Facilities – Study and Procedures**. Senate Bill 741 would require the Department of Natural Resources to prepare an independent environment and socioeconomic project assessment report within 60 days of the application for a Certificate of Public Convenience and Necessity (CPCN). The Public Service Commission (The Commission) is also required to share that report with the zoning officials of any affected county or municipal government.

Senate Bill 741 is unnecessary. The current CPCN process already ensures that all environmental, historical, ratepayer impacts and other considerations are addressed by the applicant. The process involves notifying specific stakeholders, public hearings, and 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. The very purpose of the CPCN permitting process is to determine whether the applicant has met the standards for receiving a permit, including the location of projects.

A CPCN process is a comprehensive regulatory process, requiring input from various State agencies such as the Power Plant Research Program, the Department of Natural Resources, and the Maryland Department of the Environment as well as input from impacted local governing body or bodies, landowners, and the public. Under Maryland law, Pepco and Delmarva power must obtain a CPCN for any transmission line project 100kV and above—by way of example, two prior transmission projects undertaken for reliability that required CPCNs include the Burtonsville to Takoma project and the Piney Grove to Wattsville project. It is the Commission's statutory obligation to determine whether a CPCN is in the best interests of Maryland and the reliability of the electric system. Specifically, the Commission must consider, among other items the effect of the project on the stability and reliability of the electric system; economics; esthetics; historic sites; aviation safety; air and water pollution; and the need to meet existing and future demand for electric service.

The Department of Natural Resources (DNR) input to the CPCN process is particularly important. DNR reviews air and water impacts, and in reviewing both it considers the health impacts on persons affected by proposed infrastructure. Specifically, DNR's air pollution review assesses air emissions compliance with federal national ambient air quality standards, which are determined

based on human health risk assessments. The existing CPCN process sufficiently assesses the impact of a particular project and as such Senate Bill 741 is unnecessary.

For the above reasons, Pepco and Delmarva Power respectfully request an unfavorable vote on Senate Bill 741.

Contact:

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BGE_UNF_SB 741

Uploaded by: Washington, Charles

Position: UNF



An Exelon Company

Position Statement

Oppose
Finance Committee
02/25/2020

SB 741 Certificate of Public Convenience and Necessity - Electric Facilities - Study and Procedures

Baltimore Gas and Electric Company (BGE) opposes *Senate Bill Utility Regulation – Consideration of Climate and Labor*, which would add requirements to the evaluations conducted and notifications made as part of the Certificate of Public Convenience and Necessity (CPCN) process, and would prohibit a local government from taking specified adverse actions related to CPCN projects. It would prohibit the Public Service Commission (Commission) from requiring a CPCN applicant for a generating station to apply for or receive specified local zoning approvals and may likewise not deny a CPCN for the same reasons.

While this legislation is well intentioned, it attempts to add an unnecessary layer onto an already robust and comprehensive Certificate of Public Convenience and Necessity process that considers the physical, environmental, aesthetic and noise impacts for the siting of transmission lines and generating stations.

The electric transmission system is analogous to the interstate highway system. Its purpose is to move electricity efficiently, to eliminate congestion or traffic jams and ensure electricity is delivered to where customers need it. BGE's transmission system consists of more than 6,000 structures that move high-voltage electricity from power sources to BGE substations where the voltage is managed and then moved along the distribution system until ultimately it is safely delivered to homes and businesses. Transmission of electricity is required to keep the lights on in Maryland.

Currently, state agencies already have the obligation to examine the impacts of CPCN projects. The CPCN regulatory process is designed to consider the physical, environmental, aesthetic and noise impacts of a transmission line project. These construction impacts are currently considered by the Commission as part of the thorough process for reviewing an application for a CPCN. The Commission has an opportunity to require an applicant to mitigate and properly manage any adverse construction impacts through the issuance of licensing conditions that attach to a grant of a CPCN. A CPCN process is a comprehensive regulatory process, involving many state agencies, including the Power Plant Research Program, the Department of Planning, the Department of Natural Resource and the Maryland Department of the Environment, as well as input from the impacted local governing body or bodies, landowners, and the public.

Additionally, construction environmental and health impacts are largely mitigated through the regulatory permitting requirements for a project. Permit conditions require the company to manage:

particulate matter from construction activity and air pollution, such as dusting from construction activity. It restricts any cause of discharge into the atmosphere any odors or vapors that may be a nuisance.

Because it is a truly comprehensive information gathering process, the CPCN process typically takes roughly 18 months to complete.

It is the Commission's statutory obligation to determine whether a CPCN is in the best interest of Maryland and the reliability of the electric system. Specifically, the Commission must consider, among other items:

1. The recommendation of the governing body of each county or municipal corporation in which any portion of the construction of the overhead transmission line is proposed to be built; and
2. The effect of the overhead transmission line on:
 - a. the stability and reliability of the electric system;
 - b. economics;
 - c. esthetics;
 - d. historic sites;
 - e. aviation safety;
 - f. air and water pollution; and
 - g. the need to meet existing and future demand for electric service

BGE believes that the current scope of environmental considerations sufficiently provides guidance to the Commission, state agencies and local governments when considering CPCN applications. For these reasons, BGE respectfully request that the Committee vote unfavorable on this legislation.

BGE, headquartered in Baltimore, is Maryland's largest gas and electric utility, delivering power to more than 1.2 million electric customers and more than 655,000 natural gas customers in central Maryland. The company's approximately 3,400 employees are committed to the safe and reliable delivery of gas and electricity, as well as enhanced energy management, conservation, environmental stewardship and community assistance. BGE is a subsidiary of Exelon Corporation (NYSE: EXC), the nation's leading competitive energy provider.

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Uploaded by: Abbott, Tyler

Position: INFO



Maryland

Department of the Environment

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor

Ben Grumbles, Secretary
Horacio Tablada, Deputy Secretary

February 25, 2020

The Honorable Delores G. Kelley, Chair
Finance Committee
Miller Senate Office Building, 3E
Annapolis, MD 21401

Re: Senate Bill 741 Certificate of Public Convenience and Necessity - Electric Facilities - Study and Procedures

Dear Chair Kelley and Members of the Committee:

The Maryland Department of the Environment (MDE or the Department) has reviewed *SB 741 - Certificate of Public Convenience and Necessity - Electric Facilities - Study and Procedures* and would like to provide some information on this bill.

The bill changes § 3-306 of the Natural Resources Article involving the review process for an application to the Public Service Commission (PSC) for a certificate of public convenience and necessity (CPCN) associated with power plant construction “involving, but not limited to, use or diversion of the waters of the State, or private wetlands.” The bill seems to add specificity on the type of report required by the Department of Natural Resources (DNR). As MDE understands it, however, an independent environmental and socioeconomic project assessment report consistent with the added specificity language is already being provided under the general language of the current law, albeit not within a 60-day window.

MDE contributes to the report that is currently required under § 3-306. For a CPCN application for a fossil fuel-fired power plant, which is the type of application most affected by the 60-day time frame, MDE and DNR currently adhere to the procedural schedule set by the PSC. The agencies follow this schedule as it is well recognized that a 60-day timeline would be too short for completion of the project assessment report and other necessary documents. For fossil fueled plants, it is typical for CPCN applications to be incomplete when they are submitted to the PSC. As such, it can take weeks (and sometimes months) before the statutory threshold of a complete application is met. Due to this fact, the current study that is required under §3-306 is typically provided in the last stages of the process and is included as part of the State’s letter of recommendation and pre-filed testimony in accordance with a procedural schedule established by the PSC Utility Law Judge. The PSC schedule is typically 6-12 months depending on the complexity of the project. As such, if the 60-day time frame were to be enforced for fossil fuel-fired power plants, it would not allow adequate time for a thorough review of the impacts from such plants, which would not serve the public well.

Thank you for your consideration. We will continue to monitor *SB 741 - Certificate of Public Convenience and Necessity - Electric Facilities - Study and Procedures* during the Committee’s deliberations, and I am available to answer any questions you may have. Please feel free to contact me at 410-260-6301 or by e-mail at tyler.abbott@maryland.gov.

Sincerely,

Tyler Abbott
cc: George “Tad” Aburn, Director, Air and Radiation Administration

PSC_INFO_SB0741

Uploaded by: Stanek, Jason

Position: INFO

JASON M. STANEK
CHAIRMAN

MICHAEL T. RICHARD
ANTHONY J. O'DONNELL
ODOGWU OBI LINTON
MINDY L. HERMAN



PUBLIC SERVICE COMMISSION

February 25, 2020

Chair Delores G. Kelley
Senate Finance Committee
Miller Senate Office Building, Room 3 East
Annapolis, MD 21401

RE: INFORMATION – SB 741 – Certificate of Public Convenience and Necessity – Electric Facilities – Study and Procedures

Dear Chair Kelley and Committee Members:

Senate Bill 741 introduces several procedural and study requirements to the Public Service Commission's Certificate of Public Convenience and Necessity (CPCN) process as well as prohibitions aimed at limiting the effect of local government planning and zoning approvals on the CPCN approval process. Many of the bill's proposed requirements are already part of the CPCN review process, at least functionally, and the stated prohibitions appear to reinforce the Commission's final siting authority for generating stations and transmission lines as affirmed recently by the Maryland Court of Appeals in *Board of County Commissioners of Washington County v. Perennial Solar, LLC*. If enacted, the Commission would be required to adopt regulations to implement certain SB 741 requirements on or before October 1, 2020, which as discussed below would be a difficult time frame to meet.

CPCN Procedural and Study Requirements

SB 741 requires the Department of Natural Resources (DNR) to complete an independent environmental and socioeconomic project assessment report, in addition to any other required study, and submit it jointly with the Department of the Environment (MDE) in accordance with the Commission's procedural schedule for a CPCN application. The joint submission must include the results of the independent study and investigation, a recommendation concerning the CPCN application, and proposed licensing conditions for the construction, operation, and decommissioning of the proposed facility. SB 741 further requires the Commission to send notice and a copy of the CPCN application to the Offices of Planning and Zoning for each county or municipal corporation in which the facilities defined in the CPCN application are proposed to be located. The Commission would also be required to add those Offices to the service list for the CPCN proceeding.

The Commission's CPCN process already incorporates several of these proposed requirements as a matter of Maryland law, Commission regulation, and Commission practice.

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For example, once a CPCN application is filed, § 7-207 of the Public Utilities Article requires that notice be given to the governing body of each county and municipal corporation in which any portion of the CPCN facility is proposed to be constructed, and COMAR 20.79.02.02 specifically requires the applicant to provide copies of its application to the local governing body and planning and zoning commission(s) in which the project will be located, among others. Notice is also required to be provided to the governing bodies and members of the Legislature for the counties or municipalities in which portion of the facility is proposed to be located, as well as to all other interested persons. Any interested person can petition the Commission to intervene in the CPCN proceeding. Those who do not wish to participate as a formal party may, instead, request to be added to the Commission’s service list to receive copies of documents filed with, or issued by, the Commission.

Under § 7-207(e), the Commission is required to give due consideration to specified statutory factors prior to taking final action on a CPCN application. These factors include the effect of the generating station or transmission line on “economics” and, where applicable, “air and water pollution.” The Commission evaluates these factors based on the evidentiary record established by the parties to a CPCN proceeding. Most of the record is established prior to the evidentiary hearing, and the evidentiary record typically closes upon conclusion of the evidentiary hearings. Included in the record in every CPCN proceeding is an independent assessment of the proposed project’s environmental and socioeconomic impacts—completed by the Department of Natural Resources, the Department of the Environment, and other State agencies—as well as the State agencies’ recommendation for approval (or denial) and any attendant licensing conditions for granting a CPCN.

Solar Photovoltaic Facility-Specific Requirements

SB 741 requires the Commission to incorporate licensing conditions that are specific to solar photovoltaic facilities. These conditions include reasonable setbacks and visual buffering requirements, adherence to storm-water management guidelines, and solar photovoltaic facility decommissioning requirements—conditions that are typically addressed in a Commission order granting a CPCN to a solar facility. Historically, these types of conditions have been recommended by DNR’s Power Plant Research Program (PPRP) for solar facilities and adopted by the Commission as part of the issued CPCN.

Specifically, SB 741 requires that commercially reasonable setbacks and visual buffering requirements must use predetermined setback distances and screening plans applicable to all solar facilities in the State, as the Commission adopts by regulation. Commercially reasonable from a business viewpoint is likely to conflict with community viewpoints. Also, it may not be feasible to adopt a regulation with predetermined setback distances and screening plans applicable to all solar photovoltaic facilities in the State, as the Commission currently considers many factors in the evidence before it, on a case-by-case basis.

Regarding storm-water management, SB 741 requires storm-water management guidelines adopted by MDE for solar facilities to be included in licensing conditions. MDE is one of the reviewing State agencies coordinated through PPRP and is able to recommend licensing conditions in accordance with Maryland storm-water management requirements. To that end, compliance with erosion, sediment and storm-water control regulations have become a standard CPCN licensing condition for solar projects.

Where SB 741 requires the use of salvage value in calculating solar decommissioning costs in decommissioning plans, there is a continuous evolution of decommissioning recommendations as the solar power industry grows and experience is gained. The use of salvage value in calculating decommissioning costs as far as thirty or more years into the future may prove challenging. The current market for solar panel recycling is not sufficiently mature to support reliable estimates of salvage value. As for the use of a surety bond, letter of credit or any corporate guarantee to secure the costs of decommissioning, it is worth noting that the purpose of a decommissioning requirement for solar facilities in the State is to ensure that the State, county, and municipal corporation do not bear any financial burden in the event of abandonment. Moreover, the creditworthiness of an applicant may evolve over time after a CPCN is issued, and, in many cases after a CPCN is issued, the project is often sold by the developer to another party. Therefore, corporate guarantees may prove insufficient as decommissioning liability protection instruments, and a surety bond or letter of credit may be needed.

Final Siting Authority for Generating Stations and Transmission Lines

On July 15, 2019, the Maryland Court of Appeals ruled in *Board of County Commissioners of Washington County v. Perennial Solar, LLC* that the Commission is the “ultimate decision-maker” for the siting and location of generating stations that require a CPCN. In that case, which concerned the construction of a large solar facility on agriculturally-zoned land, the Court of Appeals held that PUA § 7-207 “preempts by implication local zoning authority approval for the siting and location of generating stations which require a CPCN. The statute is comprehensive and grants the PSC broad authority to determine whether and where SEGs [Solar Energy Generating Systems] may be constructed.” The Court recognized that while the local government is a significant participant in the CPCN process, and local planning and zoning concerns are important in the approval process, “the ultimate decision-maker is the PSC, not the local government or local zoning board. * * * [Local zoning laws] are nevertheless a statutory factor requiring due consideration by the PSC in rendering its ultimate decision.”

SB 741 provides that the Offices of Planning and Zoning for each county or municipal corporation in which the CPCN facility is proposed to be located may submit a written report on the consistency of the CPCN application with the local government’s comprehensive plan and zoning. However, SB 741 prohibits the Commission from requiring an applicant to obtain a special exemption, conditional use permit, floating zone or other discretionary zoning approval; the Commission cannot deny a CPCN application where the applicant has not received a special exemption, conditional use permit, floating zone¹ or other discretionary zoning approval. Furthermore, SB 741 prohibits counties or municipal corporations from implementing a site plan approval (or other permit or approval) that is inconsistent with or more stringent than the requirements of a CPCN, or delaying issuance of a site plans or any other permits or approvals.

On the surface, the provisions discussed above appear to be consistent with the Court of Appeals’ decision in *Perennial Solar*. In effect, a local authority would not be able to unwind the issuance of a CPCN, thereby preserving the Commission’s final decision-making authority. However, SB 741 could under certain circumstances create tension with PUA § 7-207(e)(3), which requires the Commission to give due consideration to the consistency of the CPCN

¹ A floating zone is a zoning district that delineates conditions which must be met before that zoning district can be approved for an existing piece of land.

application with the local government's comprehensive plan and zoning. For instance, where a county's comprehensive plan and zoning would require an applicant to obtain a special exception and variance, SB 741 would allow the Commission to issue the CPCN (in the public interest) without requiring that approval. Indeed, the Commission could not deny the CPCN for failure to obtain that approval or condition the CPCN on receiving the approval. In this regard, SB 741 could undermine the legislative intent behind § 7-207(e)(3) if the Commission is not permitted to prescribe action that would align the application with the local comprehensive plan.

Rulemaking Requirement

SB 741 requires the Commission to adopt regulations to implement SB 741 on or before October 1, 2020, which is also the bill's effective date. To implement this requirement, the Commission must observe rulemaking protocol and state procedures. Commission Staff will need to develop and socialize draft regulations with affected stakeholders, including state agencies such as DNR and MDE, the solar development community, interested counties and municipal corporations, and others. Consequently, the regulation adoption date should be extended to at least 2021 in order to allow sufficient time for the Commission to solicit stakeholder input and promulgate applicable regulations.

Conclusion

Many of the procedural and notice requirements under Senate Bill 741 appear to overlap with existing provisions of the PUA and COMAR. Consequently, as a matter of Commission practice, those requirements are already captured by the existing CPCN application and review process. Except for the prohibitions related to county and municipal corporation approvals, the proposed legislation will not likely have a significant impact on the CPCN process and may not be necessary. The Commission requests that any rulemaking requirement be extended to 2021 to allow sufficient time for the Commission to promulgate any applicable regulations.

Thank you for your consideration of this information. Please contact Lisa Smith, Director of Legislative Affairs, at 410-336-6288 if you have any questions.

Sincerely,



Jason M. Stanek
Chairman