

JASON M. STANEK
CHAIRMAN

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



PUBLIC SERVICE COMMISSION

February 8, 2021

Chairman Dereck E. Davis
House Economic Matters Committee
Room 231, House Office Building
Annapolis, MD 21401

RE: HB 777 - INFORMATIONAL – Power Plant Research Program – Review of Application for Certificate of Public Convenience and Necessity – Alterations

Dear Chairman Davis and Committee Members:

HB 777 clarifies that the Public Service Commission will notify the Department of Natural Resources and the Department of the Environment immediately upon the receipt of any application for a Certificate of Public Convenience and Necessity associated with the construction of a generating station. Other requirements under HB 777 are directed at DNR and MDE, establishing a six-month timeframe in which the two agencies must complete and submit to the Commission the results of their independent assessments of a CPCN application, along with their recommendation of approval or denial, and recommended licensing conditions. Currently, the State agencies are not required to submit recommended licensing conditions to the Commission if they are recommending denial of the CPCN application.

CPCN Application Notice Requirement

HB 777 clarifies that once an application for CPCN to construct a generating station is filed with the Commission, the Commission shall immediately notify DNR and MDE of the application. Currently, COMAR 20.79.02.02B requires the applicant to simultaneously provide copies of its CPCN application to DNR and MDE, and to other State and federal agencies, when making a filing with the Commission. The Commission believes this regulation satisfies the amended language under HB 777.

Heightened Standard for Waiving Procedural Deadlines

HB 777 amends the Natural Resources Article to establish two limited circumstances in which the Commission may waive a deadline under the statute or otherwise alter the procedural schedule: (1) for undue hardship; or (2) on agreement of the parties to the CPCN

proceeding. The “undue hardship” standard would impact the Commission’s discretionary authority to grant waivers of filing deadlines or modify the procedural schedule in a CPCN proceeding, if necessary. Currently, Section 3-104 of the Public Utilities Article (“PUA”) authorizes the Commission to “institute and conduct proceedings reasonably necessary and proper to the exercise of its powers or the performance of its duties.” PUA § 3-104(a). The PUA further provides that the Commission or a public utility law judge “may conduct hearings, examine witnesses, administer oaths, and perform any other acts necessary to the conduct of proceedings.” PUA § 3-104(b). Pursuant to this authority, the Commission can waive or extend non-statutory deadlines for good cause.

In prior CPCN proceedings, the Commission has waived or extended filing deadlines and modified the procedural schedule by agreement of the parties. HB 777 would codify this current practice. However, in other instances, where the Commission could separately find cause to waive deadlines, HB 777 would only permit the Commission to grant such a waiver upon a finding of “undue hardship.” While the PUA does not define “undue hardship,” the term as applied under the Americans with Disabilities Act, for example, refers to any action that requires significant difficulty or expense when considered in light of a number of factors, including costs, financial resources, operational impact, etc. Raising the Commission’s waiver standard in this manner could lead to unintended consequences if the Commission is unable to consider the extenuating circumstances of each case and each waiver request on a case-by-case basis. The Commission therefore recommends the phrase “undue hardship” be replaced with more discretionary language to preserve the Commission’s existing authority to adjust the procedural schedule as reasonably necessary to ensure a fully developed record and promote the public interest. Accordingly, the Commission proposes the following amendment to HB 777:

- (b) (3) THE COMMISSION MAY IN ITS DISCRETION WAIVE A DEADLINE UNDER THIS SECTION:
 - (I) ~~FOR UNDUE HARDSHIP~~ GOOD CAUSE; OR
 - (II) ON AGREEMENT OF THE PARTIES TO THE PROCEEDING.

The Commission has discussed this proposed amendment with key stakeholder groups, and they agree to support this language.

Pending PSC Rulemaking on CPCN Application Requirements

On December 23, 2020, the Commission initiated Rulemaking No. 72 (RM 72) for the purpose of revising COMAR provisions governing CPCN applications for the construction of large-scale generating stations. The Commission’s Technical Staff submitted proposed revisions to COMAR 20.79.01, 20.79.02, and 20.79.03, specifically seeking to modify certain CPCN application filing requirements, including the establishment of a new pre-application process, as well as to enhance administrative transparency in the determination of a “complete” CPCN application in order to initiate the parties’ substantive review of the application. HB 777 addresses the substantive portion of the CPCN review process. The Commission received written public comments by February 5, 2020, and will conduct a virtual rulemaking session in the near future.

Conclusion

The procedural requirements under Senate Bill 417 predominantly concern the independent evaluation of a CPCN application by the Department of Natural Resources and the Department of the Environment, and the specific submissions by those agencies in connection with their review. While HB 777 would serve to establish a practical timeframe for the State agencies to complete and submit the results of their independent evaluation of a CPCN application, which could ultimately facilitate a more efficient CPCN review, the Commission should retain its authority to waive a deadline or otherwise adjust the procedural schedule, as necessary, to ensure an outcome that best serves the public interest. The Commission therefore proposes to amend HB 777 as described in this testimony, with the full support of all key stakeholders.

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