

SB 417 Feb 8 2021.pdf

Uploaded by: Fine, Maureen

Position: FAV

**Support SB 417- Power Plant Research Program- Review of Application for Certificate of Public Convenience and Necessity-Alterations -sponsored by Sen. Pinsky-Education, Health, and Environmental Affairs
Hearing 2/10 at 1:00**

**The testimony of Henry S. Cole, Ph.D. on Senate Bill 417
February 8, 2021**

I am Dr. Henry S. Cole (Ph.D.) President of Henry S. Cole Environmental Associates, Inc., and Co-Chair of Clean Air Prince George's County (CAPG).¹ Our organization has led the fight against the Mattawoman Power Plant in Brandywine and believe that we have played a significant part in the projects cancellation.²

My findings and recommendations grow from my expertise in the area of air quality assessment and my active engagement over the past five years in cases involving the power plant permitting process in Prince George's and Charles Counties.

I support Senate Bill 417 because it begins to address current inadequacies in the current practices used by the Public Service Commission (PSC) and regulatory agencies to issue Certificates of Public Convenience and Necessity (CPCNs) and environmental permits for power plants applications. However, I believe that additional strengthening will be necessary. The process of certifying energy-related projects must go well beyond their convenience and necessity. We need to ensure that our regulatory agencies thoroughly consider the impacts of power plants, pipelines, and compressor stations on public health, the climate crisis, and environmental justice for communities of color and low income that have disproportionately suffered from the impacts of fossil fuel use.

In short, we need to create a regulatory framework that proactively promotes the shift to renewable energy and energy efficiency and places the burden on fossil fuel related applicants to demonstrate that it's proposal (a) is really needed (b) will not harm the health, safety and well-being of families and communities (c) will not worsen the climate crisis and (d) will not impede progress on state mandates to reduce greenhouse gas (GHG) emissions and increase reliance on renewable energy. The regulatory framework should also require the PSC, the Department of the Environment (MDE), the Department of Natural Resources (DNR) and the Power Plant Research Program (PPRP) to exercise far greater scrutiny in their reviews of applicants' submissions.

I base these recommendations on my in-depth work as an expert for Clean Air Prince George's involvement in the Public Service Commission's proceedings on the Mattawoman Energy Center. Although the Company has withdrawn its application and the PSC cancelled the CPCN just last week, the project had all the approvals it needed to go forward, despite serious oversights in environmental reviews conducted by the MDE, DNR, and PPRP. For example:

- The PPRP's air impact analysis failed to consider the impact of increased emissions during the 2-3 year anticipated construction period; emissions associated with greatly increased traffic congestion, diesel truck emissions, and dust associated with building activities. Sensitive populations including children who attend the Brandywine Elementary School which lies adjacent to critical transportation routes.³

¹Dr. Cole environmental and atmospheric scientist with some 40 years of experience on a broad range of issues, including air quality modeling and the environmental impacts of power plants and waste disposal sites. I previously served as a senior scientist with the U.S. EPA's

Office of Air Quality Planning & Standards (OAQPS). His company has provided scientific expertise for a diverse clientele including community and environmental organizations, government agencies, corporations, and attorneys. Contact: hcole@hcole-environmental.com

²Although the company's air permit required immediate and construction the site remained vacant for more than 5 years since it obtained its CPCN due to a loophole which allows equipment orders to count as actual construction. For more than five years the Brandywine community was left in limbo.

³ Failure to evaluate potential – given that power plant emissions cause increased ambient concentrations of NO₂, fine particulate matter, and ozone, all pollutants known to cause or aggravate respiratory and cardiovascular disease.

- The PPRP used a monitoring station located 70 km from Brandywine in a Virginia state park to obtain background ambient air concentrations rather than require the applicant to install a monitor that would accurately represent background concentrations in an area located in the heavily trafficked Route 5, U.S. 301 Corridor.
- Regulatory agencies failed to consider the impact of construction period traffic on the safety of residents and school children.
- Agency reviews failed to consider the environmental justice of adding a fifth fossil fuel power plant to the predominantly African-American Brandywine area, an area that already has a Superfund Site, a coal ash disposal landfill, and massive truck traffic associated with numerous surface mining operations.
- To my knowledge, the state's environmental reviews failed to assess the potential risks associated with gas pipeline explosions despite residential neighborhoods along pipeline routes.
 - In its assessment of pipeline construction issues, regulators failed to consider its impact on recreational uses of the State Cedarville Forest—a critical resource frequently used by large numbers of hikers, bikers, campers, educators, naturalists, hunters, and fishermen.
- Agency environmental reviews did not evaluate how the operation of the Brandywine Energy Center would impact state mandates for GHG reduction and increased renewable energy requirements. Gas fired power plants have a projected operational life of several decades—i.e. during a period in which the consequences of climate change will accelerate without large reductions in GHG emissions.

In Summary, I support the efforts of Senate Bill 417 sponsors to improve the regulatory process related to future power plant applications. Secondly I would urge legislators to consider even stronger protections that would ensure that all of the issues facing public health and wellbeing are thoroughly addressed as we move forward. Our communities, our children and future generations require nothing less.

Thank you,

Henry S. Cole, PhD (301-780-7990)

11229 Mattaponi RD.

Upper Marlboro, MD 20772

301-780-7990

MAREC Comments SB 417.pdf

Uploaded by: Meyer, Isaac

Position: FAV



Date: February 10, 2021

Testimony of Bruce Burcat, Executive Director
Mid-Atlantic Renewable Energy Coalition
Before the Senate Education, Health and Environmental Affairs Committee

Senate Bill 417
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 417

MAREC is an organization representing many of the leading utility-scale wind and solar developers, wind turbine and PV solar panel manufacturers, and public interest organizations that support the development of renewable energy in the Mid-Atlantic region. Our members develop wind and solar farms in ten jurisdictions in the PJM region, including Maryland. Unfortunately, when it comes to developing solar projects in Maryland, our members find the process to obtain certification for their projects to be inefficient and lengthy.

Of the ten jurisdictions in the MAREC region, Maryland is one of the most challenging to successfully develop in-state sites for utility-scale solar projects. 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 averages over 1.5 years and can exceed two years.

Local input before the Public Service Commission (PSC) when considering the certification of a solar project is **already** an essential element of the process. The PSC's CPCN process is

thorough and comprehensive. Nevertheless, there is what amounts to a dual permitting process in Maryland that continues to exist even after the Maryland Court of Appeals' found in its 2019 Perennial decision that a separate local process was not legally justified creating a difficult situation for project developers.

In short, the DNR's Power Plant Research Program (PPRP) is required to provide a Project Assessment Report and licensing conditions on the construction and operation of the solar project, which are a couple of the key elements of the PSC's review to grant certification. In some cases, the PPRP has withheld this information on the basis that they were unable to complete its review due to the projects not having received a local permitting decision.

As the Court stated in Perennial, that such a process "would engender chaos and confusion." Senate Bill 417 would create a defined structure and time frame for local participation and would resolve the issue of dual permitting processes.

Senate Bill 417 also would ensure that certain licensing conditions related to wetlands, stormwater and erosion control are consistent with state law, and that they are imposed earlier in the process -- not at the very end causing additional significant costs, which were unanticipated by project developers.

Solar businesses choose to develop in states that have reasonable processes for permitting their projects and have public policies supporting development. While Maryland has developed solid policies supporting such development, the length of time to get a permit and then being hit with unanticipated project changes (and costs) at the end of the process are major impediments to meeting the goals of the Clean Energy Jobs Act.

We respectfully, request the Committee a favorable report on SB 417.

Maryland SB417 ACP Comments - SUPPORT amg 210208.p

Uploaded by: Meyer, Isaac

Position: FAV



**Senate Education, Health and Environmental Affairs Committee
Feb 10, 2021**

**Testimony of Andrew Gohn on Behalf of the American Clean Power Association
SUPPORT – Senate Bill 417**

Andrew Gohn – Eastern Region Director of State Affairs

Chairman Pinksy and members of the Committee, thank you for the opportunity to offer testimony in support of Senate Bill 417.

I am Andrew Gohn, Eastern Region Director of State Affairs for the American Clean Power Association (ACP), formerly known as the American Wind Energy Association (AWEA). ACP works to champion policies that will transform the U.S. power grid to a low-cost, reliable, and renewable power system.

ACP believes the passage of SB 417 will facilitate the permitting of renewable energy projects in the state while ensuring that these projects receive transparent and timely review in which stakeholders have broad and meaningful participation.

The process for granting a Certificate of Public Necessity and Convenience in Maryland is increasingly subject to regulatory delay, slowing deployment of renewable projects in the state and frustrating the state clean energy goals. ACP appreciates the attention to some of these issues in Rule Making 72 at the Public Service Commission (PSC). Legislative changes are also needed, however, to address issues outside the scope of RM 72.

Reinforce Existing Law

Despite the clear direction from the Maryland Court of Appeals' 2019 *Perennial* holding that the PSC siting authority preempts local zoning, there have been cases in which the state's Power Plant Research Program (PPRP) has withheld or unreasonably delayed Project Assessment Reports (PARs) and recommended licensing decisions based on local permitting decisions. This has had the effect of slowing permitting and deployment of renewable projects in the state.

SB 417 would resolve this discrepancy by requiring PPRP to provide PARs, proposed licensing conditions, and recommendation to grant or deny permit applications to the PSC within 6 months of receiving a complete application.

Ensure Consistent Licensing Conditions

SB 417 ensures that draft licensing conditions are consistent with state law with regard to wetlands, stormwater, and erosion control.

Under current law, PPRP has broad discretion to propose novel siting conditions and impose timelines for those conditions beyond those established by statute or precedent. These conditions are often submitted to the PSC at a late stage in the permitting process. Moreover, those conditions may not always be



consistent across projects. In combination, these factors can lead to significant regulatory uncertainty for project developers.

ACP appreciates the opportunity to offer comment.

SB 417 (CPCN reform) USSEC Testimony.pdf

Uploaded by: Meyer, Isaac

Position: FAV

UTILITY-SCALE SOLAR ENERGY COALITION OF MARYLAND



Senate Education, Health and Environmental Affairs Committee

2/10/2021

SB 417

Support

Chairman Pinsky and members of the Committee,

The Utility-Scale Solar Energy Coalition of Maryland (USSEC) comprises solar energy developers dedicated to responsible development of solar energy generation in Maryland.

USSEC strongly supports SB 417 which, in conjunction with the Public Service Commission (PSC) rulemaking efforts currently underway, will help address issues in the renewable permitting regime while ensuring proposed renewable projects receive thorough, transparent, and timely review under the state's Certificates of Public Convenience and Necessity, or CPCN, process.

Under the Clean Energy Jobs Act's (CEJA) in-state solar carveout, Maryland will need roughly 2000 MW of new utility-scale solar projects (projects >2 MW) through 2030 in addition to ~3000 MW of new residential, commercial, and community solar. The good news is that there are currently roughly 2000 MW of proposed solar projects in the PJM queue in Maryland and some of them – about 575 MW – already have their state permits. Yet the state CPCN process, the permitting process which governs renewable siting for these bigger projects, is increasingly experiencing delays which will ultimately prevent Maryland from achieving the in-state solar additions required under CEJA.

What is at stake is not only meeting Maryland's in-state climate priorities, but also unlocking massive investments in capital and jobs across Maryland. The Center for Climate Strategies conducted a macroeconomic and fiscal analysis published in November of 2020 of the economic impacts of increased deployment of utility-scale solar via streamlining of the state's CPCN process. The study, which is enclosed with this testimony, estimated that the state stands to gain over **\$440 million in direct local investment and over \$340 million in additional new wages to Maryland workers.**

The PSC has ultimate authority over projects subject to a CPCN, and they delegate the analysis of a proposed application to DNR's Power Plant Research Program (PPRP) who gathers input from state agencies and local governments. Yet despite the increased priority Maryland has placed on in-state solar development, the pace of CPCN approvals has never been slower. The average time of CPCN adjudication from application submittal to the PSC's ultimate decision has increased from 9 months before 2018 to over 1.5 years today, and that is not including the numerous projects that have either been stuck indefinitely in the process or the numerous pending projects that are waiting for the state's CPCN process to be fixed. Despite CEJA's passage in 2019, only 3 CPCN permits were granted in 2020 and 2 in 2019, down from 8 in 2018.

There are a variety of problems with the current PPRP process that have contributed to long delays in processing some applications and have slowed new applicants from engaging in the process. Many of the problems are being directly addressed by the PSC in RM 72 currently underway. For example, RM 72 is likely to directly address issues around what constitutes a complete application, increase transparency in the application completeness review, and give local governments more advanced notice and opportunity to provide early input prior to an application being officially filed.

UTILITY-SCALE SOLAR ENERGY COALITION OF MARYLAND



The renewables industry has worked closely with the PSC and PPRP as well as a number of Maryland environmental groups on RM 72, but other problems with the current CPCN process can only be addressed via legislation. SB 417 addresses two of these important issues, summarized below.

Problem #1: PPRP can decline to provide PSC with key information needed for PSC to make siting decision.

A key part of the PSC's review is the result of the state-wide study conducted by PPRP. At the end of this study, PPRP typically submits to the PSC a comprehensive report called a Project Assessment Report (PAR) and a set of licensing conditions to govern the construction and operation of the project. These two items are critical to the PSC's review. Without them the PSC does not have the information necessary to grant a CPCN.

Under current statute, PPRP is only required to provide PAR and Licensing Conditions to the PSC when PPRP recommends approval of a CPCN. On some projects, the agency has relied on this language to withhold from the PSC the PAR and Licensing Conditions, key information and reports that are necessary for the PSC to make an informed siting decision. This practice has provided PPRP with significant leverage to prevent CPCN applications from moving forward. PPRP has defended this practice by stating that they are unable to process applications before proposed projects receive a local permitting decision. This justification has been employed even after the Maryland Court of Appeal's 2019 Perennial decision which clearly articulated that the PSC's siting authority preempts local zoning. PPRP has historically utilized this argument either to compel CPCN applicants to indefinitely delay processing of their CPCN applications, or to justify a recommendation of denial of an application coupled with a refusal to provide the PAR and Licensing Conditions to the PSC, information that the PSC needs to support an informed siting decision¹.

SB 417 directly addresses this dynamic by requiring PPRP to provide the PSC the PAR and proposed Licensing Conditions within 6 months of receiving a complete application along with recommendation to either grant or deny permit application.

To put this 6-month period in context, current statute (Nat. Resources Article § 3-306b) requires PPRP to conduct its review within 60-days, a standard that is never applied in practice. Also, this new 6-month timetable would fit in with other changes under proposed rules in RM 72. RM 72 as proposed by staff would add a new 60+ day application completeness review period as well as a 90-day pre-application local review period (both provisions that have garnered support from the solar industry as well as PPRP). RM 72 would also streamline application review by creating a new thorough application completeness checklist which would ensure consistent and robust applications and transparent and uniform assessments of application completeness. SB 417 in conjunction with RM 72 would thus codify a period of over 11 months from submittal of a draft CPCN application for local review to provision of the PAR and licensing conditions by PPRP to the PSC for consideration.

While there is no subsequent deadline for the PSC's review of the application, PAR, and licensing conditions, the net effect of RM72 and SB 417 would be a far more predictable and superior process versus the current inconsistent and non-transparent process which gives PPRP the sole ability to indefinitely delay projects.

¹ RM 72 as proposed by PSC staff would address aspects of this dynamic by prescribing checklist items that constitute a completed CPCN application, including aspects related to due consideration of local government input and process.

UTILITY-SCALE SOLAR ENERGY COALITION OF MARYLAND



Problem #2: Licensing conditions regarding wetlands, stormwater, and erosion control can be inconsistent across projects, not supported by state law, and not known until the very end of the permitting process.

Another major procedural issue with the CPCN process is the timing of conditions and the content of those conditions. Under current law, PPRP has authority to propose conditions that are different than previously known state laws and regulations. These conditions are submitted at the very end of the CPCN process, often leading to significant changes to projects that were not known in advance.

For example, the Maryland Department of the Environment (MDE) as the regulatory agency for wetlands requires a certain setback from wetland drainage ditches per state law, but PPRP may push for more stringent setbacks than required by MDE standards. Because conditions are submitted at the end of the process, these last-second changes have had significant impacts on project economics and viability.

SB 417 ensures that draft licensing conditions are consistent with state law with regard to wetlands, stormwater, and erosion control. This enables developers to know the rules early on versus waiting until the very end of the CPCN process to see PPRP's licensing conditions.

SB 417 is a critical piece in unlocking Maryland's CPCN process and ensuring that solar projects are considered and adjudicated in a transparent and timely manner. USSEC encourages this Committee to support this bill.

We thank you for your consideration.

Submitted on behalf of USSEC:

Isaac Meyer, Compass Government Relations Partners

SB0417_Power_Plant_Research_Pgm_MLC_FAV.pdf

Uploaded by: Plante, Cecilia

Position: FAV



TESTIMONY FOR SB0417
POWER PLANT RESEARCH PROGRAM – REVIEW OF CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY - ALTERATIONS

Bill Sponsor: Senator Pinsky

Committee: Education, Health and Environmental Affairs

Organization Submitting: Maryland Legislative Coalition

Person Submitting: Cecilia Plante, co-chair

Position: FAVORABLE

I am submitting this testimony in favor of SB0417 on behalf of the Maryland Legislative Coalition. The Maryland Legislative Coalition is an association of individuals and grassroots groups with members in every district in the state. We have over 30,000 members across the state.

Pipelines, power plants, fossil fuel infrastructure keeps getting approved in Maryland. There seems to be nothing stopping it. Not the Fracking Ban. Not our greenhouse gas targets. Not the fact that we are already seeing the ravages of climate change.

We need this. We need something to stop the Public Service Commission, which seems to have lost sight of the fact that the words Public and Service are in their very name, and the Board of Public Works, which also seems to have lost track of its mission. We need an independent review of the applications for large infrastructure projects with a focus on the harm that the project will create.

We would like to see more teeth – an adjudicatory body to review any decisions that the Public Service Commission makes that are in opposition to the recommendations of the independent assessment of the Department of Natural Resources, and we would like to see any language about avoiding this process for undue hardship removed. However, we agree with the thrust of this legislation and feel that it could not be more necessary.

The Maryland Legislative Coalition supports this bill and we recommend a **FAVORABLE** report in Committee.

SB417 - Power Plant Research Program–CPCN Review -

Uploaded by: Tulkin, Josh

Position: FAV



Maryland Chapter

7338 Baltimore Avenue, Suite 102
College Park, MD 20740-3211

Committee: Education, Health, and Environmental Affairs

Testimony on: SB 417 - “Power Plant Research Program – Review of Application for Certificate of Public Convenience and Necessity – Alterations”

Position: Favorable

Hearing Date: February 10, 2021

The Maryland Sierra Club submits this testimony in support of SB417, a bill making necessary improvements to the Public Service Commission’s process for review and decision regarding Certificates of Public Convenience and Necessity (CPCNs) associated with power plant construction.

Why SB417 is needed:

- In order for the Public Service Commission (PSC) to complete its review of a CPCN application, the Power Plant Research Program (PPRP) – located in the Department of Natural Resources (DNR) – is required to provide a “Project Assessment Report” (PAR) and “Licensing Conditions.” Currently, however, there is a lack of clarity regarding these PPRP submissions which, in turn, is delaying completion of some CPCN application reviews by the PSC.
- Recently, the average time for CPCN reviews has increased from nine months to about 18 months. This prolonged process has contributed to a decrease in the number of CPCNs being granted from eight in 2018 to two in 2019 and three in 2020.
- With the reality that “time is money,” this delay is hampering, and in some cases precluding, the effective development of the clean renewable energy projects Maryland urgently needs to put in place.
 - To meet the in-state solar energy target of 14.5 percent of energy mandated by the Clean Energy Jobs Act, Maryland needs for developers to build, in this decade, an average of 625 megawatts of solar each year.
 - The slow rate of utility scale project approval resulting from the prolonged and less than optimally productive CPCN review process is one major barrier to accomplishing this.

What SB417 does:

- This bill provides clarification and definition to elements of the CPCN review process that require legislative action to be modified. The bill complements additional modifications to the CPCN process being considered through administrative action by the PSC under a rulemaking procedure (RM72).
- The bill requires PPRP to submit its PAR and Licensing Conditions to the PSC regardless of whether PPRP’s recommendation is to approve or deny a CPCN application, and specifies a reasonable (six month) timeline for submission of these inputs, without which the CPCN review cannot advance.
- The bill also ensures that Licensing Conditions proposed by the PPRP and DNR that relate to wetlands, stormwater management, or erosion and sediment control are consistent with state law requirements on these issues. This element of the bill will eliminate variability in application or interpretation of such environmental requirements in PPRP/DNR assessments of CPCN applications.

Founded in 1892, the Sierra Club is America’s oldest and largest grassroots environmental organization. The Maryland Chapter has approximately 75,000 members and supporters, and the Sierra Club nationwide has over 800,000 members and nearly four million supporters.

Conclusion

This bill provides clarity and transparency now lacking in the CPCN review process. It will increase the efficiency and productivity of that process and, in so doing, support Maryland in achieving its clean energy development goals.

We urge a favorable report by this Committee.

Alfred Bartlett, M.D., Volunteer Lead
alfredbartlett@msn.com

Josh Tulkin, Chapter Director
josh.tulkin@mdsierra.org

FWA SB 417-2.pdf

Uploaded by: McKitrick, James

Position: FWA



Larry Hogan, Governor
Boyd Rutherford, Lt. Governor
Jeannie Haddaway-Riccio, Secretary

February 10, 2021

The Honorable Paul G. Pinsky
Chair, Education, Health, and Environmental Affairs Committee
2 West Senate Office Building
Annapolis, MD 21401

The Honorable Cheryl C. Kagan
Vice Chair, Education, Health, and Environmental Affairs Committee
2 West Senate Office Building
Annapolis, MD 21401

Re: Support with Amendments – Senate Bill 417 – Environment – Power Plant Research Program – Review of Application for Certificate of Public Convenience and Necessity – Alterations

Dear Chair, Vice Chair, and Committee Members,

The Maryland Department of Natural Resources supports Senate Bill 417 with amendments. This bill alters the circumstances under which the Public Service Commission (PSC) must notify the department and the Maryland Department of the Environment about an application for a Certificate of Public Convenience and Necessity (CPCN) associated with large-scale energy infrastructure.

The department's Power Plant Research Program (PPRP) coordinates the statewide review of CPCNs to minimize environmental impacts to rare, threatened or endangered species, streams, wetlands, birds, water quality, and other critical natural resource considerations. PPRP is the state's only intervenor in CPCN cases that analyzes potential environmental impacts and moves forward conditions that mitigate and remediate them.

In general, the department supports bringing the statute in line with the PSC's current practice of PPRP completing its portion of the CPCN review for solar generation cases within six months. In fact, most solar CPCNs applications have PPRP review completed and PSC approval within just slightly over six months. There are always outliers, however, and the department believes that the pending establishment of a new pre-application process by the PSC in its recently opened rulemaking (RM 72) will allow the new timeline to be met consistently. (Historically, reviews have been stymied by a lack of information and transparency provided by developers in their initial applications.)

That said, there are two amendments that the department has previously discussed with the bill's proponents. First, SB 417 is directed in spirit at solar cases, but is presently drafted to encompass all cases, including hydroelectric, natural gas, nuclear, transmission and wind energy cases. The complexity of these cases and the agency coordination is extensive and requires a much longer review window in order for PPRP to adequately meet its energy and environmental

mission. Second, the exemption of cases from the six-month timeline via “undue hardship” is ambiguous and perhaps not a legally-adequate application. Balancing the fact that there may be rare instances where six months may not be adequate to complete review, the department would recommend amending the bill to allow the PSC to modify the procedural schedule and exempt the six-month review deadline “for good cause” instead.

For the above reasons, the department respectfully requests the committee to grant SB 417 a favorable report provided it is thoughtfully amended.

Respectfully submitted,

James W. McKitrick
Director, Legislative and Constituent Services

SB0417 (HB0777) - LOI.pdf

Uploaded by: Fahrig, Landon

Position: INFO



Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor
Mary Beth Tung, Director

TO: Members, Senate Finance Committee
FROM: Mary Beth Tung – Director, MEA
SUBJECT: SB0417 (HB0777) - Power Plant Research Program - Review of Application for Certificate of Public Convenience and Necessity - Alterations
DATE: February 10, 2021

MEA POSITION: Letter of Information

The intent of this bill, while well-meaning, will duplicate a process already in motion. Senate Bill 417 alters the Certificate of Public Convenience and Necessity (CPCN) process by requiring that the Public Service Commission (PSC) in turn require that the Department of Natural Resources obtain a specific, independent project assessment report .

There is already a PSC Rulemaking in process that is meant to address changes to the CPCN process, “RM72”. The following are excerpts from that PSC docket.

With limited exception, all utility-scale solar projects must first obtain a Certificate of Public Convenience and Necessity (“CPCN”) from the Commission prior to beginning construction. The CPCN application process is governed under the Public Utilities Article, Annotated Code of Maryland, §§ 7-207 through 7-208, and the Code of Maryland Regulations (“COMAR”) 20.79. Each CPCN application is subject to a comprehensive review by the Commission based on evidence submitted by the parties to the proceeding, which includes an independent project evaluation by seven reviewing State agencies. Nevertheless, the Commission is committed to exploring ways to enhance this process for the benefit of all parties and the public.¹

On December 18, 2020, the Commission’s Technical Staff (“Staff”) submitted a Petition for a Rulemaking for the purpose of revising the COMAR provisions governing applications for a Certificate of Public Convenience and Necessity to include certain application requirements, including the establishment of a new pre-application process, for the construction of large-scale generating stations.²

As a result of RM72, several parties have already weighed in on potential changes to the CPCN process, and that public, inclusive forum may be the most appropriate venue to elicit any desired changes.

¹https://webapp.psc.state.md.us/newIntranet/AdminDocket/NewIndex3_VOpenFile.cfm?FilePath=//Coldfusion/AdminDocket/RuleMaking/RM72//1.pdf

²https://webapp.psc.state.md.us/newIntranet/AdminDocket/NewIndex3_VOpenFile.cfm?FilePath=//Coldfusion/AdminDocket/RuleMaking/RM72//11.pdf

SB0417_Informational_Staneek.pdf

Uploaded by: Staneek, Jason

Position: INFO

JASON M. STANEK
CHAIRMAN

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



PUBLIC SERVICE COMMISSION

February 8, 2021

Chairman Paul G. Pinsky
Senate Education, Health & Environmental Affairs Committee
Miller Senate Office Building, 2 West Wing
11 Bladen Street
Annapolis, MD 21401

RE: SB 417 - INFORMATIONAL – Power Plant Research Program – Review of Application for Certificate of Public Convenience and Necessity – Alterations

Dear Chairman Pinsky and Committee Members:

SB 417 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 SB 417 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

SB 417 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 SB 417.

Heightened Standard for Waiving Procedural Deadlines

SB 417 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. SB 417 would codify this current practice. However, in other instances, where the Commission could separately find cause to waive deadlines, SB 417 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 SB 417:

- (b) (3) THE COMMISSION MAY IN ITS DISCRETION WAIVE A DEADLINE UNDER THIS SECTION:
 - (I) ~~FOR UNDUHARDSHIP~~ 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. SB 417 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 SB 417 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 SB 417 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,

A handwritten signature in blue ink, appearing to read "Jason M. Stanek".

Jason M. Stanek
Chairman