UTILITY-SCALE SOLAR ENERGY COALITION OF MARYLAND

Senate Education, Health and Environmental Affairs Committee
2/10/2021

SB 417

Support

Chairman Pinksy 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 thr 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.

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 utlizied 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 decision[1].

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.

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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:

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