Maryland CPCN Considerations

Maryland Public Service Commission

Sections 7-207 and 7-208
Public Utilities Article
Certificate of Public Convenience and Necessity (Review)

• Required prior to constructing or modifying qualifying generating stations or high-voltage transmission lines

  – Exempt from CPCN requirement:
    • Projects with generation capacity less than or equal to 2 MW

  – May seek CPCN exemption with PSC approval:
    • Projects with on-site generation capacity of more than 2 MW (up to 25 MW) and at least 10% of generated electricity is consumed on site
    • Projects with on-site generation capacity (≤ 70 MW) and at least 80% is consumed on site
    • Projects with land-based wind generation (≤ 70 MW)
CPCN PULJ Procedure

1. Application
2. Judge Assigned to Case
3. Prehearing Conference
4. Discovery (Data Requests)
5. Filing of Testimony and Recommended Licensing Conditions
6. Evidentiary and Public Hearings; Legal Briefs
7. PSC Proposed Order incl. Permit Conditions
8. Order Becomes Final in 30 Days Unless Appealed
Parties to the Proceeding

• Parties to Proceeding
  – Power Plant Research Program (Dept. of Natural Resources)
  – Maryland Office of People’s Counsel
  – Maryland PSC Technical Staff

• Intervening Parties (by petition)
  – e.g., individuals, counties, advocates, organizations, etc.
PJM Evaluation of Project

- PJM typically not a party to CPCN proceeding
- PJM goal: to determine if Project requires system enhancements for grid stability/reliability.
- PJM conducts sequential studies:
  - Feasibility Study
  - Impact Study
  - Facilities Study
- PSC Staff references various PJM studies
CPCN Consideration Factors

• The Commission must give due consideration of the following factors:
  – Recommendation of the governing body of each county or municipal corporation in which any portion of the project is proposed to be located;
  – The effect of the proposed project on:
    • Stability and reliability of the electric system;
    • Economics;
    • Esthetics;
    • Historic sites;
    • Aviation safety;
    • Air and water pollution (when applicable); and
    • Availability of means for timely disposal of wastes produced
CPCN Factors (cont’d)

• Need to minimize loss of forest and provisions for afforestation/reforestation. Nat. Res. § 5-1603

• [Generating station] Commission must also consider:
  – Position of the local government on proposed project;
  – Consistency of Project with local government’s comprehensive plan and zoning;
  – Efforts of affected parties to resolve issues presented by local government
Licensing Conditions

• Commission may impose specific licensing conditions as part of CPCN
  – E.g., solar decommissioning plan, conservation plan, vegetation management plan, afforestation/reforestation
  – PPRP and other parties propose licensing conditions
  – Licensing conditions are enforceable
Washington County, Maryland vs. Perennial Solar, LLC

- 86-acre solar project on site zoned as “Agricultural Rural”
- Perennial received special exception from Board of Zoning Appeals.
- Landowners and Board of County Comm’rs appealed zoning decision.
- Court of Appeals held (7/15/19): PSC is ultimate authority in siting large solar projects under PUA § 7-207 through implied preemption.
- CPCN matter (9408) pending before PSC.
Example: Big Spring Solar CPCN

- 3.5 MW solar project on land zoned Agricultural Rural
- Issue in Dispute: Amount of afforestation required, if any, under Forest Conservation Act and local Forest Conservation Ordinance
  - Washington County Board of Zoning Appeals granted Project special exception from mitigation.
  - Project would not remove trees.
- Party Positions
  - Big Spring: No tree removal, therefore afforestation unnecessary.
  - PPRP: due consideration of need to minimize loss of forest requires full compliance with FCA and mitigation.
Big Spring Solar CPCN (cont’d)

• PSC required to give due consideration to need to minimize loss of forest.

• **Held:** Afforestation mitigation was not required for the Project.
  – Project was subject to both the FCA and County FCO.
  – FCA may supersede FCO or land use ordinance, but preemption should be rarely used.

• PULJ gave significant weight to FCO and County’s decision to grant exemption.
  – County has authority to implement its own FCO.
Example: Biggs Ford Solar CPCN

• 15 MW solar project in Frederick County
• At issue: Biggs Ford challenged new solar-specific zoning requirements by relying on Commission’s preemption authority.
  – New zoning requirements removed solar farms from Ag. zones and created new Commercial Floating Zone District.
  – Biggs Ford refused to file an application for a floating zone reclassification.
Biggs Ford Solar CPCN (cont’d)

• Party Positions
  – Biggs Ford: PSC has preemptive authority to grant CPCN
    • Project complies with County’s Comprehensive Plan (CP)
    • Project was consistent with 8 of 13 requirements under proposed zoning requirements.
  – PPRP: Recommended denial of CPCN.
    • State’s recommended licensing conditions require conformity with county land use and site planning requirements.
    • Recommended Biggs Ford apply for floating zone reclassification
  – County intervened in proceeding
    • Project was not consistent with County’s CP.
    • Project had not received necessary County approvals.
    • Project needed approval of zoning reclassification to proceed.
Biggs Ford Solar CPCN (cont’d)

• **Proposed Order Held:** Project is unable to meet all the statutory due consideration criteria needed for approval.
  – It is unnecessary to require Biggs Ford to seek a floating zone reclassification for the Project.
  – It is not in the public interest to approve a CPCN without adequate licensing conditions.

• **On appeal to Commission**
  – Decision: PSC remanded case to PULJ to give Biggs Ford opportunity to seek zone reclassification based on new zoning ordinance.
    • Premature to conclude the ordinance would always prevent approval of utility-scale solar projects.
Can other agencies’ decisions affect CPCN issuance?
MD Solar 1 Project

• 32.5 MW (AC) Shugart Valley Place Solar Project
  – 537 acres, located in Charles County, MD
  – Required clearing 200 acres of trees
• CPCN granted Sept. 2018
  – PPRP and PSC Staff recommended licensing conditions
  – Licensing conditions: e.g. obtaining wetlands permit, etc.
• Aug. 28, 2019 - MDE denied Nontidal Wetlands and Waterways Permit

Source: https://www.origisenergy.com/projects/md-solar-1/
In Summary

- PSC is ultimate siting authority for generation facilities
- Granting of CPCN requires “due consideration” of several factors
- PSC gives significant weight to local government’s position
- Granting of CPCN often subject to specific licensing conditions
- Other agency decisions can impact CPCN issuance
Questions

• If you have any questions about the CPCN process, please contact:

  Joey Chen
  Advisor to the Chairman
  joey.chen@maryland.gov
  (410) 767-8057