



Solar Arrays & Maryland's Certificate Of Public Convenience And Necessity (CPCN) Application Process



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Who's Involved In The CPCN Process?

- Public Service Commission (PSC)
- PSC Technical Staff (Staff)
- Maryland Dep't of Natural Resources' Power Plant Research Program (PPRP), on behalf of reviewing State agencies.
- Office of People's Counsel (OPC)
- Local county and/or municipal governments and planning offices
- Interested members of the public

DID YOU KNOW?

It takes roughly 10 acres of solar panels to generate 2 MW of electricity.

Solar arrays are becoming an increasingly familiar sight all over Maryland. In 2017, for the first time, solar power in Maryland exceeded the combined electricity generation from both biomass and wind power.¹ Agricultural landowners often decide to install solar panels to off-set their personal and business electricity usage. Solar developers also approach agricultural landowners about leasing farmland to install utility-scale solar energy generating stations (SEGS).

In Maryland, utility-scale electricity generation facilities are built and operated by private companies.² Selling solar electricity has the potential to be a profitable endeavor for landowners and developers alike. For example, Maryland's Renewal Portfolio Standard (RPS) requires electricity suppliers to ensure a certain percentage of electricity is from solar generators.³ The State's Solar Renewable Energy Certificates (SREC) market allows solar generators to sell their SRECs to suppliers needing to meet the RPS requirements.⁴

The Maryland Public Service Commission (PSC) is the state agency that supervises and regulates electric, gas, and other public service companies.⁵ The PSC has the authority to issue a Certificate of Public Convenience and Necessity (CPCN) in connection with an electric company's application to construct or modify a new generating station or high-voltage transmission lines. The PSC, however, does not regulate the cost of electricity generated and sold into the grid by facilities located in Maryland.⁶

Most solar facilities that generate over 2 megawatts (MW) of electricity must apply for a Certificate of Public Convenience and Necessity (CPCN) before construction. Only the PSC has the authority to issue a CPCN, which grants a "person" (i.e. any individual or entity) permission to construct or modify a new generating station according to the conditions set by the PSC.⁷ Typically, the utility developer is the party preparing and applying for a CPCN for a project that will be placed on leased or purchased the land. However, a private landowner may also seek the right to install a commercial-scale solar array.

The CPCN approval process is adjudicatory (an administrative judge considers evidence from both an evidentiary hearing and a public hearing held near the proposed project and makes the final decision) that involves multiple state agencies and local stakeholders (local government and private parties).⁸ Applying for a CPCN is a complicated and lengthy task. For advice about how the issues discussed herein might apply to your situation, consult an attorney. The following checklist provides an overview of CPCN proceedings.

Maryland CPCN Application Process

Pre-application

- » Before applying for a CPCN, developers are expected to **contact the pertinent parties** (county officials, state agencies, etc.) to identify early issues.
- » Applicant should report anticipated project descriptions to DNR's **Power Plant Research Program** (PPRP), including site description and biological, economic, transportation, visual, aesthetic, and other impact assessments.⁹
- » Applicant should make an **interconnection agreement** request to PJM Interconnection, the regional transmission organization (RTO) that supplies Maryland with electricity. Forms can be found on the PJM webpage.¹⁰ Interconnection requests require a fee.
- » The PPRP begins a **comprehensive review** of the project, coordinating and compiling input from the reviewing State agencies, to form the scientifically supported recommended license conditions. This review is conducted as a part of the CPCN process and provided to the PSC for its consideration of the CPCN application.

Application

- » Once the application materials and the filing fee are submitted,¹¹ a **public utility law judge** (PULJ) is usually assigned to the case who will oversee the case and make the initial decision.
- » **Notice** of the application and future public hearings must be provided to:
 - State and Federal agencies;¹²
 - Governing county or municipal body where project is to be located, or those within 1 mile;
 - General assembly representatives for subject county, or those within 1 mile;
 - Each adjacent landowner.
- » Applicant must publish **notice** on social media, in a newspaper in the subject county and/or municipality, and at the entrance of the hearing buildings.
- » A **pre-hearing conference** is scheduled to identify issues and establish the hearings schedule and set deadlines for discovery and filing of written testimony.
- » A **public hearing** will be held at a location close to the proposed facility site to hear and record comments from any members of the public.
- » An **evidentiary hearing** is held for the parties of record before the PULJ (public may watch) to present testimony by calling and cross-examining witnesses.
- » **Briefs** may be required after hearings to argue any remaining issues.
- » A **proposed order**, including any permit conditions, is typically issued by PULJ within 365 days of completed application.
- » **Proposed order becomes final** in 30 days unless it is appealed by any party to the proceeding.

Appeals

- » Any party to the proceeding can appeal the final order within 6 - 24 months, depending on what the order being appealed provides. Once the deadline passes, there is no right to an appeal.
- » A proposed order can be appealed to the full 5-member PSC commission.
- » A 5-member commission order can be appealed to the circuit court.
- » A circuit court order can be appealed to the Court of Special Appeals.

Due Consideration

Does An Exemption Apply?

- **2 MW or less:** Does not require a CPCN. Developer must apply to the PSC for an exemption from construction and CPCN approval requirements.
- **2 - 25 MW:** Facilities that generate between 2 - 25 MW and consume at least 10% generated electricity on-site can apply to the PSC for an exemption from the CPCN approval requirements.
- **25 - 70 MW:** Facilities that generate up to 70 MW and consume at least 80% generated electricity on-site can apply to the PSC for an exemption from the CPCN approval requirements.

The application for exemption is available on the PSC webpage: <https://www.psc.state.md.us/electricity/cpcn-information/>. Applicants must pay a fee and provide proof of notice to the local governing body.

Local zoning laws will still apply to generating facilities that are exempt from CPCN and construction approval requirements. Check with your local planning office to determine where solar facilities are allowed – likely as a special exception – and any conditions for approval before installing solar arrays.

Local government is a significant participant in the CPCN approval process, but the ultimate decision-maker is the PSC. The PSC must follow the provisions of §7-207 of the Public Utilities Article, *Annotated Code of Maryland* (“PU”) when issuing decisions on CPCN applications. One major aspect of the PSC’s deliberations is the need to give “**due consideration**” to factors typically weighed in local land use decisions, including aesthetics, historic sites, air and water pollution, and waste disposal.

The PPRP gathers this information, evaluates it, and makes recommendations during its comprehensive review, which then becomes a part of the application record for the PSC to consider. The PSC Technical Staff also considers the stability and reliability of the electric system and the ability to transmit electricity generated from the site to main transmission lines. PU § 7-207(e)(2).

With regard to local governments, the PSC must give due consideration to the recommendations of the governing body of each county or municipal corporation in which any portion of the generating station is proposed to be located. PU §7-207(e)(1). Due consideration includes the consistency of the proposed project with the local planning and zoning laws of the affected county or municipality, including the applicant’s efforts to resolve any issues presented by the county or municipality. PU §7-207(e)(3).

Although local zoning decisions may ultimately be preempted by a PSC decision, they are nevertheless an important factor in the CPCN process. The due consideration requirement means that local laws impact whether the PSC decides to approve or disapprove a project, or to impose conditions. The PSC does not make siting decisions for solar projects but assesses whether the chosen location is in the public convenience and necessity.

For a smooth CPCN process, developers should seriously consider local comprehensive plans and zoning designations and work with the local jurisdictions.

Endnotes

- ¹ U.S. Energy Information Administration (EIA), *Maryland State Profile*, <https://www.eia.gov/state/analysis.php?sid=MD> (last updated August 16, 2018).
- ² Maryland Department of Natural Resources Power Plant Research Program (PPRP), *Maryland Power Plants and the Environment*, Chapter 2: Power Generation, Transmission, and Use, <http://dnr.maryland.gov/pprp/Documents/CEIR-Final-Report.pdf> (Dec. 2016).
- ³ For more information on Maryland's Renewal Portfolio Standard, see Maryland Public Service Commission: Renewable Portfolio Standard, <https://www.psc.state.md.us/electricity/renewable-portfolio-standard/>.
- ⁴ The Maryland SREC market is administered through the PSC. Suppliers must register and apply for certification. For more information, see <https://www.psc.state.md.us/electricity/solar-renewable-portfolio-standard-documents-rps/>.
- ⁵ The jurisdiction and powers of the PSC are found in Public Utility Article, *Annotated Code of Maryland* ("PU"), § 2-101, et seq.
- ⁶ As opposed to electric utilities, which are the entities that build and maintain the transmission and distribution lines that deliver power to local consumers and where the PSC is responsible for regulating the price of delivery. PPRP, *supra* at n 5.
- ⁷ Md. Code Ann., PU § 7-207.1.
- ⁸ Md. Code Ann., PU § 7-207, et seq. and the PSC regulations set forth in the Code of Maryland Regulations ("COMAR") 20.79 03.00, et seq. govern the application process. For a list of the Public Service Commission regulations, see <http://dnr.maryland.gov/pprp/Pages/pscregs.aspx>.
- ⁹ Md. Code Ann., PU § 7-207, et seq.; COMAR 20.79.03.01 - 02.
- ¹⁰ PJM, New Service Requests, <https://www.pjm.com/planning/services-requests/new-service-requests.aspx> (last visited August 23, 2019); For more information, see also, PJM Manual, GENERATION AND TRANSMISSION INTERCONNECTION PROCESS, <https://www.pjm.com/-/media/documents/manuals/archive/m14a/m14av19-generation-and-transmission-interconnection-process-11-01-2016.ashx> (Nov. 1, 2016).
- ¹¹ There is no official application form to apply for a CPCN. Instead, applicants must review COMAR 20.79.01.03 to ensure they have all the necessary materials to submit to the PSC, along with the application fee. Typically, the pre-application communications with PPRP and other agencies will help applicants draft and improve the required reports and streamline the application process. For more information about submitting a CPCN application to the PSC, see PSC Online Services (including E-Filing and Submitting Public Comments): <https://www.psc.state.md.us/>.
- ¹² Md. Code Ann., PU § 7-207, et seq.; COMAR 20.79.02.02.
- ¹³ *Bd. of Cty. Comm'rs v. Perennial Solar, LLC*, 464 Md. 610 (2019).