

# Maryland CPCN Considerations

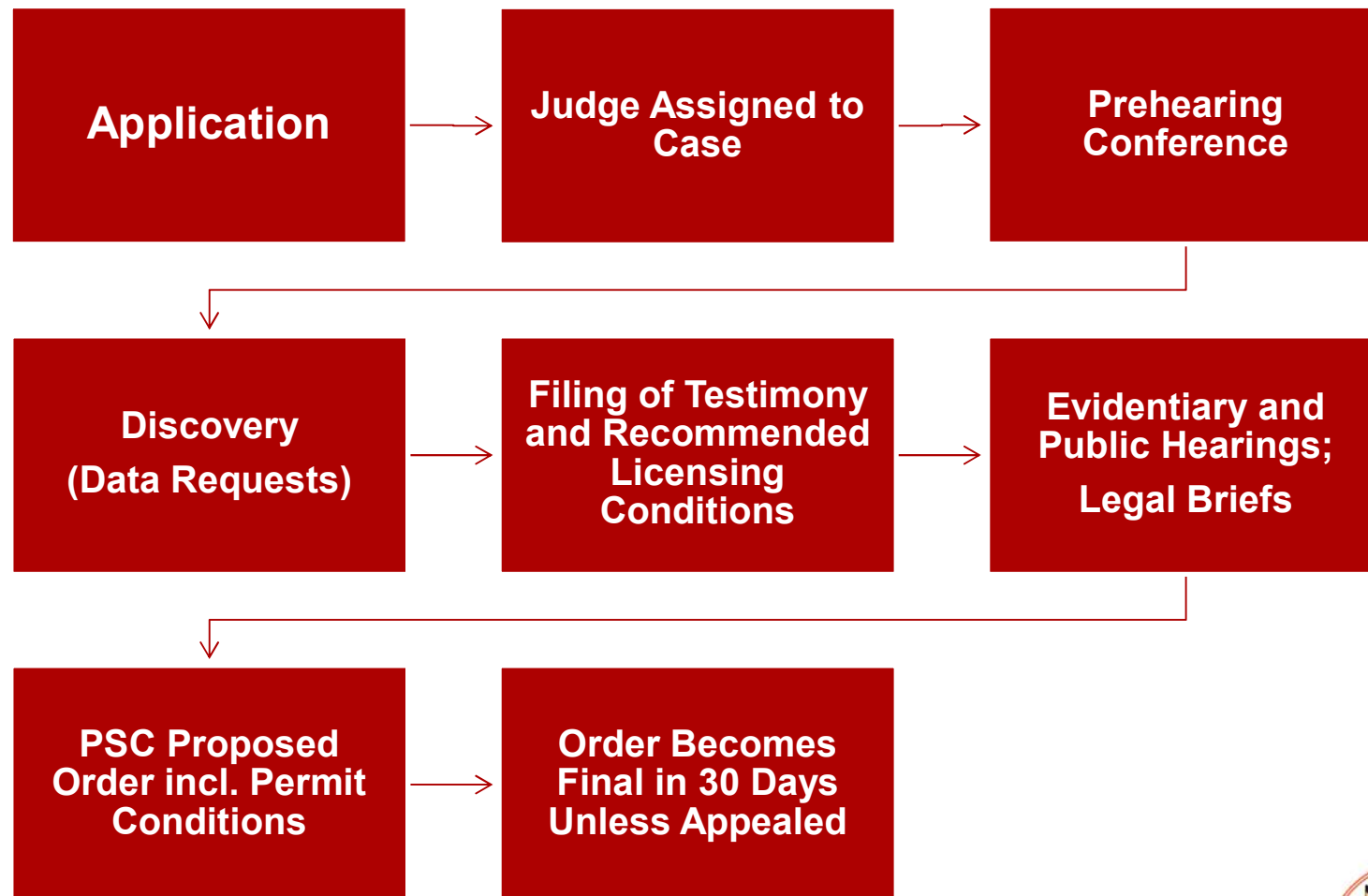
## Maryland Public Service Commission

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 ( $\leq 70$  MW) and at least 80% is consumed on site
    - Projects with land-based wind generation ( $\leq 70$  MW)

# CPCN PULJ Procedure



# 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/>



**MARYLAND**  
Public Service Commission



# 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](mailto:joey.chen@maryland.gov)

(410) 767-8057



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