



November 2, 2020

VIA ELECTRONIC FILING

Andrew S. Johnston, Executive Secretary
Maryland Public Service Commission
William Donald Schaefer Tower
6 St. Paul Street, 16th Floor
Baltimore, Maryland 21202

Re: COMAR 20.79 Rulemaking, Attn: Joey Chen

Dear Mr. Johnston:

The Utility-Scale Solar Energy Coalition (“USSEC”) and the undersigned renewable energy and environmental advocacy organizations are pleased to submit recommendations to the Maryland Public Service Commission (the “Commission”) for its upcoming rulemaking regarding the Certificate of Public Convenience and Necessity (“CPCN”) application process. The Commission has ultimate siting authority over all solar and wind generation projects greater than 2 MW in capacity, and expeditious development of such projects is key to meeting Maryland’s renewable energy and greenhouse gas emissions goals. However, numerous aspects of the State’s CPCN process are cumbersome, inefficient and lack transparency, resulting in significant delays in the processing and adjudication of numerous CPCN applications and chilling renewable energy activity in the state despite the recent expansion of the Maryland RPS by the General Assembly.

One key source of delay is the nebulous and opaque process of determining a complete CPCN application, and USSEC is hopeful that the Commission’s effort to address these issues via this proposed rulemaking will substantially address such delays by defining clear criteria for application completeness and a transparent process that allows completed applications to begin the CPCN process without delay.

USSEC’s proposed changes fall into four categories:

1. An enumerate list of requirements for a complete application. Applications that include all requirements in this list are deemed complete
2. Changes to the completeness review procedure to streamline the process, increase transparency, and mitigate uncertainty
3. Changes in light of the Maryland Court of Appeals *Perennial* ruling with respect to due consideration of local planning and zoning
4. Other clarifying changes

The enclosed narrative description summarizes each of USSEC's proposed changes to COMAR. The specific text amendments to COMAR are enclosed in the Appendices. Also enclosed in the Appendices is a short summary of the same changes without the narrative description. The below narrative is organized in order as the changes appear in COMAR.

USSEC and the undersigned organizations believe that the below changes are a critical step in addressing important shortcomings of the current CPCN process which stand in the way of a rational and streamlined state permitting process. We look forward to participating in this rulemaking and are grateful the Commission for prioritizing this important issue in the interest of advancing the Maryland's renewable energy and greenhouse gas reduction goals.

Sincerely,

**Utility-Scale Solar Energy Coalition
of Maryland**



Cyrus Tashakkori, Chairman

**Maryland-DC-Virginia
Solar Energy Association**



David Murray, Executive Director

American Wind Energy Association



Andrew Gohn, Eastern Region Director of State Policy

Mid-Atlantic Renewable Energy Coalition



Bruce Burcat, Executive Director

Chesapeake Climate Action Network



Mike Tidwell, Executive Director

Maryland League of Conservation Voters



Kim Coble, Executive Director

USSEC Explanation of CPCN Rulemaking Recommendations

1. COMAR 20.79.01.04 – Completeness Checklist

This section of the Commission’s regulations sets forth the requirements for a complete CPCN application and should serve as the “check list” for a complete application during the Commission’s completeness review.

USSEC has proposed several changes to this section. First, USSEC has proposed adding the word “complete” in the first paragraph to clarify these are the requirements for a complete application. The procedural elements of the Commission’s completeness review are addressed in proposed amendments to COMAR 20.79.01.08, below. As discussed below, the purpose of the Commission’s completeness review is to determine if the applicant has provided the baseline information necessary for the parties to begin their review. However, satisfying the requirements of COMAR 20.79.01.04 for a complete application does not mean the Commission must issue a CPCN, and parties remain free to conduct discovery, submit their own testimony, and take positions as to whether the CPCN should be granted or denied.

Second, in § E, USSEC has proposed an amendment to the list of required approvals. As currently drafted, § E requires an application to include a “list of each local, state or federal government agency having authority to approve or disapprove the construction or operation of the project.” The inclusion of the word “local” has created confusion given that the Commission’s CPCN preempts all local approvals, which under *Perennial* are legally void as a matter of law.¹ Accordingly, USSEC has recommended removing the word “local” from § E.

Third, USSEC has proposed several minor stylistic edits.

2. COMAR 20.79.01.08 – Clarifications to Completeness Review Procedure

This section contains the Commission’s procedure for completeness reviews and is one of the most important areas of focus for this rulemaking.

Under the current version of this section, within 45 days of either delegating a CPCN case to the PULJ Division or keeping it at the full Commission, the Commission must issue a decision stating either (1) the CPCN application is complete (allowing the review to proceed) or (2) the CPCN application deficient, including the nature of the deficiency. COMAR 20.79.01.08A. In

¹ See e.g., Bd. of County Commissioners of Washington County v. Perennial Solar, LLC, 464 Md. 610, 644 (2019) (“Finally, the County argues that the regulations promulgated by the PSC as set forth in COMAR 20.79.01.04 clearly identify the local Board of Zoning Appeals as a local agency with authority to approve or disapprove the construction of SEGS under the Zoning Ordinance. COMAR 20.79.01.04(e) requires that a CPCN application for the construction of a generating station include: ‘[a] list of each local, state or federal government agency having authority to approve or disapprove the construction or operation of the project.’ Although the regulation acknowledges that there may be other agencies which might have approving authority, the language is silent on which agencies might have authority, and/or what that authority might mean. We do not read the regulation to suggest that the Board of Zoning Appeals has authority to issue a separate approval of SEGS, particularly where the Board’s approval or disapproval could be inconsistent with the PSC’s final determination.”)

practice, the Commission has not issued a completeness determination in compliance with this section in most solar CPCN cases.

USSEC has proposed substantial modifications to this section to clarify how the completeness review procedure works and provide more certainty throughout the CPCN process. Importantly, the Commission's completeness review addresses the threshold issue of whether the applicant has provided the baseline information necessary for the parties to review the application and make their recommendations on the record. If the Commission determines an application is complete pursuant to these procedures, the review may proceed, but it does not constitute approval of the application or issuance of a CPCN. Parties may conduct discovery, submit their own evidence, and take positions on the application, including that it should be denied. However, by ensuring application completeness is determined upfront according to a list of required information, the Commission will enhance administrative efficiency by allowing parties to focus on the merits of the application and avoid unnecessary delays near the end of the process.

a. § A – Clarifying Amendments and Adjusted Review Period

In the existing § A, USSEC has proposed modifying the review timeline for the completeness determination from 45 to 50 days after the CPCN case is delegated to PULJ Division or kept at the Commission. The purpose of this is to allow for adequate time for parties to comment on completeness, for the Applicant to respond, and for the Commission or PULJ to issue a decision on whether the application is complete or deficient.

Further, USSEC has proposed tying the determination of whether or not an application is complete to the list of elements of a complete application specified in COMAR 20.79.01.04. This aspect of the proposal is essential as it clarifies that the requirements set forth in COMAR constitute the only criteria that may be used in the completeness review. This will prevent parties from inventing new requirements for a complete application that were unknown to the Applicant prior to filing.

Finally, USSEC has added a requirement for the Commission to specify a date by which the Applicant must correct a deficiency identified by the Commission or PULJ. This will ensure deficiencies are cured at the start of the process, allowing PPRP to complete its review without interruption or delay.

b. § B – Default Completeness Determination

USSEC has proposed a new § B that automatically deems an application complete if the Commission does not issue a finding under § A within 50 days of the delegation. In many CPCN proceedings, the Commission has not issued a completeness determination, which has allowed PPRP to deem applications deficient well after the existing 45-day timeframe in COMAR (in many cases just a few weeks prior to when PPRP's ultimate report and licensing conditions are due to the PULJ).

This section addresses this issue by deeming the application complete automatically if the Commission does not issue a finding on completeness within the specified 50-day timeframe. As

discussed above, once an application is deemed complete the review will move to the merits of the application and parties can raise substantive issues and take positions on whether the application should be approved or denied.

c. § C and § D – 30 Day Completeness Comments Filing Deadline and 10 Day Response Deadline

USSEC has proposed a new § C that allows any party to file comments on whether or not an application is complete or deficient within 30 days of the order delegating the proceeding to the PULJ Division (or keeping it with the Commission). This creates a predetermined and clear process for parties to file comments on application completeness. If a deficiency is identified, the party must explain how it will impact its review of the application and propose a timeframe to correct the deficiency. § D similarly allows the Applicant 10 days to respond to the comments filed by a party under § C. The purpose of this is to remove any uncertainty as to how parties provide input to the Commission or PULJ on application completeness.

d. § E – Clarification that Commission Makes Final Completeness Determination

USSEC has proposed a new § E that specifies that the comments filed under § C and D are not binding on the Commission. In at least one case, the PULJ deferred to PPRP's completeness determination. § E makes clear that the Commission makes the ultimate completeness determination, not one of the parties.²

e. § F – Completeness Review Limited to Requirements of COMAR 20.79.01.04

Under current procedures, the Commission and parties are not constrained by any specific requirements as to what makes an application complete. As a result of this, PPRP and Staff are able to, and regularly do, claim an application is incomplete for any reason, even if the stated reason for incompleteness was not known prior to the application being filed. This has led to inconsistent treatment of CPCN applications and a lack of certainty and transparency for applicants.

To correct this issue, USSEC has proposed a new § F that clarifies a CPCN application cannot be deemed incomplete for failure to provide information other than what is required by COMAR 20.79.01.04.

f. § G – Requirement for Parties to Make Position on Application Completeness Known at Start of Proceeding

Under the Commission's current regulations, at any time during a CPCN proceeding, a party is able to raise a claim of an incomplete application as justification to request that the PULJ modify the procedural schedule, or to use such a claim as a basis to deny a CPCN application entirely. In fact, PPRP has frequently requested that the Commission modify procedural schedules due to a claim of an incomplete application 5 to 8 months into CPCN proceedings and has

² USSEC does not believe a special appeal right for a PULJ's completeness determination to the full Commission is necessary. Parties would retain their existing ability to file an interlocutory appeal under extraordinary circumstances.

recommended denial of CPCN applications because certain information was not provided. This practice has created significant delays, uncertainty, and churn in the CPCN process. This dynamic can be significantly curtailed by requiring PPRP to make its position on completeness known at the start of the proceeding, allowing the PULJ to weigh in and, if necessary, allowing the Applicant to correct any deficiency upfront.

Accordingly, USSEC has proposed a new § G that specifies that a party waives its right to raise the failure to provide the information required by COMAR 20.79.01.04 as a basis to deny a CPCN to an Applicant or as good cause to modify the procedural schedule for the proceeding on the CPCN application if the party did not raise the deficiency in comments filed in compliance with the regulation (*i.e.*, within the required 30 day timeframe). This will create an incentive for parties to raise deficiencies upfront and prevent undue delays in CPCN cases due to last minute claims that applications are deficient.

Under § G, a party is unable to raise the lack of information required by COMAR 20.79.01.04 after the completeness determination has been made, but is not barred from conducting discovery, identifying issues, and taking positions on the application. The information required by COMAR 20.79.01.04 is baseline information necessary to allow the parties to begin their review, but does not limit the scope of the party's review on the merits once the application is deemed complete.

3. COMAR 20.79.03.01 – Clarifications to Required Description of Generating Station

COMAR 20.79.01.04G requires a CPCN application to satisfy the requirements of COMAR 20.79.03.01 to be deemed complete. COMAR 20.79.03.01, in turn, specifies the requirements of the description of the generating station that must be included within the application. As currently drafted, the requirements for the description do not take into account what have become standard requirements for CPCN applications. Similarly, the regulation does not incorporate the requirement for “due consideration” of local zoning and comprehensive plans, which has been in effect since 2017. USSEC has proposed several changes to COMAR 20.79.03.01 to align it with current practices and statute, allowing the Commission to complete its completeness review with an up-to-date list of application requirements.

a. § B – Preliminary Conceptual Site Plans and Landscape Buffer Plans

It has become standard practice for CPCN applicants to provide a preliminary conceptual site plan and preliminary conceptual landscape buffer plan as part of their applications. The preliminary conceptual site plan shows the initial proposed layout of the project, which is subject to CPCN review and modification/approval through the local site plan review process after a CPCN has been issued (typically by the county or municipal corporation's planning commission). The preliminary conceptual landscape buffer plan shows the location and type of proposed landscape buffering for the project to address esthetic impacts to public rights of way and adjoining properties. Landscape buffer plans are also typically reviewed and approved locally after the CPCN is issued. USSEC has proposed new language in § B to clarify that these two items are part of a complete CPCN application.

b. § G – Required Interconnection Studies

Prior to deregulation, the CPCN process was the primary method for the Commission to consider the need for new generation and the impact that generation would have on the stability and reliability of the electric grid. With deregulation, however, PJM was vested with primary responsibility to determine grid stability and reliability impacts of new wholesale generators. Accordingly, for generating stations interconnecting to FERC jurisdictional facilities, the Commission has relied on an applicant's compliance with the PJM interconnection process as the basis of determining that grid stability and reliability will not be impacted. In the CPCN process, the practice has been for applicants to demonstrate that they are proceeding through the PJM interconnection process, which is accomplished by providing a PJM System Impact Study report and any of the follow-on studies or agreements (Facilities Study, Interconnection Services Agreement, etc), if available. There is no requirement for the PJM process to be complete at the time the application is filed or the CPCN is issued, and Staff typically proposes a condition requiring the PJM studies and agreements to be filed prior to the start of construction.

To formalize this practice, USSEC has proposed new language to § G that clarifies that a “copy of the PJM System Impact Study report for the project and any additional interconnection studies available at the time the CPCN application is filed with the Commission” is sufficient to satisfy this completeness factor.

c. § I – Zoning Consistency

It has long been understood that the Commission's siting authority over generating stations preempts local zoning. *Howard County v. Potomac Elec. Power Co.*, 319 Md. 511 (1990) (Commission's issuance of a CPCN to a transmission facility preempted Howard County's special exception zoning approval process); *Baltimore Gas & Elec. Co. v. Dep't of Health and Mental Hygiene*, 284 Md. 216, 231 (1979) (Commission is “vested with the sole power and authority to approve on behalf of the State of Maryland the erection of electric generating stations”).

The General Assembly enacted SB851/HB1350 in 2017, creating a requirement for the Commission to give “due consideration” to the “consistency of [each CPCN] application with the ... zoning of each county or municipal corporation where any portion of the generating station is proposed to be located.” PUA § 7-207(e)(3)(i). In light of this new language, the Court of Appeals unanimously affirmed the Commission's authority over the siting of solar electric generating stations in *Bd. of County Commissioners of Washington County v. Perennial Solar, LLC*, 464 Md. 610, 644 (2019), with the consideration of local zoning and comprehensive consistency occurring exclusively within the CPCN process. The Court of Appeals ruled that the CPCN statute “is comprehensive and grants the PSC broad authority to determine whether and where [solar energy generating systems] may be constructed.” *Id.* Further, “the General Assembly has expressly limited the role of local government to an advisory role in the CPCN approval process.” *Id.* at 643.

An essential holding in *Perennial* is that the CPCN process preempts local discretionary siting approval processes such as special exceptions, conditional uses, and floating zones. As explained by the Court of Appeals, “a two-tiered regulatory process as proposed by the County would engender chaos and confusion if local zoning authority was not preempted.” *Id.* at 634. In

other words, the CPCN process preempts not just substantive zoning requirements (*i.e.*, restrictions as to the particular location and design of facilities) but also procedural zoning requirements (*i.e.*, the local process by which discretionary zoning approvals are rendered).

Despite CPCN preemption, PPRP has taken the position in numerous cases that it will not complete its review until local discretionary zoning processes are complete. This has led to substantial delays in CPCN proceedings as it is not practicable for the Commission to issue a CPCN to the project unless PPRP submits its project assessment report and proposed licensing conditions. A partial list of impacted CPCN proceedings is below:

- Case No. 9620 (Lightsource Solar, St. Mary's County) – PPRP requested that the CPCN proceeding be suspended until the St. Mary's County Board of Zoning Appeals renders a decision on the project's request for a special exception. PPRP's justification was that it would be unable to complete its review absent this zoning decision. The PULJ granted this suspension on January 21, 2020.
- Case No. 9496 (Bluegrass Solar, Queen Anne's County) – PPRP requested that the CPCN proceeding be suspended until Queen Anne's County Board of Zoning Appeals rendered a decision on the project's request for a conditional use approval prior the submission of its conditions and review. The PULJ granted this suspension on June 19, 2019.
- Case No. 9477 (Cherrywood Solar, Caroline County) – PPRP filed a motion to suspend the procedural schedule, in part, to allow the Caroline County Board of Zoning Appeals to render a decision on the project's request for a special exception prior to PPRP's filing date. The PULJ granted this suspension on July 26, 2018.
- Case No. 9463 (MD Solar 2, Charles County) – PPRP requested that the Applicant file a request suspending the procedural schedule to allow the Charles County Board of Zoning Appeals to render a decision on the project's request for a special exception. The Applicant filed the request, which was granted by the PULJ on April 4, 2018.
- Case No. 9464 (MD Solar 1, Charles County) – PPRP requested that the Applicant file a request suspending the procedural schedule to allow the Charles County Board of Zoning Appeals to render a decision on the project's request for a special exception. The Applicant filed the request, which was granted by the PULJ on April 4, 2018.
- Case No. 9457 (Richfield Solar, Dorchester County) – PPRP requested that the Applicant request that the PULJ suspend the procedural schedule to allow the Dorchester County Board of Zoning Appeals to render a decision on the project's application for a special exception prior to PPRP's filing date. The Applicant filed the request, which was granted by the PULJ on March 1, 2018.
- Case No. 9439 (Biggs Ford Solar Center, Frederick County) – PPRP indicated that it would require the Applicant to complete the county's floating zone process prior to the submission of its testimony. The Applicant refused on the basis of preemption, and PPRP recommended denial of the CPCN (and did not submit conditions) based on the claim that PPRP could not complete its review without the zoning decision. On remand, the Commission ordered the Applicant to complete the floating zone process. The Applicant completed this process, which led to a denial of its floating zone application by the county. In response, PPRP again recommended denial of the CPCN, this time in part based on the zoning decision, and again did not submit conditions.

- Case No. 9436 (Jones Farm Solar, Queen Anne’s County) – PPRP requested that the procedural schedule be modified to allow the Queen Anne’s County Board of Zoning Appeals to render a decision on the project’s request for a conditional use approval prior to PPRP’s filing date. The PULJ granted the modification on July 12, 2017.

This dynamic has increased permitting costs and uncertainty in Maryland to the point that it is dissuading developers from entering the market. In light of *Perennial*, it is essential for the Commission to end PPRP’s ability to unilaterally require projects to receive local zoning approvals. In a new § I, USSEC has proposed important new language to clarify what information on zoning consistency is required for an application to be deemed complete.

Under USSEC’s proposed language, the Applicant has two options if its position is that the project is *consistent with* the local zoning ordinance.

Under the first option, the Applicant may submit a narrative detailing the requirements of the zoning ordinance and specifying how the project satisfies those requirements. For most projects, an application using this option would include a recitation of the requirements for solar facilities under the zoning ordinance (for instance, what setbacks are required from adjoining properties, what visual screening is required, *etc.*) and a requirement-by-requirement explanation of how the project satisfies the ordinance. This would provide a factual basis for the Commission to evaluate zoning consistency under PUA § 2-207(e)(3)(i) without requiring projects to complete local dictionary zoning processes which, per *Perennial*, are legally void.

Under the second option, the Applicant may submit a copy of a letter, order, or decision from the planning department or zoning board of the county or municipal corporation stating that the project is consistent with the zoning ordinance. While local discretionary approvals are legally void, this option allows projects to continue working with local jurisdictions voluntarily and submit a letter or decision provided by the county or municipal corporation as evidence of zoning consistency. This could range from a letter from the jurisdiction’s zoning department that the project is consistent with the ordinance to a formal decision from the county’s board of zoning appeals. By formalizing this option, the Commission would continue to allow projects to establish zoning consistency by proceeding through the County’s preferred local process. However, as this is just one of two options, PPRP and the Commission would no longer be able to use failure to apply for the local approval as a basis to delay proceedings or deny CPCNs.³

USSEC’s proposed language also specifies that an Applicant that takes the position that the project is *inconsistent with* the zoning ordinance must satisfy two requirements. First, an Applicant must provide a “narrative detailing the requirements of the zoning ordinance and specifying how the project is inconsistent with and, if applicable, consistent with the design and siting requirements of the ordinance.” This is similar to the first option for applications that claim consistency with the zoning ordinance, except the Applicant must identify inconsistent elements.

³ While a party would be unable to raise failure to complete the local process as a basis to deny a CPCN, the party would *not* be barred from raising substantive issues relating to the zoning issue. For instance, the party could disagree with the applicant’s narrative on zoning consistency and submit testimony explaining the basis for the disagreement. Similarly, the Commission would be able to deny an application, in part, on zoning inconsistency. However, this would be merit based and not for the procedural reason that the applicant did not apply for the local zoning approval.

Second, the Applicant must provide its “justification for why the Commission should issue Approval to the Project notwithstanding the inconsistency.” This second factor requires applicants to discuss why the Commission should deviate from the requirements of the ordinance. The narrative provided would vary case-to-case, and could range from issues with specific requirements in the ordinance (*i.e.*, a setback requirement that the project cannot satisfy) to broad policy arguments (*i.e.*, the ordinance is not in the public interest because it seeks to ban all utility scale solar facilities).

d. § J – Comprehensive Plan Consistency

SB851/HB1350 also created a requirement for the Commission to give “due consideration” to the “consistency of [each CPCN] application with the comprehensive plan ... of each county or municipal corporation where any portion of the generating station is proposed to be located.” PUA § 7-207(e)(3)(i). There has been substantial deviation in each CPCN case on the level of detail and scrutiny provided with respect to this factor.

From the outset, it is important to recognize that comprehensive plans are not legally binding documents, even absent CPCN preemption. It is not possible to “violate” a comprehensive plan as they are merely non-binding guidance documents. Maryland courts “have repeatedly noted that, generally, ... Comprehensive Plans ... are advisory, guides only, and not normally mandatory.” *Trail v. Terrapin Run, LLC*, 403 Md. 523, 528 (2008). Comprehensive plans “represent only a basic scheme generally outlining planning and zoning objectives in an extensive area, and are in no sense a final plan; they are continually subject to modification in the light of actual land use development and serve as a guide rather than a strait jacket.” *Mont. Co. v. Woodward & Lothrop*, 280 Md. 686, 704 (1977).

At the same time, the General Assembly has created a defined standard for how local entities must determine the “consistency” of a proposed development with their comprehensive plans when issuing discretionary zoning approvals. Md. Land Use Article (“LUA”) § 1-303 provides that “‘consistent with’ or hav[ing] ‘consistency with’ a comprehensive plan [means] an action taken that will further, and not be contrary to, the following items in the plan: (1) policies; (2) timing of the implementation of the plan; (3) timing of development; (4) timing of rezoning; (5) development patterns; (6) land uses; and (7) densities or intensities.” While not binding on the Commission, this review standard serves as a useful guide for the Commission’s comprehensive plan consistency analysis under PUA § 7-207(e)(3)(i). It also provides a framework for the Commission’s completeness review.

In light of the above, USSEC has proposed a new § J that delineates what information an Applicant must provide on comprehensive plan consistency. Similar to the zoning consistency language, USSEC has broken this section into “consistent with” and “inconsistent with” sections.

Under USSEC’s proposed language, the Applicant has two options if its position is that the project is *consistent with* the comprehensive plan.

Under the first option, the Applicant may submit a narrative “explaining how the project is consistent with the comprehensive plan under the standard set forth in Land Use Article § 1-303.”

This option requires the Applicant to provide analysis under the seven LUA § 1-303 factors, citing directly to the local jurisdiction's comprehensive plan and explaining how the proposed project furthers and is not contrary to the delineated items in the comprehensive plan. The purpose of this is to provide an evidentiary basis for the Commission to make an independent determination under PUA § 2-207(e)(3)(i).

Under the second option, the Applicant may submit a “copy of a letter, order, or decision from the planning department or zoning board of the county or municipal corporation stating that the project is consistent with the comprehensive plan.” Similar to the second option for projects consistent with local zoning discussed above, this allows applicants to voluntarily continue to proceed with local review and approval processes and submit the result of that application with the Commission in satisfaction of this review factor. However, as this is just one of two options, PPRP and the Commission would no longer be able to use failure to apply for the local approval as a basis to delay proceedings or deny CPCNs.⁴

In addition to the above, USSEC's proposed language provides clear requirements for how an Applicant must handle an application that takes the position that a project is inconsistent with the comprehensive plan, either in whole or in part. An Applicant that takes this position must satisfy two requirements. First, an Applicant must provide a “narrative explaining how the project is inconsistent with and, if applicable, consistent with the comprehensive plan under the standard set forth in Land Use Article § 1-303.” Second, an Applicant must provide a “justification for why the Commission should issue Approval to the Project notwithstanding the inconsistency.” As with the zoning consistency section, this is purposefully flexible and invites the Applicant to satisfy its burden of proof based on the facts of the case and the particular comprehensive plan at issue.

e. § K – Efforts to Resolve Issues Raised by the County or Municipal Corporation

SB851/HB1350 also created a requirement for the Commission to give “due consideration” to “efforts to resolve any issues presented by a county or municipal corporation where any portion of the generating station is proposed to be located.” PUA § 7-207(e)(3)(ii). This recognizes the important voice local jurisdictions retain in the CPCN permitting process.

USSEC has proposed a new § K to prescribe what information with respect to this factor creates a complete application, with two options. First, the Applicant may provide a description of “[a]t least one meeting about the project between representatives of the Applicant and representatives of the county or municipal corporation where the project is proposed to be located and any modifications to the design of the project that resulted from feedback received at the meeting.” The purpose of this is for the Applicant to document outreach efforts with the county and describe any changes to the project undertaken to address concerns raised at the meeting.

⁴ Similar to above, while a party would be unable to raise failure to complete the local process as a basis to deny a CPCN, the party would *not* be barred from raising substantive issues relating to the comprehensive plan. For instance, the party could disagree with the applicant's narrative on comprehensive plan consistency and submit testimony explaining the basis for the disagreement. Similarly, the Commission would be able to deny an application, in part, on comprehensive plan inconsistency. However, this would be merit based and not for the procedural reason that the applicant did not apply for the local zoning approval.

Second, “[i]f representatives of the county or municipal corporation where the project is proposed to be located did not meet with the Applicant prior to when the Applicant filed the CPCN application with the Commission,” the Applicant may provide “a description of the Applicant’s efforts to schedule a meeting prior to the date the filing occurred and why the meeting did not occur.” This acknowledges that some local jurisdictions may be unwilling or unable to meet with the Applicant prior to filing. If this option is not included, it would create a unilateral ability for local jurisdictions to prevent applications from being deemed complete. Accordingly, this option is critical.

4. COMAR 20.79.03.02 – Clarifications to Required Environmental and Site Impact Information

COMAR 20.79.01.04 requires a CPCN application to satisfy the requirements of COMAR 20.79.03.01 to be deemed complete. COMAR 20.79.03.02, in turn, specifies the environmental and siting information included within the application. Similar to COMAR 20.79.03.01, the requirements for the description do not currently take into account what have become standard requirements for CPCN applications. Accordingly, USSEC has proposed several changes to update COMAR 20.79.03.02 with the goal of improving the Commission’s completeness review.

a. § A – Clarifying Amendments

USSEC has proposed clarifying amendments to § A. First, USSEC has proposed changing the term “application” to “project” to clarify the Commission is reviewing a proposed project. Second, USSEC has proposed amending existing language to clarify that the “purpose of this regulation is to require the applicant to demonstrate that the project complies with applicable environmental and regulatory requirements and evaluate the benefit or the detriment of the project to the environment.” This makes clear that the Commission reviews siting requirements in addition to environmental requirements. It also recognizes that generating stations may have environmental benefits, in addition to detriments. This is especially important for the review of solar and other renewable energy facilities.

b. § B(1)(a) – Additional Environmental Study Information

USSEC has proposed adding in specific documentation and information necessary to satisfy the requirement for a “general description of the physical, biological, aesthetic, and cultural features, and conditions of the site and adjacent areas” under § B(1)(a). The purpose of this addition is to include standard documents as components of a complete application. These include: (1) a geotechnical report; (2) a wetland field assessment report; (3) a FEMA flood insurance map; (3) a Department of Natural Resources Wildlife and Heritage Service response letter regarding threatened and endangered species; and (4) a United States Fish and Wildlife Service IPaC report regarding threatened and endangered species.

c. § B(2)(d) – Impact on State’s Ability to Achieve Renewable Portfolio Standard and Greenhouse Gas Reduction Act Requirements

In *Perennial*, the Court of Appeals found that a primary purpose of the Commission's CPCN siting authority is to effectuate its oversight of the State's renewable energy and climate change mitigation mandates:

“In response to the growing concern over climate change, the Maryland General Assembly enacted legislation intended to reduce Maryland greenhouse gas emissions. The legislation included a specific intent to move the Maryland energy market away from historical reliance on fossil fuels and enacted a Renewable Energy Portfolio Standard ('RPS').¹¹

...

In 2009, the Maryland General Assembly enacted the Greenhouse Gas Emissions Reduction Act of 2009 ('GERRA'), a law that requires the State to reduce greenhouse gas emissions from a 2006 baseline by 25% by 2020 and by 40% by 2030. During the 2019 legislative session, the General Assembly adopted the Clean Energy Jobs Act, which increases the State's RPS target to 50% by 2030. The Clean Energy Jobs Act also includes a significant increase in electricity sales derived from solar energy from 1.9% to 5.5% in 2019, and to 14.5% in 2028.

The General Assembly has delegated to the PSC the authority to 'implement a renewable energy portfolio standard' that applies to retail electricity sales in the State by electricity suppliers consistent with the specific timetable established by the statute. On an annual basis, the PSC is required to report to the General Assembly on the status of the implementation of the RPS program, including the availability of Tier 1 renewable sources such as solar energy.

Consistent with the PSC's duties to ensure compliance with the RPS, including the specific targets for the share of electricity coming from solar electric generation, the General Assembly has also delegated to the PSC the exclusive authority to approve generating stations in Maryland.”

Bd. of County Commissioners of Washington County v. Perennial Solar, LLC, 464 Md. 610, 621–23 (2019) (internal citations omitted).

Despite the clear interplay between the CPCN process and the RPS and GERRA, the Commission's current CPCN completeness factors make no mention of either. As the CPCN process determines whether generating stations are in the public interest to construct, it is logical – and necessary – for the Commission to consider the impacts of each proposed generating station on the RPS and GERRA. Accordingly, the Commission should make information on a proposed project's impact on the RPS and GERRA a requirement for a complete application. USSEC has proposed a new § B(2)(d) requiring this information.

d. § B(3)(b) – Water Quality Benefits

§ B of COMAR 20.79.03.02 requires a complete application to include “a description of the effect on water quality and appropriation” and specifies categories of required information on this topic. The required information, however, assumes that all impacts on water quality will be negative. This does not recognize that solar facilities have the potential for positive water quality impacts by eliminating land disturbance during decades of operation as well as reducing annual fertilizer/pesticide loads associated with active farming. Accordingly, USSEC has proposed new language to § B(3)(b) that requires “an assessment of the positive or negative impact the project will have on water quality.”

e. § B(6) – Maryland Historic Trust Consultation on Historic and Archeological Sites

PUA § 7-207(3)(2)(iv) requires the Commission to give “due consideration” to the effect of a proposed generating station on “historic sites” when determining whether to grant a CPCN. Despite this required review factor, the Commission’s current regulations do not require applications to include any information on impacts to historic sites.

The Maryland Historic Trust (“MHT”) identifies impacts of proposed projects subject to state permitting on historic and archeological sites. To begin this review, an Applicant provides an “intake questionnaire” to MHT, which then uses the provided information to determine either there are no potential impacts to such resources or, if impacts are possible, require further studies and mitigation, if necessary. MHT then provides the result of this analysis to PPRP, which incorporates it into its comprehensive review. PPRP incorporates any mitigation recommended by MHT into its proposed licensing conditions. Typically, Applicants have provided the intake questionnaire to MHT prior to the start of the CPCN process, with the remainder of any additional MHT reviews taking place concurrently with the CPCN proceeding.

To incorporate this standard practice within the Commission’s CPCN completeness factors, USSEC has proposed a new § B(6) to require a “description of the project’s impacts, if any, on Historic Sites and Archeological Sites and the Maryland Historical Trust’s response to a review intake questionnaire submitted by the Applicant.”

f. § B(7) – Air Navigation Impacts

PUA § 7-207(3)(2)(v) requires the Commission to give “due consideration” to the effect of a proposed generating station on “aviation safety as determined by the Maryland Aviation Administration and the administrator of the Federal Aviation Administration.” However, the Commission’s current regulations do not require applications to include any information related to this factor. Accordingly, USSEC has proposed adding a new § B(7) that requires a complete application to include “[i]nformation from the Federal Aviation Administration and Maryland Aviation Administration on the impacts of the project on air navigation and, if impacts are anticipated, proposed mitigation.”

g. § B(8) – Forest Conservation Act Exemption Information

Natural Resources Article (“NR”) § 5-1602(b)(5) exempts generating stations subject to CPCN review from the Forest Conservation Act provided: (1) the Commission gives due consideration to factors outlined in NR § 5-1603(f) and (2) “the cutting or clearing of the forest is conducted so as to minimize the loss of forest.” NR § 5-1603(f) provides that “the ... Commission shall give due consideration to the need to minimize the loss of forest and the provisions for afforestation and reforestation set forth in [the Forest Conservation Act] together with all applicable electrical safety codes, when reviewing applications for a certificate of public convenience and necessity issued pursuant to ... § 7-207 ... of the Public Utilities Article.” Despite this exemption and requirement to give due consideration to afforestation and reforestation requirements, the Commission’s regulations do not require CPCN applications to provide any information related to forestry impacts.

USSEC has proposed a new § B(8), which includes three options to CPCN applicants with respect to this factor. First, “[i]f the Applicant proposes to voluntarily comply with the forest conservation ordinance of the county or municipal corporation where the project is located” the Applicant must provide “a completed forest conservation worksheet for the county or municipal corporation.” This recognizes that many developers decide to voluntarily comply with local forest conservation ordinances despite the exemption for CPCN projects and allows developers to continue doing so at their discretion.

Second, “[i]f the Applicant proposes no action or to deviate from what would have been required under the forest conservation ordinance of the county or municipal corporation where the project is located” (for instance, by proposing no afforestation for a solar facility that does not clear forest), the Applicant must provide “an explanation of the proposal” and either: (1) the “Applicant’s justification for the proposal” or (2) a “copy of a letter, order, or decision from the county or municipal corporation agreeing to or approving the Applicant’s proposal.” The first option (the “Applicant’s justification for the proposal”) recognizes that the CPCN process supersedes Forest Conservation Act requirements and allows Applicants to make the case for mitigation that deviates from those requirements, or no mitigation at all, if appropriate. The second option (“copy of a letter, order, or decision from the county or municipal corporation agreeing to or approving the Applicant’s proposal”) allows Applicants to work with local governments before filing their applications to reach an agreement on what level of forestry mitigation, if any, is required. This recognizes that some counties have agreed to mitigation different from what would be required by their forest conservation ordinances as a result of the flexibility provided by the exemption for projects approved via the CPCN process.

Third, if the proposed project is located in Garrett County or Allegany County, an Applicant can include a statement to that effect and not propose any forest mitigation. This recognizes that Garrett County and Allegany County are categorically exempt from the Forest Conservation Act by virtue of the amount of forest cover remaining in both counties.

h. § B(9)(a) – Solar Glare Studies

PPRP has required CPCN applicants to provide studies of proposed solar facilities that analyze solar glare impacts, if any, on the surrounding area that result from the reflection of the sun's rays off panels and associated structures. As this has become a standard requirement, USSEC has proposed a new § B(9)(a) that requires the submission of such a study for a complete application. As proposed, USSEC's new language requires the study to analyze glare impacts, if any, on: (1) adjacent public and private rights of way; (2) non-participating occupied structures; and (3) flight paths associated with airports within 2 miles of the project site.

a. § B(9)(b) – Prime Farmland Impacts

It has become standard practice for CPCN applicants to provide copies of United States Department of Agriculture Natural Resource Conservice maps of prime farmland on proposed project sites. Accordingly, USSEC has proposed a new § B(9)(a) that requires proposed a solar facility to provide a copy of this map, identify the number of acres of prime farmland impacted, and identify what percentage of all total prime farmland in the State would be consumed by the project.

5. COMAR 20.79.02.03 – State Agency Jurisdiction

A significant issue in the CPCN process is a lack of certainty as to what regulatory requirements will apply to each project. While the State has adopted a suite of environmental laws with known requirements, the open-ended nature of the CPCN process and PPRP's conditions has allowed the State, through PPRP, to create new requirements that would otherwise be outside the State's regulatory jurisdiction. Further, since PPRP's conditions are submitted for Commission review at the end of the CPCN process, Applicants have little warning that new requirements will be imposed. For instance, on select projects PPRP has required setbacks from non-jurisdictional drainage ditches that are outside of MDE's jurisdiction, causing significant design challenges for developers.

This problem directly relates to the determination of application completeness. When developers prepare CPCN applications, in order to ensure that their applications are complete they look to known regulatory requirements and design their projects to satisfy them. However, as currently structured, new requirements are frequently added well into the permitting process.

To resolve this issue, USSEC has proposed a new § D that clarifies a "state agency participating in a proceeding under this subtitle may not propose licensing conditions to the Commission that impose requirements in excess of the state agency's regulatory jurisdiction." In addition, USSEC has proposed defining state agency in this section as both a state agency independently participating in the Commission's proceeding or through another state agency. This accounts for the fact that state agencies (such as MDE and MHT) typically participate through PPRP, which is part of DNR.

6. COMAR 20.79.01.02B(8) – Definition of Construction

The Commission’s regulations currently incorporate the definition of “construction” contained in Public Utilities Article (“PUA”) § 7-207, which is defined very broadly as “any physical change at a site, including fabrication, erection, installation, or demolition.”

PUA § 7-207(b)(1) does not allow construction of a generating station to commence until the Commission has granted a CPCN. In addition, PPRP includes numerous pre-construction licensing conditions in its proposed conditions to the Commission that require time consuming planning and approvals to occur before construction can begin (approval of the project’s decommissioning plan, completion of vegetation management plan, *etc.*).

Vegetative screening, which is typically a combination of tree and shrub plantings and fencing, has become a standard method to address the aesthetic impacts of solar facilities. As a result, USSEC has included a landscape buffer plan as a required component of a complete CPCN application, as discussed above. However, plantings must occur during the correct season to ensure they survive after planting. At the same time, some local jurisdictions have stated a preference for visual buffering to be installed prior to the start of construction of the solar facility.

Accordingly, USSEC has proposed modifying the definition of “construction” to exclude “the installation of visual buffering, including vegetive screening and fencing.” This will allow visual buffering to be installed prior to construction, increasing the likelihood that plants will survive and allowing for screening to be in place prior to when construction of the generating station begins. Landowners have the legal ability to plant vegetation at any time without permits, and this modification allows these otherwise permissible plantings to occur without being considered “construction” of the generating station.

APPENDIX 1:

Summary of USSEC CPCN Rulemaking Recommendations

Overview: USSEC Proposal For CPCN Application Completeness Review Check List

- Enumerate list of requirements for a complete application. Applications that include all requirements in this list are deemed complete
- Make changes to completeness review procedure to streamline process, increase transparency, and mitigate uncertainty
- Make changes in light of *Perennial* with respect to local zoning and planning
- Make other clarifying changes

Completeness Review Procedure

- Review period
 - Increase review timeline for completeness determination (from 30 to 50 days)
 - Limits completeness review to only those items required in application check list
 - Specify a date by which deficiencies must be corrected
 - New opportunity for party comments and Applicant response on deficiencies to application completeness within review period
- Default Completeness Determination
 - Application is deemed complete unless deemed otherwise within review timeline
- Commission makes final completeness determination
- Application completeness issues cannot be raised once application is deemed complete

Changes in light of Perennial

- Provide two options for determining consistency with local zoning
- Provide two options for determining consistency with local comprehensive plan
- Provide specific requirements for determining Applicant's efforts to resolve any issues raised by local governments
- Clarify that local government does not have authority to approve or disapprove construction or operation

Changes and Clarifications to Description of Generation Station & Environmental and Site Impact Information

- Add preliminary conceptual site plan and preliminary conceptual landscape buffer plan as part of complete application
- Add option for PJM System Impact Study Report for complete application
- Add environmental study information, including wetland report, geotechnical report, FEMA flood map, and T&E agency letters
- Add assessment of impact on State's ability to achieve RPS & GRRRA
- Add assessment of water quality benefits, if any
- Add assessment of historic and archaeological impacts

- Add assessment on air navigation impacts
- Add solar glare analysis
- Add prime farmland impact analysis
- Enumerate three options for FCA compliance or exemption
 - Voluntary compliance
 - Claim CPCN exemption due to no action (ex. No forest clearing)
 - If located in Garrett or Allegany counties, automatically exempt
- Clarify that the Commission is reviewing a proposed project vs. an application
- Clarifies that Applicant should demonstrate compliance with environmental and regulatory requirements
- Clarifies that both any detriment and any benefit of the project to the environment is to be evaluated

Other Changes/Clarifications

- Exempt installation of vegetative screening from definition of construction
- State agency proposed licensing conditions to be limited to areas where they have jurisdiction

APPENDIX 2:
USSEC CPCN Rulemaking Proposed Text Changes to COMAR

(Begins on Next Page)

.03 Proceedings on the Application.

A. The Commission may hold hearings with any other state or local agency having jurisdiction to issue any permit, authority, or certificate that is required before construction or operation of a project can begin.

B. In order to ensure timely completion of the proceedings, the Commission may impose a schedule of procedural dates which is subject to change only for good cause shown.

C. Phased Proceeding Requests.

(1) The applicant may request that the construction of a generating station be reviewed by the Commission in phases.

(2) If a phased proceeding is requested and the request is granted by the Commission:

(a) An applicant may file a partial application; and

(b) The Commission may render separate findings of fact on any phase or issue within a phase.

(3) Findings of fact rendered by the Commission under this section are not subject to further litigation unless warranted by new substantive issues or changed circumstances.

D. State Agency Jurisdiction.

(1) A state agency participating in a proceeding under this subtitle may not propose licensing conditions to the Commission that impose requirements in excess of the state agency's regulatory jurisdiction.

(2) Under § D, "state agency" shall include a state agency participating in the proceeding independently or through another state agency.

.01 Scope.

The regulations in this subtitle apply to:

A. A person applying for a Certificate of Public Convenience and Necessity for the construction of a generating station or modification to an existing electric generating station;

B. An electric company applying for a Certificate of Public Convenience and Necessity for the construction of an overhead transmission line or modification to an existing overhead transmission line;

C. A person requesting an exemption from the requirement to obtain a Certificate of Public Convenience and Necessity for the construction of a generating station under Regulation .03 of this chapter; or

D. A person making a modification under Public Utilities Article, §7-205, Annotated Code of Maryland.

.02 Definitions.

A. In this subtitle, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Aesthetic site" means a site whose aesthetic nature is:

(a) Of general public interest; or

(b) Officially recognized by a local, state, or federal agency charged with responsibility to oversee the protection of the environment.

(2) Applicant.

(a) "Applicant" means a person applying for a Certificate of Public Convenience and Necessity to construct or modify an electric generating station including its associated transmission line, if applicable, or for an exemption from the requirement to obtain a Certificate of Public Convenience and Necessity to construct a generating station.

(b) "Applicant" also means an electric company applying for a Certificate of Public Convenience and Necessity to construct or modify an overhead transmission line.

(3) "Application" means a request for:

(a) A Certificate of Public Convenience and Necessity for the construction of an electric generating station including its associated transmission line, if applicable, or overhead transmission line under Public Utilities Article, §§7-207 and 7-208, Annotated Code of Maryland;

(b) A Certificate of Public Convenience and Necessity and any other approvals necessary to begin a modification to an electric generating station or an existing overhead transmission line under Public Utilities Article, §7-205, 7-206, 7-207, or 7-208, Annotated Code of Maryland; or

(c) An exemption from the requirement to obtain a Certificate of Public Convenience and Necessity for the construction of a generating station under Public Utility Companies Article, §7-207.1, Annotated Code of Maryland.

(4) "Approval" as used in Public Utilities Article, §7-205, Annotated Code of Maryland, means a Certificate of Public Convenience and Necessity issued under Public Utilities Article, §§7-207 and 7-208, Annotated Code of Maryland.

(5) "Archeological site" means a site yielding artifacts, structural remains, or evidence of occupation or use before the year 1900 as designated by the State Archeologist for the Maryland Geological Survey or by another agency or government unit with responsibility for archeological sites.

(6) "Associated transmission line" means a transmission line that is necessary to transport the electric output of the generating station to the electric system.

(7) Commence.

(a) "Commence" with respect to a modification means, in general, initiation of physical on-site construction activities that are of a permanent nature, including installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures.

(b) "Commence" with respect to a change in the method of operation, means those on-site activities other than preparatory activities that mark the initiation of the change.

(8) Construction.

(a) "Construction" has the meaning stated in Public Utilities Article, §7-207, Annotated Code of Maryland.

(b) "Construction" does not mean:

~~(i) -A~~ change needed for temporary use of a site or route for a nonutility purpose or for use in securing geological data, including borings necessary to ascertain foundation conditions; ~~or;~~

~~(ii) the installation of visual buffering, including vegetative screening and fencing.~~

(9) "Demand" means the rate of consumption of electricity.

(10) "Electric company" has the meaning stated in Public Utilities Article, §1-101, Annotated Code of Maryland.

(11) Generating Station.

(a) "Generating station" means property or facilities located in Maryland constituting an integral plant or unit for the production of electric energy, including any new production unit that would be added to an existing production plant.

(b) "Generating station" does not include an integral plant or unit less than or equal to 2,000 kilowatts if it is installed with equipment that prevents the flow of electricity to the electric system during time periods when the electric system is out of service.

(12) "Historic site" means a site registered by the:

(a) Maryland Historical Trust;

(b) National Register of Historic Places;

(c) National Register of Natural Landmarks;

(d) Register of National Historic Landmarks; or

(e) National Trust for Historic Preservation.

(13) "Linear facilities" means ancillary components of a generating station that may have environmental or land use impacts in Maryland, including:

(a) A pipeline for the delivery of fuel or cooling water; and

(b) An associated transmission line.

(14) Modification.

(a) "Modification" to an electric generating station has the meaning stated in Public Utilities Article, §7-205, Annotated Code of Maryland.

(b) "Modification" to an existing overhead transmission line means:

(i) Obtaining new real property or additional rights-of-way through eminent domain; or

(ii) Construction requiring larger or higher structures to accommodate increased voltage or larger conductors.

(c) "Modification" includes any clean air modification under Public Utilities Article, §7-206, Annotated Code of Maryland.

(15) "On-site generated electricity" has the meaning stated in Public Utilities Article, §1-101, Annotated Code of Maryland.

(16) "Person" has the meaning stated in Public Utilities Article, §1-101, Annotated Code of Maryland.

(17) "Plan" means a comprehensive and interrelated set of actions for meeting forecasted electric demand for the 10-year period from the date of the application.

(18) "Project" means a proposed generating station, including linear facilities, generating station modification, transmission line, or modification to an existing transmission line.

(19) "Public airport" includes a privately owned airport as defined in Public Utilities Article, §7-207, Annotated Code of Maryland.

(20) "Regulated pollutant" means:

(a) Any pollutant for which a federal or the State ambient air quality standard has been promulgated, and any identified constituent or precursor pollutants regulated under an ambient air quality standard;

(b) Any pollutant that is subject to any standard promulgated under 42 U.S.C. §7411;

(c) Any Class I or Class II substance that is subject to a standard promulgated under Title VI of the Clean Air Act, 42 U.S.C. §7671 et seq.; or

(d) Any other pollutant that is otherwise subject to regulation under the Clean Air Act, 42 U.S.C. §7401 et seq. or Environment Article, Title 2, Annotated Code of Maryland, except that any or all hazardous air pollutants either listed in 42 U.S.C. §7412 or added to the list under 42 U.S.C. §7412(b) are not regulated pollutants unless the listed hazardous air pollutant is also regulated as a constituent precursor of a general pollutant listed under 42 U.S.C. §7408.

(21) "Transmission line" means property or facilities constructed in Maryland as an overhead transmission line designed to carry a voltage in excess of 69,000 volts.

COMAR 20.79.01.03

.03 Exemption.

A. A person may file an application for an exemption from the requirement to obtain a Certificate of Public Convenience and Necessity for the construction of a generating station if the person intends to construct a generating station which meets the requirements under Public Utilities Article, §7-207.1(a), Annotated Code of Maryland.

B. An application for an exemption from the requirement to obtain a Certificate of Public Convenience and Necessity for the construction of a generating station under §A of this regulation shall be on a form provided by the Commission.

C. Unless otherwise directed by the Commission, a decision on an application for an exemption from the requirement to obtain a Certificate of Public Convenience and Necessity for the construction of a generating station shall be rendered not later than 90 days from the date a complete application is filed.

COMAR 20.79.01.04

.04 Application Filing Requirements.

Except for an application for exemption under Regulation .03, of this chapter, a ~~complete~~ application for a Certificate of Public Convenience and Necessity for the construction of a generating station or an overhead transmission line, or an application for modification to an existing electric generating station or transmission line, shall include the following information:

A. The name of the applicant;

B. The address of the principal business office of the ~~A~~applicant;

C. The name, title, and address of the person authorized to receive notices and communications with respect to the application;

D. The location or locations at which the public may inspect a copy of the application;

E. A list of each ~~local~~, state, or federal government agency having authority to approve or disapprove the construction or operation of the project and containing a statement:

(1) Indicating whether the necessary approval from each agency has been obtained, with a copy of each approval or disapproval attached;

(2) If necessary approval has not been obtained, the reason why; and

(3) Indicating whether any waiver or variance has been granted or requested with a copy of each attached;

F. The information described under COMAR 20.79.04.01 for transmission lines;

G. A general description of the generating station or generating station modification under COMAR 20.79.03.01, or the transmission line or the modification to an existing transmission line under COMAR 20.79.04.02 and .03;

H. An implementation schedule for the project; and

I. The environmental and siting information required under COMAR 20.79.03.02 for generating stations or COMAR 20.79.04.04 for transmission lines.

COMAR 20.79.01.05

.05 Deadlines.

A. Unless otherwise directed by the Commission, a decision on an application for a Certificate of Public Convenience and Necessity for the construction of an electric generating station shall be rendered not later than 365 days from the date a complete application is filed.

B. Unless otherwise directed by the Commission, a decision on an application for modification of an electric generating station shall be rendered not later than 150 days from the date a complete application is filed.

COMAR 20.79.01.06

.06 Modifications to the Facilities at a Power Plant.

A. Except as provided in §C of this regulation, a person may not commence a modification to the facilities at a power plant without receiving prior approval from the Commission.

B. A physical alteration, replacement, change in the method of operation, or any other change to an electric generating unit or other facilities at a power plant that will result in an increase in air emissions is subject to the requirement to obtain approval from the Commission under Public Utilities Article, §7-205(b), Annotated Code of Maryland, if the change will result in an increase of either 75,000 tons or more per year in emissions of CO₂ or an increase of 1 ton or more in emission of any other regulated pollutant.

C. The following changes do not require prior approval of the Commission:

(1) Routine maintenance and repair, including routine replacement;

(2) An increase in the hours of operation or in the production rate, unless the change is prohibited under any enforceable condition established after January 6, 1975, under regulations approved under the Clean Air Act, 42 U.S.C. §7401 et seq.;

(3) Use of an alternative fuel or raw material by reason of an order under §§2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, 15 U.S.C. §791 et seq., or any superseding legislation, or by reason of a natural gas curtailment plan under the Federal Power Act, 16 U.S.C. §791 et seq.;

(4) Use of an alternative fuel by reason of an order or rule under §125 of the Clean Air Act, 42 U.S.C. §7425;

(5) Use of an alternative fuel or raw material by a stationary source which:

(a) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition established after January 6, 1975, under 40 CFR §52.21, or under regulations approved under 40 CFR Part 51, Subpart I or §51.166; or

(b) The source is approved to use under a Certificate of Public Convenience and Necessity issued under Public Utilities Article, §§7-207 and 7-208, Annotated Code of Maryland, and any other required approvals, including permits issued under COMAR 26.11.02 or 26.11.03; or

(6) Any change in ownership.

D. An increase in air emissions is calculated in accordance with COMAR 26.11.17 or 26.11.06.14, as applicable.

COMAR 20.79.01.07

.07 Waivers and Modifications.

The Commission may, in its discretion, waive or modify any provision of this subtitle and may also impose additional requirements as circumstances warrant.

COMAR 20.79.01.08

.08 Completeness Determination and Availability of CPCN Applications and Related Materials for Proposed New and Modified Power Plants

A. A person shall submit a CPCN application to construct a new or modified generating station to the Commission, which shall, within ~~45-30~~50 days of issuing an order either delegating the CPCN application to the Public Utility Law Judge Division, or keeping it at the Commission, acknowledge receipt of the request and indicate whether the request is either:

(1) Complete because it includes the information required by COMAR 20.79.01.04 for a complete CPCN application and the Commission will proceed to review the request; or

(2) Deficient because it does not include the information required by COMAR 20.79.01.04 for a complete CPCN application, in which case the Commission shall specify the nature of the deficiency and a date by which the Applicant shall submit additional information to cure the deficiency.

B. A CPCN application is deemed complete if the Commission does not issue a finding as required by § A of this regulation within 50 days of issuing an order delegating the CPCN application to the Public Utility Law Judge Division or keeping it at the Commission.

C. A party may file comments with the Commission within 30 days after the Commission issues an order delegating the CPCN application to the Public Utility Law Judge Division or keeping it at the Commission stating whether the Party has determined the CPCN application:

(1) Is complete because it satisfies the requirements for a complete CPCN application under COMAR 20.79.01.04; or

(2) Deficient, in which case the party shall:

(a) Identify which requirement for a complete CPCN application under COMAR 20.79.01.04 has not been satisfied;

(b) Explain how the identified deficiency will impact the party's review of the CPCN application; and

(c) Identify what additional information would cure the deficiency.

D. An Applicant may respond in writing within 10 days to a party's comments filed under § C of this regulation noting a deficiency.

E. The Commission is not bound by the comments filed under § C or § D of this regulation.

F. A CPCN application shall not be deemed incomplete for failure to provide information that is not required by COMAR 20.79.01.04.

G. A party waives the right to raise the failure to provide the information required by COMAR 20.79.01.04 as a basis to deny a CPCN to an Applicant or as good cause to modify the procedural schedule for the proceeding on the CPCN application if the party did not raise the deficiency in comments filed in compliance with § C of this regulation.

HB. A copy of the CPCN application to construct a new or modified generating station, as well as any public comments and State agency comments and recommendations thereon, shall be available for public inspection at the offices of the Commission.

COMAR 20.79.02.01

.01 Form of Application.

A. The original application shall be:

(1) Signed by an individual having authority with respect to the application and having knowledge of the application; and

(2) Verified under oath.

B. In its discretion, the Commission may prescribe the form of the application.

.02 Distribution of Application.

A. The applicant shall submit to the Commission an original, 14 copies, and one electronic copy of the application.

B. In addition to filing the application with the Commission, the applicant shall simultaneously mail additional copies, and, if requested, provide an electronic copy to the following agencies:

(1) The governing body and the planning and zoning commission of each county and municipality in which the project will be located (one copy);

(2) The Department of the Environment (four copies);

(3) The Office of Planning (one copy);

(4) The Department of Natural Resources (six copies);

(5) The Department of Commerce (one copy);

(6) The Department of Transportation (one copy);

(7) The State Aviation Administration (one copy);

(8) The State Highway Administration (one copy);

(9) The U.S. Department of Interior (one copy);

(10) The Federal Energy Regulatory Commission (one copy);

(11) The Federal Aviation Administration (one copy);

(12) The Maryland Energy Administration (one copy);

(13) The Office of People's Counsel (one copy);

(14) The U.S. Fish and Wildlife Service (one copy); and

(15) The local electric company (one copy).

C. The applicant shall also mail a copy of the application to any other State or local agency which may be affected.

.03 Proceedings on the Application.

A. The Commission may hold hearings with any other state or local agency having jurisdiction to issue any permit, authority, or certificate that is required before construction or operation of a project can begin.

B. In order to ensure timely completion of the proceedings, the Commission may impose a schedule of procedural dates which is subject to change only for good cause shown.

C. Phased Proceeding Requests.

(1) The applicant may request that the construction of a generating station be reviewed by the Commission in phases.

(2) If a phased proceeding is requested and the request is granted by the Commission:

(a) An applicant may file a partial application; and

(b) The Commission may render separate findings of fact on any phase or issue within a phase.

(3) Findings of fact rendered by the Commission under this section are not subject to further litigation unless warranted by new substantive issues or changed circumstances.

COMAR 20.79.03.01

.01 Description of Generating Station.

The description of the generating station, including linear facilities, or the generating station modification shall include:

A. Location;

B. Design features, including:

(1) a preliminary conceptual site plan; and

(2) a preliminary conceptual landscape buffer plan.

C. Operational features, including the expected capacity factor;

D. The schedule for engineering, construction, and operation;

E. A statement of the reasons for the selection of the design and the site of the generating station, including linear facilities, or generating station modification;

F. A description of the impact of the project on the economics of the State;

G. ~~A description of the~~ With respect to the impact of the project on the stability and reliability of the electric system;

; (1) A description of the impact of the project on the ability and reliability of the electric system;

(2) A copy of the PJM System Impact Study report for the project and any additional interconnection studies available at the time the CPCN application is filed with the Commission; or

(3) ~~or~~, If the impact is not known at the time of application, an explanation of the steps undertaken by the applicant to determine the impact, including the expected date for submission of the impact description; and

H. To the extent feasible, the location and major design features of any required major electric system upgrade, including any associated transmission line, as a result of the project.

I. A description of the project's consistency with the zoning ordinance of the county or municipal corporation where the project is proposed to be located, compromised of:

(1) If the CPCN application states that the project is consistent with the zoning ordinance, either:

(a) A narrative detailing the requirements of the zoning ordinance and specifying how the project satisfies the design and siting requirements of the zoning ordinance; or

(b) A copy of a letter, order, or decision from the planning department or zoning board of the county or municipal corporation stating that the project is consistent with the zoning ordinance; or

(2) If the CPCN application states that the project is inconsistent with the zoning ordinance in whole or in part:

(a) A narrative detailing the requirements of the zoning ordinance and specifying how the project is inconsistent with and, if applicable, consistent with the design and siting requirements of the ordinance; and

(b) The Applicant's justification for why the Commission should issue Approval to the Project notwithstanding the inconsistency.

I. A description of the project's consistency with the comprehensive plan of the county or municipal corporation where the project is proposed to be located, compromised of:

(1) If the CPCN application states that the project is consistent with the comprehensive plan, either:

(a) A narrative explaining how the project is consistent with the comprehensive plan under the standard set forth in Land Use Article § 1-303, Annotated Code of Maryland; or

(b) A copy of a letter, order, or decision from the planning department or zoning board of the county or municipal corporation stating that the project is consistent with the comprehensive plan; or

(2) If the CPCN application states the project is inconsistent with the comprehensive plan in whole or in part:

(a) A narrative explaining how the project is inconsistent with and, if applicable, consistent with the comprehensive plan under the standard set forth in Land Use Article § 1-303, Annotated Code of Maryland; and

(b) The Applicant's justification for why the Commission should issue Approval to the Project notwithstanding the inconsistency.

K. A description of:

(1) At least one meeting about the project between representatives of the Applicant and representatives of the county or municipal corporation where the project is proposed to be located and any modifications to the design of the project that resulted from feedback received at the meeting; or

(2) If representatives of the county or municipal corporation where the project is proposed to be located did not meet with the Applicant prior to when the Applicant filed the CPCN application with the Commission, a description of the Applicant's efforts to schedule a meeting prior to the date the filing occurred and why the meeting did not occur.

COMAR 20.79.03.02

.02 Environmental and Site Impact Information.

A. The purpose of this regulation is to require the applicant to demonstrate that the ~~application-project~~ complies with applicable environmental ~~and regulatory restrictions~~requirements and evaluate the benefit or the detriment of the project to the environment.

B. The environmental and site impact information shall include:

(1) The following general information:

(a) A general description of the physical, biological, aesthetic, and cultural features, and conditions of the site and adjacent areas, including a:

(i) Geotechnical report;

(ii) Wetland field assessment report;

(iii) FEMA flood insurance map;

(iv) Department of Natural Resources Wildlife and Heritage Service response letter regarding threatened and endangered species; and

(v) United States Fish and Wildlife Service IPaC report regarding threatened and endangered species.

(b) A summary of the environmental and socioeconomic effects of the construction and operation of the project, including a description of the unavoidable impact and recommended mitigation;

(c) A copy of all studies of the environmental impact of the proposed project prepared by the applicant; and

(d) A statement of the ability to conform to applicable environmental standards;

(2) A description of the effect on air quality and climate change, including the:

(a) Ability of the generating station to comply with:

(i) Federal or State ambient air quality standards;

(ii) Federal or State emission standards;

(iii) Federal new source performance standards;

(iv) Federal emission standards for hazardous air pollutants;

(v) Prevention of significant deterioration and new source review provisions; and

(vi) Any requirement to obtain emission offsets, allowances, and reduction credits.

(b) Impact on prevention of significant deterioration areas and existing nonattainment areas; ~~and~~

(c) Information and forms required by Department of the Environment regulations relating to permits to construct and operating permits under COMAR 26.11;

(d) The impact of the project on the State's ability to satisfy:

(i) The renewable portfolio standard requirements set forth in Public Utilities Article § 7-701, et. seq., Annotated Code of Maryland; and

(ii) The greenhouse gas reduction requirements set forth in Environment Article § 2-1201, et. seq., Annotated Code of Maryland.

(3) A description of the effect on water quality and appropriation, including:

(a) An analysis of the availability of surface water and ground water for the proposed generating station;

(b) The identification of affected streams and aquifers and an assessment of the positive or negative impact the project will have on water quality;

(c) The impact on other water users;

(d) The mitigation and minimization techniques evaluated; and

(e) The information and forms required by Department of the Environment regulations relating to water use and appropriation under COMAR 26.17.06.07 and 26.17.07, if applicable;

(4) A description of the effect on State or private wetlands, including:

(a) Public health and welfare;

(b) Marine fisheries;

(c) Shell fisheries;

(d) Wildlife;

(e) Protection of life and property from flood, hurricane, or other natural disaster;

(f) The evaluation of mitigation and minimization techniques, including proposals related to replacement lands; and

(g) The information and forms required by Department of the Environment regulations relating to a license for use of State tidal wetlands or nontidal wetlands under COMAR 26.23 and 26.24; and

(5) A discussion of the economics and availability of means for the disposal of plant-generated wastes.

(6) A description of the project's impacts, if any, on Historic Sites and Archeological Sites and the Maryland Historical Trust's response to a review intake questionnaire submitted by the Applicant.

(7) Information from the Federal Aviation Administration and Maryland Aviation Administration on the impacts of the project on air navigation and, if impacts are anticipated, proposed mitigation.

(8) Information for the Commission's due consideration under Natural Resources Article § 5-1603(f), Annotated Code of Maryland, comprised of:

(a) If the Applicant proposes to voluntarily comply with the forest conservation ordinance of the county or municipal corporation where the project is located, a completed forest conservation worksheet for the county or municipal corporation;

(b) If the Applicant proposes no action or to deviate from what would have been required under the forest conservation ordinance of the county or municipal corporation where the project is located, an explanation of the proposal and either:

(i) The Applicant's justification for the proposal; or

(ii) A copy of a letter, order, or decision from the county or municipal corporation agreeing to or approving the Applicant's proposal; or

(c) If applicable, a statement that the project is located in Garrett County or Allegany County, which are exempt from the Forest Conservation Act and all associated requirements.

(9) For a solar photovoltaic generating station:

(a) A study of reflective glare impacts, if any, on:

(i) Adjacent public and private rights of way;

(ii) Non-participating occupied structures; and

(iii) Flight paths associated with airports within 2 miles of the project site;

(b) If the project is proposed on land in present agricultural use:

(i) A current United States Department of Agriculture Natural Resources Conservation Service map of prime farmland encompassing the project site;

(ii) The number of acres of prime farmland designated by the United States Department of Agriculture Natural Resources Conservation Service that is within the limit of disturbance of the project:

(iii) The percentage of the total of all prime farmland in the State designated by the United States Department of Agriculture Natural Resources Conservation Service that will be utilized by the project.

COMAR 20.79.03.03

.03 Condemnation.

If the applicant is requesting authority to exercise a right of condemnation in connection with the construction of a generating station, a statement of the reasons the generating capacity is necessary to ensure a sufficient supply of electricity to customers in the State as required under Public Utilities Article, §7-207(b)(2), Annotated Code of Maryland.