



# Kent Conservation & Preservation Alliance

861 Washington Avenue, Suite 256 • Chestertown, MD 21620

## COMMENTS SUBMITTED FOR THE OCTOBER 4<sup>TH</sup> PPRPAC BY KENT CONSERVATION AND PRESERVATION ALLIANCE

Under Maryland law the Public Service Commission (PSC) relies on the Power Plant Research Program (PPRP) of the DNR for review of state agencies' issues related to power generation prior to the issuance of a Certificate of Public Convenience and Necessity (CPCN). Our organization recognizes that the PPRP is constantly under external pressure, is facing expanded workloads, and is likely understaffed for the many responsibilities delegated to them. Nonetheless, we are concerned about several PSC cases in the last year which appear to inadequately protect the public interest and the resources of the state of Maryland, and which reveal deficiencies in the current processes for evaluating, and approving new power generation projects. We would also like to note that we are concerned that the State lacks a planning mechanism for power generation placement.

The economic and political environment in which power generation occurs has totally changed in the last 20 years, but the laws and processes governing this have not kept pace with changing incentives and circumstances. CPCNs were developed in an era when regulated public utilities were the sources and distributors of electric power, and profits were strictly regulated. While the utilities still largely control distribution, generation has passed to unregulated for-profit corporations that are heavily subsidized for renewable energy generation. This new environment has introduced aggressive for-profit incentives into power generation that has tended to subvert many of the environmental, natural, cultural, and historic issues PPRP is charged with evaluating.

The nature of power generation itself has dramatically changed. CPCNs were created in an era when long-distance transmission lines and fossil fueled or nuclear generation facilities were the primary consideration, and power plants required no more than a few hundred acres of land. Today, industrial wind and solar generation facilities require hundreds to thousands of acres of land for industrial generation. Taking into account capacity factor, wind facilities require 160-230 acres/megawatt and solar 30-45 acres/megawatt, compared to 0.5 acres/megawatt for nuclear. Such massive requirements put renewable energy generation into direct competition with other uses of land, particularly agriculture. A solar facility delivering 1000 megawatts of electricity (equivalent to a single nuclear plant) would require 30,000-45,000 acres of land, which would be a quarter to a third of the agricultural land in Kent County. Since renewable energy project developers prefer rural areas because of the availability of larger tracts of land at lower per acre prices, the competition with agricultural use has become acute, yet there is no state policy which addresses this threat to the state's agricultural economy. The future of renewable energy policy will likely be driven to higher renewable energy mandates, which will increase the pressure on land use. The current 2.5% solar carve out for solar development in Maryland's Renewable Energy Policy is the floor not the ceiling.

The PSC has indicated it feels able to override local zoning even when the local jurisdiction has made adequate provision for accommodation of renewable energy facilities – just not in the locations that some developers might prefer. Thus the PSC can pursue preemption of local land use decisions, yet in the absence of PPRP's regional planning, once required for public energy facilities (which deregulation halted), it now lacks a mechanism for evaluating the impact of its preemption. Further, the primary driver of preemption today is the profit motive of private corporations, not the provision of adequate electrical resources by a regulated public service utility.

The following is a discussion of a few of the PSC cases that have been reviewed by Kent Conservation and Preservation Alliance in the past year, which have implication beyond the specific case.

1. In OneEnergy PSC case #9387 the PPRP finally recognized that they had failed to apply the requirements of the Forest Conservation Act (FCA) in previous solar applications for CPCNs. Dr. Sherwell from the PPRP testified that the failure to apply the FCA to previous solar projects "was an omission on our part of something that should have been a requirement in the CPCN case." The PPRP corrected the previous error to protect the FCA, but this course correction has resulted in appeals and confusion as to applicability in all solar cases pending at the PSC. Since we believe that the FCA should equally apply to all projects that meet the criteria in the Maryland, regardless of the "goodness" of the purpose of the developer, we are hopeful that the ultimate decision by the PSC will be support of the environment and the Chesapeake Bay.

2. Great Bay Solar Project case #9380 received PPRP review, was approved by the PSC and granted a CPCN. A subsequent case, PSC case #9393 for construction of a 138kV overhead transmission line, Dwight Etheridge testified that the Great Bay Solar project received the approval for the CPCN without having the information necessary to evaluate what impact that project would have on the reliability of the grid, and the subsequent need for a new transmission line. The Public Utility Law Judge, in the proposed order to approve the CPCN (for case # 9393), wrote that "The primary economic benefits of the line will go to the developers and or owners of the generation that these new lines will serve" and that "the ratepayers in the Delmarva Transmission Zone" will bear the cost. Two of those owners to which the primary economic benefits will be going are the Canadian multinational corporation, Algonquin Power & Utilities, which acquired Great Bay Solar and Amazon, which owns 80 MW of solar capacity in Accomack County, VA. How happy will the ratepayers be to learn that they are subsidizing these corporations as part of the extremely large rate increase that DPL is currently asking the PSC to approve?

The cumulative impact resulting in one project too many in an area that was already at capacity and reflects a lack of comprehensive state planning. Since the PPRP and the PSC are ultimately responsible for overseeing electric generation and distribution we feel the responsibility of planning for truly distributed power generation lies with these state units.

The problem of making generation of power truly distributed, is illustrated currently in Kent County where most of the County is severely restricted or are designated as “red” zones by Delmarva Power and Light, indicating that these areas are unavailable for new rooftop or community solar facilities or farm solar projects due to congestion and capacity issues in transmission lines, because the grid operator PJM has allocated all existing capacity to utility scale solar projects. The fact that Maryland is sacrificing distributed small solar projects for utility scale solar again shows a lack of planning to control for unintended consequences.

3. Mills Branch Solar, PSC case# 9411, is certainly a case full of first impressions. It is the first solar project to raise objections by County Commissioners, the first case to be challenged by a Heritage Area managing entity, and the first case to have a specific reference by the Secretaries in the submittal letter about support of local decision-making. If the PULJ rules in the applicant’s favor, it would be the first use of the PSC’s preemption protocol for a renewable energy project.

Kent County does not preclude utility scale solar. The idea that even though they have allocated land for utility scale solar that they could still have preemption apply implies that for profit corporations are now in charge of land use decisions. This case has far reaching implications; without statewide planning for placement of energy generation – a state process that was lost after deregulation – a decision to use preemption would effectively mean that no land use planning would exist for energy generation. The State and localities would be solely at the mercy of corporate determination of where land should be allocated for energy generation. Why not at least decide that preemption should not be used where a county has a clear policy and land use plan supporting renewable energy generation, as Kent County has? Kent County has zoned thousands of acres for renewable energy, adjusted its policies to favor more on-site generation for farmers and property owners, and been recognized nationally for its efforts.

In addition, historic and cultural resources are an overriding concern in Kent County. We love our past and although we see the need to incorporate modern living

into that great historical past, we want these new layers of our history to be done with care, crafted in a way to have the least impact. Changes in use in the best parts of our landscape should be made conservatively, and only when absolutely necessary. Kent County has certainly made some mistakes in protection of the countryside, but these mistakes have focused our attention even more clearly onto the fragility of this landscape and makes it all the more important that we do not allow increasing intrusions. The vernacular landscape, that currently has remained “largely” intact, is a dwindling resource, not only in Maryland, but also in this nation.

Maryland has a responsibility to help the residents who have worked hard to maintain this balance and preserve this character. Heritage areas are the mechanism for recognizing and protecting these special places; Maryland’s Certified Heritage Areas have undergone significant planning that has been approved by a board, the Maryland Heritage Areas Authority, comprised of multiple Secretaries of Maryland agencies along with top experts and representatives of key stakeholder organizations. State units operating within Certified Heritage Areas have responsibilities that must be followed. Consultation with a Certified Heritage Area’s managing entity under the law means more than a letter sent late in the process of environmental review. Just as the PPRP brings in expertise during the assessment of the suitability for the placement of energy generation for all natural resources, such expertise should be brought in to focus on cultural and historic landscapes, particularly if the location has already been identified as important.

It is not clear where the responsibility and authority for evaluation and enforcement of conditions recommended by the PPRP and adopted by the PSC in the CPCN process resides. How many conditions does the PPRP currently have in place across the state? Neither the PSC nor the PPRP has an enforcement division. None of these projects outlines an enforcement protocol, penalties for failure to comply over the life of the project, or who is responsible for inspection and oversight. Local zoning cannot endorse or/enforce conditions or authorize construction on projects that violate Land Use Ordinances; even if the PSC issues a CPCN the project is still incompatible. Such conditions are not hypothetical. In Ibis Solar case #9392 the CPCN was approved with no plans for the height of the solar panels or the inverters. Approval of a CPCN

without final documentation as to the actual configuration of a solar project is routine and problematic in and of itself. The exact height that will be necessary to meet code has not yet been determined for Ibis because it is within the 100-year floodplain. This is a residential neighborhood with two story homes in close proximity. The residents have tried repeatedly to get some answers as to what to expect with no answers from Somerset County, the PSC, or the PPRP. Yet those same residents have been asked to meet with the solar developer and comment on and approve a screening plan for a project with yet to be determined impacts.

In conclusion, it is clear that the planning and approval process for renewable energy projects in Maryland is badly fragmented and that there is a lack of comprehensive planning for the integrated development going forward that will optimize existing resources, resolve conflicts equitably, and allow for the most efficient development of new generation sources. The competition between agricultural use of prime farmland versus its use for solar generation and the extraordinarily large requirements for land by solar and wind projects has not been adequately recognized. No mechanism exists for the resolution of such competition, because while the PSC may exercise preemption authority to override local zoning, which is the primary protector of farmland, it has no mechanism to evaluate the relative merits of one use versus another. The project-by-project keyhole analysis that is going on with each application that comes before the PSC is no way to plan for the future. The potential for use of wastelands such as brownfields and Superfund sites, estimated by the EPA to exceed 100,000 acres in Maryland, has not been explored. How can we get power onto rooftops, over parking lots, and into distributed community-based projects when line capacity is being given to primarily out of state utility-scale producers? Power generation is now driven principally by for-profit private companies, which are motivated primarily by federal and state subsidies rather than the realistic economics of power generation itself, and the needs of local communities. These companies are using authority given to the State in a different era to override local control of land use, while local residents are expected to continue to bear the primary cost of new transmission and generation line capacity. The residents of the State of Maryland deserve a cohesive well thought out plan to move forward with renewable energy. All

stakeholders including county government, farming interests, and ratepayers need to be included in this planning. As distribution of electricity continues to be the responsibility of state utilities, and transmission lines and the grid are maintained by PJM, the level of intercommunication among these groups and the PPRP and PSC are clearly inadequate. A major reevaluation of the entire electrical generation and distribution processes is overdue to address these issues.

