

STATE OF MARYLAND  
PUBLIC SERVICE COMMISSION

ORDER NO. 88634

|                                     |   |                           |
|-------------------------------------|---|---------------------------|
| IN THE MATTER OF THE APPLICATION OF | * | BEFORE THE                |
| CHESAPEAKE SOLAR, LLC FOR A         |   | PUBLIC SERVICE COMMISSION |
| CERTIFICATE OF PUBLIC CONVENIENCE   | * | OF MARYLAND               |
| AND NECESSITY TO CONSTRUCT A 9.0 MW |   |                           |
| SOLAR PHOTOVOLTAIC GENERATING       | * |                           |
| FACILITY IN CECIL COUNTY, MARYLAND  | * | CASE NO. 9451             |

March 6, 2018

PROPOSED ORDER OF PUBLIC UTILITY LAW JUDGE

**Appearances:**

Todd R. Chason, Esquire, and David W. Beugelmans, Esquire,  
for Chesapeake Solar, LLC.

Sondra Simpson McLemore, Esquire, and Steven M. Talson,  
Esquire, for the Department of Natural Resources, Power  
Plant Research Program.

Lloyd J. Spivak, Esquire, for the Staff of the Public  
Service Commission of Maryland.

Mikhail Raykher, Esquire, on behalf of the Maryland Office  
of People's Counsel.

**I. Procedural History**

On May 10, 2017, an application was filed by Chesapeake Solar, LLC ("Chesapeake" or "the Applicant") requesting a Certificate of Public Convenience and Necessity ("CPCN") to construct a 9.0 megawatt ("MW") Solar Photovoltaic Generating Facility in Cecil County, Maryland ("the County"), which will be known as the Chesapeake Solar Project ("the Project"). The Applicant's initial filing included an Environmental Review

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Document ("ERD") prepared by McCrone, the Applicant's consultant, in support of the Project.<sup>1</sup>

On May 12, 2017, the Public Service Commission of Maryland ("the Commission") docketed the application as Case No. 9451 and delegated it to the Public Utility Law Judge Division.<sup>2</sup>

On May 15, 2017, the Applicant filed notice that the respective members of the General Assembly were notified of the Project in accordance with Public Utilities Article ("PUA"), *Annotated Code of Maryland*, § 7-207(c)(1)(iv-v).<sup>3</sup>

On June 6, 2017, a prehearing conference was held during which a procedural schedule was agreed upon and adopted. No petitions to intervene were filed.

On July 17, 2017, pursuant to PUA § 7-207(d)(2), I sent County Executive Dr. Alan McCarthy and Joyce Bowlsbey, President of the County Council ("the Council"), letters inviting the County Executive and the Council to sit jointly with me at the August 22, 2017 public hearing.<sup>4</sup> However, no response was received.

On August 4, 2017, in support of the Application, Chesapeake filed the Direct Testimony of Daniel Speakman, Senior

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<sup>1</sup> The Applicant's CPCN Petition and ERD were admitted into the administrative record as CS Exs. 3 and 4, respectively.

<sup>2</sup> ML 215144.

<sup>3</sup> The letters to the respective members of the General Assembly were admitted into the administrative record as CS Ex. 1.

<sup>4</sup> ML 216096.



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Project Manager for McCrone, and Joe Kelly, Senior Project Manager for SunEast Development, LLC.<sup>5</sup>

On August 18, 2017, the Applicant filed notice that the Mayor and Town Council of Chesapeake City, Maryland, were notified of the Project in accordance with PUA § 7-207(c)(1)(iii).<sup>6</sup>

On August 22, 2017, a public comment hearing was held at the Holiday Inn Express & Suites Elkton, 1570 Elkton Road, Elkton, Maryland.

On October 4, 2017, pursuant to PUA § 7-207(d)(2), I sent County Executive McCarthy and the Council letters inviting the County Executive and the Council to sit jointly with me at the November 1, 2017 public hearing.<sup>7</sup> However, no response was received.

On October 9, 2017, the Applicant filed the Direct Testimony of Reed Wills, the Chief Operating Officer for SunEast Development, LLC.<sup>8</sup>

On October 20, 2017, the Maryland Department of Natural Resources ("DNR"), Power Plant Research Program ("PPRP"), filed the Direct Testimony of Helen Stewart, a Program Manager with PPRP, a partially executed Secretarial Letter, draft licensing conditions,

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<sup>5</sup> The Direct Testimony of Mr. Speakman was admitted into the administrative record as CS Ex. 5.

<sup>6</sup> The letters to the Mayor and Town Council were admitted into the administrative record collectively as CS Ex. 6.

<sup>7</sup> ML 217212.

<sup>8</sup> The Direct Testimony of Reed Wills was admitted into the administrative record as CS Ex. 9. Mr. Wills's testimony was a substitute for Mr. Kelly's testimony, and the Applicant represented that the testimonies were exactly the same with the exception of Mr. Wills's position and experience.



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and its Draft Assessment of the Project.<sup>9</sup> Also on that date, the Commission's Technical Staff ("Staff") submitted the Direct Testimony of Christopher Lo, an Electrical Engineer in the Commission's Engineering Division.<sup>10</sup>

On November 1, 2017, a second public hearing was held at the Holiday Inn Express & Suites Elkton, 1570 Elkton Road, Elkton, Maryland.

On November 3, 2017, PPRP submitted clean and red-lined versions of its revised proposed licensing conditions.<sup>11</sup> Additionally on this date, the Applicant advised that it agreed to PPRP's revised licensing conditions.

On November 6, 2017, an evidentiary hearing was held at the Commission's office in Baltimore, Maryland, and all pre-filed testimony and documents were admitted into the administrative record by stipulation. Pursuant to my request, the Applicant agreed to provide documentation from the Federal Aviation Administration ("FAA") and/or the Maryland Aviation Administration ("MAA") regarding the Project's potential glare impact on nearby airports and a heliport. Accordingly, the record was kept open until such documentation was provided by Chesapeake. Additionally, PPRP advised that the Secretarial Letter did not contain all of the

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<sup>9</sup> The Direct Testimony of Helen Stewart was admitted into the administrative record as PPRP Ex. 1, the Secretarial Letter and initial proposed licensing conditions were admitted into the administrative record, collectively, as PPRP Ex. 2, and the Draft Assessment of the Project was admitted into the administrative record as PPRP Ex. 3.

<sup>10</sup> The Direct Testimony of Christopher Lo was admitted into the administrative record as Staff Ex. 1.

<sup>11</sup> PPRP's revised conditions were admitted into the administrative a record as PPRP Exs. 4 (clean) and 5 (red-lined), respectively.



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necessary signatures. Therefore, PPRP advised a fully executed Secretarial Letter would be filed once all of the necessary signatures were obtained

On December 14, 2017, PPRP filed a fully executed Secretarial Letter.<sup>12</sup>

On February 14, 2018, the Applicant filed additional information related to glare and correspondence from the FAA and MAA.

On February 15, 2018, I issued a Notice of Opportunity to Comment on the above-referenced filing, and directed parties to file on or before March 2, 2018, a request for an evidentiary hearing to cross-examine Chesapeake's witness, or any comments or objections.<sup>13</sup> No filings were made by the March 2, 2018 deadline.

PPRP did not file any additional modification to the revised Recommended Licensing Conditions within the 15-day period permitted by PUA § 7-207(d)(5)(ii); therefore, the revised conditions became PPRP's Final Recommended Licensing Conditions.

## **II. Summary of the Application and Testimony**

### **A. Chesapeake**

Messrs. Speakman and Wills sponsored the ERD. Mr. Wills provided background information on the Applicant, and discussed the Project's glare analysis and the new factors set forth in PUA § 7-207(e)(3), which became effective October 1, 2017. The

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<sup>12</sup> PPRP's fully executed Secretarial Letter, dated October 20, 2017, was admitted, post-hearing, into the administrative record as PPRP Ex. 6.

<sup>13</sup> ML 219015.



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Applicant's ERD contained a Project Overview (Section 1); a Statement of Need and Purpose (Section 2); the Applicant's information (Section 3); the State and Local Permits and Approvals (Section 4); COMAR 20.79.03.01 - a Description of the Generating Station (Section 5); COMAR 20.79.03.02 - Environmental Information (Section 6); and several figures, tables and appendices.

Chesapeake's overview indicated that the Project will be constructed on a privately owned parcel, approximately 97.5 acres, located in an unincorporated area of the County, approximately one mile north of Chesapeake City on State Route 213 ("the Site").<sup>14</sup> The parcel's owner, J.R. Crouse Holdings, LLC, and Applicant are parties to an Option to Purchase Agreement executed in April 2016.<sup>15</sup> The Project, as proposed, will occupy approximately 55 acres of the Site.<sup>16</sup>

The Site is zoned NAR (northern agricultural-residential district), which permits solar generating facilities.<sup>17</sup> The County issued a letter of support for the Project indicating if a CPCN was obtained no special use zoning approval would be necessary.<sup>18</sup> The Site contains agricultural fields, woods, and a dilapidated farmhouse and accessory structures within a defined farmstead.<sup>19</sup> Chesapeake explained the Project would have minimal ground

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<sup>14</sup> CS Ex. 4 at 1.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*; see Appx. 10, a letter from the Office of the County Executive, dated April 10, 2017.

<sup>19</sup> CS Ex. 4 at 1.



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disturbance (approximately 5.9 acres), including the racking system, fence posts, interconnection and wire trenching, equipment pads, interior road, graded areas, staging and stockpile areas, and vegetation clearing.<sup>20</sup>

The Applicant noted the Project would be enclosed with an eight-foot fence for screening, safety, and security.<sup>21</sup> The fence will be constructed of a solid material so that no visual images or light may be seen and to minimize visual impacts.<sup>22</sup> Vegetative screening was also part of the Project's site plan and will further minimize the Project's visual impacts.<sup>23</sup>

In terms of need, the Applicant explained the Project will produce emissions free, solar energy and highlighted the State's aggressive regulatory and legislative standards in terms of energy objectives.<sup>24</sup> Chesapeake noted the State's Renewable Portfolio Standard ("RPS") requires 25 percent of Maryland's electricity come from qualified renewable energy resources by 2020, with at least 2.5 percent renewable energy required to be solar.<sup>25</sup> The Applicant claimed the Project's 9.0 MW of solar power will help bring Maryland closer to its goal, reduce greenhouse gas emissions, and mitigate climate change impacts.<sup>26</sup> The Applicant estimated the Project would cost between \$15 million and \$19 million and create

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<sup>20</sup> *Id.* at 1-2.

<sup>21</sup> *Id.* at 2.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 13.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 13-14.



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up to 100 design, management, and construction positions, with additional indirect jobs in various industries, such as manufacturing, finance, insurance, and real estate.<sup>27</sup> The Applicant noted significant local resources are being employed and the estimated \$1 million in tax revenue generated by the Project will help support both County and State tax-funded programs, while also providing a public benefit in the form of renewable energy.<sup>28</sup>

The Applicant explained the numerous permits and approvals required to construct the Project.<sup>29</sup> In addition to a Commission-issued CPCN, the Project must undergo a process to interconnect to DPL's system. The Project will interconnect to DPL's distribution circuit number 3324, located near the Project's border.<sup>30</sup> PJM and DPL will determine if any upgrades are required, and the Applicant will be responsible for all associated costs.<sup>31</sup>

Chesapeake noted a National Pollutant Discharge Elimination System ("NPDES") General Permit is required since the Project has a planned disturbance of over one acre.<sup>32</sup> Additionally, Chesapeake indicated the Project will comply with the Forest Conservation Act ("FCA"), and the required plans will be submitted for the County's review and approval.<sup>33</sup> While a special exception or formal review by the Planning Commission will not be

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<sup>27</sup> *Id.* at 14.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 16; see *id.* 19-Summary of Permits/Approvals.

<sup>30</sup> *Id.* at 16.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 17.

<sup>33</sup> *Id.*





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required if a CPCN is issued, the County will review a formal site plan and the Project will be subject to the County's Environmental Site Design process.<sup>34</sup> The Project will also require both grading and building permits from the County.

The Site's address is 1679 Augustine Herman Highway, Chesapeake City, Maryland, and is bordered to the east by Augustine Herman Highway (Maryland Route ("MD") 213), to the north by Elk Forest Road, and to the west by Spears Hill Road.<sup>35</sup> Chesapeake noted there are several residential properties bordering the Site.<sup>36</sup>

The Applicant explained the Project will consist of approximately 40,000 solar photovoltaic ("PV") panels and will include various equipment such as a racking system, inverters, transformers, and other equipment necessary to interconnect to DPL's distribution system.<sup>37</sup> The Project will use a single-axis tracking system that will allow the PV panels to rotate and follow the path of the sun.<sup>38</sup> In order to access the Site, the Applicant will construct a north-south interior service road with aggregate base, and grass drive lanes will be used around the perimeter and for east-west access lanes.<sup>39</sup>

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<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 20.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 21.



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The Site has been farmed for decades and consists mainly of agricultural fields. Chesapeake's current design will avoid any disturbance of the existing farmstead and most of the wooded areas, with only minor clearing being required.<sup>40</sup> The Applicant explained the referenced farmstead, approximately 3.6 acres, "includes a dilapidated single family dwelling, two (2) burned out barns, and several out buildings."<sup>41</sup>

The Site does not contain any mapped Federal Emergency Management Agency floodplains.<sup>42</sup> The Project will avoid encroaching upon any wetlands setbacks; therefore, no wetland-related permits are required.<sup>43</sup> During construction, the Applicant will implement stormwater management in accordance with the County's and State's approved sediment and erosion control plans.<sup>44</sup> Once the Project is operational, stormwater quality and quantity controls will be implemented.

In terms of noise, the Applicant set forth the maximum allowable noise standards and applicable exemptions. Chesapeake indicated noise during construction will be maintained at or below the specified limits at the property lines.<sup>45</sup> Once the Project is operational, the only noise will be from inverters and transformers. The nearest residence is at least 600 feet away from

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 24.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 25.

<sup>45</sup> *Id.* at 26.



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the closest inverter; therefore, any noise will be below the permitted 65/55 decibel levels.<sup>46</sup>

The Applicant explained there would be few lighting requirements for the Project, possibly for security purposes or as required by the County.<sup>47</sup> Chesapeake also addressed the Project's visual impact. Mr. Wills stated Tighe and Bond ("T&B") conducted a glare analysis to determine the impact of glare from the Project on the surrounding areas, and then developed a three-dimensional digital terrain model to determine the glare impact with the perimeter fence.<sup>48</sup> The analysis "suggest[ed] that nearby residential properties and passing motorists on MD 213, in the absence of landscape buffers, could experience glare over short periods of time either shortly after sunrise or in the early evening during the spring and summer months of the year."<sup>49</sup> Chesapeake explained the glare was not considered to be significant, specifying "that the image induced by the glare, to the extent it is experienced, is not expected to be bright enough to remain in one's vision after the exposure to the original image has ceased."<sup>50</sup>

Mr. Wills testified, "T&H concluded that installation of the proposed 8' tall solid perimeter fence will eliminate all glare

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<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> CS Ex. 9 at 3.

<sup>49</sup> CS Ex. 4 at 26.

<sup>50</sup> *Id.*



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impacts to Maryland 213."<sup>51</sup> Additionally, based upon the approximate 800 trees that will be planted as part of the landscaping plan, T&H determined glare impacts to nearby residences should also be mitigated.<sup>52</sup>

The Applicant asserted the analysis was a worst-case scenario because the SGHAT model does not take into consideration fencing or landscaping/vegetative screening.<sup>53</sup> Chesapeake concluded the likelihood of glare trespass onto either the public road or residential properties was minimal; however, the Applicant stated it would create a process to document and address any glare-related complaints.<sup>54</sup>

In terms of landscaping, Chesapeake will plant a buffer of evergreens as necessary. The Applicant will also "utilize a native wildflower pollinator seed mix to provide buffering and aesthetics on areas outside the array," as well as planting an indigenous grass/cover seed mix below and around the arrays.<sup>55</sup>

The Applicant described the transportation-related impacts from the Project. Chesapeake stated during construction, tractor-trailers will deliver the major material and equipment to a staging area.<sup>56</sup> The Applicant estimated during the construction phase, approximately 400 truck visits and 2 crane visits would be

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<sup>51</sup> CS Ex. 9 at 3 and Attch. A.

<sup>52</sup> CS Ex. 9 at 3.

<sup>53</sup> CS Ex. 4 at 26.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 27.

<sup>56</sup> *Id.*



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required.<sup>57</sup> Once the Project is operational, traffic will be limited to mowing and vegetation management, and quarterly to yearly maintenance for the Project's components.<sup>58</sup>

The Applicant anticipated obtaining all of the necessary approvals by March 2018, and beginning construction in Spring 2018.<sup>59</sup> The Project should be operational no later than December 2018.

The Applicant provided an explanation as to how it chose the Site for the Project, citing four main points. First, Chesapeake noted the Site's close proximity to DPL circuit number 3324, which requires lower interconnection costs.<sup>60</sup> The Site was also large enough to accommodate the Project, and all environmental and cultural resources could be avoided.<sup>61</sup> Next, the Applicant stated, "The Eastern Shore typically has the highest amount of sunshine in Maryland," which translates into higher output and power to be sold, making the Project more economical.<sup>62</sup> Finally, the Site is within a zoning district that permits solar farms as a special exception, even though the County will not require a special exception if a CPCN is granted.<sup>63</sup>

The Applicant claimed the Project would have a positive economic impact on the State. Chesapeake reiterated the capital

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<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 28.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 29.

<sup>63</sup> *Id.*



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investment and the resulting jobs, the annual County taxes, reduction of out-of-state energy imports, and the modest increase in permanent employment needed to maintain the Project.<sup>64</sup>

Chesapeake indicated two of the three required studies (Feasibility and System Impact Studies) necessary to interconnect have been completed, and anticipated the third and final study (Facilities Study) being completed by January 2018.<sup>65</sup> The Applicant concluded, based upon the completed studies, the Project would require minimal upgrades and would not adversely impact the stability and reliability of the grid.<sup>66</sup>

Chesapeake explained a decommissioning plan would be submitted to PPRP and the Commission to be implemented at the end of the Project's useful life or abandonment.<sup>67</sup> The plan will ensure decommissioning costs will not be borne by the County and/or the State, and will be secured via a performance bond payable to the State.<sup>68</sup>

The Maryland Historical Trust ("MHT") requested Chesapeake provide an Area of Potential Effects and identify resources over 50 years old for evaluation for listing in the National Register of Historic Places ("NRHP"), including the existing farmhouse.<sup>69</sup> In accordance with MHT's request, the

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<sup>64</sup> *Id.* at 33.

<sup>65</sup> *Id.* at 34.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 35.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 36.



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Applicant retained Edward Otter, Inc. to study the farmstead complex.

The Applicant stated the Site's biodiversity was limited due to the historic agricultural practices and the flora on the Site is common to the area.<sup>70</sup> Additionally, there are no known rare, threatened, or endangered species, and no impacts to critical habitats were anticipated.<sup>71</sup> The Site's wildlife habitat was also limited due to farming operations; however, additional benefits for wildlife will be created as a result of establishing and maintaining native grasses and a pollinator habitat.<sup>72</sup>

Chesapeake claimed the fugitive dust resulting from construction should be less than a normal construction project because excessive earthwork activities are not required.<sup>73</sup> The Applicant also noted the Project's operation would not generate air pollutants; therefore, the federal and State Air Quality Standards were not applicable.<sup>74</sup>

Chesapeake explained the Site is located within the Back Creek watershed, a tributary stream of the Elk River within the Chesapeake Bay watershed. Upon completion, the Project will not require water or sewer utilities, and no impacts were anticipated to streams or aquifers.<sup>75</sup> During construction and operation of the

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<sup>70</sup> *Id.* at 38.

<sup>71</sup> *Id.*; see Apps. 5-6.

<sup>72</sup> CS Ex. 4 at 38-39.

<sup>73</sup> *Id.* at 42.

<sup>74</sup> *Id.* at 43.

<sup>75</sup> *Id.* at 43-44.



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Project, there would likely be only intermittent water consumption.<sup>76</sup>

The Applicant noted during construction, all waste materials would be removed from the Site to an approved handling facility.<sup>77</sup> Once the Project is operational, little or no waste materials would be generated, but any such waste would be disposed of appropriately.<sup>78</sup>

Finally, Mr. Wills discussed the County's support for the Project and referenced the letters of support submitted by County Executive McCarthy, Council President Bowlsbey, and the Cecil County Chamber of Commerce.<sup>79</sup> Finally, Mr. Wills highlighted that the Project was a permitted use in NAR District and is consistent with the County's 2010 Comprehensive Plan.

**B. PPRP**

Ms. Stewart provided a summary of findings and preliminary recommendations based upon PPRP's evaluation of the Project, as well as brief descriptions of the Project, the Site, and the proposed interconnection to the 34.5 kV feeder from the T2 transformer at the Glasgow Substation.<sup>80</sup> Ms. Stewart explained PPRP conducted its own environmental and socioeconomic evaluation of the Project by reviewing the application, testimony, obtaining

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<sup>76</sup> *Id.* at 44.

<sup>77</sup> *Id.* at 45.

<sup>78</sup> *Id.*

<sup>79</sup> CS Ex. 9 at 4-5 and Attchs. B and C; see CS Ex. 4, Appx. 10.

<sup>80</sup> PPRP Ex. 1 at 3-5.





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additional information to verify the Applicant's evaluations, and conducting a field review of the Site on April 18, 2017.<sup>81</sup>

As a result of PPRP's analysis, it developed initial recommended conditions, which were subsequently revised and approved by the respective Secretaries and Director of seven State agencies.<sup>82</sup> Based on PPRP's review, Ms. Stewart stated the Project was viable, specifically citing the Project's location, the County's decision not to require zoning approval, the potential to contribute to Maryland's RPS, and other tax credits, grants, loans and rebate programs that incentivize the development of solar projects.<sup>83</sup>

First, Ms. Stewart addressed PPRP's Assessment of the Project. She noted the Site's vegetation resources would be impacted as approximately 0.1 acres of mature trees must be removed during construction "along the eastern edge of eastern forested parcel and the hedgerow that transects the property."<sup>84</sup> Additionally, Ms. Stewart explained some grading would be required, and 2 acres of impervious surface would be added for the construction of the arrays, as well as a 15-foot wide gravel access road.<sup>85</sup> Ms. Stewart testified that PPRP's recommended conditions, specifically Condition 11 that addresses vegetation management, will preserve the Site's natural resources, create wildlife and

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<sup>81</sup> *Id.* at 5-6.

<sup>82</sup> *Id.* at 6; see PPRP Exs. 4-6.

<sup>83</sup> PPRP Ex. 1 at 7-8.

<sup>84</sup> *Id.* at 9.

<sup>85</sup> *Id.*



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pollinator habitats, and protect the Site's wetland and forested areas.<sup>86</sup>

Ms. Stewart confirmed the FCA applied to the Project, and a Forest Stand Delineation and Forest Conservation Plan would need to be submitted to the County.<sup>87</sup> PPRP recommended retention of existing forest and 5.51 acres of new planting.<sup>88</sup>

Ms. Stewart stated the Project's construction will force wildlife to relocate, and the proposed eight-foot perimeter fence will deny access to the Site to some animals. She indicated there would be temporary indirect impacts (construction noise and fugitive dust) to aquatic and amphibious species in the stream and forested wetland habitats.<sup>89</sup> However, Ms. Stewart anticipated the permanent vegetation cover to be planted by the Applicant will be beneficial to wildlife and provide a pollinator habitat. PPRP's recommended conditions will protect wildlife, minimize construction-related impacts, control spills, sediment, and erosion.<sup>90</sup> PPRP confirmed there are no records of any rare, threatened, or endangered species within the array portion of the Site; however, in the event any such species were identified, Chesapeake should coordinate with DNR's Wildlife and Heritage Service to institute appropriate measures.<sup>91</sup>

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<sup>86</sup> *Id.* at 9-10; see PPRP Ex. 4, Condition 11.

<sup>87</sup> PPRP Ex. 1 at 11.

<sup>88</sup> *Id.* at 11-12; see also PPRP Ex. 3, Ex. HS-3 and PPRP Ex. 4, Condition 10.

<sup>89</sup> PPRP Ex. 1 at 12.

<sup>90</sup> *Id.* at 12-13; PPRP Ex. 4, Conditions 7-11.

<sup>91</sup> PPRP Ex. 1 at 13-14; PPRP Ex. 4, Condition 13.



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In terms of wetland and stream resources, Ms. Stewart explained the Site's location in the Back Creek watershed and noted the stream and nontidal wetland areas in the southern, eastern, and western portions are considered jurisdictional waters of both the United States and the State of Maryland.<sup>92</sup> The stream, wetlands, and buffers will not be disturbed; however, a NPDES general permit and an Erosion and Sediment Control Plan will both be required. Ms. Stewart explained the proposed Licensing Conditions will protect the wetlands, waterways, the Critical area, and their buffers, establish permanent vegetation, and employ best management practices near the nontidal wetlands.<sup>93</sup> In relation to the environmental impacts for the Project's interconnection, Ms. Stewart noted no right-of-way was required, and the interconnection would be made by an aerial line from an existing pole.<sup>94</sup>

PPRP indicated there are unavoidable impacts resulting from the construction and operation of the Project, noting the tree removal and short-term impacts on waterways. However, Ms. Stewart stated the impacts should be minor, and highlighted the required afforestation, and sediment and erosion controls.<sup>95</sup>

Next, Ms. Stewart described the economic, demographic, and fiscal impacts of the Project. She testified the Project will create approximately 100 direct design, management, and

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<sup>92</sup> PPRP Ex. 1 at 14.

<sup>93</sup> *Id.* at 15-16; see PPRP Ex. 4, Conditions 7, 8, and 11.

<sup>94</sup> PPRP Ex. 1 at 16.

<sup>95</sup> *Id.* at 17-18.



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construction jobs, with many positions being filled from the Eastern Shore labor pool.<sup>96</sup> Ms. Stewart specified the Project "will have a positive effect on the local economy from construction worker payrolls and subsequent consumption expenditures, local purchases of common construction materials, and associated multiplier effects."<sup>97</sup> She noted public service levels would not be impacted given the Project's workforce will likely be within a daily commuting distance. Ms. Stewart concluded the Project would have a net benefit for both the State and County.<sup>98</sup>

Ms. Stewart indicated that renewable generating facilities are permitted as a special exception in the NAR district. She previously noted the County's election to not require a special exception for the Project since Chesapeake was seeking a CPCN; however, site plan approval, and grading and building permits will be required.<sup>99</sup>

Ms. Stewart described the Site and the surrounding areas. She explained that while the Site was not within a County Priority Preservation Area, a majority of the Site is classified as prime farmland.<sup>100</sup> A portion of the Site is also within the Chesapeake Bay Critical Area, but it lies outside the Project's limit of disturbance. Ms. Stewart stated the Project would not significantly affect the use of other properties in the area,

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<sup>96</sup> *Id.* at 18.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* at 19.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.* at 20. (footnote omitted)



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provided Chesapeake complies with PPRP's recommended licensing conditions.<sup>101</sup>

PPRP determined the increased traffic from construction workers would not reduce the nearby roads' levels of service during construction. Ms. Stewart maintained that post-construction, the Project would not generate a significant amount of traffic. PPRP did recommend the Applicant comply with all permit requirements related to the use of State and County roads.<sup>102</sup>

Ms. Stewart addressed the potential impact on the surrounding airspace, noting the Project's location in relation to nearby airports and a private-use heliport. The closest airport is a private-use facility with a single turf runway, approximately 1.9 miles away, and the heliport and other airports are between 2.1 miles and over 5 miles away from the Project.<sup>103</sup> PPRP concluded, based upon the referenced distances, the Project would not impact air navigation.

PPRP discussed the Project's impact on the landscape, described the terrain, the existing screening and the vegetation to be added, and the County's site plan review. Ms. Stewart noted the Applicant's proposed landscape buffering was in substantial conformance with the County's requirements and will mitigate most views of the Project from adjoining public roads and properties.<sup>104</sup>

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<sup>101</sup> *Id.*

<sup>102</sup> *Id.* at 21; *see* PPRP Ex. 4, Condition 17.

<sup>103</sup> PPRP Ex. 1 at 22.

<sup>104</sup> *Id.* at 23.



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In terms of lighting, Ms. Stewart explained the Project would have few requirements, but lighting may be necessary for either security or safety.<sup>105</sup> Provided any such lighting complies with the County's standards, any potential light trespass would be adequately mitigated.

PPRP explained the potential for glare on surrounding properties and roadways. Based upon its review, Ms. Stewart stated, "PPRP's independent assessment of glare predicted no instance of glare on neighboring properties and public roads, even in the absence of landscaping."<sup>106</sup> However, PPRP still recommended Chesapeake develop a process to address any glare-related complaints.

Ms. Stewart testified there were no properties on the NRHP within one mile of the Site, but several properties on the Maryland Inventory of Historic Properties were within one mile of the Site.<sup>107</sup> She noted the 19<sup>th</sup> century farmstead was located on the Site, but it was not within the Project's limit of disturbance. After consultation with the Applicant, the MHT determined a Phase I archeological survey was not required, and the referenced farmstead was not eligible for listing on the NRHP.<sup>108</sup> PPRP recommended in the event relics of unforeseen archeological sites are revealed and identified during construction, the Applicant be required to work with the MHT "to develop and implement a plan for avoidance and

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<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.* at 24.

<sup>108</sup> *Id.*



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protection, data recovery, or destruction without recovery of such relics or sites."<sup>109</sup>

PPRP anticipated no impacts during the Project's construction or operation on public services and safety. Ms. Stewart stated that post-construction, the risk of fire from ground-mounted photovoltaic systems is low provided fuels are removed from under and near the solar arrays.<sup>110</sup> PPRP recommended the Applicant design, install, and maintain the Project to meet the minimum standards set forth in the National Fire Protection Association's NFPA 1 Fire Code Handbook and NFPA 70 National Electrical Code.<sup>111</sup> Ms. Stewart also recommended Chesapeake coordinate with the County's Emergency Management Agency and nearby fire companies to develop protocols for on-site emergencies.<sup>112</sup>

Ms. Stewart explained that due to the Project's minimal vertical profile and recommended vegetation buffer, the Project will be largely out of sight from nearby properties.<sup>113</sup> Additionally, once the Project is operational, she claimed there will not be significant traffic, noise, pollution, or hazardous waste generated that could impact the public health, and the Site will be returned to its original state at the conclusion of the Project's useful life. Therefore, Ms. Stewart concluded, "the local environment will be minimally affected by the Project," and

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<sup>109</sup> *Id.*; see PPRP Ex. 4, Condition 19.

<sup>110</sup> PPRP Ex. 1 at 25.

<sup>111</sup> *Id.*; see PPRP Ex. 4, Condition 20.

<sup>112</sup> PPRP Ex. 1 at 25-26; see PPRP Ex. 4, Condition 22.

<sup>113</sup> PPRP Ex. 1 at 26.



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"the proposed facility will have a moderately benign local presence once the facility is operational suggests that property values would be unaffected by the Project."<sup>114</sup>

In terms of noise, Ms. Stewart discussed the allowable levels set forth in COMAR and how sound dissipates over increasing distances.<sup>115</sup> She stated that noise from operational solar facilities is typically low. Ms. Stewart explained there was approximately 625 feet between an inverter pad to the closest residential dwelling, and she expected the operational noise at that distance would not significantly impact residential receptors.<sup>116</sup> PPRP included a condition setting noise limits for both the construction and operation of the Project.<sup>117</sup>

Finally, Ms. Stewart addressed the Project's potential impact on human health from electromagnetic fields ("EMF"). She testified the EMF levels were projected to be well below the applicable standards and did not anticipate a potential health risk to nearby residents.<sup>118</sup>

**C. Staff**

Mr. Lo addressed the Project's impact on the reliability and stability of the State's electric system. He described the Project and the required interconnection process, which includes

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<sup>114</sup> *Id.*

<sup>115</sup> *Id.* at 26-27.

<sup>116</sup> *Id.* at 27.

<sup>117</sup> PPRP Ex. 4, Condition 4j.

<sup>118</sup> PPRP Ex. 1 at 28.





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several studies, as well as Interconnection Service and Construction Service Agreements, Capacity Injection Rights, and a Wholesale Market Participant Agreement ("WMPA").<sup>119</sup> Mr. Lo testified the Project has a generator interconnection queue number of AB2-168, and a projected in-service date of no later than December 2018.<sup>120</sup> He stated the Feasibility Study was completed in August 2016, the System Impact Study was completed in May 2017, and it was anticipated that the Facilities Study would be completed by January 2018.<sup>121</sup>

Mr. Lo explained the Project will connect to DPL's distribution system by tapping the existing 34.5 kV feeder MD 3324 from the T2 transformer at the Glasgow Substation.<sup>122</sup> In addition to the required interconnection relaying and control facilities, Chesapeake will install supervisory control and data acquisition ("SCADA") equipment and dedicated communication circuits for SCADA to the DPL Transmission System Control Center.<sup>123</sup> The Applicant, not DPL customers, will be responsible for all interconnection costs, including an estimated \$1,127,000 for facilities and network upgrades.<sup>124</sup>

Mr. Lo testified the System Impact Study projected no adverse impact on the reliability and stability of the State's

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<sup>119</sup> Staff Ex. 1 at 3-9.

<sup>120</sup> *Id.* at 9.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.* at 9-10.

<sup>124</sup> *Id.* at 10-11; see CS Ex. 4, Appx 1-System Impact Study Report, dated May 2017, at 4.



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electric grid.<sup>125</sup> Prior to operation, he explained the Project must comply with DPL's interconnection requirements, and complete any necessary facility upgrades and milestones specified in the WMPA, all of which will ensure that there will be no adverse impact on the reliability and stability of the electric system and grid.<sup>126</sup>

Mr. Lo concluded that renewable energy projects have been promoted and mandated by the State, and the Project would contribute to Maryland meeting its RPS goals.<sup>127</sup> Therefore, he recommended a CPCN be issued for the Project with several conditions. Mr. Lo specified the Interconnection Service Agreement be executed by Chesapeake and DPL, and be filed with the Commission prior to commencement of construction; a WMPA, executed by Chesapeake, PJM, and DPL be filed with the Commission prior to commencement of construction; that Chesapeake, its successors, and assigns provide 60 days written notice to the Commission of any non-wholesale electricity sale to a Maryland retail electric customer, and comply with regulations regarding such sales; that Chesapeake, its successors, and assigns provide 30 days written notice to the Commission of any change in ownership of the Project at least 30 days prior to the closing date of any such sale; and any conditions recommended by the State agencies.<sup>128</sup>

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<sup>125</sup> Staff Ex. 1 at 11.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.* at 13.

<sup>128</sup> *Id.* at 13-14.



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**D. Public and Written Comments**

No citizens made public comments at either of the evening hearings. No written comments, other than those previously referenced, were filed with the Commission.

**E. Post-Hearing Submissions**

On February 14, 2018, pursuant to my request during the evidentiary hearing, the Applicant submitted documentation of its ForgeSolar Glare Analysis and correspondence from the FAA and MAA.<sup>129</sup> Chesapeake explained the ForgeSolar Glare Analysis for the four nearby airports identified no glare impacts.<sup>130</sup> Additionally, the FAA provided a Determination of No Hazard to Air Navigation for all four locations, and the MAA confirmed the Project was not considered to be an obstruction or hazard to air navigation.<sup>131</sup>

**IV. Applicable Law**

This application was filed pursuant PUA § 7-207. In accordance with PUA § 7-207(e), the Commission shall take action on an application for a CPCN only after due consideration of the followings factors:

- (1) the recommendation of the governing body of each county or municipal corporation in which any portion of the construction

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<sup>129</sup> Chesapeake's glare information and FAA/MAA correspondence was admitted, post-hearing, as CS Ex. 12.

<sup>130</sup> *Id.* and Attch. A.

<sup>131</sup> CS Ex. 12 at 1-2, Attchs. B and C.



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of the generating station, overhead transmission line, or qualified generator lead line is proposed to be located; and

- (2) the effect of the generating station, overhead transmission line, or qualified generator lead line on:
  - (i) the stability and reliability of the electric system;
  - (ii) economics;
  - (iii) esthetics;
  - (iv) historic sites;
  - (v) aviation safety as determined by the Maryland Aviation Administration and the administrator of the Federal Aviation Administration;
  - (vi) when applicable, air and water pollution; and
  - (vii) the availability of means for the required timely disposal of wastes produced by any generating station.
- (3) for a generating station:
  - (i) the consistency of the application with the comprehensive plan and zoning of each county or municipal corporation where any portion of the generating station is proposed to be located; and
  - (ii) the efforts to resolve any issues presented by a county or municipal corporation where any portion of the generating station is proposed to be located.



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In order to obtain a CPCN, the burden is on the applicant to demonstrate that the Project meets the public convenience and necessity.<sup>132</sup>

**V. Findings**

Based upon my review of Chesapeake's Application, testimony and filings, PPRP's and Staff's testimony, filings, and recommended licensing conditions, and Chesapeake's acceptance of those conditions, I make the following findings:

I find that Cecil County Government supports the Project.

I find that the evidence is undisputed that the Project can be built and operated without any negative effects to the stability and reliability of the electric system and grid.

I find that the Project will benefit the economy in the form of creating construction jobs and providing tax revenue. Additionally, once completed, the Project will contribute to Maryland's Renewable Energy Standards Portfolio by adding approximately 9.0 MW to the Portfolio.

Subject to compliance with the Final Licensing Conditions, I find that the Project will have no negative effects on esthetics at the Site or nearby properties.

I find that the Project will have no negative impacts on historical sites.

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<sup>132</sup> Re *Potomac Edison Co. dba Allegheny Power*, 97 Md. P.S.C. 239, 243 (2006).



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I find that the Project will have no adverse effects on aviation safety if the Project is constructed as proposed.

I find that the Project will have no adverse effects on air or water pollution.

I find that the Project will produce minimal quantities of waste, which will be timely disposed of at an offsite-licensed landfill. In the event that hazardous waste is generated, I find that such waste will be managed in accordance with applicable federal and State requirements.

I find that the Project is consistent with the County's zoning ordinance based upon the County's determination that a special use zoning approval will not be required if a CPCN is obtained. Additionally, I find the Project to be consistent with the County's Comprehensive Plan based upon the Applicant's testimony and the County's explicit support of the Project.

I therefore find the Project, inclusive of the Final Licensing Conditions as proposed by PPRP and Staff, attached hereto as Appendices A and B and made a part hereof, to be in the public convenience and necessity.

IT IS, THEREFORE, this 6th day of March, in the year Two Thousand Eighteen,

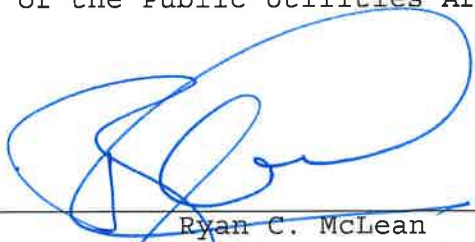
ORDERED: (1) That the Application filed for a Certificate of Public Convenience and Necessity to construct a 9.0 MW solar photovoltaic generating facility in Cecil County, Maryland is hereby granted in accordance with the findings and decision rendered herein.



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(2) That the conditions in Appendix A and Appendix B attached hereto and incorporated herein are hereby accepted as licensing conditions of the Certificate of Public Convenience and Necessity in accordance with the findings of this Proposed Order.

(3) That this Proposed Order will become a final order of the Commission on April 6, 2018, unless before that date an appeal is noted with the Commission by any party to this proceeding as provided in Section 3-113(d)(2) of the Public Utilities Article, or the Commission modifies or reverses the Proposed Order or initiates further proceedings in this matter as provided in Section 3-114(c)(2) of the Public Utilities Article.

  
\_\_\_\_\_  
Ryan C. McLean  
Public Utility Law Judge  
Public Service Commission of Maryland



## APPENDIX A

PPRP EXHIBIT \_\_ (HS-2)  
PSC Case No. 9451

**Initial Recommended License Conditions - REVISED 11/3/2017**  
**PSC Case No. 9451**  
**Chesapeake Solar, LLC**

1. Applicability of Conditions - Except as otherwise provided for in the following provisions, the application ("Application") for the Certificate of Public Convenience and Necessity ("CPCN") is considered to be part of this CPCN for the Chesapeake Solar, LLC Project ("Project"). The Application consists of the original application filed with the Maryland Public Service Commission ("PSC" or "Commission") on May 10, 2017. Construction and operation of the Project shall be undertaken in accordance with these conditions. If there are any inconsistencies between the conditions specified below and the Application, the conditions in this CPCN shall take precedence. If CPCN conditions incorporate federal or State laws through paraphrased language, where there is any inconsistency between the paraphrased language and the actual State or federal laws being paraphrased, the applicable federal or State laws shall take precedence.
2. Project Scope - The Project shall be constructed as a single-axis tracking photovoltaic (PV) system, and within the limit of disturbance and approximate dimensions (surface, in total acreage, and height) as described in the Application or, if applicable, otherwise incorporated in the CPCN. Changes to these specifications are not covered by the CPCN and must be reviewed and approved by the PSC and the Power Plant Research Program ("PPRP").
3. CPCN Expiration - Construction of the Project must commence within three (3) years of receiving the CPCN and must be completed for operation not later than four (4) years after receipt of the CPCN. If the Project is not completed and operational within four years of issuance of the final order by the PSC granting a CPCN, the CPCN shall expire and no longer constitute authorization to construct and operate the Project.
4. Applicable Laws and Regulations - Construction and operation of the solar facility shall be undertaken in accordance with this certificate and shall comply with all applicable local, State, and federal laws and regulations, including but not limited to the following:
  - a. Nontidal Wetlands - COMAR 26.23.01 applies to activities conducted in nontidal wetlands and wetland buffer.
  - b. Waterway Construction - COMAR 26.17.04 applies to regulations governing construction activities in nontidal waters and floodplains.
  - c. Water Quality and Water Pollution Control - COMAR 26.08.01 through COMAR 26.08.04 apply to discharges to waters of the State and maintenance of surface water quality.



- d. Erosion, Sediment and Storm Water Control – COMAR 26.17.01 applies to the preparation, submittal, review, approval, and enforcement of erosion, sediment and storm water control plans, including any dewatering plans and associated water recycling plans.
  - e. Oil Pollution Control – EPA 40 CFR 112 and COMAR 26.10.01.12 apply to the procedures for oil spill control.
  - f. Forest Conservation – Maryland's Forest Conservation Act (FCA), Md. Code, Sections 5-1602(b)(5) and 5-1603 of the Natural Resources Article.
  - g. Particulate Matter from Materials Handling and Construction - COMAR 26.11.06.03D, applies to airborne particulate matter such that a person may not cause or permit any material to be handled, transported, or stored, or a building, its appurtenances, or a road to be used, constructed, altered, repaired, or demolished without taking reasonable precautions to prevent particulate matter from becoming airborne.
  - h. Nuisance - COMAR 26.11.06.08, applies to the creation of nuisance or air pollution such that an installation or premises may not be operated or maintained in such a manner that a nuisance or air pollution is created. Nothing in this regulation relating to the control of emissions may in any manner be construed as authorizing or permitting the creation of, or maintenance of, a nuisance or air pollution.
  - i. Odors - COMAR 26.11.06.09, applies to the discharge of air pollution such that a person may not cause or permit the discharge into the atmosphere of gases, vapors, or odors beyond the property line in such a manner that a nuisance or air pollution is created.
  - j. Noise - COMAR 26.02.03 applies to noise regulations whereby Chesapeake Solar shall construct the proposed Project in such a way that it complies with the Maryland noise regulations and with relevant Cecil County noise ordinances.
5. Site Control – In accordance with COMAR 20.79.03.01, prior to construction, Chesapeake Solar shall provide PPRP and the PSC with a copy of the purchase agreement, land lease, or similar agreement with the owners of the property on which the Project site is located. Chesapeake Solar shall also identify any applicable term of the land lease or similar agreement and provide assurances to PPRP and the PSC that such term of the agreement meets or exceeds any applicable Power Purchase Agreement (“PPA”) term and includes any time necessary for complete closure and removal of the Project facilities.
6. Project As-Built Details – Within 30 days of commencement of operation, Chesapeake Solar shall provide to PPRP, the PSC, and Cecil County, the following “as-built” details: engineering and construction plans for the Project,

including the total acreage of the Project site; the PV panel and module type, dimensions, and locations; a consistent count of the number of PV modules; a consistent count of the number of support posts for the PV modules; and a consistent depth of post/pile burial and height of the PV panels above grade. Where the as-built details are identical to those submitted with the CPCN application, Chesapeake Solar shall provide a statement to this effect and not resubmit the information.

7. Spill Control – The wetlands, the stream and Critical Area along the southern edge of the Project site, in addition to all adjacent properties shall be protected by appropriate containment structures from spills or leaks of transformer fluids or other biologically detrimental substances.
8. Sediment Control - Chesapeake Solar shall implement erosion and sediment control best management practices (BMPs) presented in the Maryland Department of the Environment (MDE) document titled, *2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control*, and as otherwise may be approved or required by Cecil County. Chesapeake Solar shall use enhanced best management practices in the vicinity of nontidal wetlands sites, which include the use of adequately sized temporary sediment traps, as needed, super silt fencing and other specialized techniques such as double silt fences, and redundant stormwater runoff controls specifically needed for limiting the quantity of sediment entering these wetlands during the construction process. Chesapeake Solar shall stabilize all portions of the Project site disturbed during construction as soon as practicable after the cessation of construction activities within that portion of the site, followed by seed application, in accordance with the above-cited document. In no instance shall non-native species be seeded or otherwise planted.
9. Stream/Wetland Impacts - All impacts (temporary or permanent) to streams and their 100-year floodplains shall be assessed, and where possible quantified, by Chesapeake Solar prior to any construction activities.
  - a. Construction of the Project shall not disturb or remove vegetation within the 25-foot buffers of the forested non-tidal wetlands located to the west or east of the Project area, or the fifty (50) foot setback from the tributary to Long Creek, or the 1.7 acres of Critical Area located on the southern end of the Project site. During construction, Chesapeake Solar shall use flagging, fencing, access barriers, and any other necessary measures to ensure that these areas are not disturbed by construction personnel, equipment, or activities.
  - b. After construction, Chesapeake Solar shall maintain all areas described in (a) through Integrated Vegetation Management (IVM) protocols that avoid or minimize mechanical mowing and are designed to obtain a sustainable vegetation community.

- c. Chesapeake Solar shall allow the unplanted areas adjacent to Forest Retention Area 1 and Forest Retention Area 2 identified on the Final Forest Conservation Plan map to regenerate naturally to forest habitat. In these areas, mowing, herbicide treatments, or tree removal shall be avoided, with the exception of managing for invasive species control, as needed. These actions further support Cecil County's Forest Conservation general goals and priorities for afforestation and reforestation, which include, but are not limited to, enhancing forest buffers adjacent to streams, establishing plantings to stabilize slopes of ravines or other natural depressions, establishing forest areas adjacent to existing forests to increase the overall area of contiguous forest cover, and establishing buffers between areas of differing land use.
10. Forest Conservation - To mitigate for forest removal and satisfy afforestation requirements for development, Chesapeake Solar shall implement the Forest Conservation Plan (FCP) approved by Cecil County on October 13, 2017, in compliance with the Cecil County Forest Conservation requirements implementing the Maryland FCA. In accordance with the approved FCP, Chesapeake Solar shall monitor and manage the planting areas to ensure the survivability of at least 75 percent of the installed plant material. During the two-year monitoring period specified in the approved FCP, annual monitoring reports and a professional assessment of the general condition of the trees shall be provided to Cecil County, DNR Forest Service, and PPRP.
11. Vegetation Management Plan - The grounds of the Project, beneath and between the solar panels, shall be planted and established with native, warm season grasses and low-growing pollinator-friendly plant species. Prior to planting, ripping and compost amendment (to a depth of 6 inches) shall be performed in the lanes between the solar panel racks to ensure the proper post-construction runoff characteristics. Further, Chesapeake Solar shall, prior to commencement of Project construction, develop and submit to PPRP for review a grounds management plan that includes the following:
  - a. Description of grasses and plant species to be maintained at the site;
  - b. Schedule for mowing that avoids or minimizes mowing activities during the nesting season of most ground-nesting birds (i.e., May through August);
  - c. Restriction of grass mowing height to no less than 10 inches at all times following initial establishment, except where this would present a fire hazard or impede required access to equipment;
  - d. Protocol for managing invasive plant species; and

- e. Discussion of herbicides and pesticides approved for use at the Project site, and details describing the circumstances of their use.
12. Pollinator Habitat - Chesapeake Solar shall establish a long-term pollinator habitat with native flowering plants on the parcel, outside the project area and areas designated for tree planting. Details of the pollinator habitat shall be described in a Pollinator Habitat Plan, which shall include the following:
- a. Maps of designated pollinator habitat areas on the Project site;
  - b. Lists and descriptions of all intended target native plant species for the pollinator areas;
  - c. Methods for planting the pollinator areas;
  - d. All management methods for the pollinator areas, including elimination of non-native invasive species, mowing, herbicides, and other pertinent criteria;
  - e. Projected success goals for the pollinator habitats, including expected percent survival statistics of all planted species during a period of five years after installation, and contingency planting for areas of non-establishment.
  - f. Chesapeake Solar shall submit the Pollinator Habitat Plan to PPRP for review at least 30 days before commencement of commercial operation, and will indicate to PPRP whether Chesapeake Solar is interested in participating in DNR's Pollinator-Friendly Designation Program for Solar Facilities based on this plan.
13. Rare, Threatened, or Endangered Species - Chesapeake Solar shall notify and consult with the Maryland DNR, Wildlife and Heritage Service to determine appropriate actions if any rare, threatened, or endangered species are encountered during planning, construction, operation, or maintenance of this facility.
14. Access - Representatives of the PSC and DNR shall be afforded access to the Chesapeake Solar site at any reasonable time, with appropriate notification, to conduct inspections and evaluations necessary to assure compliance with the CPCN requirements. Chesapeake Solar shall provide assistance as reasonably may be necessary to conduct inspections and evaluations effectively and safely, which may include, but need not be limited to, the following:
- a. Inspecting construction authorized under this CPCN;
  - b. Accessing or copying any records that Chesapeake Solar is required to keep pursuant to this CPCN or applicable regulations;
  - c. Obtaining any photographic documentation and evidence; and

- d. Determining compliance with the conditions and regulations specified in the CPCN.
15. On-site Ground Water Well – Prior to operation, Chesapeake Solar shall provide documentation to the PSC and to PPRP that the existing potable water well at the site has been abandoned and closed in accordance with MDE and Cecil County Health Department regulations.
16. Site Plan and Landscaping – Prior to the commencement of Project construction, Chesapeake Solar shall certify to the PSC and to PPRP that it has designed the facility in substantial conformity to Cecil County’s site plan requirements and has received site plan approval from Cecil County. Prior to operation of the Project, Chesapeake Solar shall submit the approved site plan, and landscaping plan documenting its visual mitigation strategy, to PPRP and PSC for review, and shall file the same information in the PSC docket for Case No. 9451.
17. Road Permits – Chesapeake Solar shall comply with all permit requirements and restrictions for use, crossing and occupancy of State and Cecil County roads, and shall obtain appropriate approvals as necessary.
18. Reflective Glare – Chesapeake Solar shall develop a process to document and address admissible complaints related to potential solar reflections. An admissible complaint shall be one formally submitted in writing to Chesapeake Solar within two (2) years of the Project’s commencement of operation. Chesapeake Solar shall provide to the PSC and PPRP both a copy of the complaint and its response to the complaint. Chesapeake Solar’s response to any written complaint shall clearly inform the aggrieved party that if not satisfied with Chesapeake Solar’s response, the aggrieved party may seek relief by filing a complaint with the PSC. If the PSC determines that the complaint is justified, Chesapeake Solar shall prepare and implement a screening plan to mitigate impacts from reflective glare upon the affected property. The screening plan shall be in conformance with all applicable State and local laws and regulations.
19. Archeological Discoveries – In the event that relics of unforeseen archeological sites are revealed and identified during construction, Chesapeake Solar, in consultation with and as approved by the MHT, shall develop and implement a plan for avoidance and protection, data recovery, or destruction without recovery of such relics or sites.
20. Fire Safety – Chesapeake Solar shall design, install and maintain the Project to meet all applicable minimum standards set forth in the National Fire Protection Association (NFPA) 70: National Electrical Code and all applicable minimum standards appropriate for ground-mounted solar facilities set forth in NFPA 1: Fire Code.

21. Solar Decommissioning

- a. At least 90 days prior to the start of construction, the Applicant shall submit a decommissioning plan to the PSC and PPRP for review. The decommissioning plan shall describe the responsible party(ies), timeframes, and estimated costs for decommissioning, dismantling, and legal disposal of all components, including cables, wiring, and foundations below ground surface. The plan shall address site conditions after decommissioning, including stabilization, grading and seeding all disturbed areas. The plan shall maximize the extent of component recycling and reuse, where practicable, and ensure all materials are handled in accordance with applicable federal, State, county, and local requirements. The Applicant shall not begin construction until the Applicant has addressed all comments from the PSC and PPRP, the PSC has approved the plan, and all specified financial guaranties are in place. The approved plan, and any updated plans, shall be filed in the PSC docket for Case No. 9451.
- b. The Applicant shall implement a financial mechanism to ensure that decommissioning costs are not borne by the State and/or the County at the end of the useful life of the Project or in the event of abandonment of the Project. The Project will be considered to be abandoned if the Project is non-operational for a period of one (1) year. The financial instrument may be in the form of a surety bond, a letter of credit issued by a financial institution, or other alternative arrangement and must be in place prior to the commencement of construction of the Project. The financial mechanism is subject to the approval of the PSC, and PSC evaluation of the financial mechanism will consider the credit-worthiness and financial capabilities of the counter-party(ies).
- c. The Applicant shall develop an estimate of decommissioning costs by a third party consultant to determine the amount of the decommissioning performance bond, corporate guarantee, or letter of credit. The cost estimate shall address provisions for the safe removal and proper disposal of all components of the Project, including any components containing hazardous or toxic materials, minus salvage value. Over the life of the Project, the Applicant shall update the decommissioning cost estimate every five (5) years after the issuance of the CPCN to adjust for inflation, changes in salvage market conditions, and any other necessary changes. The Applicant shall provide the revised cost estimate to the PSC, file the revised cost estimate in the PSC docket for Case No. 9451, and execute an adjustment to the financial guarantee mechanism.
- d. The Applicant shall begin implementation of the approved decommissioning plan within 180 days after the Project ceases to generate

electricity for sale. Prior to starting implementation, the Applicant shall notify the PSC and PPRP of its intent to decommission.

22. Emergency Preparedness – Prior to the commencement of construction, Chesapeake Solar shall contact the Volunteer Fire Company No. 1 in Chesapeake City and the Cecil County Department of Emergency Services to establish points of contact and timely response options, facilitate emergency vehicle access throughout the site, create a consistent marking protocol for the identification of system components that require special attention during an emergency, and develop appropriate Standard Operating Procedures or Standard Operating Guidelines for addressing on-site emergencies.
23. Project Transfer – All provisions and requirements of this CPCN shall apply to any and all subsequent owners and/or operators of the solar facility. In the event of any pending change in control or ownership, the current owner/operator shall notify the succeeding owner/operator of the existence of the requirements of this CPCN by letter and shall send a copy of this letter to the PSC and PPRP. Information provided to the PSC and PPRP shall be filed in the PSC docket for Case No. 9451.
24. Submissions to PPRP – Informational copies of the required communications, reports or studies referenced in the preceding recommended license conditions shall be sent to PPRP by e-mail (and by mail if requested) at:

Director  
Power Plant Assessment Division  
Department of Natural Resources  
Tawes State Office Bldg., B-3  
580 Taylor Avenue  
Annapolis, Maryland 21401  
e-mail: pprp.dnr@maryland.gov

## APPENDIX B

### **Recommended Licensing Conditions of the Public Service Commission Staff Chesapeake Solar, LLC – Case No. 9451**

- (1) Grant a CPCN to Chesapeake Solar Center, LLC for a 9.0 MW solar generating facility; and
- (2) Require the executed distribution Interconnection Agreement (“IA”) involving Chesapeake and the state regulated Delmarva Power & Light Company (“DPL”) be filed with the Commission prior to the commencement of construction; and
- (3) Require the signed Wholesale Market Participant Agreement (“WMPA”) executed by Chesapeake with the regional transmission operator, PJM Interconnection, LLC (“PJM”) and DPL be filed with the Commission prior to the commencement of construction; and
- (4) Require Chesapeake, its successors and assigns to provide a sixty (60) days written notice to the Commission of any non-wholesale electricity sale to a Maryland retail electric customer, and comply with all regulations regarding such sale; and
- (5) Staff recommends that Chesapeake, its successors and assigns, be required to provide written notice of any change in ownership of all, or any portion of the Project, at least thirty (30) days prior to the closing date of any sale to a third party. The written notice should include, but not be limited to, identifying the third party providing contact information to receive any Commission inquiries, the proposed effective date of any change in ownership, and providing documentation that demonstrates the capability of the prospective owner to operate and maintain the Project to perform in accordance with any CPCN issued in this proceeding; and
- (6) Staff recommends that the Commission include any additional conditions proposed by the other State agencies having jurisdiction in this proceeding.