



STATE OF MARYLAND

September 13, 2017

W. Kevin Hughes, Chairman
Public Service Commission
6 St. Paul Center
Baltimore, Maryland 21202

Re: Case No. 9446, In the Matter of the Application of Sol Phoenix Solar, LLC for a Certificate of Public Convenience and Necessity to Construct a 2.5 MW Solar Photovoltaic Facility in Prince George's County, Maryland

Dear Chairman Hughes:

In accordance with Section 3-306(b) of the Natural Resources Article and the process described in Section 7-207 and 7-208 of the Public Utility Companies Article, we are enclosing our preliminary recommendation in Case Number 9446 on behalf of the Departments of Natural Resources, Environment, Agriculture, Transportation, Commerce, and Planning, and the Maryland Energy Administration. Our recommendation and proposed conditions relate to the application for a Certificate of Public Convenience and Necessity (CPCN) by Sol Phoenix Solar, LLC to construct a nominally rated 2.5-megawatt (MW) solar photovoltaic (PV) facility in Prince George's County, Maryland.

Based on our review of the application and associated environmental information available to date, we have concluded that the site is suitable and that the plant can be constructed and operated in accordance with all applicable environmental regulations provided that the attached recommendations are incorporated as conditions to the CPCN. Our preliminary evaluation of the environmental impacts associated with the proposed facility is summarized in the document titled "Project Assessment Report for the Proposed Phoenix Solar Project," which has been supplied as an exhibit in this proceeding. At the conclusion of the hearing process and close of the record these conditions will be final. Should these recommendations need to be modified, we will provide our final recommendation and conditions for the project.

Sincerely,

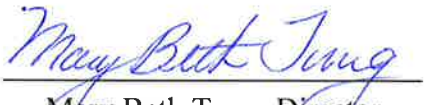
Joseph Bartenfelder, Secretary
Department of Agriculture



R. Michael Gill, Secretary
Department of Commerce


Wendi W. Peters, Secretary
Department of Planning

Pete K. Rahn, Secretary
Department of Transportation



Mary Beth Tung, Director
Maryland Energy Administration

Ben Grumbles, Secretary
Department of the Environment



Mark J. Belton, Secretary
Department of Natural Resources

Initial Recommended License Conditions**PSC Case No. 9446****Sol Phoenix 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 Sol Phoenix Solar, LLC (Phoenix Solar) Project ("Project"). The Application consists of the original application filed with the Maryland Public Service Commission ("PSC" or "Commission") on April 11, 2017, direct testimony filed on May 31, 2017, and supplemental direct testimony filed on August 8, 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, the precise reading of the federal or State laws shall take precedence if there is any inconsistency.
2. Project Scope - The Project shall be constructed as a fixed-tilt photovoltaic (PV) system with a rated capacity of up to 2.5 megawatts (MW) of alternating current (AC) electric power. The Project is to be constructed within the limit of disturbance and approximate dimensions (surface, in total acreage, and height) as described in the Application or, if applicable, otherwise incorporated into 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; otherwise, 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. Scenic and Wild River-Maryland's Scenic and Wild River Act, MD. Code, Section 8-401 et seq. of the Natural Resources Article.
 - h. 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.
 - i. 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.
 - j. 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.
 - k. Noise - COMAR 26.02.03 and relevant Prince George's County noise ordinances regulations shall apply to the construction and operation of the Project. Facility operation shall not create a noise level greater than 55 dBA at any adjacent residential property during the operational life of the Project.
5. Site Control – In accordance with COMAR 20.79.03.01, prior to construction, Sol Phoenix 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. Sol Phoenix Solar shall also identify any applicable term of the purchase agreement, land use, or similar agreement and provide assurances to PPRP and the PSC that such term of the purchase agreement, land lease, or similar 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 - Sol Phoenix Solar shall provide to the PPRP, the PSC, and Prince George's County, the as-built details within 30 days of commencement of operation for the following: engineering and construction plans for the Project, including the total acreage of the Project site; the PV panel and module type, dimensions, and locations; and a consistent count of the number of PV modules, a consistent count of the number of support posts for the PV modules, as well as a consistent number of ballasted foundations and height of the PV panels above grade. Where the as-built details are identical to those submitted with the CPCN application, Sol Phoenix Solar shall provide a statement to this effect and not resubmit the information.
7. Project Layout - In addition, Sol Phoenix Solar shall provide the PPRP and the PSC with information showing the layout of the power centers, electrical collector lines, and substation for the Project. Prior to formally submitting the Construction Drawing Plan Review application and building permit application to Prince George's County for review and permitting, Sol Phoenix Solar shall consult with Prince George's County regarding the proposed layout of the collector lines in relation to the existing infrastructure (both above ground and below grade) and buildings, as well as the proposed internal site access roads, underground utilities, and storm water management systems.
8. Spill Control - Watts Branch and its associated wetlands, as well as any other wetland areas on the Project site, shall be protected from spills or leaks of transformer fluids or other biologically detrimental substances by appropriate containment structures.
9. Sediment Control - Sol Phoenix Solar shall employ 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 Prince George's County. All portions of the Project site disturbed during construction shall be stabilized 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.
10. Stream/Wetlands Impacts - Any impacts (temporary or permanent) to streams and their 100-year floodplains shall be assessed, and where possible quantified, by Sol Phoenix Solar prior to any construction activities.
 - a. Construction of the Project shall not disturb or remove vegetation within 25-foot buffers of Watts Branch, a tributary to the Anacostia Scenic River, the wetlands associated with it or any other wetlands on the Project site. During construction, flagging, fencing, access barriers, and any other necessary measures shall be used to ensure that these areas are not disturbed by construction personnel, equipment, or activities.

- b. Sol Phoenix Solar shall provide PPRP with technical plans regarding the crossing of Watts Branch for the connection between the proposed solar arrays. If this crossing is underground, all geotechnical information related to this crossing must be provided and a Joint Permit Application must be submitted to MDE and the USACE.
- 11. Forest Conservation - Sol Phoenix Solar shall develop and implement a forest planting plan that complies with Prince George's County's Woodland and Wildlife Habitat Conservation Ordinance implementing the Maryland FCA.
 - a. Prior to the start of construction, Sol Phoenix Solar shall prepare and submit to Prince George's County and Maryland National Capitol Parks and Planning Commission (MNCPPC) for approval and to PPRP for review a Natural Resources Inventory (NRI) and a Type 2 Tree Conservation Plan that is consistent with all ordinance requirements and includes a 2:1 mitigation for tree loss from the forest site. In no case shall the mitigation required by the County be less than that required by the Maryland FCA.
 - b. The Tree Conservation Plan shall give priority to reforestation of areas adjacent to Watts Branch, a tributary to the Anacostia Scenic River, and its associated wetlands.
 - c. Where possible, all reforestation area(s) shall be located in Prince George's County within the watershed of the Anacostia Scenic River, and shall be designed to contribute to the maximum extent practicable to improving the water quality of the River.
 - d. For a period of 5 years subsequent to planting of the reforestation areas, Sol Phoenix Solar shall maintain these areas free of invasive species and shall monitor them to ensure survival of the plantings. During this period, the areas shall be restocked annually to the planned stem density to compensate for seedling mortality.
 - e. During the 5-year monitoring period, annual monitoring reports - including the number of dead trees replaced with new plantings; statistical estimates of live stem density, average stem diameter, average height, and biomass; and a professional assessment of the general condition of the trees - shall be provided to Prince George's County, the DNR Forest Service, and PPRP.
- 12. Vegetation Management Plan - The grounds of the Project, beneath and between the solar panels, shall be established with an herbaceous conservation cover planting selected from the Natural Resources Conservation Service's Maryland Conservation Planting Guide: https://efotg.sc.egov.usda.gov/references/public/MW/MD_Cons_Planting_Guide_1_18_17_Final_2-sided-print.pdf Further, Sol Phoenix 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 at all times to not less than 10 inches 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.
13. Rare, Threatened, or Endangered Species – Sol Phoenix Solar shall notify and consult with the Maryland Department of Natural Resources, 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, DNR and Prince George’s County shall be afforded access to the Sol Phoenix Solar site at any reasonable time, with appropriate notification, to conduct inspections and evaluations necessary to assure compliance with the CPCN requirements. Sol Phoenix 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. Having access to or copying any records that Sol Phoenix 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. Site Plan - Prior to the commencement of Project construction, Sol Phoenix Solar shall certify to the PSC and to PPRP that it has designed the facility in substantial conformity to Prince George’s County’s Site Plan requirements and has received Mandatory Referral approval from Prince George’s County. Sol Phoenix Solar shall submit the approved Site Plan, and Landscaping Plan documenting its visual mitigation strategy to PPRP and PSC for review prior to operation of the facility.

16. Road Permits - Sol Phoenix Solar shall comply with all permit requirements and restrictions for use, crossing and occupancy of State and Prince George's County roads, and obtain appropriate approvals as necessary.
17. Routing and Traffic Plan - Should any oversize/overweight loads be transported on local roads, Sol Phoenix Solar shall submit a travel routing and maintenance of traffic plan to the Prince George's County Department of Permitting, Inspection and Enforcement at least five days prior to dispatching oversize/overweight vehicles.
18. Reflective Glare - Sol Phoenix 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 Sol Phoenix Solar within two years of the Project's commencement of operation. Sol Phoenix Solar shall provide to the PSC and PPRP both a copy of the complaint and its response to the complaint. Sol Phoenix Solar's response to any written complaint shall clearly inform the aggrieved party that if not satisfied with Sol Phoenix Solar's response, the aggrieved party may seek relief by filing a complaint with the PSC. If the PSC determines after notice and an opportunity to be heard that the complaint is justified, it may direct Sol Phoenix Solar to 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 from unforeseen archeological sites are revealed and identified during construction, Sol Phoenix Solar, in consultation with and as approved by the Maryland Historic Trust (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 - Sol Phoenix 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. Emergency Preparedness - Prior to the commencement of construction, Sol Phoenix Solar shall contact the Prince George's County Fire/EMS Department, Capitol Heights VFD and Seat Pleasant VFD 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.
22. Solar Decommissioning:

- a. At least 90 days prior to the start of construction, Sol Phoenix Solar 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. Sol Phoenix Solar shall not begin construction until Sol Phoenix Solar 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. 9446.
- b. Sol Phoenix Solar 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 on one (1) year. The financial instrument may be in the form of a surety bond, a corporate guaranty, 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. Sol Phoenix Solar 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, Sol Phoenix Solar 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. Sol Phoenix Solar shall provide the revised cost estimate to the PSC, file the revised cost estimate in the PSC docket for Case No. 9446, and execute an adjustment to the financial guarantee mechanism.
- d. Sol Phoenix Solar shall notify the PSC and PPRP prior to implementing the approved decommissioning plan with 180 days after the Project ceases to generate electricity for sale.

23. Property 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.
24. Submissions to PPRP - Informational copies of the required communications, reports or studies referenced in the preceding recommended license conditions shall be sent to the PSC and 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