

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND**

In the Matter of the Application of Citizens
UB Solar, LLC for a Certificate of Public
Convenience and Necessity to Construct a
27.5 MW Solar Voltaic Generating Station
in Carroll County, Maryland

Case No. 9483

**REPLY OF COMMISSION STAFF TO MOTION OF CITIZENS UB SOLAR, LLC
TO STRIKE THE DIRECT TESTIMONY OF EDWARD R. CUEMAN**

The Commission Staff submits this reply in opposition to the July 31, 2019 motion by Citizens UB Solar, LLC (“UB Solar”) that asks the Public Utility Law Judge (“PULJ”) to strike the Direct Testimony of Edward R. Cueman on behalf of the Town of Union Bridge. Mr. Cueman’s testimony explains the Town’s opposition to the solar generating project proposed by UB Solar. As discussed below, three factors indicate that the Town has a substantial interest in the 27.5 MW solar generating station proposed by UB Solar: (1) a portion of the Project is in the Town, (2) the Project is in the Town’s Designated Growth Area (“DGA”), and (3) the Town may eventually annex all, or portions of, the DGA. In view of (1) the Town’s substantial interest in the UB Solar Project, and (2) the directive in section 7-207 of the Public Utilities Article (“PUA”) of the Annotated Code of Maryland that the Commission give “due consideration” to the input from local government in connection with a proposed generating station, Mr. Cueman’s testimony is clearly relevant in the Commission’s consideration of whether to authorize the Project. Consequently, the PULJ should deny UB Solar’s motion to strike Mr. Cueman’s testimony.

In his testimony, Mr. Cueman says that the Town opposes the Project because the Project is inconsistent with the Town’s Comprehensive Plan (Cueman Testimony, page 6, Lines 210-234

(“P6:201-234”). Mr. Cueman notes that the Project would generate less tax revenue and fewer job opportunities than a typical industrial development (P6:201-209). Likewise, the Direct Testimony of the Mayor of Union Bridge (Mr. Perry L. Jones, Jr.) that the Town filed along with Mr. Cueman’s testimony asserts that “the tax revenue generated from the Project would be dramatically less than a true industrial use”, and “the Project generated virtually no jobs once constructed.”

In addressing procedural issues, the Commission often relies on the Maryland Rules.¹

Rule 5-402 states that relevant evidence is admissible:

Except as otherwise provided by constitutions, statutes, or these rules, or by decisional law not inconsistent with these rules, all relevant evidence is admissible. Evidence that is not relevant is not admissible.

Rule 5-401 adopts a broad definition of “relevant evidence”:

“Relevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Mr. Cueman’s testimony is clearly “relevant” to the key issue here: should the Commission grant a Certificate of Public Convenience and Necessity (“CPCN”) to authorize construction of the solar generating station proposed by UB Solar. In July 2019, the Maryland Court of Appeals reviewed long-standing court precedent that establishes that the Commission’s authority to approve a generating station under PUA 7-207 preempts local government zoning. The court determined that this precedent applies with full force to solar generating stations:

¹ *In the Matter of the Merger of Exelon Corp. And Pepco Holdings, Inc.*, Case No. 9361, Order No. 86661, pp. 3-4 (October 9, 2014)(ML 159309).

... it is clear that the General Assembly intended to vest final authority with the PSC for the siting and location of generating stations requiring a CPCN. The statute manifests the general legislative purpose to create an all-compassing statutory scheme of solar energy regulation. That statute is "extensive and embrace[s] virtually the entire area involved."

The statute grants the PSC broad authority to determine whether and where [Solar Energy Generating Systems] may be constructed. In making such a determination, the PSC undertakes a multifaceted review, which includes input from other state agencies, as well as from local government. In addition to considering the recommendations of other state agencies, the PSC is also required to consider the stability and reliability of the system; economics; esthetics; historic sites; aviation safety; air quality and water pollution; and the availability of means of the required timely disposal of wastes produced by any generating station. PU[A] § 7-207(e)(2). Ultimately, the final decision regarding whether to approve a generating station lies exclusively with the PSC.²

However, citing PUA 7-207(e), the court in *Perennial* observed that the Commission must give "due consideration" to input by local government in connection with a proposed generating station:

Local land use interests are also designated by statute as a factor requiring "due consideration" by the PSC in evaluating and approving generating stations. This includes the "*recommendation* of the governing body of each county or municipal corporation in which any portion of the construction of the generating station ... is proposed to be located," PU[A] § 7-207(e)(1), as well as several other factors typically considered in local land use decisions, including esthetics, historic sites, pollution, and waste disposal. PU[A] § 7-207(e)(2) (emphasis added).³

The court in *Perennial* noted that legislation enacted in 2017 (HB 1350) underscored the importance of the input from local government regarding a proposed generating station.⁴ This new law required the Commission, in evaluating a proposed generating station, to consider factors such as "the consistency of the application with the comprehensive plan and zoning

² (citations omitted) *Board of County Commissioners of Washington County, Maryland v. Perennial Solar, Inc.* ("Perennial"), Case No. 21-C-15-055848, p. 23 (July 15, 2019).

³ *Perennial*, p. 24.

⁴ *Perennial*, p. 37, n. 22.

of each county or municipal corporation where any portion of the generating station is proposed to be located” (PUA 7-207(e)(3)).

In view of this important role of local government input on a proposed generating station, the testimony of the Town of Union Bridge is clearly “relevant” to issue of whether the Commission should authorize construction of the Project. The Project would be located on “unincorporated land immediately abutting the Town’s corporate boundary line at the southern gateway into Town.” (Cueman, P2:73-74). A “part of the project consisting of an access road and perimeter fencing will be located in the Town.” (Cueman, P1:57-58). The Project is also located in the Town’s DGA and the Town’s Future Annexation Area, as shown on Map Nos. 6 and 16 of the adopted Union Bridge Community Comprehensive Plan, which is attached in Appendix B of Mr. Cueman’s testimony. The Carroll County Master Plan indicates that local government has significant input regarding development in a DGA:

Designated Growth Areas (DGAs) are the smaller geographic areas of the County where the majority of Carroll County's planned residential, commercial, and industrial development is currently concentrated and future growth is planned. These areas generally are centered around a municipality, where historically higher density development has occurred in a more traditional town pattern, and where public water and sewer facilities and services are available. Community comprehensive plans focused on these areas are prepared and evaluate land uses at a more local scale. Carroll's eight municipalities are at the heart of the DGAs, with the exception of Sykesville, which lies along the southern edge of the Freedom area (one of the County's nine DGAs). This plan applies to the areas outside of the DGAs, although the County Master Plan and the nine community comprehensive plans are vitally linked and together help to implement the overall vision for each plan.

The map, entitled “Corporate Limits and Designated Growth Areas” identifies the existing DGAs in the County, based on adopted plans as of December 2013. The DGAs include Finksburg, Freedom, Hampstead, Manchester, Mount Airy, New Windsor, Taneytown, Union Bridge, and Westminster. [Cueman Testimony, Exh. C-1, p. 133]

Also, the Town asserts that the County's Comprehensive Plan targets DGA's for annexation into towns. Mr. Cueman states that the Project:

... is squarely within the "future Annexation Area" as shown on Map 6 of the subsisting Union Bridge Community Comprehensive Plan (amended August 2014).. It is without question the intent of the Plan that land proposed for development within the DGA shall be annexed into the Town. This allows the Town to control its borders in the future, whatever use the land may be put to, and to enjoy the tax revenue arising therefrom. If this were not the case, the designation of "Future Annexation Area" would be meaningless. It has been a routine approach in Carroll County for many years, even before the advent of Designated Growth Areas, for new development adjacent to municipalities to be annexed into Town. It has been true in Union Bridge where two (2) large scale developments on the north side of Town have been annexed into Town (while not yet constructed). [P5:186-198]

Thus, in view of (1) the Town's substantial interest in the UB Solar Project, and (2) the directive in PUA 7-207 that the Commission consider the input from local government in connection with a proposed generating station, Mr. Cueman's testimony is clearly relevant in the Commission's consideration of whether to authorize the Project. Consequently, the PULJ should deny UB Solar's motion to strike Mr. Cueman's testimony.

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August 14, 2019

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on this 14th day of August 2019, a copy of this pleading was either e-mailed or mailed by first-class U.S. mail, postage prepaid, to all the parties on the Service List compiled by the Commission in this proceeding.

Kenneth Marc Albert