

IN THE MATTER OF THE APPLICATION
OF CITIZENS UB SOLAR, LLC FOR A
CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY TO CONSTRUCT A
9.9 MW SOLAR PHOTOVOLTAIC GENER-
ATING FACILITY IN THE TOWN OF
UNION BRIDGE AND CARROLL COUNTY,
MARYLAND

BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

CASE NO. 9483

PROPOSED ORDER OF PUBLIC UTILITY LAW JUDGE

Before: Ryan C. McLean
Chief Public Utility Law Judge

Issued: February 13, 2020

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Appearances:

Todd R. Chason, Esquire, David W. Beugelmans, Esquire, and Chastity E. Threadcraft, Esquire for Citizens UB Solar, LLC

Jon Maguire, Esquire, and Matthew G. Luzuriaga, Esquire for the Town of Union Bridge, Maryland

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

Kenneth M. Albert, Esquire, and Lloyd J. Spivak, Esquire, for the Staff of the Public Service Commission of Maryland

Philip H. Sheehan, Esquire, on behalf of the Maryland Office of People's Counsel

I. Procedural History

1. On June 7, 2018, an application was filed by Citizens UB Solar, LLC (“CUB Solar” or “the Applicant”) requesting a Certificate of Public Convenience and Necessity (“CPCN”) to construct a 9.9 megawatt (“MW”) Solar Photovoltaic Generating Facility in the Town of Union Bridge (“the Town”) and Carroll County, Maryland (“the County”), which will be known as the Citizens UB Solar Project (“the Project”). The Application included an Environmental Review Document (“ERD”) prepared by H&B Solutions, LLC, the Applicant’s consultant, in support of the Project.¹

2. On June 8, 2018, the Public Service Commission of Maryland (“the Commission”) docketed the application as Case No. 9483 and delegated it to the Public Utility Law Judge Division.²

3. On June 20, 2018, the Applicant filed notice that the respective members of the General Assembly, the County, and the Town were notified of the Project in accordance with Public Utilities Article, *Annotated Code of Maryland* (“PUA”) § 7-207(c)(1)(iv-v).³

4. On July 5, 2018, the Town filed a Petition to Intervene (“Petition”).

5. On July 12, 2018, a prehearing conference was held during which a procedural schedule was agreed upon and adopted, and the Town’s Petition was granted.

6. On October 15, 2018, pursuant to PUA § 7-207(d)(2), I sent Perry L. Jones, Jr., Mayor of the Town of Union Bridge, and Dennis Frazier, President of the Carroll County Commissioners, letters inviting the Mayor and Town Council and the County

¹ The Applicant’s Petition and ERD were admitted into the administrative record as Applicant Exhibits (“Exs.”) 3 and 4, respectively.

² Maillog 220821.

³ The letters to the respective members of the General Assembly were admitted into the administrative record as Applicant Ex. 1.

Commissioners to sit jointly with the Public Utility Law Judge at the October 18, 2018 public hearing.⁴

7. On October 18, 2018, a public comment hearing was held at the Town of Union Bridge Community Center in Union Bridge, Maryland.

8. On October 26, 2018, the Applicant submitted the Direct Testimonies of Brian Morrissey, Managing Director of Citizens Energy Corporation, and Dane S. Bauer, Vice President of H&B Solutions, LLC.⁵

9. On December 21, 2018, the Applicant requested the procedural schedule be suspended to provide PPRP with additional time to complete its review of the Project. Accordingly, the procedural schedule was suspended that same day.

10. On April 12, 2019, the Applicant filed its Revised ERD and appendices.⁶

11. On April 29, 2019, a new procedural schedule was issued.

12. On July 3, 2019, the Town filed the Direct Testimonies of Mayor Jones and Edmund R. Cueman, the Town's Planning Consultant, as well as the Town's Opposition to the Project.⁷

13. On July 11, 2019, pursuant to PUA § 7-207(d)(2), I sent Mayor Jones and Stephen A. Wantz, President of the County Board of Commissioners, letters inviting the

⁴ Maillog 222504. No response was received from either the Town or the County.

⁵ The Direct Testimonies of Messrs. Morrissey and Bauer were admitted into the administrative record as Applicant Exs. 6 and 7, respectively.

⁶ The Revised ERD, including a red-lined version, and appendices were admitted into the administrative record collectively as Applicant Ex. 9. For ease of reference, all citations to the Applicant's Revised ERD correspond to the red-lined version and the page numbers therein.

⁷ The Town's Opposition, and the Direct Testimonies of Mayor Jones and Mr. Cueman were admitted into the administrative record as Town Exs. 1-3, respectively.

Mayor and Town Council and the County Commissioners to sit jointly with the Public Utility Law Judge at the August 19, 2019 public hearing.⁸

14. On July 12, 2019, the Maryland Department of Natural Resources (“DNR”), Power Plant Research Program (“PPRP”), submitted the Direct Testimony of Frederick S. Kelley, Program Manager with PPRP, Draft Initial Recommended Licensing Conditions, a Draft Project Assessment Report (“PAR”) for the Project, and a partially executed Secretarial Letter.⁹ Also on that date, the Commission’s Technical Staff (“Staff”) submitted the Direct Testimony of Christopher Lo, an Engineer in the Commission’s Engineering Division.¹⁰

15. On July 15, 2019, PPRP submitted a fully-executed Secretarial Letter.¹¹

16. On July 31, 2019, CUB Solar filed the Rebuttal Testimony of Brian Morrissey¹² and a Motion to Strike the Direct Testimony of Edmund R. Cueman. Parties were directed to file responses to the referenced motion by August 14, 2019.

17. On August 1, 2019, County Commissioner Wantz responded that the County would abstain from sitting jointly with me at the second evening hearing.

18. On August 6, 2019, the Applicant provided a settlement status and noted its acceptance of Staff’s conditions and PPRP’s conditions, with the exception of Condition No. 26 (Glare Mitigation). CUB Solar indicated it was working with PPRP to resolve the issue. Additionally, the Applicant noted it would transmit a settlement offer to the Town.¹³

⁸ Maillog 226034 and 226035.

⁹ The Direct Testimony of Frederick S. Kelley, the Draft Initial Recommended License Conditions, and the Draft PAR were admitted into the administrative record as PPRP Exs. 1, 3 and 4, respectively.

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

¹¹ The fully executed Secretarial Letter was admitted into the administrative record as PPRP Ex. 2.

¹² Mr. Morrissey’s Rebuttal Testimony was admitted into the administrative record as Applicant Ex. 14.

¹³ *Id.*

19. On August 13, 2019, the evidentiary hearing scheduled for August 21, 2019 was canceled to allow the parties additional time to engage in settlement discussions. Also on that date, the Town's counsel advised the Mayor and Town Council wished to sit jointly with the Public Utility Law Judge at the August 19, 2019 evening hearing. Additionally, on August 13-14, 2019, the Town, PPRP, and Staff filed responses to the Applicant's Motion to Strike.¹⁴

20. On August 19, 2019, a second evening hearing was held at the Union Bridge Fire Company in Union Bridge, Maryland. Mayor Perry Jones and the Town Council attended the hearing and sat jointly with the Public Utility Law Judge.

21. On August 30, 2019, PPRP filed the Supplemental Testimony of Mr. Kelley and PPRP's Final Recommended License Conditions.¹⁵

22. On October 31, 2019, CUB Solar filed a Joint Motion for Approval of Stipulation and Settlement ("the Settlement") between the Applicant and the Town.¹⁶ Parties were directed to respond by November 8, 2019 as to whether additional discovery or testimony was required as a result of the Settlement.

23. On November 6, 2019, PPRP responded that in order to reflect changes to the Project's site plan, the recommended license conditions needed to be revised.¹⁷ However, PPRP indicated the changes could be addressed orally during the evidentiary hearing, if needed.

¹⁴ The Applicant's Motion to Strike was never ruled upon given the subsequent suspension of the procedural schedule and the Settlement entered into between the Applicant and the Town.

¹⁵ Mr. Kelley's Supplemental Testimony and PPRP's Final Revised License Conditions were admitted into the administrative record as PPRP Exs. 5 and 6, respectively.

¹⁶ The Settlement was admitted into the administrative record as Applicant Ex. 13.

¹⁷ Maillog 227388.

24. On November 8, 2019, Staff filed its response to the Settlement and noted that it did not oppose the Settlement, but recommended the Commission take no action and asserted several of the commitments within the Settlement were outside of the Commission's jurisdiction.¹⁸

25. On November 15, 2019, PPRP filed its Revised Final Recommended License Conditions.¹⁹

26. On November 18, 2019, the Applicant and Town filed a Joint Motion requesting a pre-hearing ruling on the scope of the Commission's authority in relation to the Settlement.

27. On November 25, 2019, the referenced Joint Motion was denied.

28. On December 19, 2019, an evidentiary hearing was held at the Commission's office in Baltimore, Maryland, and all pre-filed testimony and documents were entered into the administrative record by stipulation, and both Mr. Morrissey and Mr. Kelley responded to questions from the bench. Also, after hearing arguments on Staff's request to take no action on the Settlement, Staff's request was denied.²⁰

29. On December 30, 2019, PPRP filed a corrected version of Condition No. 26 consistent with Mr. Kelley's testimony at the evidentiary hearing.²¹ PPRP did not file any further modifications to the Final Recommended Licensing Conditions within the 15-day time period permitted by PUA § 7-207(d)(5)(ii); therefore, PPRP's Recommended Licensing Conditions, including the corrected version of License Condition No. 26, became PPRP's Final Recommended Conditions.

¹⁸ Maillog 227426.

¹⁹ PPRP's Revised Final Recommended License Conditions, red-line and clean versions, were admitted into the administrative record as PPRP Exs. 7 and 8, respectively.

²⁰ See Section VI.A.

²¹ Maillog 228005. PPRP's corrected Recommended License Condition No. 26 was admitted into the administrative record, post-hearing, as PPRP Ex. 9.

II. Overview of the Revised Project

30. Based upon its revised ERD, the Applicant seeks a CPCN to construct an 8.172 MW solar photovoltaic generating station on an approximate 48-acre parcel, with approximately 35-40 acres within the Project's Limit of Construction.²² The parcel, owned by the Applicant, is located on Green Valley Road adjacent to the Carroll Substation and is entirely within an unincorporated area of Carroll County ("the Site"), described as Carroll County Tax Map 34, Parcel 102.²³ The parcel is zoned as Industrial-Restricted ("IR"), Industrial-General ("IG"), in which solar is a permitted use by right (no special exception needed), and Conservation. At one time, a railroad right-of-way ("ROW") was located on the northeast portion of the Site; however, the ROW was abandoned many years ago, and a Termination of Easement Agreement was completed.

31. Upon completion, the Project will interconnect to Potomac Edison's ("PE") distribution system via an overhead line tap between the Carroll and Mt. Airy Substations.²⁴ CUB Solar estimated the Project will consist of approximately 24,375 solar panels, and the panels will be fixed, with the bottom edges approximately 2 feet above grade and the maximum height will be no higher than 10 feet from grade.²⁵ There will be three separate power inverters that will be grouped together and feed into three transformers, each with an approximate capacity of 2.724 MW.²⁶

²² Prior to the Settlement, the Applicant noted the Project's limit of construction would be approximately 30 acres. Applicant Ex. 9 at 1.

²³ *Id.*

²⁴ *Id.* at 2.

²⁵ *Id.* at 3.

²⁶ *Id.*

III. Summary of the Revised Application and Testimony

A. CUB Solar

32. Messrs. Bauer and Morrissey sponsored the Applicant's Revised ERD, which contained a Project Overview (Section 1); a Statement of Need and Purpose (Section 2); the Applicant's Information (Section 3); the necessary State and Local Permits and Approvals (Section 4); Code of Maryland Regulations ("COMAR") 20.79.03.01 – a Description of the Generating Station (Section 5); COMAR 20.79.03.02 – Environmental Information (Section 6); and several appendices. CUB Solar highlighted the State's policies towards renewable energy and cited the Renewable Portfolio Standard ("RPS") mandate that 25% of Maryland's electricity be generated from renewable sources by 2020, including 2.5% from solar energy.²⁷ The Applicant indicated that in order to meet the referenced solar set-aside, at least 1,600 MW of solar capacity is required by 2020. The Applicant claimed the Project's 8.172 MW of solar power will help bring Maryland closer to its RPS goal, as well as providing economic benefits from the approximate \$15 million in capital costs and 40-60 design, management, and construction positions.²⁸ It was initially estimated that construction would begin during the winter of 2019 and be completed around June 2020. The Applicant anticipated utilizing local resources for parts of the design, management, construction, and startup process. CUB Solar claimed the Project would provide a significant tax revenue yield, contribute to the local economy, and reduce the State's reliance on power generated outside Maryland.

33. While the interconnection point remains the same, in light of the revisions to the Project, the previously completed Interconnection Service Agreement ("ISA") and

²⁷ *Id.* at 14. PUA § 7-703 was subsequently amended and now requires 28% of the State's electricity to come from Tier 1 renewable sources, with at least 6% being derived from solar energy. *See* PUA § 7-703(b)(15)(i)1.

²⁸ Applicant Ex. 9 at 14.

Interconnection Construction Service Agreement (“CSA”) must be updated given the Project’s smaller size. Based upon those agreements, the Project’s interconnection will require several upgrades, such as direct and non-direct connection network upgrades, installing additional metering, and point of interconnection (“POI”) upgrades, all of which have been estimated to cost \$205,000.²⁹

34. The Applicant described the numerous permits and approvals that will be required prior to beginning construction. Since the planned area of disturbance is greater than one acre, a National Pollutant Discharge Elimination System General Permit will be required. In relation to the Forest Conservation Act (“FCA”), CUB Solar explained a Forest Conservation Plan (“FCP”) will be prepared and submitted to the County as part of the local site plan process. The Applicant claimed no forested areas would be cut and the planned landscape buffer satisfies the FCA’s “no net loss” requirement, and the Applicant intended to seek an exemption of the afforestation requirement.³⁰ However, CUB Solar acknowledged the FCA is implemented by local jurisdictions and the County will review the Applicant’s Forest Stand Delineation (“FSD”) and FCP and determine what, if any mitigation is required.³¹

35. CUB Solar conducted several meetings with the Town and County regarding the Project. In light of the revisions, the Applicant indicated that the Project would be reviewed pursuant to the County’s site plan process. CUB Solar noted permits, such as grading, electrical, and building permits, will be applied for after the Project has received site plan approval.³²

²⁹ *Id.* at 17 and Appendix (“Appx.”) 2 at 3.

³⁰ Applicant Ex. 9 at 18.

³¹ *Id.*

³² *Id.* at 21; *see id.* at 22-23 – Table 1 – Matrix of State/Local Permits and Approvals.

36. The Applicant explained the Project, as revised, will be set back 75 feet from S. Main Street and 50 feet along E. Whyte Street.³³ Within the setbacks, CUB Solar proposed to plant landscape screening, construct a 6-foot perimeter fence 35 feet from the wooded perimeter's drip line, and construct an emergency drive aisle that will be accessible from the existing entrance on E. Whyte Street.³⁴ CUB Solar noted the Project's output would be delivered through PE to PJM, but the Applicant may also deliver power directly to a local customer or large wholesale purchasers.³⁵

37. CUB Solar explained the Project's design includes approximately 24,375 solar panels that will be installed on a post-supported racking system.³⁶ The Project will have 3 separate transformer pads, each with 1 transformer that will make up one-third of the alternating current capacity, and the transformer will step up the voltage from 600 volts to 34.5 kV.³⁷

38. CUB Solar indicated there would be limited need for water and sewer at the Site as there will be no operations or maintenance facilities on site or full-time personnel.

39. CUB Solar described the Site's land use and cover, noting the area consists primarily of agricultural fields that have been farmed for several decades. The entire Site will be planted and maintained in low cover grass vegetation, in accordance with the Project's site plan and designs. The Applicant proposed to include wild flower seed mixes with selected grasses in order to promote the health of honey bees and other pollinators.³⁸ Pursuant to the

³³ Applicant Ex. 9 at 24.

³⁴ *Id.* at 24-25.

³⁵ *Id.* at 25.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 28.

Town's recommendation, CUB Solar agreed to coordinate with local groups that promote pollinator habitats during the site plan process.

40. The Site is not located within the Chesapeake Bay Critical Area, is generally unaffected by floodplains, and is outside of any wetlands, which will be completely avoided with a 35-foot setback, the Applicant concluded the Project would have no measured impact to streams or floodplains.³⁹ CUB Solar identified jurisdictional waters onsite, but the waters are not in the areas where the solar panels will be installed, and the Maryland Department of the Environment ("MDE") confirmed these findings during site visits on August 2, 2017 and September 20, 2017.⁴⁰ The Applicant also discussed the impacts to stormwater both during construction and operations and how each will be addressed.

41. In terms of construction-related noise, CUB Solar indicated all such noise will be below the average daily 90 decibel rating at the property lines and set forth the maximum noise limits in COMAR. Once the Project becomes operational, the only noise will be from the transformers and inverters at each pad. The Applicant anticipated a low level of noise within the interior of the perimeter fence. CUB Solar noted the closest residential dwelling is approximately a quarter-mile away from the closest inverter pad and the noise levels will be well below the maximum levels at that distance.⁴¹

42. The Project has no lighting requirements. However, the Applicant may consider minimal lighting for security purposes or as required by the CPCN review process.

³⁹ Applicant Ex. 9 at 29. CUB Solar noted a small portion of the fence and perimeter road will be located on the fringe areas of the 100-year flood plain. *Id.* at 43. However, the Applicant's engineer anticipated no significant impacts to the flood plain would occur. *Id.* MDE found this to be acceptable and did not require a hydrologic study. PPRP Ex. 4 at 3.

⁴⁰ Applicant Ex. 9 at 29 and Appxs. 7-8.

⁴¹ Applicant Ex. 9 at 31.

43. CUB Solar conducted a glare analysis to determine whether glare from the Project could impact nearby airports, vehicular traffic, and neighboring properties. There are three airports within 5 miles of the Site: Three J Airport (approximately 3.5 miles away); Harrison Farm Airport 8-MD5 (approximately 5 miles away); and Flying H Farm (approximately 5 miles away).⁴² The Applicant's analysis determined there would be no impact on any of the nearby airports. Additionally, a landscape buffer plan will be submitted to the Town and the County as part of the review process. CUB Solar asserted the landscape buffer plan will address the glare analysis results and be designed to ensure neither vehicular traffic nor neighboring properties are impacted by glare.⁴³

44. The Applicant anticipated major materials and equipment will be delivered by tractor trailers and off-loaded at a staging area. The construction-related traffic will include cars, pickup trucks, and construction vehicles. Once the Project is completed, traffic will mostly be limited to crews conducting quarterly to yearly maintenance, and for mowing and vegetative maintenance.

45. CUB Solar described how the Project will be operated upon completion. Specifically, the Project will have both local and remote control over the electrical system to assure compliance with the interconnection agreements and, for safety purposes, an operations center will remotely monitor performance data and the physical systems throughout the year.⁴⁴ Additionally, the operations plan will include the responsibility to dispatch first responders if necessary.

⁴² *Id.* at 31 and Appx. 9.

⁴³ Applicant Ex. 9 at 32.

⁴⁴ *Id.* at 33.

46. The Applicant asserted, “The Project will not detract from the value or diminish the characteristics of adjacent properties.”⁴⁵ CUB Solar cited a previous PPRP review of a solar project which found vegetative screening mitigates impacts on neighboring property values.⁴⁶ The Applicant concluded the proposed vegetative screening and lack of noise or vibrations perceptible on neighboring properties will result in no impact on nearby property values.

47. CUB Solar claimed the Project will also have no impact on the stability and reliability of the electric system based upon the referenced interconnection studies.⁴⁷

48. The Applicant described the Site as having gently rolling hills that will require no forest cutting or clearing will be required. Additionally, CUB Solar indicated there are no rare, threatened, or endangered (“RTE”) species.⁴⁸ Due to the combination of actively being farmed for decades and the intense development associated with the nearby Lehigh Cement Plant and the Town, the wildlife habitat and biodiversity was described as fair to limited.⁴⁹ The Site contains flora and fauna typical of the area.

49. CUB Solar noted the Maryland Historic Trust (“MHT”) determined the Site is located within an area of interest and, therefore, MHT required the Applicant to conduct a Phase I archeological investigation for certain areas on the Site and that Determination of

⁴⁵ *Id.* at 38.

⁴⁶ *Id.* at 38-39, citing *In the Matter of the Application of Chesapeake Solar, LLC for a Certificate of Public Convenience and Necessity to Construct a 9.0 MW Solar Photovoltaic Generating Facility in Cecil County, Maryland*, Case No. 9451, PPRP’s Environmental Review, dated October 20, 2017, Docket No. 25 at 32-33.

⁴⁷ Applicant Ex. 9 at 39.

⁴⁸ *Id.* at 41 and Appx. 11.

⁴⁹ Applicant Ex. 9 at 41.

Eligibility (“DOE”) forms be prepared.⁵⁰ Therefore, CUB Solar’s contractor conducted the necessary investigation and prepared the associated documentation for MHT.⁵¹

50. The Applicant did not anticipate any impacts on air quality from the Project’s construction or operation. Any impacts will be limited to fugitive dust, which was anticipated to be less than normal because excessive earthwork activities are not required.⁵² Similarly, CUB Solar noted no surface or groundwater would be required for the Project, and any water necessary for cleaning or managing dust would be provided by water tankers. The Applicant noted there are no jurisdictional waters within the Project’s boundary, and no streams or aquifers are anticipated to be impacted either by construction or operation of the Project.

51. Finally, CUB Solar indicated any waste resulting from the Project’s construction would be collected and removed to an approved waste handling facility. During operations, little to no waste will be created, but any such waste would be handled in the same manner. At the conclusion of the Project’s lifespan, all waste from the Project’s decommissioning will be handled in accordance with the Decommission Plan, and the land will revert back to its original condition.⁵³

B. The Town⁵⁴

52. Mayor Jones testified that both he and the Town Council unanimously oppose the revised Project. He claimed the Project is in close proximity to private residences,

⁵⁰ *Id.* at 44 and Appx. 10. The MHT also requested information related to surrounding properties be evaluated for the National Register. *See* Appx. 10 at 2.

⁵¹ Applicant Ex. 9 at 44 and Appx. 10, MHT’s response letters and Appx. 14, CIRCA Cultural Resource Management’s documentation.

⁵² *Id.* at 47-48.

⁵³ Applicant Ex. 9 at 51.

⁵⁴ This Section summarizes the Town’s initial position set forth in its pre-filed testimony.

businesses within the Town, and the Town's Main Street Corridor and constitutes an unwarranted intrusion upon residences, the Town's historic setting, and the esthetics in and around the Town, especially its southern entrance on Main Street.⁵⁵ Mayor Jones indicated the Project is located in areas that are within the Town's Designated Growth Area ("DGA") in the municipal growth element of the Town's Comprehensive Plan. Mayor Jones stated, "In failing to annex the area to be developed into Town, the Project is entirely inconsistent with this essential part of the Plan."⁵⁶ He also indicated the portion of the Project located with the Town is not permitted as a matter of right under current zoning. In the event the Site was not annexed, Mayor Jones testified, "this Project will seal off other industrially-zoned lands in Town into small unattractive segments with very limited industrial potential," and, even if it was annexed, the Project's tax revenue would be much less than a true industrial use.⁵⁷

53. Mr. Cueman testified the Project was not consistent with either the County's or the Town's comprehensive plan and zoning. He noted the Site's location within the Town's DGA and Future Annexation Area as noted in the Town's Community Comprehensive Plan.⁵⁸ He discussed the relationship between the County and the Town from a planning perspective and the recognition of incorporated towns, as well as the unincorporated land immediately surrounding their corporate boundaries, for directing the towns' continued growth and development.

54. Mr. Cueman cited the Land Use Article, *Annotated Code of Maryland*, §§ 3-102 and 3-112, which require a municipality plan to include a growth element, specifically, growth

⁵⁵ Town Ex. 2 at 1.

⁵⁶ *Id.* at 2.

⁵⁷ *Id.* at 3.

⁵⁸ Town Ex. 3 at 1 and Appx. B.

areas outside existing corporate limits.⁵⁹ He claimed the County's 2014 Master Plan only applies to areas outside of the Town's DGA and the County defers to the Town's Comprehensive Plan within the DGA. Mr. Cueman testified, "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 into the future, whatever use the land may be put to, and to enjoy the tax revenue arising therefrom."⁶⁰ He concluded that since the Applicant does not offer or propose to be annexed, the Project was inconsistent with the Town's Comprehensive Plan.

55. Mr. Cueman explained the Project would take up a significant amount of industrial-zoned land and could result in a lost opportunity for the Town in terms of future tax base as the benefits from the Project will be less than a typical industrial use.⁶¹ Additionally, in light of the Project's close proximity to the western and southern boundaries of the Town, the Project is not compatible with the objective to preserve the Town's historic characteristics.⁶²

C. PPRP

56. Mr. Kelley provided an overview of both the Project and the Site. He explained the Project, as revised, will be located on an approximate 195-acre property located on both sides of Maryland Route 75 ("MD 75"), but will be constructed only on a 65-acre portion of that property, most of which is located within the unincorporated area of the County.⁶³ The

⁵⁹ Town Ex. 3 at 5.

⁶⁰ *Id.*

⁶¹ *Id.* at 6; *see* Appx. D – Letter from the County's Economic Development Director, dated June 28, 2019.

⁶² Town Ex. 3 at 6.

⁶³ PPRP Ex. 1 at 3-4.

Project will be located on both the west and east sides of MD 75. On the west side of MD 75, the Project will be located on an approximately 61-acre parcel, directly north of the Kilfadda Farm, while a 3.8-acre parcel east of MD 75 will be the site of the remainder of the Project, and the two sites will be connected via an underground cable.⁶⁴

57. The portion of the Site in the County is zoned IR, IG, and Conservation. Solar facilities in the County are permitted in both the IR and IG districts, and the Project will not be located on any Conservation-zoned land. The portion of the Project within the Town is zoned IR and will only consist of a perimeter road and fencing. The Site has forested areas and wetlands to the west and south of the arrays. Mr. Kelley noted that during two site visits on August 2, 2017 and September 20, 2017, MDE confirmed no wetlands extended into the Project's proposed limits of disturbance.⁶⁵ Mr. Kelley also noted portions of the perimeter fence and road were within the 100-year floodplain; however, MDE did not require a hydrologic study based upon CUB Solar's representation that neither the fence nor road would alter the grades of the floodplain.⁶⁶

58. Mr. Kelley provided an overview of PPRP's independent environmental and socioeconomic evaluation of the Project and the various impacts and factors PPRP considered. He concluded the Project was viable for numerous reasons, including the State's RPS requirements, the technology to be used is sound, and the Site consists of open land free from shading.⁶⁷

⁶⁴ *Id.* at 4.

⁶⁵ *Id.*

⁶⁶ *Id.* at 5.

⁶⁷ *Id.* at 7-8.

1. Environmental Impact Assessment

59. Mr. Kelley described the vegetation on the Site, which includes approximately 9.5 acres of forested areas, but consists mostly of agricultural fields. PPRP concluded the Project would not disturb or result in the removal of the Site's existing vegetative resources.⁶⁸ He noted that while the Project would restrict what vegetation can grow, there will be no detrimental impacts on the soils or future use as farmland. Mr. Kelley highlighted the Applicant's proposal to plant and maintain the Site with low cover grass and white clover to retain soil and replenish organic matter and nutrients to the soil. PPRP recommended a vegetation management program that will preserve the Site's resources and create habitats for both pollinators and wildlife. Specifically, PPRP recommended the areas beneath and between the solar panels be planted with native, warm-season grasses, and the development of a grounds management plan, which must include mowing schedules, management of invasive species, and the use of herbicides and pesticides.⁶⁹ Native flowering plants should also be planted to establish pollinator habitat on the Site.

60. Mr. Kelley stated the FCA is applicable to the Project even though no forests are being cleared, and CUB Solar is required to submit a FDS and FCP to the County. PPRP included a license condition that the Project should be required to comply with the County's Forest Conservation Ordinance.⁷⁰ Based upon the Applicant's Forest Conservation Worksheet, Mr. Kelley indicated the afforestation threshold should be met.

61. In terms of impacts on wildlife, the Site currently offers little habitat. Once constructed, the Project will positively impact wildlife due to the grass and clover that will

⁶⁸ *Id.* at 9.

⁶⁹ *Id.* and PPRP Ex. 8, Condition Nos. 13-14.

⁷⁰ PPRP Ex. 1 at 10 and PPRP Ex. 8, Condition No. 11.

be planted, which will encourage colonization or use by grassland and pollinator species. There are also no State or federal RTE species in the Project area. Mr. Kelley again referenced the vegetation management plan and pollinator habitat license conditions, as well as a condition that addresses the potential for RTE species.⁷¹

62. The Site drains into Sam's Creek in the Monocacy River watershed, but there are no streams, wetlands, or ditches within the Project's Limit of Disturbance ("LOD"). Mr. Kelley determined that the Project's construction and operation would have minimal impacts on streams near the Site; however, PPRP recommended CUB Solar use standard Best Management Practices and implement an Erosion and Sediment Control plan to address stormwater, any potential grading, and soil compaction.⁷²

2. Economic, Demographic, and Fiscal Issues

63. Mr. Kelley stated the Project's construction will take place over a 5- to 7-month period, was initially estimated to be completed by June 2020, and will create approximately 40-60 direct design, management, and construction jobs on-site or at remote locations.⁷³ PPRP anticipated construction jobs would be sourced locally, which will have a positive effect on the community in the form of worker payrolls and consumption expenditures, local purchases of construction material, and associated multiplier effects. Most of the workforce was anticipated to be within daily commuting distance, resulting in no impacts to housing or population-related public services.⁷⁴ PPRP concluded the Project will have a positive net

⁷¹ PPRP Ex. 1 at 11 and PPRP Ex. 8, Conditions Nos.13-15.

⁷² PPRP Ex. 1 at 11-12 and PPRP Ex. 8 Conditions Nos. 10, 12, and 16.

⁷³ PPRP Ex. 1 at 14.

⁷⁴ *Id.*

benefit for the County and the State. There will also be fiscal benefits from tax revenue from corporate, real property, and business personal property.

3. Land Use

64. Mr. Kelley described the Project's layout, consisting of 65 acres with approximately 34 acres within the LOD. The Project is bisected by MD 75, and the Site is bordered by residences and farmland to the south and southwest, and by residences and the Lehigh Portland Cement Plant to the east.⁷⁵ The Site is not within the Chesapeake Bay Critical Area, but is located within the Town's Priority Funding Area.⁷⁶

65. The Site has been used for agricultural purposes for over 100 years and contains a National Register-eligible farmstead, the Kilfadda Farm. Mr. Kelley noted the zoning of the Site in both the County and the Town, and PPRP determined the Project could meet the County's zoning requirements.⁷⁷ However, Mr. Kelley explained the Project will require both the County's and the Town's Planning Commissions to review the final site plan to ensure all applicable laws, regulations, and ordinances are complied with, and that the necessary permits are obtained.⁷⁸ Therefore, PPRP recommended a condition that requires the Project to be designed in substantial conformity to the County's site plan requirements, receive all necessary permits and authorizations prior to commencement of construction, including any requirements of the Town for the portion of the Project within its jurisdiction.⁷⁹

⁷⁵ *Id.* at 15.

⁷⁶ PPRP Ex. 4 at 27.

⁷⁷ PPRP Ex. 1 at 15.

⁷⁸ *Id.*

⁷⁹ *Id.* at 15-16 and PPRP Ex. 8, Condition No. 17.

4. Transportation

66. Mr. Kelley indicated any transportation-related impacts will be limited to the period of construction. He stated the primary entrance to the Kilfadda parcel will be an existing entrance on Green Valley Road (MD 75), just north of Sam's Creek, with an emergency entrance off South Main Street, and the Lehigh parcel entrance will also be located on MD 75 near that parcel's northern boundary.⁸⁰ The Maryland Department of Transportation State Highway Administration ("MDOT SHA") will require access permits for the entrances. Mr. Kelley specified that access to the Site will be limited to the two primary entrances unless both PPRP and the Commission approve alternate, temporary access points.⁸¹

67. PPRP did not anticipate the amount of construction-related traffic to reduce the level of service on nearby roads. Based on CUB Solar's estimates, approximately 72 to 85 truck trips will be required to deliver components and construction materials, with additional truck trips for delivery of construction equipment. MDOT SHA will require hauling permits for oversized or overweight loads on Maryland highways.⁸² Additionally, since the interconnection of the Lehigh parcel will be through an underground cable directly under MD 75, the Applicant must comply with all permitting requirements and restriction for use, crossing, and occupancy of State, County, and Town roads. Additionally, PPRP recommended CUB Solar be required to monitor roads with direct access to the Project, to report any damage to MDOT SHA, and correct any damage within 48 hours.⁸³

⁸⁰ PPRP Ex. 1 at 16.

⁸¹ *Id.* and PPRP Ex. 8, Condition No. 18.

⁸² PPRP Ex. 1 at 17 and PPRP Ex. 8, Condition No. 19.

⁸³ PPRP Ex. 1 at 18 and PPRP Ex. 8, Condition No. 20.

68. Mr. Kelley discussed the Project's potential impact on air navigation. The closest airport, Three J, a private-use airport with a turf runway, is approximately 3.2 miles from the Project, and the Carroll County Regional/Jack B. Poage Field, the closest public use airport, was over 10 miles away. Based on its glare analysis, PPRP found the Project would not adversely effect air navigation.

5. Visual Quality

69. PPRP described the current Site condition, as viewed from a south entrance of the Town, the current views include conventional crops on the left (the location for the majority of the Project) and an electrical substation. The Kilfadda parcel is bordered by a woodland edge on two sides and a thin woodland edge separating the Kilfadda farmhouse and outbuildings from the cultivated fields. To the north of the Lehigh parcel are a cemetery and church, followed by residential and commercial uses. Based upon the revised layout of the Project, the top edge of the solar array will be approximately 10 feet above the ground, and a 75-foot setback from MD 75 will be maintained.

70. The County has setback requirements for solar energy conversion facilities located in industrial zones. Specifically, the County requires setbacks be 200 feet from the boundaries of all residentially zoned properties and 100 feet from the boundary lines of adjoining non-residentially zoned properties.⁸⁴ PPRP included a license condition that CUB Solar be required to certify to both PPRP and the Commission that the Project conforms to the

⁸⁴ PPRP Ex. 4 at 33. The setback may be reduced by up to 50 percent by the County's Planning Commission provided there is supplemental landscaping, as determined by the Planning Commission. *Id.*, citing Carroll County Code § 158.153(D)(3)(a-b).

County's setback requirements and those setbacks have been reviewed and approved by the County.⁸⁵

71. PPRP conducted a viewshed analysis of the Project, which it acknowledged has certain limitations, such as encumbrances to views (trees, utility distribution lines, fences, and low-growing vegetation), atmospheric conditions, the variation of views obscured by forest (may be less when trees lose leaves), and "visual sensitivity," the relative degree of public interest in visual resources and concerns over adverse changes to that resource.⁸⁶ PPRP anticipated the topmost parts of the Project would be visible from homes and businesses near the southern limits of the Town, MD 75 traffic, and the Site's surrounding properties.⁸⁷ Views from the west will be mostly mitigated by existing mature woods, and a woodland edge will block views of some arrays from the south, but not sufficient to mitigate views from the Kilfadda Farm. Mr. Kelley also noted several properties will not be protected by CUB Solar's proposed landscaping, including homes north of Whyte Street and West Locust Street, Union Bridge Church of the Brethren, Mountain View Cemetery and some of South Main Street, which is part of the Old Main Street's scenic byway.⁸⁸ However, some of the views from these properties include the Lehigh Cement Company's facilities and PE's substation.

72. PPRP, in consultation with MHT, concluded the proposed landscaping was insufficient to screen neighboring properties, was inconsistent with the Town's vision to preserve its historic characteristics, and insufficient to preserve the Kilfadda Farm.⁸⁹

⁸⁵ PPRP Ex. 1 at 19 and PPRP Ex. 8, Condition No. 21.

⁸⁶ PPRP Ex. 4 at 34.

⁸⁷ PPRP Ex. 1 at 19-20.

⁸⁸ *Id.* at 20.

⁸⁹ *Id.* and PPRP Ex. 4 at 36

Mr. Kelley stated additional landscaping buffers were required along the northern edge of both the Kilfadda Farm and Lehigh parcels to mitigate views from the Town, and around the Kilfadda Farm. Therefore, PPRP included license conditions for the Applicant to develop a landscape plan to mitigate views of the Project from adjacent public roads, residential properties, and cultural landmarks, and address visual-related complaints/non-compliance with licensing conditions.⁹⁰

73. Mr. Kelley also noted the County's landscape regulations, which include a maintenance agreement and surety/financial assurance to replace the plantings or irrigation systems in perpetuity. PPRP therefore recommended license conditions requiring CUB Solar to execute a maintenance agreement in accordance with the applicable sections of the County Code, and submit a copy of CUB Solar's agreement with a surety or other financial assurance to both PPRP and the Commission.⁹¹

74. The Project's lighting requirements will be addressed by the County during its site plan review. PPRP included a license condition that CUB Solar be required to certify to both PPRP and the Commission that its outdoor lighting distribution plan was approved as part of the County's site plan review.⁹²

75. As part of its review, PPRP conducted a glare analysis to determine the intensity, time of day, and duration of glare from the Project upon nearby residences and public roads based upon the 20-degree fixed-tilt of the panels and assuming no landscaping along the Site. Mr. Kelley testified, "in the absence of effective landscaping, some areas within the Town of Union Bridge, areas south of the project, and traffic along Green Valley Road

⁹⁰ PPRP Ex. 1 at 20-21 and PPRP Ex. 8, Condition Nos. 22 and 27.

⁹¹ PPRP Ex. 1 at 21 and PPRP Ex. 8, Condition Nos. 23-24.

⁹² PPRP Ex. 1 at 21 and PPRP Ex. 8, Condition No. 25.

could experience a moderately strong intensity of glare for an extended period in non-winter months.”⁹³ PPRP defined a “moderately strong intensity of glare” as “glare with the potential to induce a temporary after-image within the receptor’s vision.”⁹⁴ Mr. Kelley indicated that in addition to the glare impacting the Kilfadda Farm complex, the Union Bridge Church of the Brethren, and Mountain View Cemetery could also be impacted, and the glare upon Green Valley Road has motor vehicle safety implications.⁹⁵

76. PPRP noted that while landscape buffers may obscure views of the Project once vegetation matures, off-site glare may not be fully mitigated until the buffer matures. Therefore, PPRP recommended, prior to construction, the Applicant be required “to construct a temporary, opaque buffer to mitigate glare impacts on nearby public roads until the approved landscape buffer matures enough to completely block the sun’s reflections,” and that the Applicant be required to address complaints related to potential solar reflections.⁹⁶

6. Cultural and Aesthetic Resources

77. PPRP noted four properties on the National Register of Historic Places (“NRHP”) within one mile of the Site, the closest of which is the Union Bridge Historic District, and three structures are on the National Register – Mt. Pleasant, Pipe Creek Friends Meeting House, and Hard Lodging (Solomon’s Folly).⁹⁷ There are also several properties on the Maryland Inventory of Historic Properties (“MIHP”) within one mile of the Site, including

⁹³ PPRP Ex. 1 at 21.

⁹⁴ *Id.* at fn. 3; PPRP Ex. 4 at 40, fn. 21.

⁹⁵ PPRP Ex. 1 at 21-22.

⁹⁶ *Id.* at 22 and PPRP Ex. 8, Condition Nos. 26-27.

⁹⁷ PPRP Ex. 1 at 22 and PPRP Ex. 4 at 42.

the Kilfadda Farm. Based on the MHT's review, it noted three items of archeological importance and the NRHP-listed Union Bridge Historic District, which is adjacent to the Site along its northern and eastern boundaries.

78. Based on the Phase I investigation, MHT determined none of the referenced archeological sites were eligible for the National Register, but the Kilfadda Farm was National Register eligible.⁹⁸ MHT found the Project, as proposed, would adversely affect the Kilfadda Farm and recommended additional landscaping between the Project and the Kilfadda Farmhouse be considered. Therefore, PPRP included a license condition incorporating the MHT's request for additional landscaping and a condition requiring the Applicant to supplement the DOE with additional documentation related to the Kilfadda Farm complex.⁹⁹ PPRP also recommended a condition that in the event relics or unforeseen archeological sites are revealed and identified during construction, the Applicant should be required to work with MHT to develop and implement a plan for avoidance and protection, data recovery, or destruction without recovery of such relics or sites.¹⁰⁰

79. Mr. Kelley also indicated the Project impacts a Maryland Heritage Area as it is within the Heart of the Civil War Heritage Area ("HCWHA"). MHT determined the Project will adversely impact the HCWHA by altering the character and general esthetics of the area. In consultation with HCWHA, PPRP recommended a license condition "that extends the landscape buffers around the Kilfadda parcel, along South Main Street and along the northern edge of the Lehigh parcel to mitigate views from Green Valley Road and the project's impact on the HCWHA."¹⁰¹ Additionally, the HCWHA recommended

⁹⁸ PPRP Ex. 1 at 23.

⁹⁹ *Id.* and PPRP Ex. 8, Condition Nos. 22 and 28.

¹⁰⁰ PPRP Ex. 1 at 23 and PPRP Ex. 8, Condition No. 29.

¹⁰¹ PPRP Ex. 1 at 23-24.

enhancements to the entrance into the Union Bridge Historic District and additional mitigation related to the Kilfadda Farm, the Union Bridge Toll House site, and Civil War-related material. Mr. Kelley noted further negotiations were required to determine how to address HCWHA's concerns; therefore, PPRP recommended the Applicant to address the mitigation strategies suggested by HCWHA.¹⁰²

80. PPRP noted Maryland's Old Main Streets Scenic Byway bypasses the Site on Green Valley Road. In addition to the referenced landscaping buffer that should mitigate views of the Project from the byway, PPRP recommended CUB Solar consult with the MDOT SHA Scenic Byways Coordinator to ensure the Project maintains and enhances the byway's visual quality.¹⁰³

81. Mr. Kelley also referenced conditions to protect bicyclists in the area of Union Bridge, as MD 75 has been designated as a State bikeway corridor. The additional truck and construction-related traffic could impact the safety of cyclists; therefore, PPRP recommended a license condition that the Applicant and its contractors be aware of the on-road bicycle route designations near the Site and traffic laws related to bicycles, and that the Applicant certify to both PPRP and the Commission that it consulted with the MDOT SHA Bicycle and Pedestrian Coordinator to ensure all activities are conducted in a manner that minimizes conflict with bicyclists.¹⁰⁴

7. Public Services and Safety

82. Mr. Kelley indicated the Project's construction and operation would not require additional public support under normal conditions. In the event of a fire, the Carroll County

¹⁰² *Id.* at 24 and PPRP Ex. 8, Condition No. 30.

¹⁰³ PPRP Ex. 1 at 24 and PPRP Ex. 8, Condition No. 31.

¹⁰⁴ PPRP Ex. 1 at 25 and PPRP Ex. 8, Condition Nos. 32-33.

Department of Public Safety will dispatch first responders, and the Union Bridge Fire Company is the closest fire company to the Site. PPRP recommended a condition that CUB Solar be required to design, install, and maintain the Project to the minimum standards set forth in the National Fire Protection Association's ("NFPA") NFPA 1 Fire Code Handbook and NFPA 70 National Electrical Code.¹⁰⁵ The likelihood of a fire is low, but a fire at a solar photovoltaic facility presents unique challenges. Therefore, PPRP recommended the Applicant coordinate with both the Union Bridge Fire Company and the County Department of Public Safety to develop protocols to address on-site emergencies.¹⁰⁶

8. Property Values

83. Mr. Kelley explained the Project will largely be out of site from nearby properties given the Project's low-vertical profile and the proposed landscape buffering. Additionally, once operational, the Project will not emit significant pollution (traffic, noise, air, or water) and will generate no hazardous waste. PPRP concluded the Project will have a moderately benign local presence once the facility is operational which suggests that property values will be unaffected by the project.¹⁰⁷

9. Noise Impact Assessment

84. Mr. Kelley discussed the allowable noise levels, during both construction and operations, set forth in COMAR. He testified during construction, the noise should not exceed the allowable levels. In terms of operational noise, PPRP noted noise from solar generators is typically low and is primarily associated with the inverters and transformers.

¹⁰⁵ PPRP Ex. 1 at 25 and PPRP Ex. 8, Condition No. 34.

¹⁰⁶ PPRP Ex. 1 at 26 and PPRP Ex. 8, Condition No. 35.

¹⁰⁷ PPRP Ex. 1 at 26.

Mr. Kelley testified the distance between the project panels and the nearest residence was approximately 760 feet.¹⁰⁸ Based upon that distance, PPRP concluded the solar array will not create any discernible noise at the residential receptor. Additionally, he noted all nearby residences were sufficient distances from the inverter pads and any noise from the invertors will be below ambient background noise levels.

85. Mr. Kelley noted the County has regulations for “sensitive receptors,” such as the Union Bridge Church of the Brethren. However, based upon the 175-foot distance between the closest solar panel to the Church’s property line, the noise was not expected to have a significant impact.¹⁰⁹ Based upon its own independent evaluation, PPRP found the Project’s noise levels will not exceed allowable levels and included a condition requiring construction and operation of the Project to comply with the applicable noise standards.¹¹⁰

10. Electromagnetic Field Impact Assessment

86. Mr. Kelley explained that electromagnetic fields (“EMF”) from the Project are projected to fall below threshold human health standards at a distance of three feet. Therefore, PPRP concluded the 50-foot buffer between the solar panels to the property line will not result in EMF levels that would pose a threat to nearby residents.¹¹¹

11. Decommissioning

87. At the end of a solar generating facility’s operating life, the facility must be dismantled and all components must be removed. Specific to facilities constructed on

¹⁰⁸ *Id.* at 27.

¹⁰⁹ *Id.* at 28.

¹¹⁰ *Id.* and PPRP Ex. 8, Condition No. 4.j.

¹¹¹ PPRP Ex. 1 at 28.

agricultural land, PPRP has previously recommended license conditions that ensure future landowners can use the underlying parcels for agricultural or other useful purposes. Accordingly, PPRP recommended a license condition that outlines the responsible party(ies), timeframes, and cost estimates for decommissioning, dismantling, and the legal disposal of all components, both below and above ground, recycling/reusing components, and securing the required financial guarantees.¹¹²

88. The financial instrument will ensure decommissioning costs are not borne by the State or the County at the end of the Project's useful life or in the event the Project is abandoned, and the instrument must be in place prior to beginning construction. Additionally, PPRP recommended the Applicant be required to provide a decommissioning estimate from a third-party consultant to determine the amount of the surety bond, letter of credit, or other financial arrangement.¹¹³ The decommissioning estimate must also be updated every five years to adjust for inflation or other changes during the life of the Project.

12. Response to Town's Opposition

89. PPRP reviewed the Town's testimony and Mr. Kelley concluded the Project would economically benefit the Town if the Project's underlying parcels in the DGA were annexed into the Town.¹¹⁴ He cited a similar situation in a recent CPCN case wherein the Town of Greensboro initially opposed a solar project, but subsequently withdrew its opposition after the applicant consented to the annexation of three parcels within Greensboro's DGA.¹¹⁵

¹¹² PPRP Ex. 4 at 11-12 and PPRP Ex. 8, Condition No. 36.

¹¹³ PPRP Ex. 4 at 12 and PPRP Ex. 8, Condition No. 36.

¹¹⁴ PPRP Ex. 1 at 31.

¹¹⁵ *Id.*, citing *In the Matter of the Application of the Cherrywood Solar I, LLC for a Certificate of Public Convenience and Necessity to Construct a 202 MW Solar Photovoltaic Generating Facility in Caroline County, Maryland*, Case No. 9477.

PPRP noted the Town may withdraw its opposition should CUB Solar agreed to annex the part of the project in the DGA into the Town's corporate limits.¹¹⁶

D. Staff

90. Mr. Lo described the Project and indicated its PJM Queue Position AB1-096, in which a 9.9 MW alternating current solar facility with 3.8 MW peak capacity was evaluated, with a finding by PJM of no potential adverse impact on the stability and reliability of the local distribution system.¹¹⁷ In light of the reduction in the Project's size, the ISA, CSA, and other related studies are being updated by PJM. The Project will require certain upgrades, including direct and non-direct connection network upgrades, and the installation of additional metering and POI upgrades.

91. Mr. Lo explained the process to connect to the regional transmission system, and the required studies (Feasibility, System Impact, and Facilities) and agreements (Generation Interconnection Facilities Study Agreement, ISA, or Upgrade CSA) necessary for interconnection.¹¹⁸ The referenced studies determine a project's interconnection requirements and network impacts, and the system enhancements necessary to accommodate the generator and maintain the reliability and stability of the transmission system.

92. Mr. Lo initially noted that if the CPCN is approved, construction could begin in the winter of 2019 and be completed by the summer of 2020. The System Impact Study was completed in March 2016 and confirmed the Project could interconnect to PE's system.

¹¹⁶ PPRP Ex. 1 at 31-32.

¹¹⁷ Staff Ex. 1 at 4.

¹¹⁸ *Id.* at 4-7.

However, as previously noted, the ISA and CSA were in the process of being updated due to revisions to the Project.¹¹⁹

93. Mr. Lo detailed how the Project will connect to PE's distribution system. He testified the POI will be made through an overhead tap line and tap into the 34.5 kV line between the Carroll and Mt. Airy Substations.¹²⁰ The Project will have three separate power inverters grouped together with approximately three transformers. CUB Solar will be responsible for design and construction related to activities on its side of the POI and must provide protective relaying, metering design, and installation compliance with PE's applicable standards, and provide revenue metering and real-time telemetering data to PJM. The Applicant will be responsible for all costs of the interconnection upgrades which have been estimated to be \$205,000.¹²¹ Mr. Lo explained the importance of the stability analysis for projects interconnecting with PJM. He indicated the Applicant would be required to comply with PE's and PJM's interconnection requirements, complete any necessary upgrades, and meet milestones in the ISA and CSA prior to the Project becoming operational.¹²²

94. Mr. Lo concluded the Project will bring Maryland closer to the RPS target of 50 percent renewable energy by 2030, with 14.5 percent being supplied by solar generation. Therefore, he recommended a CPCN be issued for the Project subject to six conditions, one of which includes any conditions recommended by PPRP.¹²³

¹¹⁹ *Id.* at 8.

¹²⁰ *Id.*

¹²¹ *Id.* at 8-9.

¹²² *Id.* at 9-10.

¹²³ *Id.* at 11-12.

E. Applicant's Rebuttal

95. Mr. Morrissey explained how the Project changed from the initial proposal and provided a chronology of various meetings and events with the Town related to the Project. He stated CUB Solar was amenable to several of the Town's requests, however, the Town's demands related to the Project increased over time.¹²⁴ Mr. Morrissey noted the Town's Planning Commission's recommendations: 1) annexation of the unincorporated portion of the Project into the Town; 2) that five acres be conveyed unconditionally to the Town at a future date for a future waste water treatment plant; 3) that land for a future stormwater management facility be conveyed to the Town or the County; and 4) that the Project produce substantial tax benefits for the Town.¹²⁵ While the Applicant generally agreed with those conditions, the tax benefit condition required the execution of a PILOT (payment in lieu of taxes) agreement with the Town and/or the County.

96. Mr. Morrissey indicated the County was not interested in a joint Applicant/Town proposal to allocate some of the County's potential tax revenue to the Town. He stated the Town then conditioned its support of the Project on a PILOT agreement that he estimated was five times what the Project would normally have been taxed over a 25-year period (\$130,000 vs. \$660,000), an amount that would have been in addition to taxes assessed by the County.¹²⁶ Mr. Morrissey opined that the Town's requested PILOT, in addition to the other demands, was excessive and would make the Project uneconomical. As a result of the Town's demands, the Applicant redesigned the Project and located the entire solar array in the County.

¹²⁴ Applicant Ex. 14 at 4.

¹²⁵ *Id.*

¹²⁶ *Id.* at 5.

97. The Applicant also disagreed with the Town's position that the Project would have a negative esthetic impact on the Town. Mr. Morrissey noted the 500-foot buffer, including the R-6,000 parcel that is currently farmed, between residences within the Town.¹²⁷ He highlighted PPRP's proposed Condition No. 22 that requires a landscape buffer outside the perimeter fence to screen the Project from adjacent public roads, residential properties, and cultural landmarks.¹²⁸ Mr. Morrissey claimed the proposed landscaping condition was the most robust screening requirement he has seen in his experience developing solar projects.

98. In relation to PPRP's glare mitigation condition, Condition No. 26, Mr. Morrissey believed the condition was overly broad. Therefore, CUB Solar proposed revised wording to clarify the condition.¹²⁹

F. PPRP's Response

99. Mr. Kelley did not agree entirely with the Applicant's proposed revisions to Condition No. 26. While he agreed with allowing CUB Solar to use the Project's security fencing to augment visual buffering, he disagreed with the Applicant's removal of the basis of the condition to create a temporary buffer that could be removed once the permanent buffer was installed and performing effectively.¹³⁰ Mr. Kelley explained the condition was a safeguard for glare to both surrounding properties and for those using the public roadway entering the Town. PPRP proposed slight revisions to Condition No. 26 to allow the

¹²⁷ *Id.* at 6.

¹²⁸ *Id.* at 6-7.

¹²⁹ *Id.* at 8.

¹³⁰ PPRP Ex. 5 at 1.

Applicant to utilize the security fencing to obscure glare and which still addresses PPRP's concerns.¹³¹

IV. The Settlement

100. Over a period of several months, the Applicant and the Town ("the Settling Parties") engaged in negotiations and were ultimately able to come to an agreement, effectively ending the Town's opposition to the Project. The Settlement included the following pertinent terms:

CUB Solar, prior to beginning construction, shall initiate the annexation of Tax Map 34, Parcel 102, the Project Parcel, by the Town, and that the Settling Parties would enter into an annexation agreement; that a portion of the Project would be sited within the Industrial – Restricted zoning district currently within the Town consistent with the site map (Appendix B) and the CPCN Application would be amended to reflect the site map; that prior to construction, the Settling Parties would enter into a Payment in Lieu of Taxes ("PILOT") agreement (Appendix C); that prior to construction, the Settling Parties would execute a purchase option agreement, that provides the Town the option to purchase, for up to 5 years, up to the entire portion of the Project Parcel zoned R-6000 and up to 2 acres of the Applicant's land zoned Conservation adjacent to the R-6000 zone for the construction of a wastewater treatment facility and/or stormwater management facility; prior to construction, the Applicant would design and install a landscape buffer within the setback and outside of the perimeter fence that will screen, at least 6 feet above ground level at planting and 30 feet at maturity views of the Project; the Applicant shall reimburse the Town up to \$5,000 of the Town's documented, third-party expenses associated with the referenced annexation process; the Applicant shall reimburse the Town for legal and consulting fees associated with this proceeding, up to and including the date the Proposed Order is issued; and that the Applicant and Town agreed not to contest PPRP's and Staff's proposed license conditions and that the Town will withdraw its opposition to the Project on the grounds of consistency with the Town's zoning and comprehensive plan.¹³²

¹³¹ *Id.* at 2; *see also* PPRP Ex. 9.

¹³² Applicant Ex. 13 at 3-6. The referenced items are a synopsis of certain terms of the Settlement Agreement. The Settlement Agreement also contained standard provisions, *i.e.*, that the settlement was being entered into to resolve issues raised in relation to the Project, the settlement resulted from extensive negotiations, and if the Commission does not unconditionally approve the Settlement, it becomes null and void, *etc.* *Id.* at 6-8.

V. Public Comments

101. The first evening hearing was attended by approximately 15-20 people and 4 individuals provided comments. They expressed concerns about the landscaping buffer, the Project's location near the entries to the Town, and the potential impacts on property values. Questions were also raised as to whether the Town and residents would be able to purchase the electricity generated by the Project. One individual expressed support for the Project claiming that the Town needed to expand.

102. The second evening hearing was attended by approximately 10-12 people; however, no comments were made. The Town's counsel read a brief statement of the case and the Town's position in opposition to the project in order to provide the attendees background information about the Project.

103. The only written comments were filed by the Maryland Municipal League in support of the Town's initial position. The MML explained the Applicant's siting of the Project and the refusal to annex the facility into the Town runs counter to Maryland's smart growth premise that was adopted 25 years ago.

VI. Evidentiary Hearing

A. Staff's Request to Take No Action on the Settlement

104. Prior to calling witnesses, the parties made arguments in relation to Staff's Request. Staff indicated that while it was not opposed to the Settlement, it recommended the Commission take no action on the Settlement. Specifically, Staff noted five commitments that it asserted were beyond the Commission's jurisdiction, namely, the Applicant's initiation of the annexation; the reimbursement of the Town for expenses related to the annexation process; the PILOT agreement; the purchase option; and the reimbursement to

the Town for expenses associated with this proceeding.¹³³ Staff asserted that the Commission would need to determine that the commitments are in the public interest in order to approve the Settlement.

105. At the beginning of the evidentiary hearing, Staff asserted its main concern was the Commission being drawn into a dispute about the terms of the Settlement and being required to enforce those terms, such as the land annexation, for which the Commission has no expertise.¹³⁴ Staff acknowledged the commitments between the Town and the Applicant fall within the factors set forth in PUA § 7-207, but then argued certain commitments fall outside of the Commission's jurisdiction.¹³⁵ Alternatively, Staff suggested the Settlement be accepted with a clarification that enforcement of the provisions would not come from the Commission.¹³⁶

106. The Applicant cited that the commitments fall squarely within PUA § 7-207 and noted CPCNs typically include license conditions that are beyond the Commission's expertise, such as the requirement to obtain site plan approval from the local government.¹³⁷ The Town highlighted that the commitments in the Settlement effectively brought the

¹³³ Staff's Reply at 1. Staff also noted the Settlement Agreement contained a condition related to the landscape buffer, an item which was addressed by PPRP's Recommended License Conditions, and was therefore unnecessary.

¹³⁴ Tr. at 15-16.

¹³⁵ Tr. at 16-18.

¹³⁶ Tr. at 32.

¹³⁷ Tr. at 20. For example, the Applicant pointed to a requirement that a utility construct bike trails under transmission lines as a condition in the approval of a merger. *See Re Merger of Exelon Corp. and Pepco Holdings, Inc.*, 106 Md. P.S.C 95, 166 (2015)(Condition 43 of the approved merger required the Potomac Electric Power Company ("Pepco") to coordinate with various government agencies to establish a pilot program that would allow access to specified portions of Pepco's transmission-line property for recreational and transportation use by the public, and specified the first pilot project would be a combined paved and natural surface trail system at a specified location).

Project into compliance with PUA § 7-207, in terms of the Project's consistency with the Master Plan and economic impact, and addressed the Town's opposition to the Project.¹³⁸

107. The Town also highlighted the State's Secretarial Letter which suggested the Applicant work with the Town in terms of annexation. PPRP agreed with the Town's and the Applicant's position, while OPC took no position on the issue.

108. After considering the parties' arguments, I denied Staff's Request. I disagree with Staff that the Commission lacks jurisdiction to incorporate the terms of the Settlement into an order approving a CPCN. I find that the commitments contained in the Settlement clearly fall within the PUA § 7-207(e) factors the Commission is required to consider when evaluating a CPCN application, and I stress that Staff agreed that the commitments fell within those statutory factors.¹³⁹ Moreover, I also find the commitments to be in the public's interest, especially the interests of the Town and its residents.

109. I find the items that concern Staff to be no different than many other commitments or conditions that the Commission routinely imposes on applicants, for which the Commission relies *entirely* upon PPRP's expertise. While some of the terms are not typically contained in a Settlement, *i.e.*, annexation¹⁴⁰ and reimbursement to the Town for certain expenses, I find the Settlement, in its entirety, can and should be incorporated into CUB Solar's CPCN. I specifically find the Settlement results in the Town supporting the Project where it was initially opposed, addresses issues related to esthetics, historic sites, zoning and consistency with the applicable comprehensive plan, and ensures the Project will have a positive economic impact on the Town.¹⁴¹ Additionally, I note that PPRP's testimony specifically

¹³⁸ Tr. at 23-24.

¹³⁹ See Tr. at 16-18.

¹⁴⁰ See Case No. 9477, Order No. 89096, *slip op.* at 7 (dated March 5, 2019).

¹⁴¹ See PUA § 7-207(e)(1-3).

indicated that the Town would economically benefit from the Project if the Project's underlying parcels in the DGA were annexed into the Town.¹⁴²

110. It is not reasonable to simply consider, rather than fully accept and incorporate, the Settlement and the commitments that fall specifically within PUA § 7-207 based solely on speculative concerns that the Commission may be drawn into an enforcement action involving an issue that may be beyond its expertise. Staff also presumes that the Commission, rather than the courts, will be the venue for enforcement-related issues. I also dismiss Staff's alternative, which effectively would split the enforcement of CPCN conditions between the Commission and the courts, as unreasonable and unnecessary.

B. Cross-examination of CUB Solar's and PPRP's Witnesses

111. As a result of the Settlement, all parties' testimony and exhibits were stipulated into the record. Both Messrs. Morrissey and Kelley took the stand pursuant to my request. First, Mr. Morrissey explained that the only difference in the Project, based on the Settlement, from what was proposed in the Applicant's Amended ERD is that approximately 5 to 10 acres has been added to the Project's footprint, which will include extending into the Town's current boundaries.¹⁴³ The increased footprint did not increase the Project's capacity and essentially will allow for a more efficient layout. Mr. Morrissey anticipated construction beginning during the second half of 2020 and hoped to begin commercial operations in early 2021.¹⁴⁴

¹⁴² See PPRP Ex. 1 at 31.

¹⁴³ Tr. at 36-37.

¹⁴⁴ Tr. at 38.

112. Mr. Kelley confirmed that PPRP was confident that the landscape buffering, which will be reviewed by both PPRP and MHT, will properly safeguard the Kilfadda Farm.¹⁴⁵ He also confirmed that the modified glare condition in his supplemental testimony was intended to be included in PPRP's final Recommending Licensing Conditions.¹⁴⁶

VII. Applicable Law

113. PUA § 7-207(e) mandates the Commission to take final action on a CPCN application only after due consideration of the following:

- (1) the recommendation of the governing body of each county or municipal corporation in which any portion of the construction of the generating station, overhead transmission line, or qualified generator lead line is proposed to be located;
- (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; and

¹⁴⁵ Tr. at 47-48.

¹⁴⁶ Tr. at 49-52; *see* PPRP Ex. 9.

- (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.

VIII. Analysis and Findings

A. Public Comments

114. There was not a substantial amount of public participation in this proceeding, but significant issues were raised during the first evening hearing and in the written comment that was submitted. The issues raised included concerns about the proposed landscaping buffer, the location of the Project near the Town's entrance, impacts on property values, and concerns about the Applicant's refusal to annex the Project into the Town. However, in reviewing the record, I find these issues were either specifically addressed by PPRP's analysis and proposed license conditions, are not supported by the record, or are no longer relevant.

115. First, in relation to landscaping and visibility, PPRP imposed significant landscaping requirements, which will require both the Town and the County's approval and the buffer must be maintained for the life of the Project.¹⁴⁷ The Town's opposition to the Project is documented, and its entry into the Settlement is evidence of the Town's satisfaction with not only the terms of the Settlement, but with the Project and PPRP's licensing conditions. Moreover, PPRP specifically included a condition that creates a complaint resolution process in the event either reflective glare or the visibility the Project's structures impact

¹⁴⁷ PPRP Ex. 8, Conditions 22-24.

nearby roads or residents.¹⁴⁸ Provided the Applicant complies with the landscaping conditions, concerns related to the Project's visibility should be adequately addressed. Second, there is nothing in the record that would support a finding that the Project will impact property values. Finally, the MML's comments are moot in light of the Settlement between the Town and the Applicant.

B. PUA § 7-207(e) Factors

1. Recommendations of Carroll County and the Town of Union Bridge

116. In light of the Settlement between the Applicant and the Town, I find the Town specifically supports the Project.¹⁴⁹ Carroll County did not participate in this proceeding or express any opinion on the Project.

2. Stability and Reliability of the Electric System

117. The evidence is undisputed that the Project will have no adverse impacts on the electric transmission system, provided CUB Solar complies with the conditions recommended by Staff. Mr. Lo specifically found the Applicant's compliance with Staff's Conditions, which include complying with PJM's and PE's interconnection requirements and completion of the required upgrades and milestones set forth in the ISA and CSA, will ensure no adverse impacts occur.¹⁵⁰ Additionally, Mr. Lo testified CUB Solar's compliance with those agreements will also ensure that the interconnection facilities will be properly

¹⁴⁸ Condition No. 27.

¹⁴⁹ See Applicant Ex. 13.

¹⁵⁰ Staff Ex. 1 at 10.

designed, procured, installed, and constructed.¹⁵¹ Therefore, I find if the Project is constructed and operated in accordance with Staff's license conditions, the Project will have no impact upon the reliability and stability of the electric system.

3. Economics

118. The record demonstrates the Project's economic benefits will have a positive impact on the Town, the County, and the State. In addition to the \$15 million capital investment, the Applicant estimated the Project would result in approximately 40-60 jobs being created and will generate tax revenue and contribute to the local economies.¹⁵² The Settlement also contains several agreements that will result in positive economic impacts, especially for the Town. The Town and the Applicant agreed to execute a PILOT agreement that will result in the Town receiving a significant amount of tax revenue over the 25-year life of the Project.¹⁵³

119. The Settlement also requires the Applicant and the Town to enter into an Annexation Agreement, and that the Applicant initiate annexation of Tax Map 34, Parcel 102 by the Town, and to execute a purchase option agreement that allows the Town the option to purchase land in order to construct a wastewater treatment facility and/or stormwater management facility.¹⁵⁴ Finally, CUB Solar agreed to reimburse the Town up to \$5,000 for the Town's third-party expenses associated with the referenced annexation, and the Town will be reimbursed for legal and consulting fees associated with the Town's participation in

¹⁵¹ *Id.*

¹⁵² Applicant Ex. 9 at 14.

¹⁵³ Applicant Ex. 13 at 4 and Appx. A.

¹⁵⁴ Applicant Ex. 13 at 3-4.

this case.¹⁵⁵ Therefore, I find the Project, if constructed, will provide positive economic benefits for the Town, the County, and the State.

4. Esthetics

120. As originally proposed, most views of the Project from the west will be screened by existing mature woods, as will some views from the south, but the Project's topmost parts (array edges, inverters, perimeter fencing) would be visible from homes and businesses near the Town's southern limits.¹⁵⁶ The record demonstrates that PPRP, in coordination with MHT, found CUB Solar's initially proposal landscape buffer to be inadequate in terms of screening nearby residences and was inconsistent with the Town's emphasis on preserving its historic characteristics and values.¹⁵⁷

121. Therefore, PPRP mandated additional buffering along the northern edge of both the Kilfadda and Leigh parcels to mitigate views.¹⁵⁸ The Applicant has agreed to comply with landscaping requirements recommended by PPRP, which also requires the buffer to be planted, both within the designated setback and outside of the perimeter fence, to a minimum of 6 feet at planting and 30 feet at maturity.¹⁵⁹ Additionally, PPRP included conditions that require the Applicant to maintain the buffer for the life of the Project and submit a surety agreement related to cover the replacement of planting or irrigation systems for the buffer.¹⁶⁰ The Applicant has agreed to comply with the applicable County setback

¹⁵⁵ *Id.* at 5. While the Applicant's agreement to reimburse the Town for certain expenses is technically not a positive economic impact, I find the Applicant's reimbursement commitments will benefit the Town and are, therefore, reasonable to be considered.

¹⁵⁶ PPRP Ex. 4 at 34-35.

¹⁵⁷ PPRP Ex. 1 at 20 and PPRP Ex. 4 at 36.

¹⁵⁸ PPRP Ex. 1 at 20 and PPRP Ex. 4 at 37.

¹⁵⁹ PPRP Ex. 8, Condition No. 22.

¹⁶⁰ PPRP Ex. 8, Condition Nos. 23-24.

requirements (200 feet from the boundaries of residentially zoned properties and 100 feet from boundaries all non-residentially zoned properties) as part of PPRP's final Recommended License Conditions.¹⁶¹

122. Additionally, CUB Solar will also be required to install an opaque buffer, such as additional fencing, landscaping, and/or berms) to mitigate glare on surrounding public roads and properties prior to installation of the solar panels.¹⁶² I find this buffer, which must remain until such time the permanent landscape buffer matures and provides an opaque visual barrier to Green Valley Road, will address the potential for glare-related impacts on vehicles on Green Valley Road, as well as nearby properties.

123. Based on these facts, I find that the Project will have no significant effects on esthetics on nearby properties provided the Applicant complies with the PPRP's License Conditions, the County's requirements, and the terms of the Settlement.

5. Historic Sites

124. There are several properties on the NRHP and the MIHP within one mile of the Site. As a result of MHT's directive, the Applicant completed a Phase I archeological investigation, the MHT specifically found the Kilfadda Farm was National Register eligible.¹⁶³ Therefore, CUB Solar must supplement the DOE form with documentation related to the interior spaces within the farm house and agricultural buildings prior to construction.¹⁶⁴ Additionally, in order to mitigate the adverse impacts on the Kilfadda Farm, MHT recommended additional landscaping be required. Based on MHT's findings and

¹⁶¹ PPRP Ex. 8, Condition No. 21

¹⁶² PPRP Ex. 8, Condition No. 26 (attached hereto as Appx. B); *see also* PPRP Ex. 1 at 21.

¹⁶³ PPRP Ex. 1 at 22-23.

¹⁶⁴ *Id.* at 23 and PPRP Ex. 8, Condition No. 28.

recommendations, and PPRP's recommended licensing conditions related to additional landscaping and documentation, I find the Project's impact on the Kilfadda Farm will be sufficiently mitigated, and that historic sites will not be impacted by the Project provided the Applicant complies with PPRP's License Conditions.

6. Aviation Safety

125. The record indicates there are several airports, but none closer than three miles from the Project. Based upon CUB Solar's and PPRP's glare analysis, which both predicted no glare impacts, I find that the Project will have no adverse effects on aviation safety if the Project is constructed as proposed.

7. Air Quality and Water Pollution

126. The record indicates that the fugitive dust resulting from construction should be less than a normal construction project because excessive earthwork activities are not required. CUB Solar highlighted that the approved sediment and erosion control plans will include requirements to address dust control during construction.¹⁶⁵ Additionally, the Project will not emit air pollutants during operation, and construction-related emissions will be temporary and have little impact on air quality.

127. In relation to impacts on water, the Project will have limited water and no sewer requirements for either construction or operation.¹⁶⁶ Additionally, the Site's wetlands are outside the LOD and will not be disturbed, and there will be no impacts to streams or aquifers. PPRP determined nearby streams will be minimally impacted by the construction

¹⁶⁵ Applicant Ex. 9 at 48.

¹⁶⁶ *Id.* at 48-49.

and operation of the Project due to current uncontrolled runoff from the Site's agricultural fields;¹⁶⁷ therefore, PPRP recommended several conditions to prevent such impacts, including conditions related to sediment control, soil compaction management, and grading and stormwater management.¹⁶⁸

128. Based upon the record, I find the Project will have no adverse effects on air or water pollution provided the Applicant complies with PPRP's License Conditions.

8. Timely Disposal of Wastes Produced

129. No party contested the Applicant's assertions related to the appropriate disposal of construction-related waste, which are not expected to be significant, from the Site. Any such waste will be removed from the Site and transported to an approved waste handling facility.¹⁶⁹ Once operational, the Project will produce little to no waste. Therefore, I find that waste materials produced during construction and operation of the Project will be collected and removed from the Site, and disposed of at an approved facility, and conditions are in place governing the decommissioning of the Project.¹⁷⁰

9. Consistency with the Town's and the County's Comprehensive Plans and Zoning

130. As part of the Settlement, the Town withdrew its opposition to the Project on the grounds of consistency with the Town's zoning and comprehensive plan, and the public convenience and necessity of the Project.¹⁷¹ In relation to the County, both the Applicant

¹⁶⁷ PPRP Ex. 1 at 11.

¹⁶⁸ PPRP Ex. 8, Condition Nos. 10, 12, and 16.

¹⁶⁹ Applicant Ex. 9 at 50.

¹⁷⁰ *Id.* at 50-51 and PPRP Ex. 8 at Condition 36.

¹⁷¹ Applicant Ex. 13 at 6, para. 8.

and PPRP noted utility-scale solar projects are permitted within the industrial-zoned districts of the County, and PPRP specifically determined the Project, as designed, either meets or was capable of meeting the County requirements for solar arrays.¹⁷² Therefore, in light of the Settlement and the determination that the Project can meet the County's zoning requirements for solar arrays, I find the Project to be consistent with both jurisdictions' comprehensive plans and zoning requirements.

10. Efforts Taken to Resolve any Issues with the Town and the County

131. The record indicates the Town was strongly opposed to the Project, as initially proposed and as revised, due to various concerns related to the economic impact, esthetics, impact on historic sites, and the lack of consistency with both the Town's zoning and comprehensive plan. However, the Applicant and the Town were able to reach an agreement, as documented in the Settlement that resolved all the Town's concerns. I find the Settlement to be a positive representation of CUB Solar's efforts to resolve issues raised by the Town. The County did not participate in this proceeding and the record does not indicate the County raised any concerns related to the Project.

C. Other Considerations

1. Decommissioning

132. CUB Solar agreed with PPRP's recommended license condition related to the decommissioning of the Project. I find such a plan is necessary to ensure the Project is decommissioned in an appropriate manner at the end of its useful life, in the event the Project is abandoned, or ceases to be operational. I also find PPRP's recommended license

¹⁷² PPRP Ex. 1 at 15.

conditions related to the financial mechanism will ensure the Town, the County, or State taxpayers will not be responsible for the costs of decommissioning the Project as the financial instrument must be updated every five years.¹⁷³

2. Noise

133. PPRP's independent analysis, which was consistent with the Applicant's representations, found the noise generated by the Project, both during and post-construction, would comply with the levels set by COMAR. PPRP specifically included a license condition requiring CUB Solar to comply with both State noise regulations and the County's noise ordinance.¹⁷⁴ Therefore, I find, subject to PPRP's License Conditions, the construction and operation of the Project will have no significant impact from noise.

3. Electromagnetic fields

134. PPRP specified the EMF levels were projected to fall below the threshold human health standards at a distance of three feet and should not pose a potential health risk to nearby residents.¹⁷⁵ Based on PPRP's testimony, I find that no health risks will be posed by the Project to nearby residential properties from EMF.

4. Transportation

135. In terms of transportation-related impacts, PPRP determined the truck traffic necessary for the Project will not impact existing motor vehicle traffic near the Site.¹⁷⁶

¹⁷³ PPRP Ex. 8, Condition No. 36; *see also* PPRP Ex. 4 at 11-12.

¹⁷⁴ PPRP Ex. 8, Condition No 4.j.

¹⁷⁵ PPRP Ex. 1 at 28

¹⁷⁶ *Id.* at 17.

However, PPRP included license conditions, which the Applicant agreed to, designed to address traffic- and road-related impacts. In addition to the requirement to obtain permits from MDOT SHA, the County and the Town, CUB Solar must enter and exit the Site at specified access points off Green Valley Road, and monitor road conditions, report any damages, and repair any damages within 48 hours.¹⁷⁷ Additionally, CUB Solar must instruct suppliers and contractors to be aware of cyclist and bicycle routes near the Project and bicycle laws, and certify it has coordinated with MDOT SHA's Bicycle and Pedestrian Coordinator to minimize potential conflicts with cyclists during construction.¹⁷⁸

136. Based on the record, subject to PPRP's License Conditions, I find the Project will not contribute significantly to or impact road traffic during the construction period. I also find PPRP's License Conditions requiring the Applicant promptly repair any construction-related road damage to be reasonable, and the required consultation with MDOT SHA will minimize any potential impacts or conflicts with cyclists.

5. Public Services and Safety

137. The record demonstrates the Project will not require additional public services or create safety-related concerns provided the Applicant complies with the license conditions. Although the likelihood of a fire is unlikely, PPRP recommended the Project be constructed in accordance with the minimum standards set forth in the National Fire Protection Association 70, the National Electrical Code, and the NFPA Fire Code, and to develop protocols for on-site emergencies with local first responders.¹⁷⁹ Based on PPRP's recommendations, I find the recommended license conditions are necessary to ensure that

¹⁷⁷ PPRP Ex. 8, Condition Nos. 18-20.

¹⁷⁸ PPRP Ex. 8, Condition Nos. 32-33.

¹⁷⁹ PPRP Ex. 8, Condition Nos. 34-35.

any emergency events at the Site will be handled appropriately, and the Project will not create unreasonable burdens on first responders in the event of an emergency.

6. Natural Resources

138. The record indicates the Project, if constructed as proposed will not result in any significant impacts to environmental resources. Both the Applicant's and PPRP's analyses indicated the Site consists of agricultural fields, with no streams on site, and any wetlands will be avoided. PPRP's analysis concluded the Site's existing vegetation resources will not be impacted and highlighted the Applicant's plan to plant the entire Site with low cover grass and white clover which positively impacts soil, and the creation of a pollinator habitat will be beneficial to wildlife.¹⁸⁰ The record also indicates no forested areas will be cleared; however, the Applicant will be required to comply with the FCA, which will be determined by the County.¹⁸¹ Although there is no evidence of any RTE species on the Site, CUB Solar must still take measures to protect wildlife.¹⁸²

139. Although PPRP determined the Project and its construction will have minimal negative impacts on nearby wetlands and streams, the Applicant must still comply with several conditions. As previously noted, in light of the current uncontrolled runoff, PPRP recommended CUB Solar use best practices and implement an erosion and sediment control plan which will address sediment control, grading and stormwater, and soil compaction.¹⁸³

140. I find PPRP's License Conditions to be reasonable. The Applicant has numerous permitting requirements and must submit various plans to government agencies, all of which

¹⁸⁰ PPRP Ex. 1 at 9 and PPRP Ex. 8, Condition Nos. 13-14.

¹⁸¹ PPRP Ex. 8, Condition No. 11; *see* Tr. at 38-39.

¹⁸² PPRP Ex. 8, Condition Nos. 13-15.

¹⁸³ PPRP Ex. 8, Condition Nos. 10, 12, and 16.

are designed to protect the environmental resources on and around the Site, and the pollinator habitat could improve the air, water, and soil quality and benefit the local community. Based upon the record, I find that CUB Solar's compliance with PPRP's license conditions will minimize or avoid impacts to the natural resources identified by PPRP, and the natural resources will be protected in accordance with applicable statutes and regulations, and potentially improved by the pollinator habitat.

IX. Conclusion

141. Based upon the entire record of this proceeding, I find the revised Project, as inclusive of the Final Licensing Conditions proposed by PPRP and Staff, attached hereto as Appendices A, B, and C and made a part hereof, and the Settlement Agreement entered into by the Applicant and the Town, incorporated herein, to be in the public convenience and necessity.

IT IS, THEREFORE, this 13th day of February, in the year Two Thousand Twenty,

ORDERED: (1) That the Application filed for a Certificate of Public Convenience and Necessity to construct an 8.172 MW solar photovoltaic generating facility in the Town of Union Bridge and Carroll County, Maryland, is hereby granted in accordance with the findings and decision rendered herein.

(2) That the conditions in Appendices A, B, and C, attached hereto and incorporated herein, and the commitments set forth in the Settlement Agreement between Citizens UB Solar, LLC and the Town of Union Bridge, 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 March 17, 2020, 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.

/s/ Ryan C. McLean
Ryan C. McLean
Chief Public Utility Law Judge
Public Service Commission of Maryland