

**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  
9.9 MW Solar Voltaic Generating Station  
in the Town of Union Bridge and  
Carroll County, Maryland**

**Case No. 9483**

**COMMISSION STAFF’S MEMORANDUM ON APPEAL**

Pursuant to COMAR 07.02.13 and section 3-113(d)(2) of the Public Utilities Article (“PUA”) of the Annotated Code of Maryland, the Staff of the Public Service Commission submits this Memorandum on Appeal in response to the February 13, 2020 Proposed Order (“PO”) issued by Chief Public Utility Law Judge Ryan MacLean (Mail Log (“ML”) 228592). Staff appeals the finding in the Proposed Order that the Commission’s authorization (through a Certificate of Public Convenience and Necessity (“CPCN”)) of the solar generating project proposed by Citizens UB Solar, LLC (“UB Solar”) should include the commitments in the settlement agreed to by UB Solar and the Town (referred to here as the Town/UB Solar settlement). Staff is pleased that the Town and UB Solar negotiated a settlement that results in the decision by the Town to support the requested CPCN in return for receiving financial and other benefits from the Project. However, as discussed below, the settlement commitments extend beyond the Commission’s jurisdiction. For example, the settlement commitments do not affect the operations or the environmental or other impacts of the proposed generating station, and several of the commitments do not pertain to any of the factors that the Commission must consider in evaluating whether to authorize a proposed generating station. Also, including the settlement commitments in the CPCN could embroil the Commission in disputes that lie outside

the Commission's expertise. A court is the appropriate forum to resolve these disputes. Therefore, the CPCN should not include the Town/UB Solar settlement commitments.<sup>1</sup>

### BACKGROUND

This proceeding addresses a 9.9 megawatt solar generating facility that UB Solar proposes to construct in Carroll County, Maryland and the Town of Union Bridge, Maryland ("the Town"). On October 31, 2019, UB Solar and the Town filed a joint motion that asks the Commission to approve a settlement negotiated by the two parties in connection with the proposed solar project (Mail Log ("ML") 227330). The settlement includes commitments by UB Solar and the Town regarding (1) annexation by the Town of a land parcel on which the Project will be located, and (2) execution of a purchase option that gives the Town the option to purchase from UB Solar a land parcel on which the Project will be located:

1. UB Solar will initiate the annexation by the Town of a land parcel on which the Project will be located to accommodate an expansion of the Project so that it is sited within a portion of the Town currently zoned Industrial-Restricted. (§II(1), p. 3). This is referred to here as the "annexation commitment."
2. UB Solar and the Town will execute a purchase option that gives the Town the option to purchase "at fair market value" a land parcel on which the Project will be located (§II(4), p. 4). This is referred to here as the "purchase option."

In addition, the settlement includes financial commitments by UB Solar:

1. UB Solar will reimburse the Town up to \$5,000 for the expenses incurred by the Town in connection with the land annexation (§II(6), p. 5)
2. UB Solar and the Town will execute an agreement under which UB Solar will make a payment to the Town in lieu of property tax, which is referred to as a Payment in Lieu of Taxes (§II(3), p. 4)
3. UB Solar will reimburse the Town for certain expenses associated with the Town's participation in this proceeding (§II(7), p. 5)

In its November 8, 2019 reply to the Town/UB Solar October 31 motion, Staff stated (p. 1) that it "is pleased that UB Solar and the Town have agreed to a settlement." (ML 227426). Staff

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<sup>1</sup> Staff filed its Notice of Appeal on March 16, 2020 in Mail Log ("ML") 229102.

emphasized that it “does not oppose the settlement.” (p. 1). But Staff noted that the financial commitments and the land annexation/purchase option commitments in the settlement involve matters that are outside the Commission’s jurisdiction. For these reasons, Staff recommended that the Commission take no action on the settlement, and not include in the CPCN the settlement commitments. At the December 19, 2019 evidentiary hearing in this proceeding, the parties presented oral argument on this issue. Chief Judge MacLean decided that the settlement commitments should be conditions of the CPCN. In his Proposed Order, Judge McLean reaffirmed this ruling (pages 35-38, Paragraphs 104-110 (“P104-110”)).

THE SETTLEMENT COMMITMENTS NOT ADDRESSED IN PUA 7-207  
AND NOT ENFORCEABLE BY THE COMMISSION SHOULD  
NOT BE INCLUDED IN THE CPCN

The Proposed Order determined that the settlement commitments support a finding that the Project is in the public interest and that, for this reason, the settlement commitments should be included in the CPCN:

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. Moreover, I also find the commitments to be in the public’s interest, especially the interests of the Town and its residents. [P108]

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. Additionally, I note that PPRP’s testimony specifically indicated that the Town would economically benefit from the Project if the Project’s underlying parcels in the DGA were annexed into the Town. [P109]

Staff agrees that the Project is in the public interest, and Staff supports granting a CPCN for the Project. But because the settlement commitments extend beyond the Commission’s jurisdiction, the CPCN should not include the settlement commitments. The Commission “has the implied

and incidental powers needed or proper to carry out its function” under the PUA, and these Commission powers are “construed liberally” (PUA 2-112(b) and (c)). Thus, the Commission has broad jurisdiction. However, “the Commission has the powers specifically conferred by law.” (PUA 2-112(b)(1)). The Commission “is a legislatively created body and, thus, its powers are limited to those expressly or impliedly granted by statute.”<sup>2</sup> Consequently, a Commission action is invalid if is “outside the statutory authority or jurisdiction of the Commission.” (PUA 3-203). This principle applies even in a situation (such as here) where certain parties to a proceeding ask the Commission to take an action that is beyond the Commission’s jurisdiction.<sup>3</sup> PUA 7-207(e) (which is referred to here as the CPCN Criteria law) establishes the factors that the Commission must consider in evaluating a CPCN application:

Final action by Commission. The Commission shall take final action on an application for a certificate of public convenience and necessity only after due consideration of:

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 quality and water pollution; and
  - vii. the availability of means for the required timely disposal of wastes produced by any generating station; and
3. for a generating station:

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<sup>2</sup> *Chesapeake and Potomac Telephone Co., v. MD/DE Cable Television Association*, 310 Md. 553, 560 (1987).

<sup>3</sup> *Boyd v. Maryland Supervisor of Assessments*, 57 Md. App. 603, 471 A.2d 749, 751-752 (Md. Ct. of Special Appeals 1983).

- 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.

Thus, the Proposed Order correctly notes that, under PUA 7-207(e), issues related to “esthetics, historic sites, zoning and consistency and consistency with the applicable comprehensive plan” are important factors in evaluating a proposed Project. However, the land annexation commitment in the settlement is not relevant to the factors delineated in PUA 7-207(e) for evaluating whether the Project is in the public interest. For example, the land annexation does not affect the operations or the environmental or other impacts of the proposed generating station. Moreover, the PUA does not grant the Commission any jurisdiction over a land annexation in connection with a generating station. Indeed, the fact that Town/UB Solar negotiated the annexation without involvement of the Commission underscores that the Commission has no jurisdiction over the annexation. Thus, the CPCN should not include the purchase option.

Similar reasoning indicates that the CPCN should not include the settlement commitment of UB Solar and the Town to execute a purchase option that gives the Town the option to purchase “at fair market value” a land parcel on which the Project will be located (§II(4), p. 4). . The purchase option is not relevant to the factors delineated in PUA 7-207(e) for evaluating whether the Project is in the public interest. For example, the purchase option does not affect the operations or the environmental impact of the proposed generating station. The fact that Town/UB Solar negotiated the purchase option without involvement of the Commission underscores that the Commission has no jurisdiction over purchase option.

The risk that inclusion of the settlement's land annexation/purchase option commitments in the CPCN conditions might entangle the Commission in addressing disputes that are beyond the Commission's jurisdiction and expertise highlights why the settlement commitments should be excluded from the CPCN. If a dispute arises in connection with the land annexation/purchase option commitment, Town/UB Solar are likely to ask the Commission to resolve the dispute. Indeed, in asking the Commission to approve the Town/UB Solar settlement, Town/UB Solar conceded that the reason that they want the settlement commitments to be in the CPCN is so that the parties can ask the Commission to resolve any dispute regarding commitments:

Settlements represent a give and take between parties with adverse interests. To reach an agreement, parties often agree to terms that are outside the bounds of what the Commission would have been expected to order if the case had been litigated. The Commission is not being asked to become a party to the agreement. However, the Commission still reviews such settlements to determine whether, read with the record as a whole, the requested approval is in the public interest. If so, then the public interest is served by linking the terms of the Settlement with Commission approval to ensure compliance with these central terms, rather than leaving the Commission powerless in the event of a breach. If approved, the failure of a settlement term would be subject to enforcement action at the Commission. Staff's position [that the commitments in the settlement should not be included in a CPCN condition] would undermine this oversight and limit the ability of adverse parties to resolve issues.<sup>4</sup>

Several types of disputes could arise in connection with the land annexation/purchase option commitments. For example, the settlement gives the Town the option to purchase "at fair market value" a land parcel on which the Project will be located (Settlement, §II(4), p. 4). A dispute could arise between the Town and the Project regarding the fair market value of the land parcel. If the purchase option is a condition of the CPCN, the parties are likely to ask the Commission to resolve this dispute. However, the Commission lacks the expertise and

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<sup>4</sup> Town/UB Solar "Joint Motion for prehearing ruling on scope of Commission's authority", pp. 9-10 (Nov. 18, 2019)(ML 227524)(referred to as the Town/UB Solar Motion).

jurisdiction to resolve this type of dispute. A court is the appropriate forum for this type of dispute.

Several types of disputes that lie outside the Commission's expertise and jurisdiction might also arise in connection with the Annexation Agreement. For example, the Annexation Agreement states:

If at any time any public facility, whether provided by the Town or others, is inadequate for any Development of the Property, Owner may, at Owner's cost, relieve the inadequacy or wait for relief from public capital improvement sources. However, Owner shall bring no action against Town, for injunction, damages or otherwise for the failure to deliver adequate facilities to the Property, it being understood that the Town has limited resources and its priorities for existing residents may preclude it from fulfilling the Development's needs for facilities. Upon any such Development proposal, Owner may be required to proportionately contribute to engineering studies, consulting fees or other Town initiatives to evaluate and provide adequate facilities for the Development in accordance with customary practices applicable to other developments in Town.” [§7, pp. 5-6]

A dispute could arise between the Town and the Project regarding whether a public facility (such as facilities used by the Town's fire fighters) is adequate. If the annexation plan is adopted as a condition of the CPCN, the parties might ask the Commission to address this dispute. However, the Commission does not have any jurisdiction or expertise in evaluating this dispute. Likewise, a dispute could arise over a demand by the Town that the Project “proportionately contribute to engineering studies, consulting fees or other Town initiatives to evaluate and provide adequate facilities for the Development.” Here, too, the Commission does not have any jurisdiction or expertise in evaluating this dispute. A court is the appropriate forum for this type of dispute.

Likewise, Maryland law states that an annexation plan must “demonstrate the available land for public facilities that may be considered reasonably necessary for the proposed use, including facilities for schools, water or sewage treatment, libraries, recreation, or fire or police services.” (Md. Code, Local Government, §4-415(b)(4)). A dispute might arise over whether

there is “available land for public facilities that may be considered reasonably necessary for the proposed use”, such as for “fire or police services” in connection with the Project. The Commission has no expertise regarding this dispute.

Also, the CPCN should not include the financial commitments in the settlement (in the form of (1) a reimbursement by UB Solar of expenses incurred by the Town in connection with this CPCN proceeding and the land annexation agreed to in the settlement, and (2) a payment by UB Solar in lieu of a property tax payment). Town/UB Solar assert (p. 6) that the Commission has jurisdiction over the settlement because the settlement provides important financial benefits for the Town:

... the Settlement would require the Applicant to enter into a PILOT [Payment in Lieu of Taxes] agreement with the Town offering extraordinary personal property tax revenue to the Town. Further, the annexation of the Project into the Town will provide additional real property tax revenue to the Town. The Commission frequently considers tax benefits in orders granting CPCNs to solar facilities. Additionally, the Settlement requires the Project to provide an option to purchase land on the project parcel for a waste water treatment plant and stormwater management facility. This commitment would provide a tangible economic benefit to the Town.

True, among the factors that the Commission must review in evaluating a CPCN application is the effect of the proposed facility on “economics” (PUA 7-207(e)(2)(ii)). Thus, in evaluating the UB Solar Project, the Commission could consider the financial benefits associated with the settlement commitments that the Town will receive due to the Project. These financial benefits are also relevant because they reflect “the efforts [by UB Solar] to resolve any issues presented by a county or municipal corporation where any portion of the generating station is proposed to be located.” (PUA 7-207(e)(3)(ii)). But the fact that the Commission could consider a financial payment by a proposed generating station in evaluating whether the facility is in the public interest does not mean that the commitment to make the payment should be in the CPCN. Significant here is that the financial commitments do not affect the operations or the



environmental impact of the proposed generating station. Thus, there is no need for the CPCN to include the financial commitments. This is underscored by the fact that either the Town could file a lawsuit if the Town believes that UB Solar has failed to satisfy a commitment in the settlement.

The Town could ask the court to compel UB Solar to satisfy its commitments in the settlement:

A valid settlement agreement is a type of contract. In general, an agreement to discharge a pre-existing claim is regarded as an executory accord. As explained by this Court, "An executory accord is simply a type of bilateral contract. As long as the basic requirements to form a contract are present, there is no reason to treat such a settlement agreement differently than other contracts which are binding." Once a settlement agreement has been entered into, a party may move to enforce the agreement.<sup>5</sup>

As a result, the Town does not need to seek relief from the Commission. Perhaps the Town believes that the Commission's enforcement powers might facilitate enforcement of the commitments in the settlement by providing a faster and less expensive venue to seek enforcement of the settlement. But what is significant here is that the Commission lacks jurisdiction over the land annexation/purchase option commitments, and the Commission lacks both the expertise and resources to adjudicate matters of general jurisdiction that are normally resolved in Courts.

Precedent in connection with the jurisdiction of the Federal Energy Regulatory Commission ("FERC") over wholesale electricity rates supports this view that while the Commission should consider (in its analysis of whether the proposed Project is in the public interest) the financial benefits that the Town will receive due to the financial commitments in the Town/UB Solar settlement, the commitments should not be in the CPCN. The Federal Power Act ("FPA") (16 U.S.C. 824f, *et seq.*) "delegates responsibility to FERC to regulate the interstate wholesale market for electricity -- both wholesale rates and the panoply of rules and practices

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<sup>5</sup> (citations omitted) *Calabi v. Government Employees Insurance Co.*, 353 Md. 649, 653, 728 A.2d 206, 208 (1999).

affecting them.”<sup>6</sup> Under the FPA, “[a]ll rates and charges made, demanded, or received by any public utility for or in connection with” interstate wholesale sales “shall be just and reasonable”; and “all rules and regulations affecting or pertaining to such rates or charges” must be just and reasonable (16 USC §824d(a)). Thus, “FERC has the authority -- and, indeed, the duty -- to ensure that rules or practices ‘affecting’ wholesale rates are just and reasonable.”<sup>7</sup> But courts have recognized that there are limits on the scope of the Commission’s jurisdiction over issues “affecting or pertaining to” wholesale rates”. This:

... statutory grant could extend FERC’s power to some surprising places. As the court below noted, markets in all electricity’s inputs -- steel, fuel, and labor most prominent among them -- might affect generators’ supply of power. And for that matter, markets in just about everything -- the whole economy, as it were -- might influence LSEs’ demand. So if indirect or tangential impacts on wholesale electricity rates sufficed, FERC could regulate now in one industry, now in another, changing a vast array of rules and practices to implement its vision of reasonableness and justice. We cannot imagine that was what Congress had in mind.<sup>8</sup>

Thus, courts have adopted “a common-sense construction of the FPA’s language, limiting FERC’s ‘affecting’ jurisdiction to rules or practices that “*directly* affect the [wholesale] rate.”<sup>9</sup> As a result, “in addressing similar terms like ‘relating to’ or ‘in connection with’” in the FPA, courts have noted that “ a non-hyperliteral reading is needed to prevent the statute from assuming near-infinite breadth.”<sup>10</sup> Likewise, including in a CPCN any agreement that affects the economic impact of the Project, such as the financial commitments in the Town/UB Solar settlement, would extend the scope of the CPCN to “surprising places” (such as reimbursement by UB Solar of expenses incurred by the Town in connection with the land annexation and participation in

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<sup>6</sup> *FERC v. Electric Power Supply Association (“EPSA”)*, 136 S. Ct. 760, 773, 193 L. Ed. 2d 661, 2016 U.S. LEXIS 853 (2016).

<sup>7</sup> *EPSA*, 136 S. Ct. at 774.

<sup>8</sup> *EPSA*, 136 S. Ct. at 774.

<sup>9</sup> *EPSA*, 136 S. Ct. at 774.

<sup>10</sup> *EPSA*, 136 S. Ct. at 774.

this CPCN proceeding, and a payment in lieu of property tax) that have little, if any, nexus to the focus of the Commission's review of a proposed generating station – the operations and impacts of the facility. This reinforces the notion that the settlement's financial commitments should not be in the CPCN.

The Proposed Order states that “the items that concern Staff [are] 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.” ((emphasis in original) P109). This is a reference to the Power Plant Research Program (“PPRP”), which is a program administered by the Maryland Department of Natural Resources (“DNR”). In this statement in the Proposed Order, the Proposed Order appears to suggest that the fact that the Commission typically adopts the CPCN conditions recommended by a different Maryland agency (PPRP), in conjunction with several other Maryland agencies, means that the Commission should adopt conditions that address issues that are outside the scope of PUA 7-207(e). But this assertion overlooks the key role played by PPRP and other Maryland agencies in the Commission's review of a CPCN application. PPRP has noted:

PSC regulations require the CPCN applicant to summarize the proposed project and its potential environmental, social, cultural, and economic impacts. The application is often accompanied by an environmental review document that presents the applicant's supporting environmental and socioeconomic studies. Once the applicant has submitted a CPCN application to the PSC, PPRP, in coordination with other State agencies, evaluates the potential impacts of the proposed project on Maryland's resources, including water (surface and ground water), air, land, ecology, and socioeconomics, including visual and noise-related impacts. In the case of transmission line projects, the need for the project is evaluated and a review of alternative routes is conducted as part of the review process. ... PPRP's testimony, presented on behalf of the various State agencies, typically includes initial recommended license conditions along with justifying analyses (in the form of testimony and an independent environmental review document), which can be subject to vigorous cross examination by all parties. Other intervening parties can prepare direct testimony and present their opinions and

arguments in turn, and are also subject to cross examination.<sup>11</sup>

Thus, PPRP evaluates numerous aspects of a proposed generating station, including the facility's (1) noise, (2) air and water emissions, (3) impact on water supplies, (4) impact on animal and plant life, (5) impact on historical, cultural and archeological resources; (6) impact on traffic, (7) impact on the local economy, and (8) visual impact. PUA 7-207(e) requires the Commission to evaluate these impacts of a proposed generating station. PPRP's analysis of these impacts in connection with the UB Solar Project is reflected in the Recommended Conditions filed by PPRP in this proceeding (ML 227500), which were adopted in the Proposed Order. Because the Commission relies heavily on PPRP's analysis of these environmental and other impacts, the Commission does not have its own staff to independently review these impacts. By contrast, neither the Commission, nor PPRP, nor any other Maryland agency analyzes (in connection with a CPCN proceeding) the issues raised by the land annexation/purchase option commitments in the Town/UB Solar settlement, such as the adequacy of the Town's fire fighting services. Likewise, neither the Commission, nor PPRP, has a mandate to review a demand by the Town that the Project "proportionately contribute to engineering studies, consulting fees or other Town initiatives to evaluate and provide adequate facilities for the Development." Consequently, PPRP's key role in CPCN proceedings has no bearing on whether a CPCN condition can encompass commitments that lie outside the Commission's jurisdiction (specifically, the land annexation/purchase option commitments proposed in the Town/UB Solar settlement). It also bears emphasis that although the Commission relies heavily on PPRP's analysis, the Commission alone determines whether a proposed generating station is in the public

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<sup>11</sup> "Maryland Power Plants and the Environment", p. 5 (Dec. 2016)(Maryland Department of Natural Resources Publication No. 12-12132016-638).

interest. Likewise, if the Commission determines that a proposed generating station is in the public interest, the Commission gives significant weight to the mitigation conditions proposed by PPRP but the Commission alone determines the conditions to impose in connection with the Commission's authorization of the facility.

The Proposed Order states that Staff's concern that the Commission might have limited ability to enforce the settlement commitments does not justify excluding these commitments from the CPCN conditions:

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. [P110]

However, as noted, there is a real risk that a dispute might arise in connection with the settlement commitments. Again, because these commitments are outside the scope of the CPCN law and the Commission's expertise, the Commission should not be required to resolve these disputes.

The Proposed Order states that "Staff also presumes that the Commission, rather than the courts, will be the venue for enforcement-related issues." (P110). But, as noted, the Town/UB Solar conceded that the reason that they want the settlement commitments to be in the CPCN is so that the parties can ask the Commission to resolve any dispute regarding commitments. The Proposed Order rejects Staff's fallback position (which was articulated by Staff at the evidentiary hearing) that if the Commission adopts the settlement commitments as part of the CPCN conditions, the Commission should determine that courts, not the Commission, should be responsible for enforcement of the settlement commitments. Referring to this Staff fallback position, the Proposed Order "dismiss[es] Staff's alternative, which effectively would split the enforcement of CPCN conditions between the Commission and the courts, as unreasonable and unnecessary." (P110). As discussed, because the settlement commitments involve issues outside

the Commission's jurisdiction and expertise, the Commission should not be responsible for enforcement of these commitments. In related settings, the Commission recognizes that certain disputes should be resolved by a court, not the Commission. For example, in certain situations, the Commission will resolve a dispute regarding interpretation of a Public Service Company's contract in connection with utility services but the Commission will defer to a court to determine what remedies (such as damages), if any, are appropriate if the court determines that one of the parties to the contract has breached the contract.<sup>12</sup> This indicates that if the settlement commitments are included in the CPCN, the Commission should determine that a court would be the forum to resolve a dispute regarding the commitments.

The financial commitment in the Town/UB Solar settlement are distinguishable from the financial commitments that the Commission included in the CPCN that authorized construction of the power plant proposed by Dominion Cove Point LNG, LP ("Dominion"). As part of a settlement, Dominion agreed to:

1. make annual contributions of \$400,000 to the Maryland Energy Assistance Program or other local income energy assistance programs for the first 20 years of operations, and
2. make five annual installments of \$8 million (totaling \$40 million) in to the Maryland Strategic Energy Investment Fund for renewable energy and energy efficiency investments carried out by the Maryland Energy Administration<sup>13</sup>

In authorizing the project, the Commission included these two financial commitments by Dominion as conditions of the CPCN. These financial commitments involved payments by Dominion to support programs administered by Maryland to assist low income customers and to foster the development of renewable energy and energy efficiency throughout Maryland. Thus,

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<sup>12</sup> Case No. 9144, Order No. 84819, pp. 5-6 (ML 138476).

<sup>13</sup> Case No. 9318, Order No. 86372, Appendix A, pp. 63-64, Conditions J-3 and J-4 (June 2, 2014)(ML 155481).

the Dominion payments constituted an important benefit for Maryland in connection with utility service and, hence, had a direct bearing on whether the proposed power plant was in the public interest. By contrast, the Town/UB Solar financial commitments do not benefit energy programs administered by Maryland, do not provide any benefit for low income customers, and do not promote renewable energy and energy efficiency. Thus, the Town/UB Solar financial commitments are distinguishable from the financial commitments by Dominion.

### CONCLUSION

Again, Staff is pleased that the Town and UB Solar negotiated a settlement that results in the Town supporting the Project in return for receiving financial and other benefits from the Project. However, the settlement commitments extend beyond the Commission's jurisdiction. For example, the settlement commitments do not affect the operations or the environmental or other impacts of the proposed generating station. Also, including the settlement commitments in the CPCN could embroil the Commission in disputes that lie outside the Commission's expertise. A court is better suited to resolve these disputes. Therefore, the CPCN should not include the Town/UB Solar settlement commitments.

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March 26, 2020

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY THAT on this 26th day of March 2020, 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.

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Kenneth Marc Albert.