

CHABERTON SOLAR RAMIERE LLC'S
APPLICATION FOR A CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY TO
CONSTRUCT A 3.0 MW SOLAR PHOTO-
VOLTAIC GENERATING FACILITY IN
MONTGOMERY COUNTY, MARYLAND

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BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

CASE NO. 9733

PROPOSED ORDER OF PUBLIC UTILITY LAW JUDGE

Before: Jennifer J. Grace
Public Utility Law Judge

Issued: November 20, 2025

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Appearances

Marc Machlin, Esquire, Andrew Flavin, Esquire, and Viktoriia De Las Casas, Esquire, on behalf of Chaberton Solar Ramiere, LLC

Steven M. Talson and Sondra S. McLemore, Assistant Attorneys General, on behalf of the Department of Natural Resources, Power Plant Research Program

Harrison Scherr and Kenneth M. Albert, Assistant Staff Counsel, on behalf of the Technical Staff of the Public Service Commission of Maryland

Diane Kilcoyne, Assistant County Attorney, on behalf of Montgomery County, Maryland

Matthew T. Mills, Senior Counsel, on behalf of The Maryland-National Capital Park and Planning Commission

William F. Sheehan, Esquire, on behalf of the Montgomery Countryside Alliance, the Sugarloaf Citizens Association, the Montgomery County Farm Bureau, and the Montgomery Agricultural Producers

I. Procedural History

On April 18, 2024, Chaberton Solar Ramiere, LLC (“Chaberton” or the “Applicant”) filed an Application¹ (“Application”) for a Certificate of Public Convenience and Necessity (CPCN) to construct a 3.0 megawatt (MW) alternating current (AC) solar photovoltaic (PV) community solar energy generating facility in Montgomery County, Maryland (the “Project”) pursuant to Md. Public Utilities Article (“PUA”) § 7-207.

On April 19, 2024, the Public Service Commission of Maryland (the “Commission”) docketed the Application as Case No. 9733 and delegated it to the Public Utility Law Judge Division.²

On May 16, 2024, the Applicant filed an updated and redacted ERD Appendix S.³

The Application was deemed administratively complete pursuant to the Code of Maryland Regulations (“COMAR”) 20.79.01.10A on May 29, 2024.⁴

On August 16, 2024, the Applicant filed Direct Testimony in support of the Application,⁵ along with a Revised Conceptual Site Plan,⁶ PVsyst report,⁷ and Decommissioning Plan.⁸

An initial public comment hearing was held virtually on August 22, 2024.

On March 21, 2025, the Applicant filed an Updated Conceptual Site Plan and Final Proposed Decommissioning Plan (Decommissioning Plan).⁹

¹ The Petition, Environmental Review Document (ERD), and associated Appendixes, filed under Maillog No. 309043, were entered as Applicant Exhibit (Ex.) 2 through 28.

² Maillog No. 309058.

³ Maillog No. 309703.

⁴ Maillog No. 309926.

⁵ Maillog No. 311749. The Direct Testimony of Ryan Boswell (Boswell Direct) was entered as App. Ex. 41. The Direct Testimony of Andrew Reese (Reese Direct) was entered as App. Ex. 43.

⁶ Appendix A to Boswell Direct.

⁷ Appendix B to Boswell Direct.

⁸ Appendix B to Reese Direct.

⁹ Maillog No. 316952. The Site Plan was entered as App. Ex. 32. The Decommissioning Plan was entered as App. Ex. 33 in clean version and 34 in redline version.

On April 14, 2025, a second public comment hearing was held at the Upper Montgomery County Volunteer Fire Department, 19801 Beallsville Road, Beallsville, MD 20839.

On May 1, 2025, the Applicant filed an Updated Conceptual Site Plan (Site Plan).¹⁰

On May 15, 2025, the Maryland Department of Natural Resources (DNR), Power Plant Research Program (PPRP) filed the following under Maillog No. 318870: Direct Testimony of Supida Piwkhov;¹¹ DNR/Maryland Department of the Environment (MDE) Secretarial letter;¹² Initial Recommended License Conditions;¹³ Project Assessment Report (PAR);¹⁴ PAR Appendix A (data requests);¹⁵ PAR Appendix B (glare analysis);¹⁶ PAR Appendix C (EJ screen);¹⁷ and PAR Appendix D (PPRP website excerpts).¹⁸

On May 15, 2025, the Technical Staff of the Commission (“Staff”) filed Direct Testimony of Roger F. Austin, which included recommendations/conditions.¹⁹

On May 15, 2025, Montgomery County, Maryland (the “County”), filed Written Comments of Montgomery County Council and County Executive Marc Elrich, along with two attachments: the Montgomery County Zoning Ordinance Section 3.7.2 Solar Collection System, and an Impact Report of Montgomery County Solar Collections Systems in the AR Zone.²⁰

¹⁰ Maillog No. 318495, App Ex. 38.

¹¹ Direct Testimony of Supida Piwkhov (“Piwkhov Direct”) was entered as PPRP Ex. 1.

¹² PPRP Ex. 2.

¹³ PPRP Ex. 3.

¹⁴ PPRP Ex. 4.

¹⁵ PPRP Ex. 5.

¹⁶ PPRP Ex. 6.

¹⁷ PPRP Ex. 7.

¹⁸ PPRP Ex. 8.

¹⁹ Maillog No. 318896, Staff Ex. 1

²⁰ Maillog No. 315127, County Ex. 1.

On May 15, 2025, The Maryland-National Capital Park and Planning Commission (“M-NCPPC” or “Park and Planning”), filed a letter with attachments which included recommended conditions.²¹

On May 15, 2025, the Sugarloaf Citizens Association (“SCA”), the Montgomery Countryside Alliance (“MCA”), the Montgomery County Farm Bureau (“MCFB”), and the Montgomery Agricultural Producers (“MAP”) (together, the “Joint Intervenors”), filed the Direct Testimony of Caroline Taylor with two exhibits,²² and the Direct Testimony of Doug Lechluder.²³

On May 19, 2025, a third public comment hearing was held virtually.

On May 27, 2025, the Applicant filed a settlement status update in which the Applicant indicated that while no settlement was possible, the Applicant would not contest the proposed license conditions recommended by Staff or the proposed license conditions of the State Agencies filed by PPRP.²⁴

On June 17, 2025, the Applicant filed the Rebuttal Testimony of Ryan Boswell including Attachment 1, the executed Interconnection Agreement from Potomac Electric Power Company (Pepco).²⁵

On July 1, 2025, the Joint Intervenors filed the Surrebuttal Testimony of Caroline Taylor.²⁶

On October 3, 2025, PPRP filed Revised Recommended Licensing Conditions (“RLCs”).²⁷

On October 14, 2025, the Applicant filed a settlement status update in which the Applicant indicated that it reviewed and would not contest the RLCs filed by PPRP on October 2, 2025,

²¹ Maillog No. 318858, M-NCPPC Ex. 1.

²² Maillog Nos. 318868, Joint Intervenors Ex. 1.

²³ Maillog Nos. 318868, Joint Intervenors Ex. 2.

²⁴ Maillog No. 319143, App. Ex. 40.

²⁵ Maillog No. 319675, App. Ex. 42.

²⁶ Maillog No. 320112, Joint Intervenors Ex. 3.

²⁷ Maillog No. 322976, PPRP Ex. 9 (clean) and 10 (redline version).

reaffirmed that it does not contest license conditions proposed by Staff, and that it would not contest the license conditions proposed by M-NCPPC.²⁸

On October 2, 2025, a hearing for taking evidence was held, at which time pre-filed testimony and exhibits were entered into the record. The record was held open but has now closed.

On October 23, 2025, the Applicant, Staff, and the Joint Intervenors filed Post-Hearing Briefs.²⁹

II. Overview of the Project

The proposed Project Site (Site) is 11 acres of a 118-acre property located at 17600 Whites Ferry Road, Poolesville, Maryland, in Montgomery County near the intersection of Whites Ferry Road and Sugarland Road, identified as Tax Map DS13, Grid 0000, Parcel N830. According to the Applicant's Site Plan, the Limit of Disturbance (LOD) is 10.73 acres including a 0.5-acre temporary laydown that will be outside of the fenced area. The Site includes both agricultural fields and wooded areas and the area within the LOD is currently used predominantly for agricultural purposes with the current crop rotation including wheat, soybean, and corn.³⁰ Approximately 9.7 acres of the LOD are considered prime farmland.³¹ Surrounding land uses include forest and agricultural uses.³² PPRP describes the Site as hilly but with slopes less than 10 percent and most of the Site having a slope of 5 percent or less.³³

²⁸ Maillog No. 323263.

²⁹ Applicant Post-Hearing Brief filed under Maillog No. 323614. Staff Post-Hearing Brief filed under Maillog No. 323620. Joint Intervenors Post-Hearing Brief filed under Maillog No. 323613.

³⁰ Piwkhov Direct at 5.

³¹ Piwkhov Direct at 5.

³² PAR at 2.

³³ PAR at 2.

As proposed, the solar facility will consist of approximately 6,270 PV modules installed as fixed-tilt ground-mounted arrays.³⁴ The Project will utilize approximately 24 string inverters and one associated pad-mounted power center. The Applicant proposes enclosing the solar arrays and associated equipment by a 7-foot-tall, galvanized mesh security fence.³⁵ The Applicant further proposes a 30-foot-wide vegetative landscape buffer on the northern and eastern portions of the Site perimeter where there is less existing vegetation.³⁶

III. Public Comments

At the first public comment hearing, held virtually on August 22, 2024, 3 members of the public provided comment. At the second public comment hearing, held in person in Montgomery County on April 14, 2025, over 50 people attended and 13 people provided comment. At the third public comment hearing, held virtually on May 19, 2025, 3 people provided comment. Sixteen written public comments were received by the Commission.

The majority of the comments were in opposition to the Project, though a few were in favor. Commenters pointed out that the Project violates Montgomery County's zoning in the Agricultural Reserve (AR). Commentors described the AR and its history. Many commenters stated that they are in favor of solar projects but that solar projects do not belong in the AR other than those proscribed in Montgomery County's Zoning Text Amendment (ZTA). Many commentors stated that large solar companies were offering significantly high land payments to small farms in the Agricultural Reserve, which were resulting in the termination of long-term farm leases and making farmland unaffordable. Commentors stated that the effect of solar use on prime soils and the use of agrivoltaics have not been studied.

³⁴ Piwkhov Direct at 5.

³⁵ Piwkhov Direct at 5. *See also* ERD at 11.

³⁶ PAR at 3.

IV. Applicable Law

Pursuant to Public Utilities Article, *Annotated Code of Maryland* (“PUA”) § 7-207, a person may not construct a generating station in the State unless they first obtain a certificate of public convenience and necessity (CPCN). PUA § 7-207(e) mandates the Commission to take final action on a CPCN application for a generating station 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 is proposed to be located;
- (2) the effect of the generating station 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; and
 - (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;
- (3) the effect of climate change on the generating station based on the best available scientific information recognized by the Intergovernmental Panel on Climate Change; and
- (4) 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;
 - (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;
 - (iii) the impact of the generating station on the quantity of annual and long-term statewide greenhouse gas emissions, measured in the manner specified in § 2-1202 of the Environment Article and based on the best available scientific information recognized by the Intergovernmental Panel on Climate Change; and
 - (iv) the consistency of the application with the State’s climate commitments for reducing statewide greenhouse gas emissions, including those specified in Title 2, Subtitle 12 of the Environment Article.

The burden is on the applicant to demonstrate that a project meets the public convenience and necessity.³⁷

³⁷ *In Re Potomac Edison Co. dba Allegheny Power*, 97 Md. P.S.C. 239, 243 (2006).

The Code of Maryland Regulations (COMAR) requires an applicant to demonstrate that an application complies with applicable environmental laws, regulations, and restrictions (COMAR 20.79.03.02); addresses the impacts of the project on the State’s natural resources (COMAR 20.79.03.03); and addresses the socioeconomic effects of a project (COMAR 20.79.03.04).

“Due consideration” under PUA § 7-207(e) does not require the Commission to employ a strict balancing test or any particular method. Rather, the Commission must simply “consider all relevant facts and exercise reasonable judgment.”³⁸ And “under the plain language of PUA § 7-207, the PSC is the ultimate decision-maker and approving authority of generating stations.”³⁹ Given the Commission’s preemptive authority, “‘due consideration’ of local governing bodies’ recommendations does not require the Commission to accept all, or any, local requirements.”⁴⁰

PUA § 7-207(h) provides:

- (1) A county or municipal corporation has the authority to approve or deny any local permit required under a certificate of public convenience and necessity issued under this section.
- (2) A county or municipal corporation shall approve or deny any local permits required under a certificate of public convenience and necessity issued under this section:
 - (i) within a reasonable time; and
 - (ii) to the extent local laws are not preempted by State law, in accordance with local laws.
- (3) A county or municipal corporation may not condition the approval of a local permit required under a certificate of public convenience and necessity issued under this section on receipt of any of the following approvals for any aspect of a

³⁸ *Accokeek, Mattawoman, Piscataway Creeks Communities Council, Inc. v. Public Serv. Comm’n*, 227 Md. App. 265, 288 (2016), *aff’d*, 451 Md. 1 (2016); *see also* Order Affirming Proposed Order of Pub. Utility Judge, Order No. 88260, *In the Matter of the Application of Dan’s Mountain Wind Force, LLC for a CPCN to Construct a 59.5 MW Energy Generating Facility in Alleghany County, Maryland*, Case No. 9413, at 8-9 (June 16, 2017) (rejecting the application of a formulaic approach in favor of the flexible standard adopted by the Maryland Supreme Court).

³⁹ *Bd. of Cty. Cmm’rs v. Perennial Solar, LLC*, 464 Md. 610, 643 (2019).

⁴⁰ *See Frederick County v. LeGore Bridge Solar Ctr., LLC*, 2000 Md.App. LEXIS 1140, *17 (2020) (quoting Proposed Order of Pub. Utility Law Judge, *In the Matter of the Application of LeGore Bridge Solar Center, LLC, for a Certificate of Public Convenience and Necessity to Construct a 20.0 MW Solar Photovoltaic Generating Facility in Frederick County, Maryland*, Case No. 9429, at 45 (Oct. 3, 2017)).

generating station, an overhead transmission line, or a qualified lead line proposed to be constructed under the certificate:

- (i) a conditional use approval;
- (ii) a special exception approval; or
- (iii) a floating zone approval.

The generating station in this case is proposed to be a community solar energy generating system (CSEGS). PUA § 7-306.2(d)(1)(i) required the Commission to establish and maintain a Community Solar Energy Generating Systems Program. Pursuant to § 7-306.2(a)(4), a CSEGS means a solar energy system that:

- (i) is connected to the electric distribution grid serving the State;
- (ii) is located in the same electric service territory as its subscribers;
- (iii) is attached to the electric meter of a subscriber or is a separate facility with its own electric meter;
- (iv) credits its generated electricity, or the value of its generated electricity, to the bills of the subscribers to that system through virtual net energy metering;
- (v) has at least two subscribers but no limit to the maximum number of subscribers;
- (vi) does not have subscriptions larger than 200 kilowatts constituting more than 60% of its kilowatt-hour output;
- (vii) has a generating capacity that does not exceed 5 megawatts as measured by the alternating current rating of the system's inverter;
- (viii) may be owned by any person; and
- (ix) with respect to community solar energy generating systems constructed under the Program, serves at least 40% of its kilowatt-hour output to LMI subscribers unless the solar energy system is wholly owned by the subscribers to the solar energy system.⁴¹

According to PUA § 7-306.2(b)(1), the General Assembly found that CSEGSs: (i) provide residents and businesses, including those that lease property, increased access to local solar electricity while encouraging private investment in solar resources; (ii) enhance continued diversification of the State's energy resource mix to achieve the State's renewable energy portfolio

⁴¹ PUA § 7-306.2(a)(7) defines "LMI subscriber" as "a subscriber that: (i) is low-income; (ii) is moderate-income; or (iii) resides in a census tract that is an: 1. overburdened community; and 2. underserved community." PUA § 7-306.2(a)(8) defines "Low-income" as "(i) having an annual household income that is at or below 200% of the federal poverty level; or (ii) being certified as eligible for any federal, State, or local assistance program that limits participation to households whose income is at or below 200% of the federal poverty level." PUA § 7-306.2(a)(9) defines "Moderate-income" as "having an annual household income that is at or below 80% of the median income for Maryland."

standard and Greenhouse Gas Emissions Reduction Act goals; and (iii) provide electric companies and ratepayers the opportunity to realize the many benefits associated with distributed energy. The General Assembly further found that it is in the public interest that the State enable the development and deployment of energy generation from CSEGSs in order to: (i) allow renters and low-income and moderate-income retail electric customers to own an interest in a CSEGS; (ii) facilitate market entry for all potential subscribers while giving priority to subscribers who are the most sensitive to market barriers; and (iii) encourage developers to promote participation by renters and low-income and moderate-income retail electric customers.

V. Analysis and Findings

PPRP, in coordination with the reviewing State Agencies,⁴² completed an independent assessment of the Project's potential impacts.⁴³ Based on PPRP's independent assessment of the potential natural resources, environmental and socioeconomic impacts associated with the proposed Project, DNR and MDE recommend that the Commission grant a CPCN for the Project and incorporate the reviewing State agencies' revised RLCs into the CPCN to ensure that the Project may be constructed and operated in compliance with applicable environmental laws and standards.⁴⁴

Staff recommended that the Commission grant a CPCN subject to the conditions proposed by the other State agencies, and that the Commission require the Applicant to provide the Commission with a signed copy of its Interconnection Agreement with Potomac Electric Power Company ("Pepco") prior to construction, provide the Commission with a copy of its Certificate

⁴² The reviewing State Agencies include Maryland's Departments of Agriculture, Commerce, Environment (MDE), Natural Resources (DNR), Planning and Transportation, and the Maryland Energy Administration.

⁴³ PAR at 1.

⁴⁴ PPRP Ex. 1, Piwkhov Direct at 3. *See also* PPRP Ex. 2, Secretarial Letter at 1.

of Completion, countersigned by Pepco, upon completion of construction and prior to operation, and provide the Commission with a copy of its Permission to Operate from Pepco prior to operation.⁴⁵

Montgomery County recommended denial of the Application, as it is located in the AR and does not comply with the requirements set forth in the Zoning Text Amendment (ZTA) for Solar Collection Systems (“SCSs”) in the AR zone.⁴⁶

The M-NCPPC approved the Forest Conservation Plan associated with the Project, and recommended approval of the Mandatory Referral contingent upon two conditions:

1. the Applicant implement agrivoltaics on the Property in a manner capable of being enforced by the PSC, and coordinate this activity with the Montgomery County Office of Agriculture (OAG); and
2. the Applicant must receive approval of a stormwater management plan from the Montgomery County Department of Permitting Services (DPS) prior to filing for building permits on the Property.⁴⁷

The Joint Intervenors recommended denial of the Application due to its location in the AR zone, however, “MCA, SCA, MFCB, and MAP would not oppose the Project if it were no greater than 2 MWs and if the Project were located on Class III soils, in compliance with ZTA 20-01.”⁴⁸

The Applicant accepted PPRP’s RLCs, Staff’s recommendations, and M-NCPPC’s conditions.⁴⁹ The proposed conditions of Staff and M-NCPPC are accepted without modification and are attached hereto as Attachments D and E, respectively. PPRP’s proposed RLCs were

⁴⁵ Staff Ex. 1, Direct Testimony of Christopher Austin (“Austin Direct”) at 2-3.

⁴⁶ County Ex. 1, Letter, at 1-3.

⁴⁷ M-NCPPC Ex. 1 at 1.

⁴⁸ Joint Intervenor Ex. 1, Direct Testimony of Caroline Taylor (“Taylor Direct”) at 11.

⁴⁹ Applicant Supplemental Settlement Status Update at 1.

amended slightly as set forth herein. The Final License Conditions are attached hereto as Attachment B (clean version) and Attachment C (redline version).

Each of the PUA § 7-207(e) factors, as well as the additional factors identified by the Applicant, PPRP, Staff, the County, M-NCPPC, and the Joint Intervenors in their respective analyses, are considered below.

A. Consideration of PUA § 7-207(e) Factors

1. Recommendations of Montgomery County

Montgomery County intervened as a party to this matter. The Project is proposed to be located on land that contains Class II soils in the Montgomery County AR. On May 15, 2025, Montgomery County filed in the Docket for this case, among other items, a letter requesting the Commission give due consideration to applicable zoning provisions that protect against the type of project at issue.⁵⁰ Montgomery County recommended denial of the Application, stating its concerns that the Project is not consistent with the Montgomery County Zoning Ordinance that restricts development of solar projects of certain sizes and characteristics in its AR on Class I and II soils.

In a letter filed in the docket, M-NCPPC explained it reviewed a Mandatory Referral (“MR”) for the Project at the April 24, 2025 Montgomery County Planning Board of the M-NCPPC (“Planning Board”).⁵¹ According to M-NCPPC, the Planning Board reviewed a report prepared by the M-NCPPC Planning Board Staff (attached to the letter) and heard testimony from the Applicant’s representatives. Per M-NCPPC, the Planning Board Staff recommended denial of the MR predicated upon the Project’s non-compliance with Montgomery County’s Zoning

⁵⁰ County Ex. 1.

⁵¹ M-NCPPC Ex. 1.

Ordinance – specifically its size (above 2 MWs), its presence on Class II soils within the AR Zone, and the corresponding intent of that particular zone, namely, farming uses.

M-NCPPC stated that the Planning Board considered all relevant land use and planning aspects of the Application including, but not limited to: (1) consistency with *Thrive Montgomery 2050* (the County's General Plan) and applicable master plans; (2) the intent and requirements of the zone; (3) whether the size, shape and scale of the Project is compatible with the neighborhood; (4) whether the buildings and structures, landscaping and spaces are adequate, safe and efficient; (5) whether it complies with Chapters 19 (Erosion, Sediment Control and Stormwater Management) and 22A (Forest Conservation – Trees) of the Montgomery County Code; (6) whether a water quality plan is needed; (7) whether the site is needed for a park if it is surplus school property; and (8) whether alternatives or mitigation measures have been considered for the project if the proposal is inconsistent with *Thrive 2050* or other plans and policies for the area, or has discernible negative impacts on the surrounding neighborhood, the transportation network, the environment, historic resources (including burial sites), or other resources.⁵² M-NCPPC noted that the Planning Board found that the MR satisfied six of the eight considerations above, except those relating to the intent and requirements of the AR zone and the consideration of whether alternatives or mitigation could be considered to handle inconsistencies with plans or policies.⁵³

Although the Planning Board acknowledged the Project would not comply with the AR zoning, upon further deliberation, the Planning Board found that requiring agrivoltaics on the property underneath the solar array with specific enforcement authority in the hands of the Commission would be a mitigating factor to allow for approval of the Project (subject also to obtaining stormwater management approval). The Planning Board voted 3-2 to approve the MR,

⁵² M-NCPPC Ex.1 at 2.

⁵³ M-NCPPC Ex.1 at 2.

contingent upon the following suggested conditions: (1) the Applicant must implement agrivoltaics on the property in a manner capable of being enforced by the Commission, and coordinate this activity with the Montgomery County Office of Agriculture (“OAG”); and (2) the Applicant must receive approval of a stormwater management plan from the Montgomery County Department of Permitting Services (“DPS”) prior to filing for building permits on the property.⁵⁴ The Planning Board also voted 3-1-1 to approve the Forest Conservation Plan (attached to the letter).⁵⁵

Witness Piwkhov acknowledged that, under Montgomery County Zoning Ordinance Section 3.7.2, a solar collection system larger than 2.0 MW is prohibited in the AR Zone and on Class I or Class II soils. Witness Piwkhov also acknowledged that while Montgomery County has indicated the Project generally satisfies land use and zoning requirements, the prohibition on Class I/II soils remains an exception. Witness Piwkhov testified that the Applicant proposed the incorporation of agrivoltaics to address this restriction by maintaining agricultural use of the land. Witness Piwkhov testified that the Applicant submitted an agrivoltaics report and a draft Farming Request for Proposals to Montgomery County’s OAG on December 2, 2024, incorporating comments received from Montgomery County OAG staff.⁵⁶

Witness Piwkhov testified that the reviewing State agencies recommended a license condition that requires the Applicant to file a final agrivoltaics plan, reviewed by Montgomery County, in the Docket for this case at least 30 days prior to commencement of operation.⁵⁷ Witness Piwkhov noted that this condition also mandates filing an updated plan in the Docket every five years or upon any change to the proposed agrivoltaics activity.

⁵⁴ M-NCPPC Ex.1 at 1.

⁵⁵ M-NCPPC Ex.1 Attachment.

⁵⁶ Piwkhov Direct at 9.

⁵⁷ Piwkhov Direct at 10. *See also* PPRP RLC 17.

Witness Piwkhov also testified about the impact the Project will have on prime farmland to address concerns regarding constructing the Project in the AR Zone. Witness Piwkhov noted that while the Project will be located on a 118-acre property, the Project site's LOD is 10.73 acres, with approximately 9.7 acres within the LOD considered prime farmland. Assuming agrivoltaics are employed throughout the usable property in the LOD, Witness Piwkhov testified that the Project offers 7 acres of arable land from the 10.73-acre LOD for agrivoltaics' practices; therefore, the Project will remove only 3.73 acres from agricultural production during operation.⁵⁸ Witness Piwkhov testified that of Montgomery County's approximately 93,000 acres of agricultural reserved land, this Project would result in approximately 0.004% of agricultural reserve removal after incorporating agrivoltaics' practices.⁵⁹ Witness Piwkhov testified that in the alternative, taking a conservative approach and not considering agrivoltaics' practices, the Project would result in approximately 0.012% removal of Montgomery County's Agricultural Reserve.⁶⁰ As Witness Piwkhov testified that an estimated 9.7 acres of prime farmland will be removed by the Project, she calculated that the Project impacts on Montgomery County's 109,000 acres of prime farmland will be less than 0.01%.⁶¹

Witness Piwkhov testified that the reviewing State agencies are recommending the County Permits and Approvals RLC, which requires the Applicant⁶² to obtain all applicable permits and approvals necessary or required for the construction and operation of the Project from Montgomery County and to certify to the Commission by filing a statement in the Docket that it has obtained

⁵⁸ Piwkhov Direct at 13.

⁵⁹ Piwkhov Direct at 13.

⁶⁰ Piwkhov Direct at 13

⁶¹ Piwkhov Direct at 13.

⁶² Although "Applicant" is used in this Proposed Order, all RLCs additionally apply to the Project Owner, Applicant's successors and assigns.

such approval, listing the permits and approvals granted by the County in the Docket for this case 60 days prior to the start of construction.⁶³

Witness Boswell submitted rebuttal testimony on behalf of the Applicant which highlighted that even though the M-NCPPC Planning Board acknowledged the Project would not comply with the solar siting restrictions in the AR imposed by ZTA 20-01, the M-NCPPC Planning Board found that requiring agrivoltaics as part of the Project would be a mitigating factor to allow for approval. Witness Boswell testified that the Applicant does not contest the licensing conditions proposed by the Planning Board in its letter filed on May 15, 2025.⁶⁴

Witness Boswell disagreed with the Joint Intervenor's testimony that asserted the ZTA is not a significant barrier to solar projects in the AR. Witness Boswell noted in response to a Bench Data Request in Case No. 9726 that Montgomery County confirmed that only two non-rooftop projects have been approved in the AR Zone with one currently pending.⁶⁵

PUA § 7-703(b)(25)(i)(1) requires that at least 14.5% of energy from electricity suppliers to be derived from solar energy by the year 2030. This Project Site can contribute to Maryland's solar energy at the same time as the land is being used for Agriculture, as intended by Montgomery County. Agrivoltaics, if required for this Project and looked at through the lens of agricultural production, would limit the removal of agricultural land from agricultural production.

2. Stability and Reliability of the Electric System

On behalf of Staff, Witness Austin testified that the Project is a 3.0 MW solar photovoltaic energy system, which has applied to participate in the Maryland Community Solar Program as a

⁶³ Piwkhov Direct at 12. *See also* PPRP RLC 11.

⁶⁴ Applicant Ex. 42, Boswel Rebuttal at 2.

⁶⁵ Boswell Rebuttal at 4.

CSEGS, where the output is sold to retail customers or subscribers, typically at a discount from prevailing retail electricity rates.⁶⁶

Witness Austin explained the Commission's subscriber organization (SO) approval process and stated if an SO decides to move forward with a project, it will need to apply for capacity in the Community Solar Program. Once an SO applies for capacity, the electricity company will perform additional studies as necessary, finalize the engineering and design necessary to interconnect the project with the electric distribution system, and return an Interconnection Agreement for the SO to review and sign.⁶⁷

Witness Austin explained Interconnection Agreements generally as governing the terms and conditions under which the CSEGS will interconnect to and operate in parallel with the electric company's distribution system.⁶⁸ An Interconnection Agreement also defines the obligation of the SO to cover the costs to perform upgrades that may be required for the project to connect and safely inject the desired amount of energy into the electric company's electric distribution system. Final approval of the Interconnection Agreement will allow the SO to begin construction of the project.⁶⁹

Witness Austin noted that the Interconnection Agreement will include a Certificate of Completion ("COC") which must be signed and returned to the electric company after construction of the project.⁷⁰ Witness Austin testified that the COC contains information about the interconnection equipment required by the electric company to safely interconnect the project and should include proof that the installation of the interconnection equipment has been inspected and approved by an authorized inspection authority. Injection of power to the electric company's

⁶⁶ Austin Direct at 3.

⁶⁷ Austin Direct at 5.

⁶⁸ Austin Direct at 6.

⁶⁹ Austin Direct at 6.

⁷⁰ Austin Direct at 6.

electric distribution system can only occur after the electric company receives the signed COC and subsequently issues a Permission to Operate (“PTO”) notice.⁷¹

Witness Piwkhov stated the Project will deliver all its output to subscribers via the Potomac Electric Power Company (“Pepco”) electric distribution grid. The Point of Interconnection (“POI”) for the Project will be on the south side of Whites Ferry Road at an existing 13 kilovolt (“kV”) direct feeder overhead line to Pepco’s Quince Orchard Substation. Witness Austin also testified that the Project will connect to Pepco’s Quince Orchard Substation via a 13 kV feeder. Per Witness Piwkhov, the proposed interconnection will be installed as an underground line starting from the Project’s switchboard pad and proceeding north and will then transition to an overhead line prior to the POI.

Witness Austin testified that the Applicant has received an SO Identification Number and the Project was conditionally approved by Pepco on December 5, 2023.⁷² Per Witness Austin’s written direct testimony, the Applicant submitted a CSEGS Interconnection Application to Pepco on December 15, 2023, which, at the time of Witness Austin’s written testimony, was still undergoing technical review.⁷³ Witness Austin’s written testimony stated that upon completion of this review, Pepco would issue a Conditional Interconnection Approval and Cost Letter and subsequently, Pepco would conduct additional studies, finalize engineering and design for interconnection, and present an Interconnection Agreement for the Applicant’s review and signature. Witness Austin noted that the Interconnection Agreement will include a COC, which the Applicant must sign and return to Pepco upon Project construction completion. Per

⁷¹ Austin Direct at 6.

⁷² Austin Direct at 7.

⁷³ Austin Direct at 7.

Witness Austin, if Pepco finds the COC satisfactory, it will countersign it and grant the Applicant a PTO notice.⁷⁴

Witness Austin concluded that the executed Interconnection Agreement will provide the Commission with the assurance that the Project will be connected to Pepco's electric system in a manner that will not adversely affect the reliability and stability of the local electric system.⁷⁵ Additionally, any required expense to construct an upgrade of Pepco's electric system necessary to accommodate the Project will be borne by the Applicant and not Pepco's ratepayers.⁷⁶ A countersigned copy of the COC will provide the Commission with assurance that Pepco has determined that the interconnection of the Project to Pepco's electric distribution system has been inspected and meets all of Pepco's interconnection requirements. Pepco's PTO notification will provide the Commission with assurance that the Project will be operated in full compliance with Pepco's operating requirements.⁷⁷

Witness Austin also testified that renewable energy projects, such as solar and wind farms, have been promoted and mandated by many states, and that the Renewable Portfolio Standard ("RPS") requires suppliers to utilize renewable resources to serve an increasing percentage of total demand or pay an alternative compliance fee. Witness Austin cited the Maryland Clean Energy Jobs Act of 2019, codified in PUA § 7-703, which sets Maryland's RPS target at 50 percent from Tier 1 renewable sources including at least 14.5 percent derived from solar energy by 2030. Witness Austin testified that this Project will contribute toward meeting Maryland's RPS goals.⁷⁸

⁷⁴ Austin Direct at 8.

⁷⁵ Austin Direct at 9.

⁷⁶ Austin Direct at 9.

⁷⁷ Austin Direct at 9.

⁷⁸ Austin Direct at 9.

Based on the above, Witness Austin recommended that the Commission:

1. Grant the Applicant a CPCN to construct and operate a 3.0 MW CSEGS at the location indicated in the Applicant's CPCN Application;
2. Require the Applicant to provide the Commission with a signed copy of its Interconnection Agreement with Pepco prior to commencing construction of its CSEGS;
3. Require the Applicant to provide the Commission with a copy of its COC, that has been countersigned by Pepco, upon completion of construction and prior to operation of its CSEGS;
4. Require the Applicant to provide the Commission with a copy of its PTO from Pepco prior to commencing operation of its CSEGS; and
5. Adopt any additional conditions proposed by the other State agencies having jurisdiction in this proceeding.⁷⁹

In his rebuttal testimony, Witness Boswell submitted the Applicant's executed Interconnection Agreement with Pepco.⁸⁰

The record reflects that the Project will be connected to Pepco's electric system in a manner that will not adversely affect the reliability and stability of the local electric system. The Certificate of Completion, countersigned by Pepco, will provide the Commission with the assurance that Pepco has determined that the interconnection of the Project to Pepco's electric distribution system has been inspected and meets all of Pepco's interconnection requirements. Pepco's notification of Permission to Operate will provide the Commission with assurance that the Project will be operated in full compliance with Pepco's operating requirements.

3. Economics

Witness Lechliden, on behalf of the Joint Intervenors, provided an overview of Montgomery County's AR and local food production in Montgomery County. Witness Lechliden

⁷⁹ Austin Direct at 9-10.

⁸⁰ Boswell Rebuttal at 2 and Attachment 1.

testified that over 330 farms produce table food in Montgomery County, providing fresh and local food to residents, including those in need, through the Montgomery County Farm to Food Bank program.⁸¹ Witness Lechliden stated that agriculture in Montgomery County accounts for more than 10,000 jobs and that 583 farms in Montgomery County remain viable in no small part due to its very restricted zoning.⁸² Witness Lechliden stated that zoning in favor of agricultural uses in the AR has served to maintain the economics of farming in Montgomery County by keeping land values reasonable and property taxes low.⁸³ Witness Lechliden stated that since the AR's inception in 1980, total farm product sales in Montgomery County have increased from \$25,330,000.00 to \$281,587,662.00 inclusive of the horticultural and equine industries.⁸⁴ Witness Lechliden testified that if the Project is permitted, the Project will undermine the economics of farming in the AR by creating an imbalance, causing farms to compete with commercial businesses for access to land.⁸⁵ Witness Lechliden noted that currently, over 50% of farming in Montgomery County is conducted on leased land. Witness Lechliden testified that Montgomery County farmers have embraced precision agriculture in the AR, whereby farm equipment (including planters, harvesters, and sprayers) uses global positioning satellites to steer and operate to minimize overlap in seeding, fertilization, and harvesting, helping to reduce production costs for farming in the AR.⁸⁶

On behalf of PPRP, Witness Piwkhov testified that during the peak construction period, the Project is estimated to create approximately 42 jobs, with 24 full-time design, management, and construction jobs, working remotely or on the Project site.⁸⁷ According to Witness Piwkhov, most construction activities are not expected to require highly specialized skills so the Project is

⁸¹ Lechliden Direct at 4.

⁸² Lechliden Direct at 4.

⁸³ Lechliden Direct at 4.

⁸⁴ Lechliden Direct at 4-5.

⁸⁵ Lechliden Direct at 5.

⁸⁶ Lechliden Direct at 6.

⁸⁷ Piwkhov Direct at 28.

likely to source many construction jobs from the Maryland labor pool if local labor is available and area subcontractors competitively bid the work.⁸⁸ Witness Piwkhov testified that this will have a positive effect on the Montgomery County economy from construction worker payrolls and subsequent consumption expenditures, local purchases of common construction materials, tax revenues, and associated multiplier effects.⁸⁹ Witness Piwkhov acknowledged that not all benefits will accrue to Maryland since specialized components, particularly PV panels, are manufactured elsewhere and will be imported into the State.⁹⁰ Most of the construction workforce, however, is expected to be within daily commuting distance so the Project will have no effect upon population and housing, or on population-related public service provision. Witness Piwkhov concluded that with public service levels largely unaffected, the net benefit of Project construction will be positive for Montgomery County, the State, and surrounding jurisdictions.⁹¹ Witness Piwkhov testified that once the Project is operational, the Project will create less than one 1 full-time job for operation and maintenance of the facility.⁹²

Witness Piwkhov testified that fiscal benefits will be in the form of corporate income tax revenues to the State, income tax revenues to the State and county on lease payments to landowners, taxes on construction worker wages, and utility (property) tax revenues to Montgomery County.⁹³ Furthermore, Witness Piwkhov's written direct testimony stated that the Project will have a benign local presence and surrounding property values will be minimally affected.⁹⁴

⁸⁸ Piwkhov Direct at 28.

⁸⁹ Piwkhov Direct at 28.

⁹⁰ Piwkhov Direct at 28.

⁹¹ Piwkhov Direct at 28.

⁹² Piwkhov Direct at 29.

⁹³ Piwkhov Direct at 29.

⁹⁴ Piwkhov Direct at 29.

The record reflects that the net benefit of Project construction will be positive for Montgomery County and the State. The record further reflects a likelihood of fiscal benefits in the form of corporate income tax revenues to the State, income tax revenues to the State and Montgomery County, and property tax revenues to Montgomery County.

4. Esthetics

a. Visual Impacts

Witness Piwkhov testified that the visual character of the Project Site is hilly, with slopes less than 10 percent and much of the Site having slope less than five percent, and is surrounded by agricultural fields with a stand of trees to the south and east.⁹⁵ According to Witness Piwkhov, views of the Project Site are mitigated by existing vegetation to the west, south, and east. The Project Site is visible, however, from Whites Ferry Road and Sugarland Road.⁹⁶

Witness Piwkhov noted that Montgomery County's Zoning Code requires a 30-foot-wide landscape buffer within 200 feet of adjacent residences. Witness Piwkhov stated that although the distance from the Project Site to the nearest adjacent residence is greater than 200 feet, the Applicant is voluntarily proposing a 30-foot-wide vegetative landscape buffer along the northern and eastern boundaries of the solar array to reduce the Project's visibility impacts.⁹⁷ According to Witness Piwkhov, the Applicant's proposed 30-foot-wide landscape buffer will utilize multiple rows of vegetation comprised of a mix of canopy trees, evergreen trees, and shrubs, including plants that are 6 feet tall at installation, with the expectation that the evergreen and canopy trees

⁹⁵ Piwkhov Direct at 6, 22.

⁹⁶ Piwkhov Direct at 22.

⁹⁷ Piwkhov Direct at 22.

will be 20-70 feet tall at maturity.⁹⁸ Witness Piwkhov also stated that the Project will be buffered to the south and west by existing vegetation and surrounded by a seven-foot security fence.⁹⁹

PPRP estimated the Project's visual footprint within a 0.5-mile radius around the Project LOD by considering terrain elevations, areas of mature forest, proposed landscape buffers, and physical characteristics of the array.¹⁰⁰ Witness Piwkhov stated that visibility was modeled in Year 0 and Year 3. Per Witness Piwkhov, in Year 0 when the proposed landscape buffer has not matured, the Project will be visible to several surrounding properties that are not shielded from views by existing vegetation including several residences and motorists traveling along Whites Ferry Road and Sugarland Road.¹⁰¹ Witness Piwkhov testified that once the landscape buffer surrounding the Project Site begins to mature at Year 3, it will help to provide a natural barrier to most of these properties and motorists, although seasonal changes in the fall and winter months could allow the Site to be visible, especially along the southern edge of the LOD. However, Witness Piwkhov noted that if the existing vegetation along the southern boundary is deemed insufficient at a later date, the Applicant has indicated it will work with Montgomery County to resolve any visual and/or glare impacts along this boundary.¹⁰²

Witness Piwkhov stated that, to help mitigate the Project's visual impacts, the reviewing State agencies recommended: (1) the Landscape Maintenance Agreement and Landscape Surety Agreement RLCs, which ensure that the Applicant maintains the landscape buffer and replaces dead plantings; and (2) the Complaint Resolution RLC, which addresses complaints related to visual impacts.¹⁰³

⁹⁸ Piwkhov Direct at 23.

⁹⁹ Piwkhov Direct at 22.

¹⁰⁰ Piwkhov Direct at 23.

¹⁰¹ Piwkhov Direct at 23.

¹⁰² Piwkhov Direct at 23 citing PPRP Ex. 5, Applicant Response to PPRP DR 2-14.

¹⁰³ Piwkhov Direct at 24.

b. Reflective Glare Impacts

Witness Piwkhov testified that PPRP undertook an independent assessment, using the Forge Solar GlareGauge glare prediction model, to estimate the potential of reflective glare upon nearby residences as well as public and private roadways within the immediate area surrounding the Project.¹⁰⁴ The analysis included site topography and the Project’s proposed landscape buffer at the height of 12 feet (representative of the buffer height three years after planting), but did not include existing tree lines that surround the Project to model a “worst-case scenario” in which the Project can only control obstructions within the Site.¹⁰⁵ Per Witness Piwkhov, the results for Year 3 indicate one stationary receptor (*i.e.*, a residence south of the Project) is predicted to receive 16.2 hours of yellow glare per year, and the private driveway connected to this residence is predicted to have around 21 hours of yellow glare per year.¹⁰⁶ Additionally, green glare, ranging from 1.1 to 47.5 hours per year, is predicted for one public roadway (Morrow Road), four private roadways, and six stationary receptors.¹⁰⁷

At the evidentiary hearing, Witness Piwkhov testified that PPRP concluded that the buffer the Applicant proposed for the Project on the northern and eastern sides are sufficient to mitigate the yellow glare.¹⁰⁸ PPRP performed an additional alternate glare analysis including the proposed landscape buffer (at the height of 12 feet in year three) along the southern edge of the Project’s LOD, this additional alternate analysis including an existing row of vegetation.¹⁰⁹ With this modification, no yellow glare is predicted to occur at the residence and its private driveway to the south of the Project.¹¹⁰ Witness Piwkhov testified that because the Project will be buffered by an

¹⁰⁴ Piwkhov Direct at 24.

¹⁰⁵ Piwkhov Direct at 24.

¹⁰⁶ Piwkhov Direct at 24.

¹⁰⁷ Piwkhov Direct at 24.

¹⁰⁸ Transcript at 94.

¹⁰⁹ Transcript at 93, Piwkhov Direct at 24.

¹¹⁰ Piwkhov Direct at 24.

existing line of trees along the south boundary, PPRP is not recommending any additional yellow glare mitigation.

Witness Piwkhov testified that if the existing vegetation along the southern boundary is deemed insufficient, the Applicant has indicated it will work with Montgomery County to resolve any visual and/or glare impacts along this boundary.¹¹¹ Witness Piwkhov testified that, to help mitigate reflective glare impacts, the reviewing State agencies recommended two license conditions. First, the Complaint Resolution RLC addresses complaints related to solar reflections (as well as other visual impact or noise issues).¹¹² Second, the Glare Analysis and Potential Mitigation RLC, requires that unless the Applicant certifies to the Commission that the Project's components and layout proposed in the conceptual site plan incorporated into the Commission's final order is the same as the final site plan that the Applicant intends to construct, the Applicant will be required to perform a glare analysis and to provide the results and proposed mitigation, if applicable, to PPRP no less than 90 days prior to the start of construction and to the Commission for review no less than 60 days prior to construction.¹¹³

There is no evidence in the record that any visual impacts that are potentially not mitigated would have a significant adverse visual impact on the surrounding areas. Similarly, the record reflects that impacts from glare will not be significant. Based on its additional analysis including existing vegetation on surrounding properties, PPRP has indicated that at year 3, glare impacts are not anticipated. The Applicant has stated its commitment to "work with" the County to address any glare or visual impacts. PPRP's prediction and the Applicant's commitment are a part of the record. Despite the lack of specificity or any guarantee that PPRP's analysis is correct or what,

¹¹¹ Piwkhov Direct at 23.

¹¹² Piwkhov Direct at 25. *See also* PPRP RLC 7.

¹¹³ Piwkhov Direct at 25. PPRP's glare analysis and potential mitigation RLC28, attached hereto in Attachment B changed these requirements from 90 to 60 days.

exactly, the Applicant or any Project Owner will do to mitigate any unanticipated glare or visual impacts, if glare or visual impacts occur, License Condition 7, Complaint Resolution, provides the process for addressing mitigation.

5. Historic Sites

Witness Piwkhov testified that the Project is located within a Priority Preservation Area (“PPA”), Mid-Maryland Montgomery County Rural Legacy Area (“RLA”), and the Montgomery County Heritage Area.¹¹⁴ Witness Piwkhov explained that the Mid-Maryland Montgomery County RLA is intended to protect farmland, open space, and natural resources in the northwestern portion of Montgomery County. Montgomery County’s PPA was established to preserve and support agriculture and forestry lands, mostly covering the northeast and northwest portions of Montgomery County. Witness Piwkhov also explained that the Montgomery County Heritage Area was created through State legislation to raise awareness of the culture and history of Montgomery County. Witness Piwkhov testified that the Heritage Area overlays a large portion of Montgomery County.¹¹⁵ PPRP contacted the Heritage Area several times but did not receive any comment on the Project.¹¹⁶

Witness Piwkhov stated there are no historic properties listed on the National Register of Historic Places Inventory or Maryland Inventory of Historic Properties on the Project Site.¹¹⁷ The Applicant contacted the Maryland Historical Trust (“MHT”) for formal determinations and recommendations, and MHT determined the Project will have no adverse effect on any historic properties.¹¹⁸

¹¹⁴ Piwkhov Direct at 11.

¹¹⁵ Piwkhov Direct at 12.

¹¹⁶ Piwkhov Direct at 12.

¹¹⁷ Piwkhov Direct at 31.

¹¹⁸ ERD at 27 and Appendix P.

PPRP proposed an Archeological Discoveries RLC¹¹⁹ which requires the Applicant to consult with MHT in the event that construction reveals unforeseen archeological relics or sites.¹²⁰

Based on this record, and subject to compliance with applicable License Conditions in Attachment B, the Project will not have an adverse effect on historic sites, or cultural or archeological resources.

6. Aviation Safety

Witness Piwkhov testified that there are no public or private use airports located within three miles of the Project site and that the Federal Aviation Administration Notice Criteria Tool indicated that the Project does not exceed notice criteria, and no further notification is required.¹²¹ The Maryland Aviation Administration Project Locator Tool was completed for the Project indicating that no further action is required.¹²² Based on the above, Witness Piwkhov testified that the reviewing State agencies do not recommend any license conditions with respect to air navigation.

Based on the record in this proceeding, the Project will have no impact on aviation safety.

7. Air Quality and Water Pollution

a. Air Quality

The only sources of air emissions from the Project will be those associated with construction activities, which will be temporary.¹²³ During construction, dust may be produced from non-point sources such as earthwork and construction traffic on unpaved roads.¹²⁴ This type

¹¹⁹ PPRP RLC 22.

¹²⁰ Piwkhov Direct at 31.

¹²¹ Piwkhov Direct at 25.

¹²² ERD at 40.

¹²³ PAR at 25,

¹²⁴ ERD at 22.

of dust is described as fugitive dust. Per the ERD, fugitive dust is expected to be less than normal construction since this Project will not require excessive earthwork activities. According to the ERD, other potential sources of pollutants during construction are mobile internal combustion engines from earthwork equipment and an increase in vehicle traffic by workers. The ERD stated that emissions from these sources should have little impact.¹²⁵

In consideration of the potential for fugitive dust, PPRP provided the Fugitive Dust Control RLC,¹²⁶ which states that during construction activities, the Applicant must take “reasonable precautions” as described in COMAR 26.11.06.03D, to reduce the potential generation of particulate matter from unpaved roads.

According to the Applicant’s ERD, the Project, like all solar generation facilities, will generate no air pollution emissions during its operation. Notably, the Applicant’s ERD stated the Environmental Protection Agency (“EPA”) Avoided Emissions and generation Tool (“AVERT”) online calculator estimated that this Project is expected to displace approximately 7,210 tons of carbon dioxide (“CO₂”).¹²⁷

Subject to compliance with the fugitive dust control License Condition, which has been included without modification in the License Conditions in Attachment B, the Project will not have an adverse impact on air pollution during construction. Once operational, the Project will have a positive impact on air quality.

b. Water Pollution

Witness Piwkhov testified that the entirety of the Project Site drains via unnamed tributaries into Dry Seneca Creek, which flows into the Potomac River.¹²⁸ The water features on

¹²⁵ *Id.*

¹²⁶ PPRP RLC 13.

¹²⁷ ERD at 16.

¹²⁸ Piwkhov Direct at 6.

the property on which the proposed facility will be located include an unnamed tributary to Dry Seneca Creek and its associated wetlands. Witness Piwkhov confirmed the Project Site is not located within a Tier II Catchment Area.¹²⁹

Witness Piwkhov testified about general potential stormwater management impacts from the solar projects. Changes to the site hydrology from grading and soil compaction, additional impervious surfaces, and the channeling of runoff are possible and achieving effective stormwater infiltration will be dependent on avoiding soil compaction during construction or re-loosening compacted areas before planting vegetative cover.¹³⁰

Witness Piwkhov testified that the runoff from the proposed panel array will primarily flow southwest within the LOD over an area with slopes between 0-10% before reaching two delineated wetlands and an unnamed tributary to Dry Seneca Creek, which flows through part of a Tier 5 (Significant for Biodiversity Conservation) DNR-mapped biodiversity conservation network (BioNet) area.¹³¹

Witness Piwkhov testified that while the Project drainage is within the watershed of the Potomac River, the Project will have no adverse effect on the scenic quality of the Potomac River.¹³² Moreover, the reviewing State agencies did not identify any impacts on the water feature areas that required regulatory actions.

PPRP recommended several license conditions with respect to stormwater management and to minimize or mitigate the potential impacts to streams and watersheds. Witness Piwkhov stated that mitigation for stormwater effects should be incorporated into the Erosion and Sediment Control and Stormwater Management Plans submitted to Montgomery County for approval.¹³³

¹²⁹ Piwkhov Direct at 6.

¹³⁰ Piwkhov Direct at 14.

¹³¹ Piwkhov Direct at 15.

¹³² Piwkhov Direct at 16.

¹³³ Piwkhov Direct at 15.

Witness Piwkhov noted that the Grading and Stormwater Management RLC requires that copies of these plans and approvals be filed in the Docket for this case.¹³⁴ Witness Piwkhov explained that the Vegetation Management RLC addresses avoidance and remediation of compacted soils. Witness Piwkhov then stated that the Sediment Control RLC requires that the Applicant employ MDE approved best management practice (“BMP”) standards and actions to control erosion and sediment impacts during construction.¹³⁵ The Surface Water, Wetlands, and Hydrology Impacts RLC addresses direct impact concerns to wetlands and stream resources.¹³⁶

Subject to compliance with applicable License Conditions in Attachment B, the record reflects no likely adverse impacts on water quality due to the Project.

8. Timely Disposal of Wastes Produced

According to the ERD, during construction, the contractor will collect any waste material and remove it from the site to an approved waste handling facility.¹³⁷ Large amounts of waste during construction are not anticipated. Waste material will mainly consist of packaging materials from the framing and electrical equipment that will be delivered to the site.

During operation, there will be little, or no waste material generated at the site.¹³⁸ Any waste that is generated from maintenance and/or repair operations will be removed from the site and disposed of at an approved waste handling facility. There will be no sanitary sewer waste generated at the site.

¹³⁴ Piwkhov Direct at 15.

¹³⁵ Piwkhov Direct at 15.

¹³⁶ Piwkhov Direct at 16-17.

¹³⁷ ERD at 30.

¹³⁸ ERD at 30.

Per the ERD, solar panels and inverters used in this Project do not pose any significant hazards to the environment or public health as solar panel materials are contained in a solid matrix that is insoluble and non-volatile at ambient conditions, and enclosed.¹³⁹

The ERD stated that waste associated with decommissioning and deconstruction of the Project will be handled appropriately pursuant to a decommissioning plan approved by the Commission, including provisions for safe removal and proper disposal of all components of the Project, including any components with rare/valuable minerals, as well as components containing hazardous/toxic materials. Once the life of the Project is complete, the land will revert to its original condition.¹⁴⁰

PPRP reviewed the Applicant's revised decommissioning plan.¹⁴¹ Witness Piwkhov stated that the Applicant has described the circumstances that will trigger decommissioning, a description of all Project materials to be removed, and steps to restore the Project to its pre-construction condition. Witness Piwkhov stated that PPRP finds the plan reasonable for this stage of the Project.¹⁴²

Witness Piwkhov stated that PPRP has reviewed the cost estimate and finds it to be reasonable and consistent with the Project's decommissioning plan and recent decommissioning cost estimates that the Commission has approved for other solar projects.¹⁴³ Witness Piwkhov testified that based upon the Applicant's cost estimate, PPRP has determined that a performance bond of no less than \$660,250 shall be in place prior to the start of construction.¹⁴⁴ This includes the cost of removal of all Project materials (*i.e.*, PV modules, inverters, transformers, wiring,

¹³⁹ ERD at 30.

¹⁴⁰ ERD at 30.

¹⁴¹ Piwkhov Direct at 32.

¹⁴² Piwkhov Direct at 33.

¹⁴³ Piwkhov Direct at 33.

¹⁴⁴ Piwkhov Direct at 33.

access roads), restoration of the Site to its previous condition, and transportation of all materials to a disposal location.¹⁴⁵

Witness Piwkhov testified that the Applicant included general statements indicating that the reuse and recycling of PV modules shall be maximized based on best practices at the time of decommissioning, with landfilling being the last resort.¹⁴⁶ The current proposed destination for the modules is a leading recycling facility in Sparta, Tennessee. PPRP agrees with the Applicant's assertion that the market for PV module resale and recycling is expected to further develop over the lifetime of the Project, and future decommissioning plans are expected to reflect these changes.¹⁴⁷

PPRP expects the decommissioning plan and cost estimate to change over time, as the documents are based on a conceptual site plan that is expected to change as engineering details are added and the Applicant addresses Montgomery County review comments.¹⁴⁸ Therefore, PPRP recommended the Decommissioning RLC,¹⁴⁹ which requires the Applicant to submit a Montgomery County-approved decommissioning plan and cost estimate to the Commission prior to the start of construction for review and to establish the initial amount of the bond to be in place prior to the start of construction to ensure that the financial instrument shall be sufficient for the first five years of the Project.¹⁵⁰ The Decommissioning RLC also requires the Applicant to update the decommissioning plan and cost estimate every five years thereafter.

The Decommissioning RLC establishes a mechanism for approval of the decommissioning plan and cost estimate prior to construction. Provided the Applicant complies with the License

¹⁴⁵ Piwkhov Direct at 33.

¹⁴⁶ Piwkhov Direct at 33.

¹⁴⁷ Piwkhov Direct at 34.

¹⁴⁸ Piwkhov Direct at 34.

¹⁴⁹ PPRP RLC 31.

¹⁵⁰ Piwkhov Direct at 34.

Conditions in Attachment B, as modified by this Proposed Order, and final approved decommissioning plan, there should be no adverse impacts stemming from a failure to timely dispose of waste materials.

9. Effect of Climate Change on Generating Station

Witness Piwkhov testified that the potential changes in Maryland's climate during the lifetime of the Project (roughly 40 years) include slightly higher average and extreme air temperatures (1-2 degrees C), possibly more extreme high-temperature days per year, an increase in the frequency or intensity of severe storms, and gradually rising sea level.¹⁵¹ Witness Piwkhov stated that while the Project will not be affected by sea level rise, it may be subject to possible effects of increases in air temperature or severe storms. Witness Piwkhov then stated there do not appear to be direct risks to the panels and other facility components from higher temperatures; however, the Applicant's analysis indicated that higher temperatures could reduce PV panel efficiency and power output but do not pose a permanent impact to the operation of the facility.¹⁵²

Witness Piwkhov testified that the Project is designed to withstand a storm wind speed of 115 mph and the racking system design will include wind breaks on the outer rows to limit damage in extreme weather events.¹⁵³ Witness Piwkhov stated that while this indicates compliance with the current specifications, the ability to withstand future more intense storms with higher wind speeds is unknown.¹⁵⁴

The record reflects features of the Project's design limit potential damage to the facility from foreseeable weather effects and therefore limit the possibility of catastrophic destruction from an intense storm that could require premature decommissioning to the extent practicable.

¹⁵¹ Piwkhov Direct at 21.

¹⁵² Piwkhov Direct at 21 citing ERD at 36.

¹⁵³ Piwkhov Direct at 22.

¹⁵⁴ Piwkhov Direct at 22.

10. Consistency with County's Comprehensive Plan and Zoning

Montgomery County stated in its May 15, 2025 letter that it has concerns because the Project is not consistent with the Montgomery County Zoning Ordinance that restricts development of solar projects of certain sizes and characteristics in its AR on Class I and II soils.¹⁵⁵ As previously stated in this Proposed Order, the Project exceeds the applicable 2.0 MW limitation and does not comply with the prohibition against solar collection systems on Class II soils.

The Joint Intervenors oppose the Project because it is inconsistent with the goals of the Master Plan establishing the AR. Witness Taylor reiterated that the Project violates ZTA 20-01, which permits a solar facility no larger than 2 MW.¹⁵⁶ Additionally, the record reflects that the Project does not comply with the Montgomery County prohibition against solar collection systems on Class II soils. Witness Taylor testified that in short, approval of the Application would result in farmland with prime soils being used to site oversized solar facilities rather than being used to grow food, which is contrary to decades of AR planning and preservation.¹⁵⁷

On this record, the Project is consistent with Montgomery County's comprehensive plan but not consistent with the County's zoning for the Agricultural Reserve. (See discussion in section V(A)(1) above.)

11. Efforts to Resolve Any Issues

The Applicant states it held a pre-application consultation with Montgomery County on August 15, 2023 and provided the County with a site plan and ERD on August 30, 2023.¹⁵⁸ Discussions between the Applicant and the County regarding the appropriateness of agrivoltaics as an agricultural use within the AR zone did not change the County's opposition to the Project.

¹⁵⁵ County Ex. 1.

¹⁵⁶ Taylor Direct at 11.

¹⁵⁷ Taylor Direct at 9-10.

¹⁵⁸ ERD at 8.

On behalf of the Applicant, Witness Boswell submitted written rebuttal testimony which highlighted that even though the M-NCPPC Planning Board acknowledged the Project would not comply with the solar siting restrictions in the AR imposed by ZTA 20-01, the M-NCPPC Planning Board nonetheless found that requiring agrivoltaics as part of the Project would be a mitigating factor to allow for approval. The Applicant stated it does not contest the licensing conditions proposed by the M-NCPPC Planning Board in its letter filed on May 15, 2025.

12. Impact on Greenhouse Gas Emissions

Witness Lechliden testified that local food production in the AR, particularly of corn, wheat, and soybeans, reduces the need for imported products, thereby lessening environmental contamination from transport.¹⁵⁹ Witness Lechliden testified that the AR plays a critical role in carbon offsetting through conservation tillage, cover crops, and maintaining vegetative/forest cover, which is essential for Montgomery County and Maryland to meet carbon emission reduction goals.¹⁶⁰ Witness Lechliden also testified that composting agricultural waste in the AR is vital for Montgomery County's food waste management plan. Witness Lechliden stated that efforts like on-farm food waste composting have become an important tool for managing food wastes that otherwise would end up in landfills. Witness Lechliden asserted that without the AR, Montgomery County would face severe challenges in meeting its goal of reducing greenhouse gas ("GHG") emissions by 80 percent by 2027 and 100 percent by 2035.¹⁶¹

Applicant used the EPA AVERT online calculator to estimate that the addition of this 3.0 MW solar energy generating system will support approximately 415 households at 12,000 kWh/year and displace 7,210 tons of CO₂ emissions.¹⁶² PPRP also ran the EPA AVERT

¹⁵⁹ Lechliden Direct at 6.

¹⁶⁰ Lechliden Direct at 7.

¹⁶¹ Lechliden Direct at 8.

¹⁶² ERD at 16.

analysis but PPRP’s conclusion is the Project will displace 3,820 tons of CO₂ in the Mid-Atlantic Region and 200 tons of CO₂ in Maryland.¹⁶³

The testimony of the Joint Intervenors on this subject matter does not take into account the use of agrivoltaics in the Project. The use of agrivoltaics throughout the LOD, however, negates the Joint Intervenors’ concerns. The record in this case reflects that the Project will positively impact (decrease) greenhouse gas (GHG) emissions.

13. Consistency with the State’s Climate Commitment for Reducing Statewide Greenhouse Gas Emissions

The Climate Solutions Now Act of 2022 (Senate Bill (“SB”) 528) amended several provisions of the Environment Article, *Annotated Code of Maryland* (“EN”). EN § 2-1204.2 now provides that the State shall achieve net-zero statewide GHG emissions by 2045, with EN § 2-1205 mandating a 60 percent reduction from 2006 levels by 2031.

Reduction in GHG emissions requires more renewable energy resources. The Clean Energy Jobs Act (SB 516) made substantial updates to PUA § 7-703, which addresses the State’s RPS. The RPS requires certain percentages of the State’s retail electricity sales each year to be generated from a renewable source. By 2030, the RPS is 50 percent from Tier I renewable sources with at least 14.5 percent derived from solar energy.¹⁶⁴

At the evidentiary hearing, Witness Boswell testified that the Final Report from Maryland's Task Force to study solar incentives, published in April 2024, estimates that up to 35,000 acres of land, a large portion of which will be farmland, will be needed to achieve the State’s current RPS requirement to generate at least 14.5 percent of its electricity from solar sources by 2030.¹⁶⁵

¹⁶³ PAR at 27.

¹⁶⁴ PUA § 7-703(b)(25).

¹⁶⁵ Transcript from October 2, 2025 Evidentiary Hearing (Tr.) p. 58, l. 21.

The Project will improve Maryland's ability to generate carbon-free electricity and is therefore consistent with the State's climate commitment for reducing statewide GHG emissions.

B. Additional Considerations

1. Impacts to Natural Resources and the Environment

Witness Piwkhov testified that the potential effects of the Project include disturbing or removing existing vegetation, possibly compacting soil in some locations, and changing soil drainage patterns and water holding capacity. However, Witness Piwkhov testified that appropriate mowing and other vegetation maintenance practices can create wildlife habitat, enhance soil water infiltration, and improve runoff water quality.¹⁶⁶

The Applicant indicates that it plans to plant low cover grass vegetation and incorporate wildflower seed mixes with the selected grasses to provide habitat for pollinators in areas where agrivoltaics are not incorporated.¹⁶⁷ This vegetation cover management plan will reflect the Applicant's intent to apply for DNR's Pollinator Friendly Certification.¹⁶⁸ The vegetation management plan aims to minimize mowing and groundcover selection prioritizes lower growing species.¹⁶⁹

The Applicant's Vegetation Management Plan proposes that mowing will take place 2 to 3 times per growing season.¹⁷⁰ Witness Piwkhov explained that many pollinator species and other wildlife can be negatively affected by herbicides or pesticides that have been applied to or drift from adjacent areas to their food sources or habitats and minimizing the use of herbicides or pesticides at the Project site will enhance the Applicant's plans to create pollinator-friendly habitat,

¹⁶⁶ Piwkhov Direct at 17.

¹⁶⁷ ERD at 23.

¹⁶⁸ ERD at 40.

¹⁶⁹ Piwkhov Direct at 18.

¹⁷⁰ Piwkhov Direct at 18.

as well as ensure that runoff from the site will not introduce these chemicals into downstream aquatic habitats.¹⁷¹ Another consideration noted by Witness Piwkhov is that mowing grass below 10 inches can prevent the establishment of self-sustaining wildlife-friendly grassland habitat. Witness Piwkhov stated that where feasible, employing an integrated vegetation management (“IVM”) approach can eliminate most mowing and the need for chemical treatments.¹⁷²

Witness Piwkhov noted that the reviewing State agencies’ Vegetation Management RLC¹⁷³ includes avoiding soil compaction and remediating as necessary, planting only native or naturalized species, avoiding mowing during the nesting season of most ground-nesting birds (*i.e.*, May through August), restricting mowing at all times to a height of no less than 10 inches, a protocol for managing invasive plant species, a plan for avoiding and minimizing the use of herbicides or pesticides, and using IVM protocols.¹⁷⁴ Witness Piwkhov testified that such management practices can improve ecological conditions without impairing the operations of the facility,¹⁷⁵ and that these recommendations are captured in the Vegetation Management RLC.

Witness Piwkhov testified that there are no impacts to forests and reforestation requirements are not anticipated.¹⁷⁶ Witness Piwkhov noted that the Applicant submitted the Project’s Forest Conservation Plan to the Planning Board as part of the MR review, and the M-NCPPC Planning Board approved the Applicant’s Forest Conservation Plan with conditions.¹⁷⁷ PPRP proposes a Forest Conservation RLC that requires compliance with all provisions of the

¹⁷¹ Piwkhov Direct at 18.

¹⁷² Piwkhov Direct at 19.

¹⁷³ PPRP RLC 18.

¹⁷⁴ Piwkhov Direct at 19.

¹⁷⁵ Piwkhov Direct at 19.

¹⁷⁶ Piwkhov Direct at 19.

¹⁷⁷ M-NCPPC 1.

property's existing Forest Conservation Easement associated with the Project development and provisions of Montgomery County's approved Forest Conservation Plan.¹⁷⁸

Witness Piwkhov testified as to any potential impacts to rare, threatened, or endangered ("RTE") species. Witness Piwkhov testified that the United States Fish and Wildlife Service ("USFWS") identified the Property as a potential habitat for the Monarch Butterfly and the Northern Long-eared Bat.¹⁷⁹ According to Witness Piwkhov, however, if the Applicant's seed-mix for its pollinator friendly habitat includes suitable milkweed species or other nectar producing species, the Project could have a positive impact on RTE species as it could create a habitat for the Monarch Butterfly.¹⁸⁰ The USFWS determined that the Project will have no effect on the Northern Long-eared Bat.¹⁸¹ DNR's Wildlife and Heritage ("WHS") stated that it has no official records for State or Federal listed, candidate, proposed, or rare plant or animal species within the Project area.¹⁸²

Because it is possible for RTE species to be encountered on the Site during planning, construction, operation, or maintenance of the facility, PPRP recommended a Wildlife and Heritage Service RLC¹⁸³ requiring notification to and consultation with DNR WHS should any encounters with any RTE species occur during the construction or operation of the Project.

Based on the record, the Applicant's compliance with the RLCs in Attachment B will ensure proper vegetation management, and that no adverse impacts to vegetation resources or wildlife will result from the Project.

¹⁷⁸ Piwkhov Direct at 19.

¹⁷⁹ Piwkhov Direct at 20.

¹⁸⁰ Piwkhov Direct at 21.

¹⁸¹ ERD appendix E.

¹⁸² ERD appendix D.

¹⁸³ PPRP RLC 20.

2. Transportation

Witness Piwkhov testified that because vehicles will be entering and exiting the Project during the construction phase, there is the potential for increased risk to automobile, school bus, and cyclist traffic.¹⁸⁴ Witness Piwkhov testified that the reviewing State agencies recommend the Truck Routing and Traffic Management Plan RLC¹⁸⁵ to mitigate these conflicts by requiring the Applicant to develop a Truck Routing and Traffic Management Plan, approved by Montgomery County in the Docket in this case prior to the commencement of construction.¹⁸⁶

PPRP also recommended the Road Permits RLC,¹⁸⁷ requiring the Applicant to comply with all permit requirements for use, crossing, and occupancy of State, and Montgomery County roads, to obtain appropriate approvals as necessary. Furthermore, Witness Piwkhov stated that the reviewing State agencies recommend the Road Damage RLC,¹⁸⁸ to address damage to public roads from construction vehicles.¹⁸⁹

Based on the record, the Applicant's compliance with these RLCs will ensure that any adverse impacts to transportation during construction and operation of the Project are minimized.

3. Noise

Witness Piwkhov testified that operational noise from PV facilities is typically low, only occurs during daylight hours, and that measured noise levels are expected to decline to ambient background noise levels at distances between 50 and 150 feet from the solar array.¹⁹⁰ Witness Piwkhov testified that based on the Applicant's concept site plan, filed in the Docket on

¹⁸⁴ Piwkhov Direct at 30.

¹⁸⁵ PPRP RLC 23.

¹⁸⁶ Piwkhov Direct at 30.

¹⁸⁷ PPRP RLC 24.

¹⁸⁸ PPRP RLC 25.

¹⁸⁹ Piwkhov Direct at 30.

¹⁹⁰ Piwkhov Direct at 27.

August 16, 2024, the distance from the edge of the solar facility to the nearest residence is approximately 1,825 feet, and that at this distance, operational noise generated by the Project is expected to be well below ambient background noise levels.¹⁹¹ Witness Piwkhov concluded, therefore, the Project will have no significant impact to residential receptors.

Based on the information in the record, the Project will comply with both the construction and operational noise limits.

4. Electromagnetic Field Levels

Witness Piwkhov testified that electromagnetic field (“EMF”) levels from the Project are not anticipated to pose a potential health risk to nearby residents.¹⁹² Witness Piwkhov explained that EMF levels from the proposed Project are projected to fall below the threshold for human health standards at a distance of ten feet from the electrical equipment. Witness Piwkhov concluded that because electrical equipment associated with the Project is approximately 2,000 feet from the nearest residence, the distance is sufficient to avoid adverse impacts to human health.¹⁹³

Based on the record, EMF levels at the Site will not cause adverse impacts to human health.

5. Environmental Justice

Both the Applicant and PPRP agree that under COMAR 20.79.03.05 and COMAR 20.79.01.06, an environmental justice assessment is not required for this solar Project.¹⁹⁴ PPRP, however, utilized EJSCREEN to assess all census block groups (“CBGs”) that are wholly or partially located within a three-mile radius of the Project. According to Witness Piwkhov,

¹⁹¹ Piwkhov Direct at 27.

¹⁹² Piwkhov Direct at 27.

¹⁹³ Piwkhov Direct at 28.

¹⁹⁴ ERD at 44, PAR at 13, 25.

PPRP’s assessment found that two of the CBGs within the radius of the Project had minority populations greater than the State average, and no CBGs within the radius of the Project had an EJSCREEN Demographic Index that is in the 80th percentile or higher.¹⁹⁵ Witness Piwkhov testified that, given that the Project will not generate air pollutants, noise, or large amounts of fugitive dust, and traffic will be minimized during operation, PPRP determined the Project will not have an adverse effect on nearby environmental justice communities.¹⁹⁶

6. Miscellaneous

a. PUA §7-306.2(d)(13)

Witness Piwkhov testified that there are no existing or proposed CSEGSs located on the same or an adjacent parcel of land as the Project.¹⁹⁷ There are no projects with a CPCN to construct, nor any proposed projects currently under CPCN review, or scheduled for a “preapplication meeting” that are located on the same or an adjacent parcel of land. Based on this information, PUA §7-306.2(d)(13)(i) is not applicable to the proposed Project.

b. PUA §7-306.2(n)

The Project will be subject to the prevailing wage standard requirements outlined in PUA § 7-306.2(n).¹⁹⁸

c. Agrivoltaics

The Applicant voluntarily committed to incorporating agrivoltaics practices as a part of the Project and submitted an Agrivoltaics Report and a draft Farming Request for Proposals

¹⁹⁵ PAR at 25.

¹⁹⁶ PAR at 25-26, Piwkhov Direct at 26-27.

¹⁹⁷ Piwkhov Direct at 13.

¹⁹⁸ Piwkhov Direct at 9.

(RFP) to Montgomery County’s Office of Agriculture (OAG) on December 2, 2024.¹⁹⁹ The Applicant has not yet issued the RFP in solicitation of bids.

The Joint Intervenors oppose the Project, even with the use of agrivoltaics. Witness Lechlinder asserted that agrivoltaics is not a recognized exception within the provisions of ZTA 20-01 and should not be employed to circumvent its protections of prime farm Class I and II soils.²⁰⁰ Witness Lechlinder further testified that traditional solar and agriculture are most efficient when separated, and that agrivoltaics has not been proven feasible under local agronomic conditions.²⁰¹ Witness Lechlinder stated that to enhance the sustainability of crops, the spacing and height of solar panels needs to be expanded, reducing the per acre output of the solar panels and that the panels themselves reduce the per acre crop yield.²⁰² Witness Taylor stated there is currently insufficient data to indicate that agrivoltaics will be successful under local growing conditions.²⁰³

Witness Piwkhov testified at the evidentiary hearing that even without the incorporation of agrivoltaics in this Project, PPRP’s recommendation is that the Commission approve this Project.²⁰⁴

The RFP drafted by the Applicant does not specify the type of Agrivoltaics that will be used. PUA § 7-306.2(a)(2), as of the date the Application was filed, defined “Agrivoltaics” as the simultaneous use of areas of land for both solar power generation and:

- (i) raising grains, fruits, herbs, melons, mushrooms, nuts, seeds, tobacco, or vegetables;
- (ii) raising poultry, including chickens and turkeys, for meat or egg production;
- (iii) dairy production, such as the raising of milking cows;
- (iv) raising livestock, including cattle, sheep, goats, or pigs;
- (v) horse boarding, breeding, or training;

¹⁹⁹ Piwkhov Direct at 9 citing Applicant Response to PPRP DR 5-2a.

²⁰⁰ Lechlinder Direct at 9.

²⁰¹ Lechlinder Direct at 9.

²⁰² Lechlinder Direct at 9.

²⁰³ Taylor Direct at 10.

²⁰⁴ Tr. p. 91.

- (vi) turf farming;
- (vii) raising ornamental shrubs, plants, or flowers, including aquatic plants;
- (viii) aquaculture;
- (ix) silviculture; or
- (x) any other activity recognized by the Department of Agriculture as an agricultural activity.²⁰⁵

Agrivoltaics, a term that applies to a wide spectrum of farming and husbandry activities combined with energy generation, are somewhat new across the country, and to Maryland. The term in Maryland has recently been more precisely defined to include more than mere pollinator habitat and/or apiaries,²⁰⁶ and this most recent definition is what “Agrivoltaics” refers to in the ordering paragraphs herein.

Due to its location in Montgomery County’s Agricultural Reserve, and its siting on Class I/II soils, consistent dual-use agrivoltaics, as described by PUA § 7-306.2(a)(2), should be a requirement for the issuance of a CPCN in this case. Mere use of pollinator friendly habitats and/or apiaries is not enough. The requirement of consistent dual-use Agrivoltaics both satisfies Maryland’s renewable energy goals and ensures the use of agriculture in the land designated by Montgomery County as an Agricultural Reserve.

The Applicant stated that it “is voluntarily committing to incorporate agrivoltaic practices as part of the Project.”²⁰⁷ The question is what these “commitments” mean and how they can be enforced. The Applicant has drafted an RFP to solicit providers but has not yet issued that RFP; thus, the Applicant cannot provide specific details of the agrivoltaic plan at this time.

PPRP proposed an agrivoltaics plan RLC that says “*if* Agrivoltaics is employed at the Project site” the Project Owner shall file an agrivoltaics plan *reviewed by* Montgomery County in

²⁰⁵ As of July 1, 2025, PUA § 7-306.2 was amended to include the requirements that areas of land must be maintained in agricultural use in accordance with COMAR 18.02.03 or the Maryland Assessment Procedures Manual (§ 7-306.2(a)(2)(i)(1)) and “Agrivoltaics” specifically does not include the simultaneous use of areas of land for both solar power and apiaries or pollinator habitat (§ 7-306.2(a)(2)(ii)(1-2)).

²⁰⁶ § 7-306.2(a)(2)(ii)(1-2).

²⁰⁷ Tr. p. 67.

the PSC docket at least 30 days prior to operation, and sets forth the minimum requirements of such a plan, and requires an updated plan be filed at least every five years after the commencement of operation or whenever a change occurs in the agrivoltaic activity selected.²⁰⁸

M-NCPPC recommended approval of the Project *subject to* the use of agrivoltaics on the Project. If this Project is to be approved, it must include active Agrivoltaics as defined by PUA § 7-306.2(a)(2) in addition to pollinator friendly habitat. PPRP's RLCs as modified in Attachment B to this Proposed Order and M-NCPPC conditions included as Attachment E are hereby accepted. Should the owner/operator of this Project fail to maintain active Agrivoltaics throughout the life of the Project, the Compliance RLC²⁰⁹ will allow Montgomery County, PPRP, or any other Party to the case to file notice to the Project's Representative who will have 45 days to file in the docket a summary of the non-compliance issue and a statement of how it has addressed or is addressing the matter.

Approval of the CPCN for this Project is conditioned on the use of Agrivoltaics as defined by PUA § 7-306.2(a)(2) throughout the life of the Project. Agrivoltaics shall be used on the majority of the LOD, except where access roads and/or concrete pads or other equipment are installed. In areas of the Property where Agrivoltaics is not feasible, the Project shall include the planting and maintenance of pollinator-friendly habitat. In addition, prior to construction, the Applicant shall obtain financial surety in the form of a bond or letter of credit from a financial institution in an amount not less than \$500,000 payable to Montgomery County, in the event the Commission makes a finding that the Project Owner failed to ensure continued use of Agrivoltaics as defined by PUA § 7-306.2(a)(2) throughout the life of the Project.

²⁰⁸ PPRP RLC 17.

²⁰⁹ PPRP RLC 32.

Use of Agrivoltaics is a requirement of this Project. In addition, the reporting requirements in PPRP's agrivoltaics plan RLC, as modified in Attachments B and C to this Proposed Order and M-NCPPC conditions in Attachment E to this Proposed Order are hereby accepted. Should the owner/operator of this Project fail to maintain Agrivoltaics throughout the LOD as set forth herein throughout the life of the Project, the Compliance RLC will allow Montgomery County, PPRP, or any other Party to the case to file notice with the Project's Representative who will have 45 days to file in the docket a summary of the non-compliance issue and a statement of how the Project Owner has addressed or is addressing the matter.

VI. Conclusion

Before taking final action on a CPCN application, the Commission must give due consideration to several factors under PUA § 7-207(e). After considering all of these and other factors, including the recommendations, if any, of the county in which the project is proposed, the Commission weighs the overall benefits of the project against the likely impacts of the project.

As set forth herein, the Project is consistent with Montgomery County's comprehensive plan but not consistent with the County's zoning because it exceeds the 2 MW maximum for solar installations within the AR zone and because the Site is located on Class II soils. The Project is consistent with all other aspects of the County's zoning.

The Project will not adversely affect the reliability and stability of the local electric system. Visual impacts and projected glare 3 years post-construction is anticipated to be *de minimus*. There are no historic sites, or cultural or archeological resources on or near the Site. No adverse effects are predicted on aviation safety, water quality, vegetation, forests, or wildlife. There will be no permanent noise impacts, or adverse impacts to health due to EMF. A primary consideration is the renewable energy generation the Project will provide, which contributes to meeting regional

energy needs, advancing sustainability goals, and reducing carbon emissions. The Project will have a positive impact on air quality through a reduction in GHG emissions. In addition, the Project is expected to provide the various economic benefits noted by the General Assembly.

The record in this case supports the conclusion that, considering Maryland's renewable energy goals, subject to appropriate license conditions, on balance the benefits of this proposed Project strongly outweigh Montgomery County's local zoning that would preclude it. The requirement of Agrivoltaics throughout the life of the Project allows use of this Site to both generate solar electricity in furtherance of Maryland's renewable energy goals and to use the land for agriculture, which is the intended use of Montgomery County's AR zone. The Applicant or any Project Owner shall use Agrivoltaics throughout the LOD and through the end of the life of the Project. The Applicant or Project Owner shall be required to obtain a financial surety which will be payable to Montgomery County in the event the Commission finds that Agrivoltaics is not implemented or ceases prior to the end of the life of the Project. Should any Party allege that the Project Owner fails to implement or fails to continue to employ Agrivoltaics throughout the life of the Project, that Party shall contact the Project's Representative pursuant to PPRP's compliance RLC and the Project Representative shall have 45 days to respond with a filing in the docket.

Accordingly, Chaberton Solar Sugarloaf I, LLC's Application will be approved subject to (1) the use of Agrivoltaics throughout the LOD and through the end of the life of the Project, (2) the Project Owner's acquisition of financial surety in the form of a bond or letter of credit payable to Montgomery County in the amount of not less than \$500,000 from a financial institution prior to the start of construction, (3) the planting and maintenance of pollinator habitat in that portion of the LOD where Agrivoltaics use is not viable, (4) the License Conditions of PPRP²¹⁰ as modified by this Proposed Order, and attached hereto as Attachment B; (5) the conditions proposed

²¹⁰ PPRP Ex. 9.

by Staff,²¹¹ as attached to this Proposed Order as Attachment D; and (6) the conditions proposed by M-NCPPC,²¹² attached to this Proposed Order as Attachment E.

IT IS, THEREFORE, this 20th day of November, in the year Two Thousand Twenty-Five,

ORDERED: (1) That the Application of Chaberton Solar Ramiere, LLC for authority to construct a solar photovoltaic generating facility in Montgomery County, Maryland is hereby granted;

- (2) That a Certificate of Public Convenience and Necessity, subject to:
- a. the use of Agrivoltaics throughout the LOD and through the end of the life of the Project;
 - b. the Project Owner's acquisition of financial surety in the form of a bond or letter of credit payable to Montgomery County in the event that the Commission finds agrivoltaics is not used or ceases to be used on the Site in the amount of not less than \$500,000 from a financial institution prior to the start of construction;
 - c. the planting and maintenance of pollinator habitat throughout the Site where agrivoltaics use is not viable;
 - d. the License Conditions of PPRP, modified herein and attached hereto as Attachment B;
 - e. the recommendations of Staff, attached hereto as Attachment D;
- and
- f. the conditions of M-NCPPC, attached hereto as Attachment E, is hereby granted;

²¹¹ Staff Ex. 1 at 10.

²¹² M-NCPPC Ex. 1 at 2.

(3) That any party wishing to appeal this Proposed Order pursuant to Section 3-113(d)(2) of the Public Utilities Article shall file a notice of appeal and associated memorandum by December 22, 2025; and

(4) That if the Commission does not modify or reverse the Proposed Order or initiate further proceedings as provided in Section 3-114(c)(2)(ii) of the Public Utilities Article, this Proposed Order will become a final order of the Commission on December 23, 2025.

/s/ Jennifer J. Grace

Jennifer J. Grace
Public Utility Law Judge
Public Service Commission of Maryland