

IN THE MATTER OF THE APPLICATION
OF GATEWAY SOLAR, LLC FOR A
CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY TO CONSTRUCT A 12
MW SOLAR PHOTOVOLTAIC GENERATING
FACILITY IN WORCESTER COUNTY,
MARYLAND

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BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

CASE NO. 9409

July 28, 2016

PROPOSED ORDER OF PUBLIC UTILITY LAW JUDGE

Appearances:

Carolyn Elefant, Esquire, and Alexander J. E. English, Esquire, for Gateway Solar, LLC.

Steven Talson, Esquire, for the Department of Natural Resources, Power Plant Research Program.

Michael Dean, Esquire, and Lloyd J. Spavak, Esquire, for the Staff of the Maryland Public Service Commission.

Theresa V. Czarski, Esquire, for the Office of Maryland People's Counsel.

I. Procedural History

On December 1, 2015, an Application¹ was filed by Gateway Solar, LLC ("Gateway" or "the Applicant") requesting a Certificate of Public Convenience and Necessity ("CPCN") to construct a 12.0 MW Solar Photovoltaic Generating Facility in

¹ Gateway Ex.4.

Worcester County, Maryland. The solar photovoltaic generating facility, as referenced herein, will be referred to as Gateway Solar ("the Project"). The Application also included a request for a waiver of the two-year notice requirement in *Maryland Annotated Code*, Public Utilities Article ("PUA") § 7-208(c)(1). The Project would be constructed on 120 acres of a 426 acre property, which is currently used for agricultural production. It will be a generating station that has 52,000 solar panels on land in Whaleyville, Worcester County, on Maryland's eastern shore. In addition to the application, Gateway filed an Environmental Review Document² with its Generation Interconnection Feasibility Study Report for PJM Generation Interconnection Request Queue Position Z2-076.

On December 2, 2015, the Commission docketed the application as Case No. 9409 and delegated it to the Public Utility Law Judge Division.³ A pre-hearing conference was held on December 22, 2015, at which an agreed upon schedule was set for this proceeding.

On December 21, 2015, Gateway sent the notice⁴ pursuant to PUA, Sections 7-207(c)(1)(iv)-(v) to the legislators required to be put on notice of the application. Gateway also

² Gateway Ex.5.

³ ML 178930.

⁴ Gateway Ex. 2 and 3.

filed the Direct Testimony and the Rebuttal Testimony⁵ of Thomas A. Anderson, Project Manager, Gateway Solar LLC.

Staff filed the Direct Testimony of Mikhail Ratushny, Staff Engineer, with Staff's recommended Licensing Conditions.⁶

The Maryland Department of Natural Resources Power Plant Research Program ("PPRP") filed its State Agencies Letter with the Initial Recommended License Conditions⁷ and the Direct Testimony of Dr. John Sherwell, Administrator of Atmospheric Sciences, PPRP.⁸

On May 12, 2016, pursuant to PUA § 7-207(d)(2), I sent Madison J. Bunting, Jr., President of the Worcester County Commissioners, a letter inviting the Worcester County Council to sit jointly with me at the public hearing. The Counsel did not jointly sit at the Public Comment Hearing held on June 9, 2016.

On June 8, 2016, an evidentiary hearing was held at which all testimony and documents were admitted into the record subject to cross-examination. Also testifying at the hearing, for PPRP, was Marian Honeczy, Supervisor, Urban & Community Forestry Maryland Department Natural Resources Forest Service, and Jenelle Irwin, Worcester County Natural Resources Planner.

Approximately nine citizens attended the Public Comment Hearing, but only four individuals spoke. Three spoke in

⁵ Gateway Ex. 7.

⁶ Staff Ex. 1.

⁷ PPRP Ex. 1.

⁸ PPRP Ex. 2.

favor of the Project and the fourth speaker had questions about the fire hazard created and other public safety concerns; which were addressed by Thomas Anderson who also addressed the meeting with an explanation of the Project's characteristics.

II. Summary of the Application and Testimony

A. Gateway

The application and ERD stated that the Project will be a nominal 12.0 MW AC solar voltaic project on 120 acres of a 426 acre farm in Worcester County. The property was secured by a long-term lease and is zoned Agricultural 1 ("A1"), which allows for the use of the land as a solar farm. After the construction, which will involve 40-60 temporary construction jobs, the Project will have minor environmental impacts with a large continuing benefit of aiding in meeting Maryland's long-term goals for renewable energy production. The application set out the requirements of PUA Section 7-207(e)(2) and addressed each one stating its assertion that; the project can be constructed and operated in compliance with all the legal requirements. A request for wavier of the two year notice requirement in PUA Section 7-208(C)(1) was also included as an request to be addressed. This requirement only applies to the joint construction of a generating station and an associated transmission line in excess of 69,000 volts. Since there is no associated transmission line in excess of 69,000 volts as part of this case, the requested waiver does not need to be addressed as it does not apply.

The Project's ERD contained a Project Overview (Section 1), a Statement of Need and Purpose (Section 2), the Applicant's information (Section 3), the required State and Local Permits and Approvals (Section 4); COMAR 20.79.03.01 - Description of the Generating Station (Section 5); and COMAR 20.79.03.02 - Environmental Information (Section 6), as well as several appendices and figures.

According to the ERD, the Project will be located on a total of 120 acres of a 426 acre privately-owned farm. The property (Worcester County Assessor's Office Tax Map: 0019, Grid: 0003, Parcel: 0006) is owned by Tull Brothers LLC, and zoned Agricultural 1, which allows utility scale solar farms as a permitted use. The site consists of a level agricultural field that is segregated by agricultural ditches. There are no significant trees, tree cover, or forest cover at the site, and no significant structures or improvements are located on the site.

Gateway proposed to interconnect to Delmarva Power & Light Company's ("DPL") Worcester Substation using two direct taps: one into the existing 25kV MD 224 circuit and the other onto the existing 25 kV MD2282 circuit, with no need for the construction of an addition transmission line. The Applicant anticipated that the Project would have little ground disturbance for the installation of the 52,000 PV modules, which are mounted on single-axis tracking mounts. The solar panels will sit

approximately six feet above the ground in rows nineteen feet apart.

Gateway stated that the Project will cost between \$24 million and \$29 million to construct and will create approximately 40-60 temporary jobs. The Project will use a single-axis tracker technology designed to optimize the performance of the project. Gateway indicated that the Project will require numerous approvals, regulatory compliances, and permits. These include a CPCN, as well as PJM and DPL required upgrades, a National Pollutant Discharge Elimination System General Permit, and various other State and County regulatory approvals and permits.

Once completed, the Project will sell all output into the PJM Interconnection, LLC ("PJM") wholesale market via DPL's distribution system.

The Applicant stated that the Forest Conservation Act ("FCA") did not apply to cutting or clearing of public utility rights-of-way or for electric generating stations, licensed by the Commission, provided certain conditions were met. They stated that it is exempt because (1) it will receive a CPCN from the PSC before Project construction and (2) it will be installed primarily on previously cleared agricultural land, thus minimizing forest loss.⁹

⁹ Gateway Ex. 7.at P. 6 L. 1-8.

The Applicant indicated that the areas surrounding the Project site are primarily agriculturally zoned parcels, and residential use land. There will be an eight-foot high black vinyl chain-link fence around the perimeter of the project to provide security and safety. Landscape buffers will be implemented where there are adjoining residential uses. There are no planned operations and/or maintenance facilities as part of the Project.

In terms of noise, Gateway stated that all noise during construction shall be below the 90 decibel rating at the property lines.¹⁰ Once the Project is operational, the Applicant asserted that the only noise will be from inverters and transformers and, as the nearest residence is approximately 360 feet away, the noise from the closest inverter will be below the permitted 65/55 decibel levels. Gateway indicated that no known rare, threatened or endangered species are on the Project site.¹¹ Additionally, the Applicant indicated that no pollutants would be emitted during the operation of the generating station, and that any waste generated during construction and/or operation of the Project would be disposed of to an approved waste handling facility.¹²

¹⁰ See Gateway Ex. 5, Sec. V, B-2 at P. 18-19.

¹¹ *Id.*, Sec. VI, A-1 e & f.

¹² *Id.*, Sec. VI, E-1 & 2.

B. PPRP

PPRP witness Sherwell summarized the findings and preliminary recommendations resulting from PPRP's evaluation of the Project. He stated that PPRP performed an independent environmental and socioeconomic evaluation of the Project, which included a field review of the site on February 11, 2016.¹³ Dr. Sherwell's testimony included the initial recommended licensing conditions that were developed in coordination with various State agencies.¹⁴ As part of its review, he indicated that PPRP examined both the potential environmental and socioeconomic impacts to economic and fiscal issues, transportation, land use, visual impacts, historic and archaeological sites, public services and safety, property values and noise impacts from the Project.

Dr. Sherwell testified that the construction of the Project would require 24 acres of on-site or 48 acres of off-site mitigation under the FCA as computed under the provisions of Worcester County's Forest Conservation Law.¹⁵

In terms of rare, threatened and endangered species, Dr. Sherwell indicated that there are no known threatened and endangered species on the proposed site.¹⁶

¹³ See PPRP Ex. 2.at P. 3, L.19.

¹⁴ PPRP Ex. 1.

¹⁵ PPRP Ex, at P. 5, L. 14-18 and PPRP Ex. 1, Condition #7.

¹⁶ PPRP Ex. 2, at P. 6, L. 6-7.

Dr. Sherwell indicated that the United States Army Corp of Engineers ("USACE") and Maryland Department of Environment's ("MDE") verified the presence of wetlands on the site. PPRP recommends a license condition requiring that, prior to the commencement of construction, Gateway obtain all necessary approvals and permits from MDE and USACE regarding impacts to wetlands.¹⁷

In terms of socioeconomic benefits, Dr. Sherwell stated that the Project would create up to 40 to 60 design, management and construction jobs.¹⁸ He testified that the local labor pool could be the source of many of the construction-related positions, which would have a positive fiscal impact for the local economy.¹⁹ Dr. Sherwell indicated that the Project will not have operations or maintenance facilities, or a permanent operations or maintenance workforce.²⁰ PPRP estimated that the business personal property taxes resulting from the Project would be approximately \$130,000 in the first year of operation, which would decline due to depreciation to approximately \$50,000 in the Project's twentieth year.²¹

The parcel that the Project will be constructed on is

¹⁷ *Id.* at P. 7, L. 4-6.

¹⁸ *Id.* at P. 7, L. 12.

¹⁹ *Id.* L. 15-19.

²⁰ *Id.* at P. 7, L. 26 to P. 8, L. 1.

²¹ *Id.* at P. 8.

zoned A1 - Agriculture. Dr. Sherwell explained that utility-scale solar projects may be located in any Agriculture, Estate, Village, Commercial (except Commercial Marine) and Industrial District lots greater than fifty acres, "subject to a two-step process comprising [of] Concept Plan approval followed by Master Site Plan approval."²² To address land use impacts from the Project, PPRP recommended that Gateway certify to both PPRP and the Commission that the Project has been designed "in substantial conformity to Worcester County's Site Plan review requirements and has received all required permits and approvals from Worcester County prior to the commencement of construction."²³

PPRP also addressed the impact on transportation resulting from the Project. Dr. Sherwell testified that most construction traffic will utilize MD 346, a state highway.²⁴ PPRP estimated no more than fifty automobiles and light trucks would be added to the local roads, which would not reduce the level of service on nearby roads.²⁵ Similarly, Dr. Sherwell stated that the Project's construction would generate approximately 100-200 truck deliveries, an average of 10 total truck trips per week, which will not adversely impact existing traffic.²⁶ He recommended that Gateway "comply with all permit requirements for

²² *Id.* at P. 8, L. 16-21.

²³ *Id.* at P. 9, L. 2-6.

²⁴ *Id.* at P. 9, L. 9-12.

²⁵ *Id.* at L. 13-18.

²⁶ *Id.* at L. 19-21.

use of State roads and obtain appropriate approvals as necessary."²⁷

Dr. Sherwell testified that the Federal Aviation Administration has "the authority to conduct aeronautical studies of proposed activities that could affect airspace" which "review physical incursions of proposed structures into airspace, interference with radar communications and any other conditions such as glare that might negatively affect air traffic."²⁸ PPRP concluded that since no airports are within two and one half miles of the Project site, there would be no adverse impact upon air navigation.²⁹

PPRP also addressed the visual impacts of the Project. Dr. Sherwell noted that the site's terrain was relatively flat and most of the parcel is surrounded by forested lands. He testified that the arrays will have a low visual profile, sitting no more than six feet above ground, with some components slightly higher.³⁰ PPRP recommended planting "a minimum 25-foot deep landscape screen of native evergreen trees and shrubs outside the perimeter fencing from any property line or public road", which may be adjusted or waived by the County.³¹

²⁷ *Id.* at P. 10, L. 4-6.

²⁸ *Id.* P. 10.

²⁹ *Id.*

³⁰ *Id.* at P., 10, l. 27 to P. 11, L2.

³¹ *Id.* at P., 11 L.12-19.

Additionally, PPRP conducted a glare analysis to estimate the intensity, time-of-day and duration of glare, and concluded that surrounding residences, overlooks, and roadways would not experience glare.³² However, Dr. Sherwell recommended the Applicant document and address solar reflection complaints.³³

Dr. Sherwell also discussed the Project's impact on historical and cultural resources. He stated that there are no properties on the National Register of Historic Places or the Maryland Inventory of Historic Properties within one mile of the Project, and no Maryland Historic Trust ("MHT") easements would be affected.³⁴ The MHT concluded there would be no adverse effects on historic properties from the Project. However, in the event relics of unforeseen archeological sites are revealed and identified during construction, the Applicant should be required to work with the MHT "to develop and implement a plan for avoidance, data recovery, or destruction without recovery of such relics or sites."³⁵

PPRP noted that MD 346 is a designated on-road bicycle route. Dr. Sherwell stated that there should be a condition that directs Gateway to instruct its suppliers, contractors, and

³² *Id.* at L. 20.

³³ *Id.* at L. 25-26.

³⁴ *Id.* at P. 12.

³⁵ *Id.*

employees to be aware of cyclists on MD 346 as it is a designated bike route.³⁶

Next, Dr. Sherwell discussed the Project's impact on public services and safety. PPRP anticipated no impacts during construction or operation on public services and safety.³⁷ He stated that post-construction, the risk of fire from ground-mounted photovoltaic systems is low provided that fuels are removed from under and near the solar arrays.³⁸ PPRP recommended that the Applicant design, install and maintain the Project to meet the minimum standards set forth in the National Fire Protection Association's NFPA 1 Fire Code Handbook and NFPA 70 National Electrical Code.³⁹ Dr. Sherwell noted that a potential hazard for firefighters would be the risk of electrical shock. Therefore, PPRP recommended Gateway coordinate with the Willards Volunteer Fire Company, Berlin Fire Company, Showell Volunteer Fire Department, Worcester County Fire Marshal and County Department of Emergency Services to establish points of contact, emergency access to the site, a protocol to identify system components, and develop standard operating procedures and guidelines.⁴⁰

³⁶ *Id.*

³⁷ *Id. at P. 13.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id. at P. 14.*

Dr. Sherwell concluded that due to the Project's minimal vertical profile and the recommended vegetation buffer, the Project will be largely out of site from nearby properties.⁴¹ Additionally, once the Project is operational, there will not be significant traffic, noise, pollution or generate hazardous waste that could impact the public health.⁴² Dr. Sherwell also indicated that the site will be returned to its original state at the conclusion of the Project's useful life. Therefore, he testified that "the local environment would be minimally impacted by the Project" and "that the proposed facility would have a moderately benign local presence once the facility is operational suggests that property values would be unaffected by the Project."⁴³

Finally, Dr. Sherwell discussed PPRP's noise impact assessment. He determined that during both construction and operation, the Project will comply with applicable noise limits.⁴⁴

C. Staff

Mr. Ratushny described the Project and explained the process by which generators are connected to the regional transmission system and the various studies and agreements that

⁴¹ *Id.* at P. 14.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.* P. 15.

are required.⁴⁵ Mr. Ratushny stated the Project has to have a Feasibility Study and Feasibility Study Agreement; an Impact Study and Impact Study Agreement; a Facilities Study and Facilities Study Agreement; a Wholesale Market Participants Agreement; an Interconnection Service Agreement, and a Construction Services Agreement.⁴⁶ Mr. Ratushny stated that prior to becoming operational, "the Project will be required to comply with DPL's and PJM's interconnection requirements and complete the requisite facility upgrades and milestones specified" in both the Interconnection Service Agreement and Wholesale Market Participants Agreement.⁴⁷

In terms of conditions, Mr. Ratushny recommended that the completion of the required facilities and any necessary upgrades be verified prior to operation of the Project.⁴⁸ This will ensure there are no adverse impacts on the electricity transmission system's reliability and stability. Additionally, he recommended that Gateway obtain Commission approval to conduct business as an electric retail supplier prior to conducting any retail electricity sales.⁴⁹

Mr. Ratushny concluded that the Project will help contribute to meeting the State's Renewable Portfolio Standards

⁴⁵ See Staff Ex. 1.

⁴⁶ *Id.* at P. 5 & 6.

⁴⁷ *Id.* at P. 10.

⁴⁸ *Id.* at P. 11.

⁴⁹ *Id.*

("RPS") goal of having two percent solar generation by 2022.⁵⁰ Therefore, he recommended that a CPCN be issued for the Project, consistent with the licensing conditions proposed by both Staff and the other State agencies.⁵¹

D. Public Comments

At the public hearing, three members of the public spoke in favor of the Project. One stated that he was in favor of the Project because it would be good for the local economy and it creates green energy. A contractor who has worked on previous solar projects spoke in favor of this Project. The third speaker had questions about fire and safety issues.

A Gateway representative spoke at the hearing responding to comments and questions.

No written comments were filed with the Commission.

III. Discussion and Analysis

This application was filed pursuant PUA § 7-207. Pursuant to PUA § 7-207(e), the Commission shall take action on an application for a CPCN only after due consideration of the followings factors:

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

⁵⁰ *Id.* at P. 12.

⁵¹ *Id.* at P. 12-13.

(2) The effect of the generating station, overhead transmission line, or qualified lead line on:

(i) The stability and reliability of the electric system;

(ii) economics;

(iii) esthetics;

(iv) historic sites;

(v) aviation safety as determined by the Maryland Aviation Administration and the administrator of the Federal Aviation Administration;

(vi) when applicable, air and water pollution; and

(vii) the availability and means for the required timely disposal of wastes produced by any generating station.

IV. Forest Conservation Act

The only issue in dispute is the level of the application of the FCA to the Project. All of the other factors that must be considered had an acknowledgment by the parties that the recommended licensing conditions of PPRP and Staff should be accepted, and if accepted, would allow the construction and operation of the project under a CPCN.

Gateway objects to PPRP's condition number seven and to the compromise Staff offered in its testimony, on the correct level of reforestation or afforestation, as required under the FCA.⁵²

⁵² Md. Code Ann.at Nat. Res.(NR) Sec:5-1601- Sec:5-1613.

Gateway's witness Anderson testified that Gateway considered that the granting of a CPCN, under the exemption for generating stations in the FCA, means that the Commission only needs to give "due consideration"⁵³ to the minimization of tree loss and to the No Net Forest Loss⁵⁴ policy of the FCA. Gateway opines that this does not mean full compliance to the FCA requirements as contained in PPRP's condition seven. Gateway's position is the "due consideration" requirement does not mean automatic full compliance, but can mean anything from zero forestation to full compliance, as found by the facts applied under the due consideration standard. Gateway asserts that since it will not remove any trees from the already cleared land, and since it was told by Worcester County planning staff that no mitigation would be required due to its having a CPCN, that the due consideration standard does not mean automatic full compliance, but only requires the Commission to examine and balance the relevant facts.

Gateway states that PPRP's interpretation fails to give consideration to Worcester County's intent in its Forest Conservation Ordinance that exempts generating stations where minimal tree removal is involved.

Gateway also states that PPRP has not met its burden

⁵³ Gateway Ex.7, P.10, L. 13-20.

⁵⁴ Id. at P.9, L. 12-16.

to show that condition seven is supported by the evidence because the fact that no trees are being removed is the maximum level of minimizing tree removal. It also asserts that the increased costs of compliance with this condition seven will make the cost of solar projects higher, which will reduce the likelihood of more solar projects being proposed, which is contrary to the stated goals of Maryland's efforts to increase its renewable energy portfolio.⁵⁵

Gateway also disagrees with the Staff's compromise position. Staff asserts that due consideration requires mitigation, and it has split the difference of PPRP's full compliance and Gateway's no afforestation positions. Gateway states that there is no evidence to support staff's arbitrary compromise and that it should be rejected.

PPRP agrees with the Staff that the Commission has discretion in applying the FCA to this project but disagrees with the "50-50" split proposed by the Staff. It asserts that the goals of forest conservation and of an increase in solar power are not mutually exclusive but instead are complementary. PPRP asserts that the added costs of complying with its condition seven will not impede solar development in Maryland.

PPRP agrees with the applicant that due consideration must be given, but that does not mean that full compliance is not correct in this case. Worcester County provided to PPRP the level

⁵⁵ See PUA Sec. 7-702(a).

of mitigation its code requires under its planning standards. PPRP asserts that there is no evidence that supports any finding other than full compliance with the County's ordinance as embodied in its condition seven.⁵⁶

Staff asserts that the commission has a duty to use its discretion in giving due consideration to the FCA, at the same level it gives other factors (PUA Sec. 7-207), in deciding what if any remedial actions to order. This does not mandate full compliance or complete exemption, but it does require a consideration of the local ordinance. Staff states that the record does not contain any clear reason to favor the State's interest in forest conservation over its policy favoring solar development. Staff wants equal weight given to the two policies and recommends either 12 acres of forestation or a payment of a fee-in-lieu of \$156,750.⁵⁷

V. Findings

I find that the only dispute to be resolved is the amount, if any, of the mitigation required under the FCA to be made a condition to the CPCN. The record testimony supports a finding somewhere between the positions of the Applicant and of PPRP in consideration of the policies of solar development and of forest protection. These policies of Maryland that must be considered in a balancing of the goals of these policies, which

⁵⁶ Condition seven requires either 24 acres of on-site afforestation or 48 acres of off-site forest retention.

⁵⁷ The fee-in-lieu amount is half the amount that was contained in the testimony of the Worcester County's witness. Tr. p. 112.

are not mutually exclusive, but do have conflicting considerations. The goal of an increase in renewal energy production can be inhibited if the expense of adding new generation is made too costly or much more costly, by full compliance with the FCA. The goal of "no net loss" and of an increase in the percentage of state forest coverage is prejudiced if solar installations do not cover their fair share of the burden of the costs of these goals. Both of these goals are worthy and are beneficial to the environment, and I find that they are both obtainable by finding the correct balance of afforestation, to be ordered, based upon the evidence in this case. I find that the arbitrary equivalency given to them by the Staff is unsupported by the evidence. The benefits, to the environment, of an added solar farm can be measured in decades while the benefits of added forest resources can be measured in millenniums.

I further find that the added costs of afforestation (\$340,000⁵⁸ as estimated by Gateway) in a project with a cost of over \$25 million, when amortized over the useful life of the project, is not an amount large enough to inhibit future solar installations. It is just a cost to be factored in the total amount of costs for these types of for-profit investments.

I find that the evidence supports a finding that no reforestation is to be ordered because there are no existing

⁵⁸ See Tr. P. 33-34.

trees being removed. This finding is consistent with the reasoning used in the Pinesburg Solar⁵⁹ case that found that due consideration required a tree for tree replacement. This finding does resolve the "reforestation" issue but does not resolve the "afforestation" issue. Afforestation addresses the fact that at one time the entire State was forested and over time deforestation has occurred. The site of this project is an example of land where forest cover was lost years ago. The lack of forest cover makes this site a cheaper location than a similar one that is still forested, and that fact was a probable consideration in the site selected. The environmental benefit of afforestation of this site cannot be disputed, and some afforestation is reasonable to be ordered after giving due consideration of the evidence. I find that PPRP's condition 7 shall be amended to require 24 acres of on-site afforestation. This can include the areas referred to by conditions Number 15 and 16, or 24 acres of off-site forest retention. The off-site option amount has been reduced to 24 acres from PPRP's proposed 48 acres to reflect that this is the correct amount of acreage of trees to be protected or added, regardless of the location of those trees within Worcester County. This formula reflects the same tree for tree analysis as applied to the reforestation consideration, as stated above. This finding strikes the correct balance of the costs and environmental benefits that the evidence

⁵⁹ Case number 9395.

supports, and I reject the compromise condition as offered by the Staff.

I further find that there is no record in the docket from the local county government that either supports or opposes the Project.

I find that the evidence is undisputed that the Project can be built and operated without any negative effects to the stability and reliability of the electric system and grid.

I find that the Project will have some, but limited, benefit to the economy in the form of creating construction jobs. Additionally, once completed, the Project will contribute to Maryland's Renewable Energy Standards Portfolio by adding approximately 12.0 MW to the Portfolio.

Subject to PPRP's recommended licensing conditions, I find that the Project will have no negative effects on esthetics of the Project site or nearby properties.

I find that the Project will have no negative impacts on historical sites.

I find that the Project will have no adverse effect on aviation safety as there are no airports nearby the Project site.

I find that the Project will have no adverse effects on air or water pollution.

I find that the Project will produce minimal quantities of waste which will be timely disposed of at an offsite-licensed landfill. In the event that hazardous waste is

generated, I find that such waste will be managed in accordance with applicable federal and State requirements.

Subject to the Final Licensing Conditions of PPRP, as amended herein and of the Staff, I find that the Project meets all federal and State environmental laws and standards.

I therefore find that granting the CPCN, as requested and which includes PPRP's Recommended Licensing Conditions, as amended herein, attached hereto as Appendix A and made a part hereof, as well as Staff's recommended conditions, attached hereto as Appendix B and made a part hereof, satisfies the public convenience and necessity requirement of PUA § 7-207.

IT IS, THEREFORE, this 28th day of July, in the year Two Thousand Sixteen,

ORDERED: (1) That the Application filed for a Certificate of Public Convenience and Necessity to construct a 12.0 MW solar photovoltaic generating facility in Worcester County, Maryland is hereby granted to Gateway Solar, LLC in accordance with the findings and decision rendered herein.

(2) That the conditions in Appendix A, as amended herein, and Appendix B attached and incorporated herein are hereby accepted as licensing conditions of the Certificate and Public Convenience and Necessity in accordance with the findings of this Proposed Order.

(3) That this Proposed Order will become a final order of the Commission on August 30, 2016, unless before that date an appeal is noted with the Commission by any party to

this proceeding as provided in Section 3-113(d)(2) of the Public Utilities Article, or the Commission modifies or reverses the Proposed Order or initiates further proceedings in this matter as provided in Section 3-114(c)(2) of the Public Utilities Article.

Dennis H. Sober
Public Utility Law Judge
Public Service Commission of Maryland