Circuit Court for Baltimore City
Case No. 24-C-20-005110

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 668

September Term, 2021

FREDERICK COUNTY, MARYLAND

v.

MARYLAND PUBLIC SERVICE COMMISSION, ET AL.

Wells, C.J.,
Leahy,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: December 12, 2022

The General Assembly has delegated authority to approve generating facilities to the Maryland Public Service Commission (the "Commission" or "PSC"). A generating facility cannot be constructed unless, after an exhaustive application and approval process, the Commission issues a Certificate for Public Convenience and Necessity ("CPCN") in conformance with Maryland Code (1998, 2020 Repl. Vol.), Public Utilities Article ("PU"), § 7-207.[1] This appeal involves the "intersection of the State's efforts to promote solar electric generation as part of its renewable energy policies, and local governments' interest in ensuring compliance with local planning and zoning prerogatives." *Bd. of Cnty. Comm'rs of Wash. Cnty. v. Perennial Solar, LLC*, 464 Md. 610, 612 (2019). More specifically, we must consider whether the Commission appropriately considered the relationship between the CPCN in this case and its impact on the State's Renewable Portfolio Standard ("RPS"), and whether the Commission gave "due consideration" to the County's recommendations, zoning, and comprehensive plan (also referred to as "CP").[2]

[1] In portions of this opinion, we refer to the version of the Public Utilities Article in effect at the time of the Commission's final order on November 24, 2020. Since that date, the statute has been amended several times: first, to allow for virtual public hearings due to the COVID-19 emergency, 2021 Md. Laws, ch. 268 (S.B. 430); and, second, to clarify that the Commission should consider labor standards and "the effects of climate change on the operation of certain structures, the impact of certain generation stations on statewide greenhouse gas emissions, and the consistency of the application with the State's climate commitments[.]" 2021 Md. Laws, ch. 614 (H.B. 298); 2021 Md. Laws, ch. 615 (S.B. 83).

[2] A comprehensive "plan" consists of "the policies, statements, goals, and interrelated plans for private and public land use, transportation, and community facilities documented in texts and maps that constitute the guide for an area's future development." Maryland Code (2012 Vol.), Land Use Article ("LU"), § 1-101(l)(1). As relevant here, a charter county is obligated to create a comprehensive plan in accordance with the "visions"

(Continued)

Appellant, Frederick County, Maryland (the "County"), filed a petition for judicial review in the Circuit Court for Baltimore City, challenging the Commission's decision to approve Biggs Ford Solar Center, LLC's ("Biggs Ford") application for a CPCN for a 15.0 megawatt (MW) solar photovoltaic generating facility on prime farmland located within one of the County's five Priority Preservation Areas. The Commission's decision affirmed the proposed order of the public utility law judge and determined, among other things, that the judge gave "due consideration to the County's recommendations," as required by PU § 7-207(e)(1). The County appeals from the order entered in the circuit court affirming the Commission's decision, and presents three questions for our review:

> "I. Did the Public Service Commission err by adding and applying criteria [relating to the RPS] not contained within the applicable statute in its analysis and decision to approve the Certificate of Public Convenience and Necessity?
>
> II. Did the Public Service Commission exceed its authority and err when it declared that County Bill 17-07 constitutes a *de facto* ban on utility scale solar facilities in Frederick County, and further err by relying on this *ultra vires* conclusion to give the County's recommendation no weight?
>
> III. Did the Public Service Commission err/exceed its authority and fail to remain 'neutral' when it ordered the Power Plant Research Project (PPRP) to create and submit into the record documents in conflict with PPRP's stated position and statutory authority?"

for growth set forth in LU § 1-201. LU § 1-414. In keeping with those requirements, Frederick County developed a Comprehensive Plan in April 2010 and an updated plan in September 2019—the Livable Frederick Master Plan—which delineated the County's plans for its future growth. LU § 1-416 (requiring counties to review and, if necessary, revise plans every ten years).

First, we conclude that the Commission did not err in considering the RPS in evaluating whether to approve Biggs Ford's application. The Court of Appeals instructed very clearly in *Perennial Solar* that the Commission has broad authority over solar energy generating stations, in part, to "ensure compliance with the RPS." 464 Md. at 623, 644. Likewise, the General Assembly delegated broad powers to the Commission to "carry out its functions," PU § 2-112(b)(2), including ensuring compliance with the RPS and approval of CPCN applications.

Second, we cannot say the Commission failed to give due consideration to the consistency of the application with the County's recommendations, zoning, and comprehensive plan under PU § 7-207(e)(1) and (4).[3] Although the County's interests in the preservation of prime farmland are weighty, our review in this regard is constrained under PU § 3-203, by which we must assume that the final decision of the Commission is *prima facie* correct, as well as the Commission's clear preemption authority over local zoning for the siting and location of generating stations that require a CPCN. *Perennial Solar*, 464 Md. at 623-24, 644.

[3] In 2021, the General Assembly amended PU § 7-207 to require the Commission to consider the effect of climate change when deciding to grant or deny a CPCN. 2021 Md. Laws, ch. 615 (S.B. 83). The General Assembly added what is now PU § 7-207(e)(3), which requires the Commission to give due consideration to "the effect of climate change on the generating station, overhead transmission line, or qualified generator lead line based on the best available scientific information recognized by the Intergovernmental Panel on Climate Change." *Id.* Accordingly, what was once PU § 7-207(e)(3)—i.e., the provision requiring, *inter alia*, "due consideration" of a county's zoning and comprehensive plan—has been recodified as PU § 7-207(e)(4). *Id.*

Finally, we do not reach the County's third issue because it was not raised before the Commission. The record reflects that at the conclusion of the evidentiary hearing on October 29, 2019, none of the parties objected to the PULJ's request for additional information, including the PAR and proposed licensing conditions. Nor did any party file an objection to the PULJ's November 12 order requesting the same.[4] We have not located where the County raised this issue before the Commission nor does the County point to any place in the record where it did so. The Court of Appeals explained in *Cicala v. Disability Review Board for Prince George's County*:

> A party who knows or should have known that an administrative agency has committed an error and who, despite an opportunity to do so, fails to object in any way or at any time during the course of the administrative proceeding, may not raise an objection for the first time in a judicial review proceeding.

288 Md. 254, 261-62 (1980) (citations omitted). The issue is, therefore, not preserved for appellate review. *Motor Vehicle Admin. v. Shea*, 415 Md. 1, 15 (2010) ("it is settled law in Maryland that a court ordinarily 'may not pass upon issues presented to it for the first

[4] After the County waived the issue and after the additional information, including the PAR, was submitted, the County, in its briefing before the PULJ, noted PPRP's continued opposition in the PAR and urged that the license conditions would not have been submitted "but for the unusual direction issued by Order of the PULJ." We do not conclude that this preserved the issue because this point was not raised before the Commission, but even if we did, we would decide that the County's contention lacks merit. Consistent with its statutory authority, the Commission has the authority to compel testimony and produce evidence as appropriate. PU § 3-110(a) (granting Commission authority to direct person to attend proceeding and produce relevant evidence). PPRP remained a party throughout the administrative proceedings, and, as a party, the Commission was certainly within its authority to order PPRP to submit evidence. *See also Maryland State Police v. Zeigler*, 330 Md. 540, 557 (1993) ("it is an established principle that an administrative agency has broad discretion to consider evidence submitted after the close of an evidentiary hearing as long as there is compliance with procedural due process.").

time on judicial review and that are not encompassed in the final decision of the administrative agency.'") (quoting *Brodie v. Motor Vehicle Admin.*, 367 Md. 1, 4 (2001)).

Accordingly, we affirm the judgment of the circuit court.

BACKGROUND

Initial Application

On February 16, 2017, Biggs Ford filed an application with the Commission for a CPCN to construct a 15.0 MW solar photovoltaic generating facility (the "Project") on a 151-acre leased property located at the intersection of Biggs Ford Road and Dublin Road on the western edge of Walkersville in Frederick County, Maryland (the "Property"). The Property lies contiguous to the Walkersville Community Growth Area boundary, as designated in the County's CP. The United States Department of Agriculture ("USDA") has designated the soil on the Property as prime farmland in its Natural Resources Conservation Service soil survey. Accordingly, the Property is located within one of the County's five Priority Preservation Areas and is zoned for agricultural use.

Included with Biggs Ford's application was an Environmental Review Document ("ERD") and associated appendices in support of the Project. As proposed in the initial application, most of the Property would be covered by 61,000 solar panels, with a maximum height of 10 to 12 feet, and approximately six to ten power centers consisting of inverters, transformers, and associated disconnects. Biggs Ford reserved an area with an existing farm complex located in the center of the site. The initial application also projected a 25-foot setback to avoid wetlands and another 50-foot setback from a tributary of the

Monocacy River abutting the site's northern border. Biggs Ford planned to sell energy generated from the Project into the PJM Interconnection, LLC ("PJM") wholesale market as reflected in an Interconnection Service Agreement and a Construction Service Agreement entered into with PJM and Potomac Edison-FirstEnergy, respectively**.** Biggs Ford claimed the Project's 15.0 MW of solar power will help bring Maryland closer to its renewable energy goals mandated in the State RPS.

The initial application provided several reasons why Biggs Ford chose the site for the Project: 1) close proximity to the Monocacy-Carroll distribution circuit; 2) the site lacked significant environmental resources that would be impacted by the Project; and 3) the site was within a zoning district that permits solar farms as a special exception. Although there is no historic building on the site, the application described the site as "a large, well-preserved, multi-component Native American village site located on the Monocacy River."

2017 Proceedings Before the PSC

The Commission docketed the matter as Case No. 9439 and delegated it to a Public Utility Law Judge ("PULJ"). The PULJ granted Frederick County permission to intervene. Prior to the public comment hearing held on September 7, 2017,[5] the County adopted Bill No. 17-07 on May 16, and the new law became effective on July 14, 2017. The Bill amended the County's zoning approval process for utility-scale solar facilities, and among

[5] In accordance with PU § 7-207(d)(2), the President of the Frederick County Council sat jointly with the PULJ during the hearing at the PULJ's invitation.

other things, permits such facilities on properties zoned for agricultural use only after a floating zone reclassification is obtained.[6]

In June, Biggs Ford filed the direct testimonies of Ryan Gilchrist, a project manager with Coronal Development Services, LLC, and Timothy Kellerman, senior Environmental Scientist with Triad Engineering, Inc. As summarized in the PULJ's proposed order, Mr. Gilchrist "cited the 13 new zoning requirements resulting from Bill No. 17-07 that are currently applicable to the Project and claimed the Project is consistent with eight of the requirements. He suggested that the Commission give no weight to the remaining five requirements." Mr. Gilchrist claimed that the new zoning requirements "effectively would prohibit utility-scale solar projects in any Agricultural District in Frederick County." Among the requirements that Mr. Gilchrist found unreasonable were that such projects may not be located within a Priority Preservation Area, may not be contiguous to a community growth boundary as designated in the CP, and that "all areas of disturbance may not exceed the lesser of 10% of the tract of tillable acreage or 75 acres in size." Mr. Gilchrist opined that large-scale solar projects were not viable on less than approximately 100 acres. He claimed there were only five parcels in the County zoned

[6] The preamble to the Bill stated:

> The County Council of Frederick County, Maryland, finds it necessary and appropriate to delete existing Code provisions related to solar collection systems and adopt new provisions defining three categories of solar energy systems, identifying in which Zoning districts the solar energy systems may be located as a permitted use, and establishing a Commercial Solar Facility Floating Zone, and certain other criteria.

agricultural on which utility-scale projects could be constructed under the new requirements, but he noted that most owners are not interested in selling their land for solar projects.

The State agencies charged with reviewing Biggs Ford's application unanimously recommended that the PULJ deny the application. In August, PPRP[7] submitted the direct testimony of William C. Anderson, Assistant Secretary of Aquatic Resources for DNR, and a "Secretarial Letter" signed by the Secretaries of the Departments of Agriculture, Planning, Environment, DNR and the Director of the Maryland Energy Administration ("MEA"). The Secretaries of Commerce and Transportation signed on several weeks later. The letter recommended denial of the application because the record lacked evidence of the County's recommendation and Biggs Ford had failed to seek a Floating Zone reclassification. In his direct testimony, Mr. Anderson explained that "[w]hile we recognize and support the Commission's overarching siting authority for electric generating stations, *there are legitimate State interests regarding natural resource management that rely upon County implementation*." (Emphasis added).

[7] PPRP is a "continuing research program for electric power plant site evaluation and related environmental law use considerations" within the Department of Natural Resources ("DNR"). Maryland Code (1973, 2018 Repl. Vol.), Natural Resources Article ("NR"), §3-301(d). PPRP is responsible for coordinating a response to CPCN applications by DNR and the Maryland Department of the Environment ("MDE") "in consultation with the Director of the Maryland Energy Administration and in cooperation with the Secretaries of the Environment, Agriculture, Commerce, and Planning." NR § 3-303(a)(1). Specifically, under NR § 3-306, DNR and MDE must complete required studies of the proposed CPCN site and PPRP must "forward the results of the study and investigation, together with a recommendation that the certificate be granted, denied, or granted with any condition deemed necessary, to the chairman of the Commission."

The County objected to the Project and noted that the two greatest impediments to floating zone approval were the Project's location next to the community growth boundary and within a Priority Preservation Area. The County also refuted Biggs Ford's claim that the zoning ordinance operated as a prohibition on large-scale solar projects, noting, for example, that they were permitted on acreage available in the Limited Industrial and General Industrial zones. Moreover, the County noted that the 10% tillable acreage and 75-acre provisions in the new law permit a combination of parcels to be included in a floating zone, and that size limitations do not apply to industrial-zoned land.

After extensive proceedings, including an evidentiary hearing on September 18, 2017, the PULJ issued a proposed order denying Biggs Ford's application on December 5, 2017. The PULJ, quoting *Howard Cnty. v. Potomac Elec. Power Co.*, 319 Md. 511, 527 (1990), noted that in regard to the Commission's authority over the siting of generation stations, "the recommendations from other state agencies and local governing bodies are *advisory only* and not controlling." (Emphasis in original). The PULJ rejected the County's argument before the Commission that the County could not process or review the Project's plan unless the project received zoning approval, stating, "[i]f the County's position were to be accepted in this case, the ruling would effectively permit the County to veto any Commission-issued CPCN, would strip the Commission of its preemption authority, and would be contrary to both PUA § 7-207 and appellate court decisions." The PULJ clarified:

> I find no fault in [Biggs Ford's] reliance upon the Commission's preemption authority . . .. Even though PPRP recognizes the Commission's preemption authority, PPRP claimed, "[T]here are legitimate State interests regarding natural resource management that rely upon the County implementation."[]

> While I agree with that statement, the State Agencies' need to rely on county implementation is immaterial as to whether the Commission has authority to preempt a county's land use ordinance. I find that the Commission can act on a CPCN application with or without an underlying zoning decision from the respective county or municipality.

The PULJ found no valid reason to require Biggs Ford to seek a floating zone classification, "especially as the Applicant, the County and PPRP all agree that the Project is unable to meet all the criteria necessary for approval." Accordingly, the PULJ gave Bill No. 17-07 "minimal, if any, weight" in his decision because it functioned as an attempt to "entirely eliminate, or severely restrict, construction of utility-scale solar projects in the Agricultural-zoned district." The PULJ also observed that "[e]ven in industrial-zoned areas, the opportunity to site a utility-scale solar project, such as this one, is very limited due to the lack of viable parcels." The PULJ further concluded that "accepting Bill No. 17-07's requirements as a basis to deny this Project would serve a dangerous precedent" and be incompatible with the State's RPS goals.

On the other hand, the PULJ accorded "significant weight" to the County's opposition to the Project because the County "has a reasonable and legitimate interest in the preservation of its agricultural land and in the development of parcels in and around preservation areas." In accordance with those interests, the PULJ found that the Project was "inconsistent with the CP given the Project's location near preservation areas and the potential adverse impact the Project's construction and operation could have on the surrounding communities." Although the PULJ acknowledged that the CP expressed generalized support for renewable energy, he noted that "Biggs Ford's argument requires

a rigid interpretation of that sole provision within the CP, while disregarding other entire sections" related to agricultural preservation.

At the conclusion of his 95-page proposed order, the PULJ determined that Biggs Ford "failed to meet it[s] burden of proof that the Project and the associated licensing conditions justify granting the Certificate of Public Convenience and Necessity." While the PULJ found that each factor in PU § 7-207(e)(2) supported granting the application, the PULJ "place[d] significant weight on the County's opposition to the Project, the Project's inconsistency with the County's CP, and the lack of proposed licensing conditions that adequately address implementation and compliance issuances associated with construction and operation of the Project." However, the PULJ specifically noted that he was "not rejecting the Application based upon Biggs Ford's election not to seek a floating zone reclassification"; or "upon the Project's apparent non-compliance with the County's new zoning ordinance, Bill No. 17-07"; or "PPRP's election not to submit an analysis of the Project and proposed licensing conditions."

Biggs Ford appealed the PULJ's proposed order to the Commission. On appeal, the Commission remanded the case to the PULJ "to provide Biggs Ford the opportunity to seek a floating zone reclassification based upon Frederick County's recent zoning ordinance." The Commission noted that the "County's ordinance is new and it remains to be seen how the County will apply it" rendering it "premature to conclude that it will always prevent utility scale solar projects from receiving approval." The Commission also referenced that "PPRP did not propose any licensing conditions." While the Commission noted that it

could not "require that they do so," it would "invite that input on remand, particularly after Biggs Ford goes through the County floating zone reclassification process."

Floating Zone Application

In accordance with the Commission's Order, Biggs Ford and the property owner, Ralph Whitmore, filed an application for a floating zone reclassification with the County. Following public hearings by the Planning Commission and the County Council, the County Council denied Biggs Ford's application and issued its findings in Resolution No. 19-03, dated April 2, 2019. Specifically, the County Council found that the application was inconsistent with the County's comprehensive plan because the Plan designated the Property as Agricultural/Rural, and the Property "lies within the designated Priority Preservation Area" and "[o]ne hundred percent of the site contains prime farmland soils." The County Council concluded that "[c]onstruction of a commercial facility covering 96 acres of land with solar panels would not be compatible with the adjoining farming operations and low density/intensity residential uses." Likewise, the Commissioners of the Town of Walkersville opposed the request because, among other reasons, the Property is "prime farmland . . . within the Town's growth limits . . . ," and the request was "[in]compatible with the . . . Town Comprehensive Plan[.]" In sum, the County Council concluded that the application failed to satisfy the requirements for a commercial floating zone district because:

> 1) the site is adjacent to the Walkersville Community Growth boundary; 2) the site is located within the designated Walkersville Priority Preservation Area; 3) 100% of the site contains prime farmland soils; and 4) the size of the proposed project (including all areas of disturbance)

> greatly exceeds the requirement that the size of the project be the lesser of 10% of the properties' tillable acreage or 75 acres.

Additional Proceedings Before the PULJ

After receipt of County Council Resolution 19-03, the PULJ received additional testimony. On September 11, 2019, the State submitted the direct testimony of Robert Sadzinski, who, as the Program Manager for PPRP, was responsible for coordinating project reviews with other state agencies and had oversight of the licensing reviews and environmental impact assessments for CPCN applications. Mr. Sadzinski explained that the State's opposition stemmed from the fact that "the entire project site is classified as prime agricultural farmland based on its soil composition" and "the project site is within a county-designated [PPA], as defined within the Frederick County Comprehensive Plan." Mr. Sadzinski further noted that "State law requires each Maryland county to delineate PPAs to stabilize the agriculture land base within its border, and to adopt applicable local policies limiting development within these areas." Additionally, rather than "simply including all of its agricultural land[,]" Mr. Sadzinski noted that "Frederick County restricts PPA designation to properties of 'highest priority'" and the "proposed project's location within one of Frederick County's carefully selected PPAs is inconsistent with the goals of a PPA[.]"

On September 19, 2019, a second public comment hearing was held in which "comments were made both in support of and in opposition to the Project, with a majority of the individuals being opposed." As a general matter, interested citizens "cited the four bases relied upon by PPRP in support of denying the Project." Although many individuals

"noted their support for renewable energy[,]" they "objected to the Project's location in a residential area" and expressed concerns "about the negative impacts on nearby property values, ruining the existing views/esthetics, and some questioned whether the proposed landscape buffer would be maintained or whether the Project would become an eyesore like similar projects in the County." One citizen "noted the need to preserve agricultural property, especially prime farmland, and suggested solar panels be placed on commercial buildings and industrial complexes."

On October 29, 2019, the PULJ held a second evidentiary hearing. Mr. Gilchrist testified at the second hearing and discussed revisions to the Project's Site Plan intended to address the County's concerns. He explained that "the primary change was reducing [the Project] site size from approximately 135 acres to 97 acres and that opened up the possibility for us to increase setbacks." The projected solar panels were reduced by 4,000 from 61,000 to 57,000. Mr. Gilchrist also noted that the changes to the Project sought to "preserve the historic site on the properties" such that it would "continue to be visible from the road." With newly added setbacks, Mr. Gilchrist opined that the Project would have a "vegetative barrier" and that "you won't be able to see it from any road, from any residence, given the reasonably flat topography of the array and the height of the vegetative screening."

Mr. Gilchrist also objected to the site's designation by the USDA as consisting of prime farmland soils. He explained that the USDA utilized "a very general survey" which was "not based on soil samples taken at the site." Mr. Gilchrist opined that "it's not

necessarily accurate" because "there's been no on-site analysis by either the USDA or PPRP or anybody involved in the case." On cross-examination, Mr. Gilchrist conceded that Biggs Ford had not conducted any soil analysis to challenge the site's designation as prime farmland. In rebuttal, Mr. Sadzinski noted that it is PPRP's policy to rely on soil designation by the USDA.

Mr. Sadzinski testified next and explained that, despite the proposed changes to the Project Site Plan, "[t]he site is still the same" and remained incompatible with the CP. He explained that the reviewing State agencies remained opposed to issuance of the CPCN and cited several bases, including the Property's classification as prime agricultural farmland, its location with the PPA, the Project's inconsistency with the County CP, and the strong opposition of both the County and the Town of Walkersville. Although he conceded that the State's position was not that the Project would impair the underlying soils, the site's location within a county-designated PPA remained a major issue that could not be addressed by the changes to the site plan. On cross-examination, Mr. Sadzinski agreed that he couldn't say the County could not reach its goal of placing 100,000 acres under protective easement if the Project was constructed. Mr. Sadzinski also conceded that if all farmland was restricted from being used for large-scale solar projects, the State's 14.5% RPS goal would be difficult to meet.

Mr. Steven Horn, Director of the Frederick County Planning and Permitting Division, testified that the County established its PPAs "at the direction of the State of Maryland" and "was pursued by us in a manner in which we relied on soil quality

opportunities for large continuous acres of good quality farmland to go under permanent preservation." Although Mr. Horn noted that Biggs Ford's reservation of more farmland for continued agricultural use was "helpful[,]" he reiterated the County's opposition to the Project.

At the conclusion of the hearing, the PULJ determined that additional information from Biggs Ford and PPRP was needed before issuing a proposed order. The PULJ was concerned that "we get to the end of . . . this next process . . . and I'm left without any conditions and we have to come back yet again." Counsel for PPRP responded that "[w]e would like to have conditions because they are protective of the environment and of the citizens in the state." None of the parties objected to the PULJ's request for additional information.

On November 14, 2019, the PULJ issued a modified procedural schedule that (1) directed PPRP to submit a project assessment report ("PAR"), proposed licensing conditions, and supporting testimony, and (2) directed Biggs Ford to "file any information, studies, analysis, and/or testimony that reflect the modifications to the Project and its Application on or before February 10, 2020."

On February 10, 2020, PPRP filed the Supplemental Direct Testimony of Mr. Sadzinski, Requested License Conditions, and a PAR. In its cover letter, PPRP noted that the PAR and requested conditions:

> do not represent the consensus of the State's seven reviewing agencies for CPCNs, PPRP's supporting testimony is limited to Project Manager Robert Sadzinski's explanation of the process undertaken to present the attached filings. Accordingly, the requested license conditions are based solely on

> PPRP's environmental and socioeconomic review of the proposed project unless otherwise noted. Although the requested license conditions will provide some assurances that the proposed project will be built in accordance with appropriate environmental guidelines, they will not mitigate all adverse impacts from the proposed project.

PPRP continued to stress the State's concern related to the Project's location on prime farmland within the PPA and explained that in 2012, "the State had just over 1 million acres of prime farmland which has decreased over the years due to development. The County has approximately 115,500 acres of prime farmland (out of a total of 427,000 acres) and has experienced a loss of farmland due to development."[8]

Biggs Ford filed Mr. Gilchrist's supplemental testimony, an ERD Addendum, and an amended site plan. Among other things, the amended proposal included a reduced footprint, reduction in the number of solar panels, increased landscape buffer, and intent to plant a pollinator habitat, as well as additional mitigation efforts. The ERD Addendum explained that the pollinator habitat would create "greater than 50% ground cover in the solar panel zone" with native vegetation as well as "a minimum of 10 acres of flowering

[8] Notably, the Commission technical staff, in their post-remand brief, also opposed granting a CPCN for the Project. In the Staff's view, Biggs Ford's application should have been denied because "the Project (1) violates the County's Comprehensive Plan, (2) is incompatible with existing law uses, (3) violates the requirements in County law in connection with rezoning property, and (4) violates the land use policies of Walkersville." The Staff urged that, even as amended, the "mitigation measures proposed by the Project do not change the fact that the Project violates the land use policies of the County and Walkersville" and that stakeholder at all levels of government opposed the Project. Accordingly, the Staff concluded that because of "the significant weight that is given to the input by local government on the consistency of a proposed generating project with local land use policies, the fact that the Biggs Project (1) violates the County and Town's land use policies, and (2) is opposed by the County and Town, justifies rejection of the Project."

pollinator zones." Mr. Gilchrist also explained that "by locating the solar arrays closer together and by utilizing higher efficiency solar modules . . . the footprint of the Project was reduced from 135 acres to 97 acres."

The PULJ then issued an order granting other interested parties the opportunity to file testimony in response to PPRP and Biggs Ford's February 10, 2020, filings. In response, the County filed the supplemental testimony of Steve Horn on April 10, 2020. In his testimony, Mr. Horn reiterated that the proposed revisions "[do] nothing to address the primary fundamental concerns about the location of this proposed project in a Priority Preservation Area (PPA), and that the property is comprised of prime soils" or that the proposed commercial use "is inconsistent with the County's and the Town of Walkersville's Comprehensive Plans."

On April 13, 2020, Biggs Ford filed a letter indicating that it supported PPRP's proposed licensing conditions, that it did not believe further evidentiary hearings were required, and that the matter could be briefed. On April 27, 2020, the PULJ determined, with the consent of the parties, that additional hearings were not necessary. Thereafter, the parties submitted their briefing.

The PULJ and the Commission Approve

On August 27, 2020, the same PULJ who issued the first proposed order issued a second proposed order, this time granting Biggs Ford's application for a CPCN. After "reviewing the entire record in this case, including testimony, evidence, public and written comments, and briefs," the PULJ concluded that Biggs Ford "remedied the deficiencies

that served as bases to reject the Project as initially proposed" and found the "Project, as amended, to be in the public's convenience and necessity." The PULJ specifically found that the "benefits of the Project and its contribution to the State's [RPS] outweigh the Project's inconsistency with both the County's and the Town's Comprehensive Plans [] and their opposition to the Project." While noting the County's "legitimate interest in the preservation of agricultural land," the PULJ noted that, due to the amended layout, approximately a third of the parcel will continue to be farmed and "there is no evidence that the underlying farmland's prime soils will be negatively impacted by the Project." Furthermore, he noted that the PAR demonstrated two potential benefits from the Project that were not presented in Phase I: (1) the Project would see improved water quality runoff leaving the Site and (2) the Project would have positive impacts on the local economy from tax revenues and additional management and construction jobs.

The PULJ ultimately concluded that—while the project was inconsistent with the CP and "the County's interests in the preservation of farmland are legitimate"—the County's concerns regarding preservation of the site's prime farmland were "somewhat overstated." In the PULJ's view, even if "[t]he Site lies within a PPA, the 'opportunity' to place the land under protective easement only exists if a property owner is interested in placing such a restriction on their property." Additionally, the PULJ considered that "the Project could eventually be placed into the agricultural preservation program at the conclusion of its useful life" because "the underlying soil would not be impacted by the Project[.]"

The PULJ reconciled his original determination in the 2017 proposed order—that the preservation of agricultural land and the development of parcels in and around PPAs was a reasonable and legitimate interest of the County—by finding that "whether the Project preserves or uses valuable farmland is debatable." He observed that "[t]hose in favor of the Project note the land will continue to be prime farmland but will not be used as such for the life of the Project, which could extend for decades[.]"

Based upon his evaluation of the PU § 7-207 factors, the PULJ found it "appropriate to exercise the Commission's authority to preempt the County's zoning ordinance" because "the acceptance of the County's zoning ordinance would create a dangerous precedent throughout the State, unnecessarily restrict the deployment of solar facilities, and make achieving the RPS's increased goal of 14.5% solar renewable energy by 2030 completely unrealistic."

In addressing the PU § 7-207 factors, the PULJ claimed that he accorded the recommendation of the County under § 7-207(e)(1) "significant weight." However, the PULJ stated that "to the extent the County's opposition is based on Bill No. 17-07, . . . I give no weight because the County's floating zone ordinance continues to function as a de facto ban on utility-scale solar projects." Moreover, the PULJ determined the following in regard to the County's objections:

> While preservation is certainly important, the County is effectively denying the Project because the Site "would fit nicely into the agricultural preservation inventory which already contains nearby preserved prime parcels," and that "the opportunity to enlarge the adjoining block of over 1,000 acres of farmland already protected by preservation easement will be lost if the CPCN is approved." Currently, there is no such opportunity as

> the owner has no desire to voluntarily place his land into agricultural preservation, but there could be such an opportunity in the future at the end of the Project's useful life. *Furthermore, how a parcel would fit into the County's agricultural preservation inventory is not relevant to this proceeding. There is no evidence the Project would impact the County's preservation goals*[.]

(Emphasis added).

In considering the application's consistency with the County's comprehensive plan and zoning, the PULJ observed that "CPs are considered to be guides and are not mandatory unless specified in an ordinance." The PULJ acknowledged that both the Project and the CP had changed since the time he issued his first proposed order, and that the Project remained inconsistent with the CP. However, based on the "significant reduction in size of the Project, the changed layout and the landscaping buffer," the PULJ found that "the Project's potential adverse impacts to the surrounding communities, which served as a basis to find the Project was inconsistent with the CP in Phase I, have been remedied." "Additionally," the PULJ found, "while the County's interests in the preservation of farmland are legitimate, I find the County's concerns are somewhat overstated." The PULJ reiterated his observations (presented above) that owner currently had no interest in placing such a restriction on the Property.

Finally, the PULJ emphasized that "it is abundantly clear that utility-scale solar projects are a necessary component in meeting the RPS's goals" and that "the amount of farmland necessary to meet the 14.5% solar carve out is minimal, with estimates ranging between 0.72% and 1.62%," meaning that "there is no evidence to indicate that if the

Project was ultimately constructed that the County would be unable to meet its 100,000 acre preservation goal."

The County then appealed the PULJ's Proposed Order to the Commission. After summarizing the arguments of the County and Biggs Ford, the Commission affirmed the PULJ's factual findings and legal conclusions. Among other things, the Commission determined that the "County's contention that its recommendations are binding upon the Commission is simply untrue" and concluded that the "PULJ gave due consideration to the County's recommendations (as well as [Biggs Ford]'s best efforts to comply with them) before correctly deciding to exercise the Commission's pre-emption authority." Regarding the RPS, the Commission noted that the factors in PU § 7-207 "are not exclusive"; that the County did not provide a compelling reason why the Commission "should ignore" the policy underlying the RPS in evaluating applications for CPCN; and that the ordinance "created an unacceptable hurdle to complying with Maryland's RPS." The Commission further determined that "the amended Application sufficiently addressed the deficiencies in the original Application" and that the PULJ "properly considered the additional information provided" after the County rejected Biggs Ford's floating zoning application.[9]

[9] One of the commissioners dissented because he agreed "with the position and recommendations of both the PPRP and Commission Technical Staff to deny the issuance of the CPCN for Biggs Ford [] and would have exercised the authority and discretion, clearly affirmed in the *Perennial* decision, differently than the Majority."

Circuit Court Proceedings

After the Commission issued its order, the County petitioned for judicial review in the Circuit Court for Baltimore City. After briefing and a hearing, the circuit court affirmed the decision of the Commission on June 8, 2021. Among other things, the court found that the "various subsections of Title 7 of the Public Utility Article (PUA), are intended to be interpreted cooperatively"; that the factors enumerated in PU § 7-207(e) are "not exhaustive"; and that "the legislature enacted PU § 7-207, to be [c]onsistent with the [Commission's] duties to ensure compliance with the [RPS]."

Further, the court found that the Commission gave "due consideration to the recommendation" of the County, prior to concluding "that the relevant county ordinance was entitled to no weight because it was a de facto ban on solar generating stations." The court determined that "the Commission did not commit an error of law when it refused to give any weight to Petitioner's ordinance and recommendation, because the Commission reached its conclusion only after due consideration was given, as required."

The court also found that the Commission could "perform any acts necessary to aid in the conduct of proceedings" and, relying on *Maryland State Police v. Zeigler*, 330 Md. 540, 557 (1993), had "wide discretion to receive additional evidence." The court held that it was "appropriate, if not prudent, for the Commission to consider all available PPRP research, particularly when evaluating §§ 7-207(e)(2)(i) and (ii), and the Commission was well within its discretion to order additional research." Finally, the court concluded that the County "failed to clearly show that the Decision of the Commission is: (1)

unconstitutional; (2) outside the statutory authority or jurisdiction of the Commission; (3) made on unlawful procedure; (4) arbitrary or capricious; (5) affected by other error of law; or (6) if the subject of review is an order entered in a contested proceeding after a hearing, unsupported by substantial evidence on the record considered as a whole." The County noted a timely appeal.

STANDARD OF REVIEW

Generally, when reviewing the final decision of an administrative agency, "we look through the decision of the circuit court and review the agency's decision directly." *W. Montgomery Cnty. Citizens Ass'n v. Montgomery Cnty. Plan. Bd. of Md.-Nat'l Cap. Park & Plan. Comm'n*, 248 Md. App. 314, 332-33 (2020) (citation omitted), *cert. denied*, 474 Md. 198 (2021). "A court may not uphold an agency decision on any basis other than the findings or reasons stated by the agency." *Comptroller of the Treasury v. Two Farms, Inc.*, 234 Md. App. 674, 697 (2017) (citation omitted). Consequently, "[w]hile a court's decision may be upheld as right for the wrong reason, an agency decision must be 'right for the right reason.'" *Id.* (quoting *Mueller v. People's Couns. for Balt. Cnty.*, 177 Md. App. 43, 84 (2007)).

We review a final decision or order of the Commission through a relatively narrow lens, as specified in Section 3-203 of the Public Utilities Article. According to the statute, a "final decision, order, or regulation of the Commission is prima facie correct and shall be affirmed unless clearly shown to be" deficient on one of six enumerated grounds:

> (1) unconstitutional;
> (2) outside the statutory authority or jurisdiction of the Commission;

> (3) made on unlawful procedure;
> (4) arbitrary or capricious;
> (5) affected by other error of law; or
> (6) if the subject of review is an order entered in a contested proceeding after a hearing, unsupported by substantial evidence on the record considered as a whole.

PU § 3-203. Accordingly, "the standard of review does not depend on whether we would reach the same conclusions as the Commission, but on whether the Commission's decision or process is infected by the specified defects." *Md. Off. of People's Couns. v. Md. Pub. Serv. Comm'n*, 461 Md. 380, 391-92 (2018). In construing PU § 3-203, the Court of Appeals has explained:

> In giving meaning to this language in PU § 3-203 without rendering it surplusage, we believe that it calls for a court to be particularly mindful of the deference owed to the Commission on those issues on which courts typically accord some degree of deference to administrative agencies—*i.e.* findings of fact, mixed questions of law and fact, and the construction of particular statutes administered, and regulations adopted, by the agency. On those questions on which a court does not typically defer to an agency—general questions of law, jurisdiction and constitutionality—PU § 3-203 requires no greater deference to the Commission than any other agency. Such legal questions "are completely subject to review by courts."

Id. at 393-94 (cleaned up). In sum, with respect to the Commission, this Court "accord[s] particular deference (though not total deference) to PSC decisions." *Id.* at 394 (quoting *Accokeek, Mattawoman, Piscataway Creeks Cmty. Council, Inc. v. Pub. Serv. Comm'n of Md.*, 451 Md. 1, 12 (2016)).

DISCUSSION

I.

Use of Renewable Energy Portfolio Standard as Evaluation Criteria

A. Parties' Contentions

The County argues that the Commission "erred as a matter of law by adding the Renewable Energy Portfolio Standard (RPS) to the statutory evaluation criteria" in PU § 7-207. According to the County, the "RPS Legislation is separate and distinct from the legislation that applies to the evaluation of Biggs Ford's CPCN application" and "has no place in the . . . CPCN analysis." The County avers that the General Assembly's "multiple revisions to PU[] § 7-207, make clear its intent **not** to include the RPS as a factor to be considered in the evaluation of a CPCN application." (Emphasis supplied by the County). Rather, "[b]y its own terms, PU[] § 7-703, [RPS] applies only 'to all retail electricity sales in the State by electricity suppliers.' The RPS legislation does not apply to any County or municipality, or to Biggs Ford or its CPCN application." (citation omitted)**.**

To the contrary, Biggs Ford contends that the "Commission appropriately considered the RPS in determining that a CPCN should be granted to Biggs Ford." According to Biggs Ford, the "County's argument reveals its fundamental misunderstanding of the RPS and the Commission's role in overseeing electric generating stations and implementing electricity policy in the State." Biggs Ford relies on *Board of County Commissioners of Washington County v. Perennial Solar, LLC*, 464 Md. 610, 624 (2019), which provides that: "*[c]onsistent with the PSC's duties to ensure compliance with*

the RPS, including the specific targets for the share of electricity coming from solar electric generation, the General Assembly has also delegated to the PSC the exclusive authority to approve generating stations in Maryland." (Emphasis added by Biggs Ford). Based on this provision, Biggs Ford concludes that "a primary purpose of the Commission's authority over solar facility siting via the CPCN process is to ensure compliance with the RPS." Directing us to *Maryland Office of People's Counsel v. Maryland Public Service Commission*, 461 Md. 380, 405-06 (2018), Biggs Ford notes that the Court of Appeals has "found it . . . appropriate for the Commission to consider RPS issues in its public convenience and necessity review" under a related provision in the Public Utilities Article.

The Commission, just as Biggs Ford, argues that it "properly considered all relevant factors, including the statutory factors listed in PUA § 7-207, when it affirmed the findings and conclusions of the PULJ." As an initial matter, the Commission notes that "Frederick County does not deny that the Commission made detailed findings regarding the relevant statutory factors set forth in PU[] § 7-207(e)(2) and (e)(3) [now PU § 7-207(e)(4)]." Referencing PU §§ 7-702(a)(1) and (2), the Commission asserts that "Maryland policy goals on renewable energy immediately present themselves" and counters that "[i]f the record reflected that the proposed solar facility was not necessary to achieve these policy goals, Frederick County would have relied upon this fact to contend that the Commission should conclude that the project was not in the public interest." Relying on the "clear language" of *Perennial Solar*, the Commission asserts that "it is unclear how Frederick [County] can contend the Commission erred by considering RPS standards in its

administrative findings." According to the Commission, consideration of RPS standards during the CPCN process was "common." The Commission asserts it "not only has the right, but the obligation, to consider the extent to which a particular project will further these policy goals when determining whether to conclude a project is in the overall public interest."

B. Canons of Statutory Interpretation

The cardinal rule of statutory interpretation is to "discern and carry out the intent of the Legislature." *Wash. Gas Light Co. v. Md. Pub. Serv. Comm'n*, 234 Md. App. 367, 382 (2017) (quoting *Blue v. Prince George's Cnty.*, 434 Md. 681, 689 (2013)), *aff'd*, 460 Md. 667 (2018). "We begin our analysis by looking to the normal, plain meaning of the language of the statute, reading the statute as a whole to ensure that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory." *Wash. Gas Light Co.*, 460 Md. at 682 (2018) (quoting *Brown v. State*, 454 Md. 546, 551 (2017)). "We neither add nor delete language so as to reflect an intent not evidenced in the plain and unambiguous language of the statute, and we do not construe a statute with forced or subtle interpretations that limit or extend its application." *Wash. Gas Light Co.*, 234 Md. App. at 382 (quoting *CashCall, Inc. v. Md. Comm'r Fin. Regul.*, 448 Md. 412, 431 (2016)). When the words of a statute are ambiguous, either in isolation or as part of the larger statutory scheme, "a court must resolve the ambiguity by searching for legislative intent in other indicia" and will "consider the common meaning and effect of statutory language in light of the objectives and purpose of the statute and Legislative intent." *Blackstone v.*

Sharma, 461 Md. 87, 113 (2018) (quoting *Stachowski v. Sysco Food Servs. of Balt., Inc.*, 402 Md. 506, 517 (2007)). As the Court of Appeals explained:

> Even in instances when the language is unambiguous, it is useful to review legislative history of the statute to confirm that interpretation and to eliminate another version of legislative intent alleged to be latent in the language.
>
> In addition to legislative history, we may and often must consider other external manifestations or persuasive evidence in order to ascertain the legislative purpose behind a statute. Specifically, [courts] should consider the context of the bill, including the title and function paragraphs, the amendments to the legislation as well as the bill request form. [Courts] may also analyze the statute's relationship to earlier and subsequent legislation, and other material that fairly bears on the fundamental issue of legislative purpose or goal, which becomes the context within which we read the particular language before us in a given case.
>
> In the event the language of a statute is ambiguous, we will often apply rules of statutory construction to ascertain the intent of the legislature. One such rule is to read the language of a statute in a way that will carry out its object and purpose. [Appellate courts] will also consider the consequences resulting from one meaning rather than another, and adopt that construction which avoids an illogical or unreasonable result or one which is inconsistent with common sense.

Id. at 113-14 (2018) (cleaned up).

C. Statutory Scheme

The Commission is an independent state-wide agency "vested with the sole power and authority to approve on behalf of the State of Maryland the erection of electric generating stations." *Balt. Gas & Elec. Co. v. Dep't of Health & Mental Hygiene*, 284 Md. 216, 231 (1979); *see also* PU § 2-113(a)(1)(i)(2) (requiring the Commission to "promote adequate, economical, and efficient delivery of utility services in the State."). The Commission has the powers "specifically conferred by law" and "has the implied and

incidental powers needed or proper to carry out its functions under [the Public Services and Utilities] division." PU § 2-112(b). The General Assembly has directed that the Commission's "powers" "shall be construed liberally," PU 2-112(c), and granted the Commission the authority to "adopt reasonable regulations as necessary to carry out any law that relates to the Commission," PU § 2-121. Specifically, in regard to the approval and monitoring of solar generating stations, the General Assembly has concentrated the Commission's authority under two bodies of law: (1) the Renewable Energy Portfolio Standard and (2) section 7-207, which sets the requirements for an application for a CPCN.

1. Renewable Energy Portfolio Standard

In *Board of County Commissioners of Washington County v. Perennial Solar*, the Court of Appeals summarized the statutory framework relating to the RPS. 464 Md. 610, 621-23 (2019). The Court explained:

> In response to the growing concern over climate change, the Maryland General Assembly enacted legislation intended to reduce Maryland greenhouse gas emissions. The legislation included a specific intent to move the Maryland energy market away from historical reliance on fossil fuels and enacted a Renewable Energy Portfolio Standard ("RPS"). *See* Maryland Code, Environment Article ("EN") § 2-1201, *et seq.*; PU § 7-701.
>
> The RPS statute, PU § 7-701, *et seq.*, was originally enacted in 2004 to facilitate the State's transition to renewable energy sources. The objective of the RPS statute is to recognize and develop the benefits associated with a diverse collection of renewable energy supplies to serve Maryland. As part of its enactment, the General Assembly specifically determined that: "the benefits of electricity from renewable energy resources, including long term decreased emissions, a healthier environment, increased energy security, and decreased reliance on and vulnerability from imported energy sources, accrue to the public at large;" and that the State needed to "develop a minimum level of these resources in the electricity supply portfolio of the

> State." PU § 7-702(b). The RPS includes specific targets for the share of electricity coming from solar electric generation. PU § 7-703.
>
> In 2009, the Maryland General Assembly enacted the Greenhouse Gas Emissions Reduction Act of 2009 ("GRRA"), a law that requires the State to reduce greenhouse gas emissions from a 2006 baseline by 25% by 2020 and by 40% by 2030. EN §§ 2-1204, 2-1204.1; PU § 7-701, *et seq.* During the 2019 legislative session, the General Assembly adopted the Clean Energy Jobs Act, which increases the State's RPS target to 50% by 2030. Senate Bill ("S.B.") 516, 2019 Reg. Sess. (cross-filed as H.B. 1158). The Clean Energy Jobs Act also includes a significant increase in electricity sales derived from solar energy from 1.9% to 5.5% in 2019, and to 14.5% in 2028. *Id.*
>
> The General Assembly has delegated to the PSC the authority to "implement a renewable energy portfolio standard" that applies to retail electricity sales in the State by electricity suppliers consistent with the specific timetable established by the statute. PU § 7-703(a). On an annual basis, the PSC is required to report to the General Assembly on the status of the implementation of the RPS program, including the availability of Tier 1 renewable sources such as solar energy. PU § 7-712.

Id. (cleaned up).

2. CPCN

Under Maryland law, a party may not begin construction on a generating station unless that party obtains a CPCN from the Commission. PU § 7-207(b)(1)(i). The Commission will only issue a CPCN after a "detailed" application and approval process and an "extensive" review process. *Perennial Solar*, 464 Md. at 624 (citing PU § 7-207). Upon receipt of an application, the Commission either provides notice immediately or requires the applicant to provide immediate notice to: (i) the Maryland Department of Planning; (ii) the governing body, and if applicable, the executive of each county or municipal corporation in which a portion of the generating station is proposed to be constructed; (iii) the governing body of any county or municipal corporation within one-

mile of the proposed location of the generating station; (iv) each member of the General Assembly representing any part of the county in which any portion of the generating station is proposed to be constructed; (v) each member of the General Assembly representing any portion of each county within one-mile of the proposed location of the generating station; and (vi) all other interested persons. PU § 7-207(c)(1). The Commission is also required to forward a copy to "each appropriate State unit and unit of local government for review, evaluation, and comment regarding the significance of the proposal to the State, area wide, and local plans or programs," and to each member of the General Assembly who requests a copy. PU § 7-207(c)(2).

The Commission must "provide an opportunity for public comment" and coordinate and include the local governing body of the county or municipality in the CPCN public hearing process. PU § 7-207(d). Likewise, "[t]he Commission shall ensure presentation and recommendations from each interested State unit[.]" PU § 7-207(d)(5).

The Commission "is the final approving authority for the siting and construction of generation stations." *Perennial Solar*, 464 Md. at 625. The Public Utilities Article, as it was in effect during the pendency of Biggs Ford's application, provides that the "Commission shall take final action on an application for a certificate of public convenience and necessity only after *due consideration* of" certain statutory 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 . . . 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;
(vi) when applicable, air quality and water pollution; and
(vii) the availability of means for the required timely disposal of wastes produced by any generating station; and

(3) for a generating station:

(i) the consistency of the application with the comprehensive plan and zoning of each county or municipal corporation where any portion of the generating station is proposed to be located; and
(ii) the efforts to resolve any issues presented by the county or municipal corporation where any portion of the generating station is proposed to be located.

PU § 7-207(e) (emphasis added).[10]

3. Intersection

The Court of Appeals described the intersection of the RPS and CPCN frameworks in *Perennial Solar*. There, the Court was "asked to determine whether state law preempts local zoning authority with respect to solar energy generating systems that require" a CPCN. 464 Md. at 612. In first reviewing the "duties and authority delegated to the PSC by the General Assembly in the area of solar energy generating station approvals," the Court of Appeals explained:

> ***Consistent with the PSC's duties to ensure compliance with the RPS, including the specific targets for the share of electricity coming from solar electric generation,*** the General Assembly has also delegated to the PSC the

[10] As previously mentioned, PU § 7-207(e)(3) has been recodified as PU § 7-207(e)(4). 2021 Md. Laws, ch. 615 (S.B. 83). Currently, PU § 7-207(e)(3) requires the Commission to give due consideration to "the effect of climate change on the generating station[.]" *Id.* This change, however, was not in effect at the time of the Commission's final order. Accordingly, we present the version of PU § 7-207(e) which governed during the pendency of the underlying proceeding.

> ***exclusive authority to approve generating stations in Maryland***. Unless exempt by the statute, a generating station cannot be constructed unless the PSC issues a CPCN, which is only issued after a detailed application and approval process.

Id. at 623-24 (citing PU § 7-207) (cleaned up) (emphasis added). The Court then analyzed whether PU § 7-207 preempted County regulation and concluded:

> PU § 7-207 preempts by implication local zoning authority approval for the siting and location of generating stations which require a CPCN. The statute is comprehensive and grants the PSC broad authority to determine whether and where SEGS may be constructed. Local land use interests are specifically designated by statute as requiring "due consideration" by the PSC. This includes the recommendation of the governing body of each county or municipal corporation in which any portion of the construction of the generating station is proposed to be located, as well as due consideration by the PSC of the consistency of the application with the comprehensive plan and zoning for the respective local jurisdiction.

Id. at 644. Accordingly, under this framework, the Commission's broad authority over solar energy generating stations allowed the Commission to determine whether a generating station is appropriate, subject to "due consideration" by local interests, in part to "ensure compliance with the RPS." *Id.* at 623-24, 644.

Likewise, in *Office of People's Counsel v. Maryland Public Service Commission*, the Court of Appeals concluded that the Commission's decision to consider climate change and renewable energy in the context of a utility merger under PU § 6-105 was neither arbitrary nor capricious. 461 Md. 380, 405-06 (2018). The Court specifically noted that the "Commission properly considered these issues pursuant to the General Assembly's directive that it take into account the public interest in assessing an acquisition." *Id.* at 406. The Court summarized:

> In regulating entities that operate in a dynamic and changing economy, the Commission will be confronted from time to time with technological advancements that may radically transform the business of the regulated entity or the service it provides. The Commission will have to make judgments as to how and when to put its thumb on the scale in steering such development consistent with the directions it receives from the Legislature.

Id. at 407-08.

D. Statutory Analysis

It is clear that the Court of Appeals in *Perennial Solar* has undertaken the precise statutory analysis that controls this case. There, the Court resolved that the Commission has broad authority over solar energy generating stations under the applicable statutes, in part, to "ensure compliance with the RPS." *Id.* at 623-24, 644. While the County would have us read § 7-207(e) in isolation, we decline to do so because we must "identify legislative purpose by considering the language of the statute 'within the context of the statutory scheme to which it belongs, considering the purpose, aim, or policy of the Legislature in enacting the statute.'" *Potter v. Potter*, 250 Md. App. 569, 585 (2021), *cert. granted* 476 Md. 238 (2021) (quoting *State v. Johnson*, 415 Md. 413, 421-22 (2010)).

Under the grand statutory scheme, the Commission not only has powers "specifically conferred by law" but "has the implied and incidental powers needed or proper to carry out its functions," PU § 2-112, including ensuring compliance with the RPS and approval of CPCN applications. Beyond that, the Commission's obligation to consider environmental consequences in the discharge of its duties is strewn throughout the Public Utilities Article. For example, in regulating public service companies, the Commission considers "the conservation of natural resources" as well as "the preservation

of environmental quality." PU § 2-113(a)(2). Similarly, in addition to overseeing electric generation facility planning, the Commission must "evaluate the cost-effectiveness of the investments by electric companies in energy conservation to reduce electrical demand and in renewable energy sources to help meet electrical demand." PU § 7-201(b)(1).

Section 7-207(e) of the Public Utilities Article sets forth the requisite statutory factors that the Commission must consider before issuing a CPCN. We have instructed that, "[f]or a court to conduct meaningful review of a decision to grant a certificate under PU[] § 7-207, the findings and the record must at least show that the Commission gave 'due consideration' to each of the requisite statutory factors." *Accokeek, Mattawoman, Piscataway Creeks Cmtys. Council, Inc. v. Md. Pub. Serv. Comm'n.*, 227 Md. App. 265, 289 (2016), *aff'd* 451 Md. 1 (2016). Although the RPS was not listed as a factor under PU § 7-207 in 2020 when the Commission issued the underlying order, as explained above, the RPS and CPCN statutory frameworks clearly intersect. *Perennial Solar*, 464 Md. at 623-24.

For example, PU § 7-207(e)(2)(i) requires the Commission to consider the effect of the proposed generation station on "the stability and reliability of the electric system." As the Legislature recognized in enacting the RPS in 2004, "the benefits of electricity from renewable energy resources, including long term decreased emissions, a healthier environment, *increased energy security*, and *decreased reliance on and vulnerability from imported energy sources*, accrue to the public at large." PU § 7-702(b) (emphasis added). Similarly, as the PULJ in the underlying case recognized, § 7-207(e)(2)(vi) mandates due

consideration of "air quality and water pollution," a factor which favors renewable energy projects because solar facilities "create emissions-free renewable energy." Consequently, the RPS shares with § 7-207(e) the purpose of ensuring an increasingly reliable and clean system of energy production and is therefore hardly an alien concept that the Commission is barred from considering.

Moreover, far from restricting the Commission to consider *only* the factors listed in PU § 7-207(e), the statute requires the Commission to "provide an opportunity for public comment," PU § 7-207(d)(1)(i), and "ensure presentation and recommendations from each interested State unit," PU § 7-207(d)(5)(i). The Commission must provide a copy of the application to "each appropriate State unit and unit of local government for review, evaluation, and comment regarding the significance of the proposal to State, area-wide, and local plans or programs." PU § 7-207(c)(2)(i). Clearly the General Assembly intended the Commission to fully consider the comments submitted by these various stakeholders.[11]

[11] The legislative history supports this plain reading of the statute. Specifically, when the General Assembly first amended section 7-207 of the Public Utilities to require the Commission to give due consideration to counties' comprehensive plans, the Floor Report for House Bill 1350 explained:

> This bill is needed to ensure that new generating stations are sited with due consideration of local comprehensive plans and zoning. Currently PSC ***may, but need not, take local land use policy into consideration*** when deciding on placement of electricity generating stations and transmission lines. With the advent of new utility-scale renewable generating facilities that may have a significant impact on protected areas such as farmlands and viewsheds, it is important for PSC to take cognizance of these issues, even though it may ultimately decide that the State's electricity needs overshadow local planning concerns.

(Continued)

The County argues that the General Assembly's 2021 revisions to PU § 7-207 "make clear its intent **not** to include the RPS as a factor to be considered." We disagree. In 2021, the General Assembly amended PU § 7-207 to require the Commission to consider the effect of climate change on the project and, for a generating station, the impact of the project on the State's commitment to the reduction of greenhouse gas emissions. 2021 Md. Laws, ch. 615 (S.B. 83). Specific to section 7-207(e)(4), before the Commission may take final action on an application for a CPCN for a generating station, the Commission now must duly consider:

> (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.

Clearly, the addition of this amendment clarifies that the Commission must consider the effects of climate change in evaluating a CPCN application. That does not mean, however, that the Commission was barred from considering these issues before. Indeed, the legislative history reveals that the General Assembly amended PU § 7-207 to ensure

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Bill File, 2017 H.B. 1350 at 19-20. The Floor Report further described that the bill does not allow a new "veto" power but merely "requires PSC to take due consideration of these concerns, which it has tended to do in any event." *Id.* Accordingly, the legislative history and the construction of the statute itself supports that the Commission has consistently considered concerns not expressly enumerated section 7-207 of the Public Utilities Article.

that the Commission was considering the impact of climate change (in conjunction with the RPS) because, despite the General Assembly expecting that the Commission would consider this issue, the Commission did not always do so on a regular basis. Therefore, the Legislature made *mandatory* what was once *discretionary* and required that the Commission give due consideration to how the generating station would impact statewide emissions and climate commitments. Therefore, we reject the County's contention that the 2021 amendments somehow prohibited the Commission from considering the RPS in its analysis in the underlying case.

In short, consistent with the Commission's broad and exclusive authority to approve generating stations in Maryland, as fully and succinctly described by the Court of Appeals in *Board of County Commissioners of Washington County v. Perennial Solar*, 464 Md. 610 (2019), we conclude that the Commission did not err in considering the RPS in evaluating whether to approve Biggs Ford's application.

II.

Due Consideration

A. Parties' Contentions

The County insists that the "[t]he Commission is not authorized to examine, analyze or critique County Legislation, declare County Legislation constitutes a 'de facto' ban on utility scale solar; or use its subjective determinations to give 'no weight' to the County's recommendation." According to the County, Biggs Ford did not directly challenge the County's zoning determination or the "validity of Frederick County's Bill 17-07", but

instead launched a "'collateral attack' on the validity of the County's Legislation and zoning decision in the CPCN proceedings." Therefore, "[b]ecause Biggs Ford did not seek direct judicial review of the County Council's Resolution 19-03 or of the validity of the provisions in Bill 17-07, Biggs Ford and the Commission were required to accept as correct and valid the County Council's findings in Resolution 19-03, as well as the provisions of Bill 17-07." By preempting Bill No. 17-07 as a "de facto ban," the Commission's action was "not only punitive toward the County for exercising its legislative authority, but [was] also contrary to the express language of § 7-207." The County posits that the "Commission's role was limited to giving 'due consideration' to the County's recommendation."

Biggs Ford counters that "[t]he County's argument that the Commission is somehow bound by the County's decision to deny a floating zone for the Project is conclusively refuted by the Court of Appeals' decision in the *Perennial Solar* case." Biggs Ford asserts, "[a]s much as the County would like Biggs Ford and Commission to be bound by its zoning ordinance and its recommendation to deny a CPCN to the Project, that is not the law in this State." Rather, "[c]onsistency with local zoning and the comprehensive plan is just one factor for the Commission to weigh along with all the factors under PUA § 7- 207(e) as the Commission exercises its sole authority over power plant siting in Maryland." According to Biggs Ford, the Commission was "well within its authority to give little or no weight to the County's zoning ordinance." Biggs Ford summarizes "[f]or all the reasons explained in the Commission's Order [], in the PULJ's 93-page opinion [], and as affirmed by the

circuit court [], the PULJ and Commission gave the County's zoning ordinance and recommendation due consideration and appropriately exercised the Commission's preemption authority in the totality of the facts and circumstances of this case."

The Commission likewise asserts that "*Perennial Solar* provides the Commission with full authority to site solar generation plants such as that proposed by Biggs Ford." According to the Commission, "[o]nce Biggs Ford filed for a CPCN at the Commission, the Commission's process preempted any authority Frederick County may have had over the ultimate granting of a CPCN, including the siting of the generation facility." Rather, the Commission contends that "the General Assembly (as confirmed by the appellate courts) has given the Commission sole discretion to determine whether a generating system is within the public interest." The Commission acknowledges that the County has the right to provide a recommendation but argues that the requirement to give "due consideration" only requires the Commission to "give the evidence the weight it deserves." The Commission concludes, the County "wants the Commission to continue to give 'due consideration' to its comprehensive plan until the Commission agrees with Frederick County, but this is absurd and counter to the explicit ruling in *Perennial Solar*, as well as decades of precedent."

B. The Fredrick County Comprehensive Plan and Priority Preservation Area Framework

In 2019, the County adopted an updated comprehensive plan that restated the County's strong commitment to agricultural preservation. Pursuant to the CP, the County resolved to "maintain a critical mass of agricultural acreage for our farm economy"

primarily through the use of Priority Preservation Areas and the purchase of agricultural easements. The CP explains that PPAs are utilized "to target and prioritize land preservation easement purchases and other incentives to preserve land . . . and build critical masses of protected lands on the highest priority properties." In keeping with that targeted approach, the CP states that, although Frederick County has over 250,000 acres of farmland which could be considered for priority preservation, the designated PPAs are constrained "in order to truly prioritize preservation efforts and to create an achievable preservation plan."

This was hardly a novel concept. Since 1977, the Maryland Agricultural Land Preservation Foundation has spearheaded the effort to facilitate the purchase of agricultural easements and preserve the State's prime farmland. *See* Craig A. Nielsen, *Preservation of Maryland Farmland: A Current Assessment*, 8 U Balt. L. Rev. 429, 437-38 (1979). As codified in Maryland Code (1974, 2016 Repl. Vol), Agriculture Article ("AA"), section 2-501 *et seq.*, the Foundation oversees and approves local preservation programs such as the County's. AA § 2-512. To have a preservation program certified by the Foundation, each participating county must "include a priority preservation area element in the county's comprehensive plan."[12] AA § 2-518(b)(2). A Priority Preservation Area must meet the following requirements:

[12] In addition to the requirements imposed under the Agriculture Article, charter counties also must develop comprehensive plans pursuant to Maryland Code (2012 Vol.) Land Use Article ("LU"), §1-405. Among other elements, each charter county's comprehensive plan must "include the goals, objectives, principles, policies, and standards (Continued)

> An area shall:
>
> (1)
>
> (i) Contain productive agricultural or forest soils; or
>
> (ii) Be capable of supporting profitable agricultural and forestry enterprises where productive soils are lacking;
>
> (2) Be governed by local policies, ordinances, regulations, and procedures that:
>
> (i) *Stabilize the agricultural and forest land base so that development does not convert or compromise agricultural or forest resources*; and
>
> (ii) Support the ability of working farms in the priority preservation area to engage in normal agricultural activities; and
>
> (3) Be large enough to support normal agricultural and forestry activities in conjunction with the amount of development permitted by the county in the priority preservation area, as represented in its adopted comprehensive plan.

AA § 2-518(c) (emphasis added).

When seeking certification from the Foundation pursuant to Maryland Code (1974, 2016 Repl. Vol), Finance & Procurement Article ("FP"), § 5-408, each county must provide additional information including, *inter alia*, "the county's strategy to (i) protect land from development through zoning, (ii) preserve the desired amount of land with permanent easements, and (iii) maintain a rural environment capable of supporting normal agricultural and forestry activities." FP § 5-408(f)(5) (cleaned up). Each county must also offer an evaluation "of the ability of the county's zoning and other land use management

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designed to protect sensitive areas from the adverse effects of development." LU § 1-408. Sensitive areas are defined as including "agricultural or forest land intended for resource protection or conservation." LU § 1-101(o)(5). Every ten years, in conjunction with developing a revised comprehensive plan, each county must "ensure the implementation of the visions, the development regulations element, and the sensitive areas element of the plan." LU § 1-417(a).

practices to (i) limit the impact of subdivision and development, (ii) allow time for easement purchase, and (iii) achieve the Foundation's goals before development excessively compromises the agricultural and forest resource land." FP § 5-408(f)(6) (cleaned up). Once all of these requirements are satisfied, a county becomes eligible to receive disbursements from the Foundation's Agricultural Preservation Fund to facilitate the purchase of easements within the county's identified PPAs as well as other designated uses. FP § 5-408(h).

C. Bill No. 17-07

On May 16, 2017, the County enacted Bill No. 17-07. The bill, which became effective on July 15, 2017, amended Frederick County's Zoning Ordinance, Chapter 1-19 of the Frederick County Code, 2004 ("FCC").[13] Rather than permit solar facilities anywhere on agricultural zoned areas, the Bill prioritized preservation of prime farmland. The new law allows commercial-scale solar facilities to be constructed in the Light Industrial and General Industrial zones with site plan approval, but on property zoned agricultural only after a floating zone reclassification is obtained. As amended by Bill No. 17-07, the zoning ordinance explains that a "Solar facility, Commercial"

> shall be a floating zone which may be established within the Agricultural zone having the corresponding Comprehensive Plan land use designation.

[13] Pursuant to Section 1-1-1 of the Frederick County Code, "ordinances embraced in the following chapters and sections shall constitute and be designated 'Frederick County Code, 2004,' and may be so cited." The FCC has been amended during the pendency of Biggs Ford's CPCN application, but the FCC zoning provisions at issue in this case have remained unchanged. *See* Frederick County, Maryland Code of Ordinances, *Am. Legal Publ'g Corp.* (current through Bill No. 22-14, passed 9/6/2022), https://codelibrary.amlegal.com/codes/frederickcounty/latest/frederickco_md/0-0-0-1.

> Commercial Solar facilities can play an important role by providing alternative energy sources, however because of their size, scale and intensity these commercial facilities may create adverse impacts on nearby properties and [sic] adversely affect the rural and scenic characteristics of agricultural areas. Review and siting of these facilities through a floating zone process will maintain the purpose and protect the character of agricultural areas.

FCC § 1-19-10.700(A).

Among other things, the Bill provided that such a facility:

- cannot be "contiguous to a community growth boundary";
- must have a "minimum size of 10 acres and shall not exceed 750 acres"; and
- the "tract or tracts of land which is the subject of the floating zone application may not be encumbered by an Agricultural Preservation Easement, *located within a Priority Preservation Area (PPA)* or a Rural Legacy Area (RL) in the County Comprehensive Plan . . . or be located within two (2) miles of the centerline of the right-of-way of U.S. Route 15[.]"

FCC § 1-19-10.700(B)(2)-(4) (emphasis added).

Approval or disapproval of an application for a Solar Facility-Commercial Floating Zone, is to be "determined through evaluation of the impact of the proposed project upon the adjacent and nearby properties and whether the project will be compatible with, and have no adverse effects on, surrounding properties and [sic] viewscapes from public parks and roadways." FCC § 1-19-10.700(C)(1). Among other requirements, an "applicant shall establish" that:

- "the site is the optimal location for a commercial solar project[,]" FCC § 1-19-10.700(C)(2);
- "the proposed project will be compatible with the existing and customary uses on adjoining and neighboring properties and in the Agriculture zone in terms of size, scale, style and intensity[,]" FCC § 1-19-10.700(C)(3);

- "*the project will not be located on prime farmland soils as identified in the USDA Soil Survey for Frederick County*[,]" FCC § 1-19-10.700(C)(4) (emphasis added);

- "the proposed project, including all areas of disturbance, shall not exceed the lesser of 10% of the tract's . . . tillable acreage or 75 acres in size[,]" FCC § 1-19-10.700(C)(5);

- a "25-foot deep buffering and screening area shall be provided along common property lines" between the proposed facility and adjoining properties and adjacent roadways[,] FCC § 1-19-10.700(C)(6); and,

- compliance with "all applicable federal and state regulations, including but not limited to obtaining a certificate of public convenience and necessity from the [PSC] if required[.]" FCC § 1-19-10.700(C)(8).

Having set forth the relevant provisions of the County's zoning legislation, we turn to review the requirements of "due consideration" under State law.

D. The Requirements of "Due Consideration"

Before taking final action on an application for a certificate of public convenience and necessity for a generating station, the Commission is required to give "due consideration" to various factors. These include "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" and "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." PU § 7-207(e)(1), (4).

In ascertaining the meaning of "due consideration", we begin our analysis with "the normal, plain meaning of the language of the statute, reading the statute as a whole to ensure that no word, clause, sentence or phrase is rendered surplusage, superfluous,

meaningless or nugatory." *Wash. Gas Light Co. v. Md. Pub. Serv. Comm'n*, 460 Md. 667, 682 (2018) (quoting *Brown v. State*, 454 Md. 546, 551 (2017)). Because "consideration" is already defined as "continuous and careful thought," the legislature's addition of the word "due" as a qualifier must have some independent meaning or be rendered nugatory. Insofar as "due" is defined as that which is "just, proper, regular and reasonable," *Due*, Black's Law Dictionary (11th Ed. 2019), we consider that the role of "due" in modifying "consideration" clarifies that the amount of thought which must be accorded to each of the PU § 7-207(e) factors will vary depending on the weight of the interests confronted under each factor. That reading is largely confirmed by the available definitions of "due consideration" as providing "[t]he degree of attention properly paid to something, as the circumstances merit." *Due Consideration*, Black's Law Dictionary (11th Ed. 2019). Alternatively stated, it demands "giving such thought or weight to a fact as it merits under all the circumstances of the case." *Due Consideration*, Ballentine's Law Dictionary (3d Ed. 1969).

These definitions clarify that the concept of due consideration creates something of a sliding scale. In determining the level of consideration which is "due" under the circumstances of each case, the Commission must consider the weight of the interests confronted in analyzing each of the PU § 7-207(e) factors. When the interests presented under any given factor are particularly weighty, then more consideration of that factor is necessarily due. As relevant here, at a minimum, the Commission needed to do more than simply receive the County's recommendation and give passing notice to its zoning

regulations in deciding whether to approve Biggs Ford's application for a CPCN. On the other hand, the definitions of "due consideration" equally focus on the Commission's duty to weigh these factors and assign their significance in its determination of a CPCN application as the circumstances of each case merit. Although we have not discussed the concept of due consideration at length, we observe that our prior decision in *Accokeek, Mattawoman, Piscataway Creeks Communities Council, Inc. v. Maryland Public Service Commission* supports our interpretation.

In *Accokeek*, the Commission authorized Dominion to "construct an electric generating station to power a natural gas liquefaction facility." 227 Md. App. 265, 271 (2016), *aff'd*, 451 Md. 1 (2016). An environmental advocacy organization appealed the Commission's decision and we affirmed. *Id.* Among the issues on appeal, we analyzed whether the Commission had given due consideration to the "effect of the generating station . . . on . . . economics" in approving an electric generating station. *Id.* at 285. We concluded that the Commission "did more than enough to apprise the parties and the courts of the basis for the Commission's decision" considering its thorough analysis of the testimony presented. *Id.* at 286. We explained that "[d]ue consideration" under PU § 7-207(e) required the Commission to "consider all relevant facts and factors and exercise reasonable judgment" and not "employ a particular formula or method" in according the proper weight to the evidence before it. *Id.* at 288.

Although clearly the Commission's authority to issue a CPCN under State law preempts local zoning and planning regulations, the Commission is still obligated under

State law to give the due consideration required by the circumstances of each case to the factors contained in PU § 7-207(e). In distilling the requirements of due consideration from our decisional law, we can glean the following. First, local interests cannot be ignored and must be given the appropriate weight. *Howard Cnty. v. Potomac Elec. Power*, 319 Md. 511, 528 (1990). Second, while the Commission has discretion when weighing the impact of the County's comprehensive plan and zoning, it must exercise that discretion while cognizant of 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[.]" *Perennial Solar*, 464 Md. at 644. In short, the Commission must "consider all relevant factors" and "exercise reasonable judgment." *Accokeek*, 227 Md. App. at 288. The Court of Appeals summed it up this way in *Perennial Solar*:

> Under the plain language of the statute, local government is a significant participant in the process, and local planning and zoning concerns are important in the PSC approval process. However, the ultimate decision-maker is the PSC, not the local government or local zoning board. Although local zoning laws are preempted and therefore not directly enforceable by the local governments as applied to generating stations such as SEGS, they are nevertheless a statutory factor requiring due consideration by the PSC in rendering its ultimate decision.

Perennial Solar, 464 Md. at 645. With these precepts in mind, we turn to consider whether the Commission acted within its authority and properly gave due consideration to the County's zoning ordinance and comprehensive plan.

E. Analysis

In view of the thorough opinions issued by the PULJ and the Commission in this case, we cannot say that the Commission failed to give due consideration to the County's

comprehensive plan and zoning pursuant to PU § 7-207(e)(4)(i). As the Court of Appeals made abundantly clear in *Perennial Solar*, in evaluating whether a CPCN should be granted in any given case, the Commission is ultimately "responsible for reaching the final balance that includes local planning and zoning *as one of several factors*." *Id.* at 644 (emphasis added). Pursuant to that authority, the PULJ weighed the voluminous evidence presented and concluded that, while the County's interests in agricultural preservation were valid, preemption of the County's restrictive zoning measures was nonetheless necessary to meet the State's RPS Goals. The Commission, appropriately relying on the PULJ's 93-page recommendation, issued its own lengthy decision reviewing the necessary factors and reached the same conclusion. Given our deferential standard of review pursuant to PU § 3-203, we cannot say that the Commission erred in striking that final balance.

Certainly, we agree with the County that its interests in agricultural preservation and maintaining the integrity of its PPAs are important and were entitled to significant weight in the Commission's holistic analysis. The PULJ claimed that, "[t]o the extent that the County's opposition is based upon the preservation of agricultural land and the development of parcels in and around preservation areas, I give significant weight as those are legitimate interests, independent of Bill No. 17-07." We agree, at least, that the record reflects that the PULJ, and the Commission in adopting the PULJ's findings, engaged in analysis of the testimony touching on this point and recognized that the Project remained inconsistent with the County's CP. The PULJ ultimately concluded, however, that "while the County's interests in the preservation of farmland are legitimate, . . . the County's

concerns are somewhat overstated." The PULJ explained that because the site owner was not interested in placing the land under a protective easement, the construction of the Project would effectively preserve the status quo since the land "could eventually be placed into the agricultural preservation program" considering that "the underlying soil would not be impacted by the Project[.]" That finding was supported by testimony from Mr. Sadzinski of PPRP, who conceded that the Project would not impact the ability of the underlying soil to support agricultural uses in the future. Accordingly, the PULJ emphasized that "PPRP indicated that the underlying soil would not be impacted by the Project, especially with the planned pollinator habitat." Though a reasonable factfinder could have certainly arrived at a final balance, we cannot declare that the PULJ and the Commission failed to "consider all relevant factors" and "exercise reasonable judgment" in analyzing the County's CP. *Accokeek*, 227 Md. App. at 288.

The County focuses its challenge on the PULJ's decision to accord "no weight" to Bill No. 17-07 "because the County's floating zone ordinance continues to function as a de facto ban on utility-scale solar projects." The County vigorously asserts that the PULJ had no authority to even "interpret, criticize, disregard, or discredit" its "duly enacted legislation." That line of argument undertakes to prove too much. First, it is unclear how the Commission could give "due consideration" to the County's zoning pursuant to PU § 7-207(e)(4)(i) without interpreting or analyzing the requirements of the relevant ordinances. Second, as we have explained, all that "due consideration" requires is that the Commission accord the appropriate weight to each PU § 7-207(e) factor depending on the

circumstances of the case. Here, we cannot say that the Commission failed to do so given the PULJ's thorough analysis of the Bill as well his finding that it functioned as a *de facto* ban on utility-scale solar projects in the County. Again, while some may disagree with that conclusion, we cannot say that the PULJ's finding was not supported by substantial evidence in the record.[14] Contrary to what the County argues, the record does not suggest that the PULJ declared the Bill unconstitutional or attempted to determine what weight any other person or entity should give the Bill other than the Commission.

But more fundamentally, we do not agree with the County's claim that the Commission's decision to utilize its preemption authority over Bill No. 17-07 was ultra vires. As *Perennial Solar* makes unmistakably clear, in the field of siting electric generating stations, "the ultimate decision-maker is the PSC, not the local government or local zoning board." *Perennial Solar*, 464 Md. at 645. The Court of Appeals concluded that was the case because the Commission's authority in this sphere was so extensive as to occupy the entire field. *Id.* at 631. By enacting Bill No. 17-07, which deals exclusively with the local requirements for constructing a solar generating facility, the County effectively waded into that very same field. Certainly, it was permitted to do so, but with the caveat that the requirements imposed by Bill No. 17-07 would be subject to the Commission's all-encompassing authority in the sphere of approving the siting of

[14] Mr. Gilchrist, for example, testified that (1) large-scale solar projects were not viable on less than approximately 100 acres and (2) that there were only five parcels in the County zoned agricultural and one parcel zoned light-industrial or general-industrial on which viable utility-scale projects could be constructed under Bill No. 17-07's requirements.

particular electric generating stations through the CPCN process. Accordingly, contrary to the County's contentions that the Commission had no authority to analyze the burdens imposed by Bill No. 17-07, the Commission was well within its power to disregard the requirements imposed by Bill No. 17-07 on siting solar generating facilities, after giving it due consideration.

To be fair, if we were writing on a blank slate, we might question the idea that the PULJ's dismissal of the County's agricultural preservation concerns as "somewhat overstated" truly afforded "significant weight" given the importance of the County's carefully-designated PPAs to its comprehensive planning efforts and the unanimous opposition of the reviewing State agencies based on those same concerns. In regard to the premise that at least some portion of the County's farmland must be used to support the State's RPS goals, the PULJ failed to explain why the land contained within the County's carefully delineated PPAs needed to be placed on a level playing field with the remaining portion of the County's farmland outside of its PPAs in serving that purpose. As alluded to by Mr. Sadzinski, the County has taken a circumscribed approach in designating 99,038 acres out of its 250,000 acres of farmland "in order to truly prioritize preservation efforts and to create an achievable preservation plan[.]"[15] But we are not writing on a blank slate and our review is constrained by two overriding prescripts.

[15] The PULJ found that "the record demonstrates that the amount of farmland necessary to meet the 14.5% solar carve out is minimal, with estimates ranging between 0.72% and 1.62%[.]" From that premise, the PULJ concluded that granting a CPCN in this case would not hamper the County's goals of placing 100,000 acres of prime farmland (Continued)

First, the General Assembly and the Court of Appeals have clarified that the Commission has plenary authority to decide where solar generating stations may be sited, and that while the Commission must accord the local county's recommendation, zoning, and comprehensive planning "due consideration," they are by no means binding on the Commission. As the Court of Appeals emphasized in *Perennial Solar*, while "the local governing body's recommendations are contemplated with 'due consideration', the final determination whether to approve a CPCN for SEGS is ultimately made by the PSC." *Perennial Solar*, 464 Md. at 632-33. Second, we are constrained by our narrow and deferential standard of review which begins with the premise that decisions of the Commission are "prima facie correct" unless clearly shown to be affected by one of six specified defects. PU § 3-203. Thus, our review "does not depend on whether we would reach the same conclusions as the Commission, but on whether the Commission's decision or process is infected by the specified defects." *Md. Off. of People's Couns. v. Md. Pub. Serv. Comm'n*, 461 Md. 380, 391-92 (2018).

Here, in keeping with its extensive authority to analyze and weigh each of the PU § 7-207 factors, the Commission concluded that approving the Project was in the public interest and necessity. In particular, the Commission—pursuant to its obligation to accord "due consideration" to Biggs Ford's "efforts to resolve any issues presented by the county

under easement. That may well be the case, but if the amount of County farmland needed to support the State's RPS goals was so minimal, then it is far from clear why the County's carefully designated PPAs would be needed to meet that goal when there remained approximately 150,000 acres of non-PPA farmland (by the County's estimation) available to serve that purpose.

or municipal corporation" under PU § 7-207(e)(4)(ii)—found that the Project had undergone significant changes that alleviated some of the County's concerns. Specifically, the PULJ emphasized that due to the amended layout of the Project, approximately a third of the parcel will continue to be farmed and "there is no evidence that the underlying farmland's prime soils will be negatively impacted by the Project." As summarized by Mr. Gilchrist and Biggs Ford's ERD addendum, the changes to the project were significant and included a reduced footprint, reduction in the number of solar panels, increased landscape buffer, and a pollinator habitat, as well as additional mitigation efforts. It is understandable that the County does not see these changes as significant because the County wants to ban any solar generating station construction on USDA-designated prime farmland that is within the County's PPAs, but we cannot conclude that the final balance struck by the Commission failed to "exercise reasonable judgment" under the circumstances. *Accokeek*, 227 Md. App. at 288.

In sum, we hold that the PULJ and the Commission gave due consideration to the County's recommendations, zoning, and comprehensive plan pursuant to PU §§ 7-207(e)(1), (4). In the course of that analysis, the Commission gave appropriate weight to these factors and explained why, after weighing all of the PU § 7-207(e) factors, it elected to utilize its preemption authority over Bill No. 17-07 in approving Biggs Ford's CPCN application. Although a reasonable factfinder could have reached a different conclusion, we cannot say that the Commission's ultimate decision was "infected by the specified

defects" under PU § 2-303, or that it failed to give due consideration to the County's zoning ordinance.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANT.