



SIERRA CLUB

MARYLAND CHAPTER

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September 14, 2023

Andrew S. Johnston, Executive Secretary
Maryland Public Service Commission
6 Saint Paul Street, 16th Floor
Baltimore, MD 21202

Re: Support for Denying Application for Rehearing on Aligned’s Requested Exemption from CPCN Process (ML No. 302893)

Dear Executive Secretary Johnston:

Sierra Club urges the Maryland Public Service Commission (“Commission”) to deny Aligned Data Centers (“Aligned”)’s petition for a rehearing regarding its request for an exemption for its diesel generators from the Certificate of Public Convenience and Necessity (“CPCN”) process, because the Commission’s decision was legally correct and consistent with Maryland’s climate commitments.

Maryland law requires new generators to obtain CPCNs because the CPCN application process provides the Commission with critical information about a project’s scope and its impacts on the environment and the affected community—information without which the Commission cannot make a fully informed decision about proposed generation projects. The rationale for requiring developers of new electric generation sources to engage in this process is

even more compelling given the climate crisis and the state’s climate and clean energy goals.¹ New diesel generators are grossly out of step with Maryland’s clean energy and climate plans.

Moreover, regardless of the harms associated with the use of diesel generators, the key consideration at this juncture, which the Commission correctly recognized in denying Aligned’s request for an exemption, is that these generators should participate in the full CPCN process. This will allow for public participation and the provision of information that will enable the Commission to make an informed decision on the merits of installing these generators, which have a high collective capacity of 504 megawatts (“MW”). Developers should not be permitted to disaggregate over one hundred interconnected diesel generating units to avoid the beneficial scrutiny that would be provided by the CPCN process.

In sum, the Commission was correct in its prior denial of the requested exemption, and in its petition for a rehearing, Aligned does not come close to meeting its heavy burden to show a legally recognized ground for a reversal in the Commission’s decision.

I. Background

Sierra Club supports the Commission’s August 2, 2023 decision to deny Aligned an exemption from the regular CPCN process, and urges the Commission to similarly deny Aligned’s September 1 petition for a rehearing.

Aligned had sought an exemption from the CPCN process for 168 sixteen-cylinder diesel generators, which would serve as backup generation for its data centers in periods of power

¹ The Climate Solutions Now Act calls for a 60% reduction in greenhouse gas emissions, below 2006 levels, by 2031 and net-zero carbon emissions by 2045. *See* Md. S.B. 528 (2022). Additionally, Governor Moore has announced an ambitious, ground-breaking goal of “[e]nsur[ing] that Maryland generates 100% clean energy by 2035.” *See* Wes Moore for Maryland, *Maryland’s Climate, Our Economic Future*, <https://wesmoore.com/issues/climate/>.

disruptions. These heavy diesel generators have a significant total capacity of 504 MW. The Commission rejected Aligned’s request and directed the project to proceed through the regularly required CPCN process. In short, in denying Aligned’s request, the Commissioners cited the large aggregate scale of the system of backup generators, their conflict with Maryland’s climate laws and greenhouse gas emission reduction commitments, and the possibility that there are cleaner alternatives for backup power systems for Aligned’s data centers.

II. Standard of Review

Aligned bears a heavy burden in seeking reconsideration of a PSC order. Rehearing is disfavored and requests for rehearing “should not be used as a vehicle to merely rehash or repeat previous arguments, or regurgitate ... the same concerns[.]”² “Because an agency may grant reconsideration based only on a legally recognized ground, it follows that an agency may not reconsider and reverse a decision based on a mere change of mind, nor on the substitution of a [decisionmaker] of one conviction for a [decisionmaker] of another conviction.”³ The Commission’s presumption against reversing its existing decisions—while in itself a sufficient barrier to rehearing in this case—is also logically sound, as it preserves the Commission’s

² See, e.g., Order No. 90685: Order Denying Rehearing, *Petition for Rulemaking Governing Procedures for Office of People’s Counsel Requests to Initiate Proceeding* (June 27, 2023) (citing *Giant Foods, Inc. v. Baltimore Gas & Elec. Co.*, 92 Md. P.S.C. 73 (Feb. 27, 2001); Case No. 9651, *In the Matter of Washington Gas Light Company’s Application for Authority to Increase its Rates and Charges*, Order No. 89893 (July 29, 2021); *Cinque v. Montgomery County Planning Bd.*, 173 Md. App. 349 (2007)) (citations and quotation marks omitted).

³ *Id.* (citing *Cinque*, 173 Md. App. at 361 (citing *Calvert County Planning Comm’n v. Howlin Realty Mgmt.*, 364 Md. 301, 325 (2001); *Kay Const. Co. v. Cnty. Council for Montgomery Cnty.*, 227 Md. 479, 489 (1962)); *J. Aron & Co., Inc. v. Service Transp. Co.*, 515 F. Supp. 428, 431 n.4 (D. Md. 1981)) (citations and quotation marks omitted).

administrative efficiency and instills certainty in regulated entities and other stakeholders that are affected by the Commission's decisions.

III. The Commission was correct in holding Aligned's diesel generators to the same procedural standards as other in-state generation sources.

Aligned has not met its burden on reconsideration. The Commission's decision to hold data center components to the same standards as other in-state generators was correct and consistent with the Commission's mandate to protect Maryland ratepayers from environmental harms.

First, Maryland law clearly requires CPCNs for generators even if they are small in size. Maryland law provides a blanket exception to the CPCN process only for generators with a capacity less than 2 MW, and beyond that, only generators with a capacity under 70 MW that meet strict requirements to consume a minimum amount of their power generated on-site can apply for exemptions.⁴ The CPCN process is a categorical, non-discretionary binding requirement for non-exempted projects. Here, the 168 diesel generators proposed by Aligned, which total 504 MW in nameplate capacity, plainly fail to qualify for an exemption. As the PSC correctly determined, all of the diesel generators have the common purpose of powering the Aligned data centers and all are functionally interconnected and operate in unison. The Commission was right to conclude that these 168 diesel generators are required to follow the CPCN process.

Moreover, the process of reviewing and deciding whether to approve a CPCN is no mere formality; it is essential for protecting Marylanders' right to a clean and healthy environment.

⁴ MD. CODE ANN., PUB. UTIL. § 7-207.1.

Among other components, the CPCN process requires would-be generators to address the environmental and socioeconomic impacts of new generation projects, as well as their impacts on natural resources in Maryland.⁵ Simply according an exemption for 504 MW of power would deprive Maryland residents of the results of those critical pieces of analysis. The CPCN process also serves the critically important function of community education and engagement, as it requires the applicant to consult and share its environmental review with the community that is affected by a project.⁶

This is especially important in light of the harms that diesel generators pose to public health and the environment. The combustion of diesel releases the greenhouse gas carbon dioxide, in addition to particulate matter and nitrogen oxides, which are respiratory irritants that can cause or exacerbate lung conditions such as asthma.⁷ In outdoor air, NOx emissions can interact with volatile organic compounds (“VOCs”) to form ozone, an air pollutant that “aggressively attacks lung tissue,” causing shortness of breath, asthma attacks, respiratory infections, exacerbation of lung diseases, and premature death.⁸ Alarmingly, the American Lung Association describes ozone as “one of the most dangerous and widespread pollutants in the U.S.”⁹ Tellingly, Aligned itself acknowledges the environmental risks posed by its diesel generators, admitting that they will emit greenhouse gases and seeking to avoid the legally

⁵ MD. CODE REGS. 20.79.01.05.

⁶ *Id.* 20.79.03.

⁷ See Clean Air Northeast, *Diesel 101*, <https://cleanairnortheast.epa.gov/diesel101.html#:~:text=Diesel%20engines%20in%20trucks%2C%20buses,millions%20of%20residents%20are%20affected.>

⁸ American Lung Association, *Ozone*, [https://www.lung.org/clean-air/outdoors/what-makes-air-unhealthy/ozone.](https://www.lung.org/clean-air/outdoors/what-makes-air-unhealthy/ozone)

⁹ *Id.*

required CPCN process by purchasing carbon offsets. The Commission should continue to recognize, however, that the law applies equally to Aligned, just as it does to all other regulated entities. Aligned should not be granted permission to skirt legal mandates by proposing its own alleged compliance pathways.¹⁰

IV. Conclusion

In sum, regardless of whether the Commission supports the construction of data centers or their usage of backup diesel generators, it was correct in holding Aligned to the same procedural standards as other applicants for generation sources. It is essential to proceed with the CPCN process so as to afford the Commission ample time and information to weigh the various considerations involved in approving 504 MW worth of diesel generators at Aligned's site. Accordingly, the Commission should deny Aligned's request for a rehearing.

Sincerely,

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Maryland Chapter of the Sierra Club

Shruti Bhatnagar
Conservation Chair
Maryland Chapter of the Sierra Club

CC: Rosa Hance
Chapter Chair
Maryland Chapter of the Sierra Club

¹⁰ Aligned also attempts to argue that it should qualify for an exemption to the CPCN process because the total greenhouse gas emissions from its data centers are low relative to Maryland's total stock of emissions. However, this assertion is a non sequitur that rests on faulty logic. The basis for a generator to qualify for a CPCN exemption is unrelated to the extent of its GHG emissions. Solar units that have zero carbon emissions, for instance, are regularly required to complete the entire CPCN process. *See* MD. CODE ANN., PUB. UTIL. § 7-207.2(a).