

ORDER NO. 88659

IN THE MATTER OF THE
APPLICATION OF EGYPT ROAD
SOLAR, LLC FOR A CERTIFICATE
OF PUBLIC CONVENIENCE AND
NECESSITY TO CONSTRUCT A
45.90 MW SOLAR PHOTOVOLTAIC
GENERATING FACILITY IN THE
CITY OF CAMBRIDGE, MARYLAND

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BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

CASE NO. 9434

Issue Date: April 27, 2018

On November 27, 2017, a Proposed Order of Public Utility Law Judge was issued in the matter. The Proposed Order granted Egypt Road Solar, LLC (“Applicant”) a Certificate of Public Convenience and Necessity (“CPCN”), subject to PPRP Final Licensing Conditions and Staff Final Licensing Conditions, for the construction of a 51.1 megawatt solar photovoltaic generating facility (“Project”) in the City of Cambridge, Maryland. On December 26, 2017, Helen M. Malkus filed a Notice of Appeal of the Proposed Order of Public Utility Law Judge.

On January 5, 2018, Ms. Malkus filed a Memorandum on Appeal requesting the Maryland Public Service Commission (“Commission”) to reverse the Proposed Order and deny the application for the CPCN.

On January 25, 2018, the Applicant filed a Reply Memorandum on Appeal requesting the Commission reject the appeal and affirm the Proposed Order. On January 25, 2018, the Power Plant Research Program of the Department of Natural Resources (“PPRP”) filed a letter with the Commission and identified several of the PPRP Final

Licensing Conditions that needed correction due an administrative error that was made in PPRP's initial recommended licensing conditions, which were subsequently included in the Proposed Order as the PPRP Final Licensing Conditions.

On April 17, 2018, Ms. Malkus filed a Notice of Dismissal of Appeal ("Notice"). In her Notice, Ms. Malkus asked the Commission dismiss with prejudice her appeal of the Proposed Order, pursuant to a Settlement Agreement. She further requested that the Commission immediately finalize the Proposed Order without modification.

The Commission will grant Ms. Malkus's request to dismiss her appeal with prejudice as it appears that the Applicant and Ms. Malkus have come to an agreement that is satisfactory to each party. The Commission also will make the administrative corrections to the license conditions identified by PPRP to correct its administrative errors. The Commission finds no basis, in law or fact, to reverse or remand the Proposed Order and therefore the Commission will affirm the Proposed Order and modify PPRP Final Licensing Condition Nos. 4, 12, 13, and 26, as requested by PPRP.

IT IS THEREFORE, this 27th day of April in the year Two Thousand Eighteen,

ORDERED: (1) That the appeal filed by Helen M. Malkus is hereby dismissed with prejudice;

(2) That Final Recommended License Condition Nos. 4, 12, 13, and 26 are corrected as requested by the Power Plant Research Program of the Department of Natural Resources. The modified PPRP Final Licensing Conditions to which the Certificate of Public Convenience and Necessity granted in this matter are attached hereto

and incorporated by reference hereby into this Order; and

(3) That the Proposed Order of Public Utility Law Judge issued on November 27, 2017, is hereby affirmed.

By Direction of the Commission,

/s/ David J. Collins

David J. Collins
Executive Secretary

Appendix A: Modified PPRP Final Licensing Conditions

Initial Recommended License Conditions
PSC Case No. 9434
Egypt Road Solar, LLC

1. Applicability of Conditions - Except as otherwise provided for in the following provisions, the application ("Application") for the Certificate of Public Convenience and Necessity ("CPCN") is considered to be part of this CPCN for the Egypt Road Solar, LLC Project ("Project"). The Application consists of the original application filed with the Maryland Public Service Commission ("PSC" or "Commission") on December 20, 2016. Construction and operation of the Project shall be undertaken in accordance with these conditions. If there are any inconsistencies between the conditions specified below and the Application, the conditions in this CPCN shall take precedence. If CPCN conditions incorporate federal or State laws through paraphrased language, the precise reading of the federal or State laws shall take precedence if there is any inconsistency.
2. Project Scope - The Project shall be constructed as a single-axis tracking photovoltaic (PV) system, and within the limit of disturbance and approximate dimensions (surface, in total acreage, and height) as described in the Application or, if applicable, otherwise incorporated in the CPCN. Changes to these specifications are not covered by the CPCN and must be reviewed and approved by the PSC and the Power Plant Research Program ("PPRP").
3. CPCN Expiration - Construction of the Project must commence within three (3) years of receiving the CPCN and must be completed for operation not later than four (4) years after receipt of the CPCN. If the Project is not completed and operational within four years of issuance of the final order by the PSC granting a CPCN, the CPCN shall expire and no longer constitute authorization to construct and operate the Project.
4. Applicable Laws and Regulations - Construction and operation of the solar facility shall be undertaken in accordance with this certificate and shall comply with all applicable local, State, and federal laws and regulations, including but not limited to the following:
 - a. Nontidal Wetlands - COMAR 26.23.01 applies to activities conducted in nontidal wetlands and wetland buffer;
 - b. Waterway Construction - COMAR 26.17.04 applies to regulations governing construction activities in nontidal waters and floodplains;
 - c. Water Quality and Water Pollution Control - COMAR 26.08.01 through COMAR 26.08.04 apply to discharges to waters of the State and maintenance of surface water quality;
 - d. Erosion, Sediment and Storm Water Control - COMAR 26.17.01 applies to the preparation, submittal, review, approval, and enforcement of erosion,

- sediment and storm water control plans, including any dewatering plans and associated water recycling plans;
- e. Critical Area Commission for the Chesapeake and Atlantic Coastal Bays - COMAR 27.02.04.01 applies to major development on private lands resulting from State actions;
 - f. Oil Pollution Control - EPA 40 CFR 112 and COMAR 26.10.01.12 apply to the procedures for oil spill control;
 - g. Forest Conservation - Maryland's Forest Conservation Act (FCA), Md. Code, Sections 5-1602(b)(5) and 5-1603 of the Natural Resources Article.
 - h. Particulate Matter from Materials Handling and Construction - COMAR 26.11.06.03D, applies to airborne particulate matter such that a person may not cause or permit any material to be handled, transported, or stored, or a building, its appurtenances, or a road to be used, constructed, altered, repaired, or demolished without taking reasonable precautions to prevent particulate matter from becoming airborne;
 - i. Nuisance - COMAR 26.11.06.08, applies to the creation of nuisance or air pollution such that an installation or premises may not be operated or maintained in such a manner that a nuisance or air pollution is created. Nothing in this regulation relating to the control of emissions may in any manner be construed as authorizing or permitting the creation of, or maintenance of, a nuisance or air pollution;
 - j. Odors - COMAR 26.11.06.09, applies to the discharge of air pollution such that a person may not cause or permit the discharge into the atmosphere of gases, vapors, or odors beyond the property line in such a manner that a nuisance or air pollution is created; and
 - k. Noise - COMAR 26.02.03 applies to noise regulations whereby Egypt Road Solar shall construct the proposed Project in such a way that it complies with the Maryland noise regulations and with relevant **City of Cambridge's** noise ordinances.
5. Site Control - In accordance with COMAR 20.79.03.01, prior to construction, Egypt Road Solar shall provide PPRP and the PSC with a copy of the purchase agreement, land lease, or similar agreement with the owners of the property on which the Project site is located. Egypt Road Solar shall also identify any applicable term of the purchase agreement, land lease, or similar agreement and provide assurances to PPRP and the PSC that such term of the purchase agreement, land lease, or similar agreement meets or exceeds any applicable Power Purchase Agreement ("PPA") term and includes any time necessary for complete closure and removal of the Project facilities.
 6. Land Use Agreement - Before starting any construction activities on the Project, the Applicant shall certify in writing to PPRP and the PSC that it has obtained written verification from the Department of Natural Resources (DNR) that the

relevant restrictions in the Land Use Agreement, dated May 29, 2007, between Thomas Land Group, Egypt Road, LLC and the State of Maryland have been amended to allow for the construction and operation of the Project, and will provide the Commission and all parties with a copy of the written verification.

7. Project As-Built Details - Within 30 days of commencement of operation, Egypt Road Solar shall provide to PPRP, the PSC, and the City of Cambridge, the as-built details for the following: engineering and construction plans for the Project, including the total acreage of the Project site; the PV panel and module type, dimensions, and locations; a consistent count of the number of PV modules; a consistent count of the number of support posts for the PV modules; and a consistent depth of post/pile burial and height of the PV panels above grade. Where the as-built details are identical to those submitted with the CPCN application, Egypt Road Solar shall provide a statement to this effect and not resubmit the information.
8. Spill Control - The wetlands, waterways and Critical Area and their buffers on the Project site, in addition to all adjacent properties, shall be protected by appropriate containment structures from spills or leaks of transformer fluids or other biologically detrimental substances.
9. Sediment Control - Egypt Road Solar shall implement erosion and sediment control best management practices (BMPs) presented in the Maryland Department of the Environment (MDE) document titled, *2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control*, and as otherwise may be approved or required by Dorchester County and the City of Cambridge. Egypt Road Solar shall use enhanced best management practices in the vicinity of nontidal wetlands sites, which include the use of adequately sized temporary sediment traps, as needed, super silt fencing and other specialized techniques such as double silt fences, and redundant stormwater runoff controls specifically needed for limiting the quantity of sediment entering these wetlands during the construction process. Egypt Road Solar shall stabilize all portions of the Project site disturbed during construction as soon as practicable after the cessation of construction activities within that portion of the site, followed by seed application, in accordance with the above-cited document. In no instance shall non-native species be seeded or otherwise planted.
10. Wetland and Waterway Impacts - Prior to any construction activities, Egypt Road Solar shall assess all impacts (temporary or permanent) of the Project to wetlands and waterways and their 100- year floodplains, and where possible quantify and illustrate the assessed impacts in its wetlands, waterways, and floodplains permit application submitted to MDE, with copies provided to PPRP for its review.
 - a. Construction of the Project shall not disturb or remove vegetation within the proposed 35-foot buffers of the non-tidal wetlands and waterways

located in the Project area, or within the one hundred (100) foot buffers of wetlands and waterways in the Critical Area along the northeastern edge of the Project site. During construction, Egypt Road Solar shall use flagging, fencing, access barriers, and any other necessary measures to ensure that these areas are not disturbed by construction personnel, equipment, or activities.

- b. After construction, Egypt Road Solar shall maintain each of the areas described in (a) through the use of Integrated Vegetation Management (IVM) protocols that: avoid or minimize mechanical mowing; are designed to obtain a sustainable vegetation community; and control the spread of invasive species, which may spread to connected restored areas on the east side of Egypt Road.
 - c. Egypt Road Solar shall construct all internal access roads within the Project site to appropriately maintain the natural drainage patterns for the site.
11. Critical Area- Egypt Road Solar shall work with the staff of the Critical Area Commission (CAC) and the City of Cambridge to ensure that the final site design for the proposed Project avoids the placement of solar arrays within the Critical Area located on site, including the 100-foot buffer around the jurisdictional wetlands and waterways within with the Critical Area. Egypt Road Solar shall coordinate with the staff of the CAC when developing the final site design and the construction plans for the proposed grass perimeter access road and security fence in the Critical Area to ensure that construction disturbance is minimized and the amount of restored area is maximized. In addition, Applicant shall obtain any required final approval from the CAC prior to beginning construction.
 12. Forest Conservation – To satisfy afforestation requirements for development, Egypt Road Solar shall comply with the **City of Cambridge's** Forest Conservation Standards implementing the Maryland FCA. Prior to the start of construction, Egypt Road Solar shall prepare and submit to **the City of Cambridge** for approval and to PPRP for review a Forest Conservation Plan that is consistent with all **City of Cambridge** Forest Conservation requirements and includes not less than 63.88 acres of forest mitigation. If the Applicant uses forest plantings as Mitigation, the Applicant shall comply with the following:
 - a. In accordance with priority order established in the **City of Cambridge** Forest Conservation Standards for afforestation and reforestation, preferred areas for mitigation shall be 1) establishing or enhancing forest buffers adjacent to intermittent and perennial streams to widths of at least 50 feet; 2) establishing or expanding existing forested corridors to connect existing forests within or adjacent to the site; 3) establishing or enhancing,

- forest buffers adjacent to critical habitats, where appropriate; and 4) establishing buffers between areas of differing land use.
- b. For a period of 5 years subsequent to planting of the afforestation areas, Egypt Road Solar shall maintain these areas free of invasive species and shall monitor them to ensure survival of the plantings. During this 5-year monitoring period, the areas shall be restocked annually to the planned stem density to compensate for seedling mortality.
 - c. During the 5-year monitoring period, Egypt Road Solar shall provide annual monitoring reports to the **City of Cambridge**, the DNR Forest Service, and PPRP. Each report shall include the number of dead trees replaced with new plantings; statistical estimates of live stem density, average stem diameter, average height, and biomass; and a professional assessment of the general condition of the trees.
13. Vegetation Management Plan – Egypt Road Solar shall plant and establish the grounds of the Project beneath and between the solar panels with the following plants, or as otherwise approved by the **City of Cambridge**: native, low-growing warm season grasses such as sideoats grama (*Bouteloua curtipendula*); little bluestem (*Schizachyrium scoparium*); broomsedge (*Andropogon virginicus*); deer tongue (*Dicanthelium clandestinum*), which are beneficial to ground nesting birds such as quail; and herbaceous flowering plants, which support wildlife and provide pollinator habitat. Prior to planting, Egypt Road Solar shall carry out ripping and compost amendment (to a depth of 6”) in the lanes between the solar panel racks, when necessary, to ensure the proper post-construction runoff characteristics. Further, prior to commencement of Project construction, Egypt Road Solar shall develop and submit to PPRP and the **City of Cambridge** a vegetative management plan that includes the following:
- a. Landscape Plan in accordance with the City of Cambridge Zoning Ordinance (**Unified Development Code**);
 - b. Description of grasses and other plant species to be maintained at the site;
 - c. Schedule for mowing that avoids or minimizes mowing activities during the nesting season of most ground-nesting birds including quail (i.e., May through August), and avoids mowing in wetland and waterway buffer areas at all times;
 - d. Restriction of grass mowing height at all times to not less than 10 inches except where this would present a fire hazard, impede required access to equipment, or interfere with operations of the Project;
 - e. Protocol for managing invasive plant species; and
 - f. Discussion of herbicides and pesticides approved for use at the Project site, and details describing the circumstances of their use.

14. Pollinator Habitat - Egypt Road Solar shall use native flowering plants to establish and maintain a long-term pollinator habitat in areas of the Project site outside of areas designated for tree planting. Egypt Road Solar shall develop a Pollinator Habitat Plan that sets forth details of the pollinator habitat and includes the following:
- a. Maps of designated pollinator habitat areas on the Project site;
 - b. Lists and descriptions of all intended target native plant species for the pollinator areas;
 - c. Methods for planting the pollinator areas;
 - d. All management methods for the pollinator areas, including elimination of non-native invasive species, mowing, herbicides, and other pertinent criteria; and
 - e. Projected success goals for the pollinator habitats, including expected percent survival statistics of all planted species during a period of five years after installation, and contingency planting for areas of non-establishment.
 - f. Egypt Road Solar shall submit the Pollinator Habitat Plan to PPRP and the City of Cambridge for review at least 30 days before completion of project construction, and shall indicate if Egypt Road Solar is interested in participating in DNR's Pollinator-Friendly Designation Program for Solar Facilities.
15. Rare, Threatened, or Endangered Species - If any rare, threatened, or endangered species are encountered during planning, construction, operation, or maintenance of this facility, Egypt Road Solar shall notify and consult with the Maryland Department of Natural Resources, Wildlife and Heritage Service to determine the appropriate actions.
16. Access - Egypt Road Solar shall afford representatives of the PSC and DNR access to the Egypt Road Solar site at any reasonable time, with appropriate notification, to conduct inspections and evaluations necessary to assure compliance with the CPCN requirements. Egypt Road Solar shall provide assistance, when reasonably necessary, to conduct inspections and evaluations effectively and safely, which may include, but are not limited to, the following:
- a. Inspecting construction authorized under this CPCN;
 - b. Accessing or copying any records that Egypt Road Solar is required to keep pursuant to this CPCN or applicable regulations;
 - c. Obtaining any photographic documentation and evidence;
 - d. Determining compliance with the conditions and regulations specified in the CPCN; and

- e. Setting up and maintaining equipment, collecting samples and other actions necessary to carry out a surface water study at the Project site.
17. Site Plan and Landscaping Plan- Prior to the commencement of Project construction, Egypt Road Solar shall provide the approved site plan to PPRP and the PSC for review and shall certify that it has designed the facility in substantial conformity to the City of Cambridge site development requirements and has received all required local permits. Also, Egypt Road Solar shall submit to PPRP and the PSC the landscaping plan, which shall document its visual mitigation strategy. Egypt Road shall file both documents in the PSC docket for Case No. 9434.
18. Project Deliveries - Egypt Road Solar shall consult with the Dorchester County Public Schools Central Office to establish school opening and closing times at Cambridge-South Dorchester High School and Maple Elementary School, and shall instruct its suppliers to avoid deliveries of solar components and construction equipment during these periods.
19. Road Permits - Egypt Road Solar shall comply with all permit requirements and restrictions for use, crossing and occupancy of State and City of Cambridge roads, and shall obtain appropriate approvals as necessary.
20. Reflective Glare - Egypt Road Solar shall develop a process to document and address admissible complaints related to potential solar reflections. An admissible complaint shall be one formally submitted in writing to Egypt Road Solar within two (2) years of the Project's commencement of operation. Egypt Road Solar shall provide to the PSC and PPRP both a copy of the complaint and its response to the complaint. Egypt Road Solar's response to any written complaint shall clearly inform the aggrieved party that if not satisfied with Egypt Road Solar's response, the aggrieved party may seek relief by filing a complaint with the PSC. If the PSC determines after notice and an opportunity to be heard that the complaint is justified, Egypt Road Solar shall prepare and implement a screening plan to mitigate impacts from reflective glare upon the affected property. The screening plan shall be in conformance with all applicable State and local laws and regulations.
21. Cultural Resources - Prior to construction, Egypt Road Solar shall consult with the Maryland Historical Trust (MHT) to determine whether additional cultural resource investigations will be required within areas of the Project that would be disturbed by permanent or temporary construction activities. To the extent that subsequent investigations determine that cultural resources would be adversely affected by the Project, Egypt Road Solar shall execute a Memorandum of Agreement (MOA) with the MHT resolving any adverse effects and stipulating the agreed-upon mitigation measures that will be implemented by Egypt Road Solar prior to construction.
22. Archeological Discoveries - In the event that relics of unforeseen archeological sites are revealed and identified during construction, Egypt Road Solar, in

consultation with and as approved by the MHT, shall develop and implement a plan for avoidance and protection, data recovery, or destruction without recovery of such relics or sites.

23. Bicycle Safety - Egypt Road Solar shall instruct its suppliers and contractors to be aware of on-road bicycle route designations near the Project and Maryland traffic laws regarding bicycles on the road. Egypt Road Solar shall also include this instruction in all contracts with suppliers or contractors.
24. Fire Safety - Egypt Road Solar shall design, install and maintain the Project to meet all applicable minimum standards set forth in the National Fire Protection Association (NFPA) 70: National Electrical Code and all applicable minimum standards appropriate for ground-mounted solar facilities set forth in NFPA 1: Fire Code.
25. Emergency Preparedness - Prior to the commencement of construction, Egypt Road Solar shall contact the Dorchester County's Emergency Management Agency and the fire departments whose first and second due service areas include the Egypt Road Solar Facility for the following actions: to establish points of contact and timely response options, facilitate emergency vehicle access throughout the site, create a consistent marking protocol for the identification of system components that require special attention during an emergency, and develop appropriate Standard Operating Procedures or Standard Operating Guidelines for addressing on-site emergencies.
26. Solar Decommissioning
 - a. At least 90 days prior to the start of construction, the Applicant shall submit a decommissioning plan to the PSC and PPRP for review. The decommissioning plan shall describe the responsible party(ies), timeframes, and estimated costs for decommissioning, dismantling, and legal disposal of all components, including cables, wiring, and foundations below ground surface. The plan shall address site conditions after decommissioning, including stabilization, grading and seeding all disturbed areas. The plan shall maximize the extent of component recycling and reuse, where practicable, and ensure all materials are handled in accordance with applicable federal, State, county, and local requirements. The Applicant shall not begin construction until the Applicant has addressed all comments from the PSC and PPRP, the PSC has approved the plan, and all specified financial guaranties are in place. The approved plan, and any updated plans, shall be filed in the PSC docket for Case No. 9434.
 - b. The Applicant shall implement a financial mechanism to ensure that decommissioning costs are not borne by the State and/or the **City of Cambridge** at the end of the useful life of the Project or in the event of abandonment of the Project. The Project will be considered to be abandoned if the Project

is non-operational for a period of one (1) year. The financial instrument may be in the form of a surety bond, a corporate guaranty, a letter of credit issued by a financial institution, or other alternative arrangement and must be in place prior to the commencement of construction of the Project. The financial mechanism is subject to the approval of the PSC, and PSC evaluation of the financial mechanism will consider the credit-worthiness and financial capabilities of the counter-party(ies).

- c. The Applicant shall develop an estimate of decommissioning costs by a third party consultant to determine the amount of the decommissioning performance bond, corporate guarantee, or letter of credit. The cost estimate shall address provisions for the safe removal and proper disposal of all components of the Project, including any components containing hazardous or toxic materials. Over the life of the Project, the Applicant shall update the decommissioning cost estimate every five (5) years after the issuance of the CPCN to adjust for inflation and any other necessary changes. The Applicant shall provide the revised cost estimate to the PSC, file the revised cost estimate in the PSC docket for Case No. 9434, and execute an adjustment to the financial guarantee mechanism.
 - d. Within 180 days after the Project ceases to generate electricity for sale and prior to implementing the approved decommissioning plan, the Applicant shall notify the PSC and PPRP that the Project will be decommissioned.
27. Project Transfer - All provisions and requirements of this CPCN shall apply to any and all subsequent owners and/or operators of the solar facility. In the event of any pending change in control or ownership, the current owner/operator shall notify the succeeding owner/operator of the existence of the requirements of this CPCN by letter and shall send a copy of this letter to the PSC and PPRP. Information provided to the PSC and PPRP shall be filed in the PSC docket.
28. Submissions to PPRP - Informational copies of the required communications, reports or studies referenced in the preceding recommended license conditions shall be sent to PPRP by e-mail (and by mail if requested) at:

Director
 Power Plant Assessment Division
 Department of Natural Resources
 Tawes State Office Bldg., B-3
 580 Taylor Avenue
 Annapolis, Maryland 21401
 e-mail: pprp.dnr@maryland.gov