

# PUBLIC SERVICE COMMISSION OF MARYLAND

## Annual Report on the Status of Wind-Powered Generating Stations in the State of Maryland

Pursuant to  
Section 2, Chapter 163, Acts of 2007

Prepared for:  
The Honorable Martin O'Malley, Governor of Maryland  
Senate Finance Committee  
House Economic Matters Committee

For Period January 1, 2009 – December 31, 2009

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## CURRENT LAW

### Commission Reporting Requirements

Under Section 2 of Chapter 163 of the Acts of 2007, for a three-year period ending June 30, 2010, the Public Service Commission (“Commission”) must provide a report to the Governor, the Senate Finance Committee, and the House Economic Matters Committee on the following:

- (1) the number of applications for and the locations of wind-powered generating stations for which approval is sought under § 7-207.1(a)(1)(ii) of the Public Utility Companies Article, as enacted by this Act;
- (2) the status of the applications and the extent to which the wind-powered generating stations have been constructed after obtaining approval from the Commission in accordance with this Act; and,
- (3) the status of any regulatory actions undertaken by other State or local agencies with respect to the wind-powered generating stations.

This Report pertains to Calendar Year 2009.

### Certificate of Public Convenience and Necessity (“CPCN”) Exemption for Certain Wind-Powered Generating Stations

Section 7-207 of the Public Utility Companies Article, *Annotated Code of Maryland* (“PUC Article”) requires a person to obtain approval from the Commission — in the form of a Certificate of Public Convenience and Necessity (“CPCN”) — before the person may construct a generating station in Maryland.<sup>1</sup> Effective July 1, 2007, however, § 7-207.1 of the PUC Article expressly grants an exemption from the CPCN requirement for a generating station that produces electricity from wind if:

- (1) the generating station is land-based;
- (2) the capacity of the generating station does not exceed 70 megawatts (“MW”);
- (3) the electricity that may be exported for sale from the generating station to the electric system is sold only on the wholesale market pursuant to an interconnection, operation, and maintenance agreement with the local electric company; and
- (4) the Commission provides an opportunity for public comment at a public hearing.<sup>2</sup>

A person seeking a CPCN exemption under § 7-207.1 is required to obtain approval from the Commission before constructing the wind generating station.<sup>3</sup> An application for such approval must: (1) be made to the Commission in writing on a form adopted by the Commission; (2) be

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<sup>1</sup> For purposes of this requirement, a “generating station” does not include a small generating facility with a capacity of less than 373 kilowatts (“kW”), if installed with equipment that prevents the flow of electricity to the electric system during time periods when the electric system is out of service. COMAR 20.79.01.02(9)(b).

<sup>2</sup> PUC Art. § 7-207.1(a)(1)(ii).

<sup>3</sup> PUC Art. § 7-207.1 (b)(1).

verified by oath or affirmation; and (3) contain information required by the Commission, including: (a) proof of compliance with all applicable requirements of the independent system operator; and (b) a copy of an interconnection, operation, and maintenance agreement between the generating station and the local electric company.<sup>4</sup>

When reviewing an application for approval under § 7-207.1, the Commission must:

- (1) ensure the safety and reliability of the electric system;
- (2) require the person constructing the generating station to notify the Commission two weeks before the first export of electricity from a generating station approved under § 7-207.1; and
- (3) conduct its review and approval in an expeditious manner.<sup>5</sup>

## **NUMBER OF APPLICATIONS AND LOCATIONS**

### *2009 Applications*

Pursuant to § 7-207.1 of the PUC Article, in 2009 two applicants were granted a CPCN exemption by the Commission for wind-based generation:

- On November 5, 2008, Dans Mountain Wind Force, LLC (“Dans Mountain”) filed an application for Commission approval for a 69.6 MW wind generation facility to be located in western Allegany County. The application was docketed as Case No. 9164. A CPCN exemption was granted by the Commission by Letter Order on March 12, 2009.
- On April 21, 2009, Synergics Roth Rock Wind Energy, LLC (“Roth Rock”) filed an application for Commission approval for a 50 MW wind generation facility to be located on a site on Backbone Mountain 14 miles south of the City of Oakland in Garrett County. The application was docketed as Case No. 9191. A CPCN exemption was granted by the Commission on November 18, 2009.

The Synergics Group notified the Commission to expect the filing of a CPCN exemption application for a 60 MW wind generation facility in December 2009. The project, known as the Eastern Wind project, is sited in Garrett County on Four Mile Ridge. As of the date of this Report, no CPCN exemption application has been filed with the Commission.

### *2008 & Prior Year Applications*

On January 23, 2008, Criterion Power Partners, LLC (“Criterion”) filed an application for Commission approval for a 70 MW wind-powered generating station to be located in Garrett County. The application was granted, and a CPCN exemption was approved by the Commission on October 29, 2008.

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<sup>4</sup> PUC Art. § 7-207.1 (b)(2). An “electric company” is “a person who physically transmits or distributes electricity in the State to a retail electric customer.” PUC Art. § 1-101(h).

<sup>5</sup> PUC Art. § 7-207.1(c).

The Commission also notes that prior to the July 1, 2007 statutory revisions that established a wind-based CPCN exemption process and the associated reporting requirements, two CPCN applications were filed with the Commission that would appear to meet the qualification as a CPCN-exempt wind facility:

- US Wind Force LLC received a CPCN for a 40 MW wind farm to be located on Savage Mountain in Garrett and Allegany Counties on March 20, 2003.<sup>6</sup>
- Synergics filed a CPCN request for a 40 MW wind project in Garrett County.<sup>7</sup> On May 8, 2008, the Commission granted Synergics' request to withdraw the application.<sup>8</sup> Synergics' 50 MW Roth Rock project was subsequently granted a CPCN exemption in November 2009.

In addition to these two wind farms that applied for a CPCN, the Commission also granted a CPCN on March 26, 2003 to Clipper Windpower, Inc., under the § 7-207(e) criteria, for a 101 MW wind-powered plant in Garrett County.<sup>9</sup> The Clipper Windpower, Inc. plant, at 101 MW, would not have qualified for a CPCN exemption under § 7-207.1(a)(1)(ii).<sup>10</sup> Appendix A summarizes the wind projects filing CPCNs and CPCN exemptions and the current status of the proposals.

## **APPLICATION STATUS AND EXTENT OF CONSTRUCTION**

The status of the Dans Mountain, Roth Rock, Criterion, and Savage Mountain applications and the extent to which the wind-powered generating stations have been constructed after obtaining approval from the Commission is described in this Report section .

### ***Dans Mountain***

The Dans Mountain Application filed on November 5, 2008 with the Commission was granted a CPCN exemption on March 12, 2009. As a result of Allegany County zoning regulations,<sup>11</sup>

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<sup>6</sup> *Re Savage Mountain, U.S. Wind Force, LLC*, 94 MD PSC 29, 53 (2003). Revised by Order No. 81587 (Commissioner Brenner dissenting in part) (September 7, 2007), which amended a CPCN condition to extend the date by which construction was to commence to March 20, 2010.

<sup>7</sup> *See In the Matter of the Application of Synergics Wind Energy, LLC for a Certificate of Public Convenience and Necessity to Construct a 40 MW Generating Station in Garrett County, Maryland*, Case No. 9008.

<sup>8</sup> With regards to Synergics, the CPCN was granted by a Proposed Order from one of the Commission's Hearing Examiners on October 30, 2006; however, that Proposed Order was appealed. While under appeal, the statutory requirement was amended to provide for the wind-based CPCN exemption, and as a result, Synergics obtained the option to withdraw its CPCN application. On May 7, 2008, Synergics filed a request with the Commission to withdraw its application. On May 8, 2008, the Commission granted the request.

<sup>9</sup> *Re Clipper Windpower, Inc.*, 94 MD PSC 54, 87 (2003).

<sup>10</sup> The 101 MW Clipper Windpower, Inc. project was not built and the CPCN expired. That project was downsized and resubmitted in January 2008 as the Criterion project for which a CPCN exemption was sought and ultimately granted in October 2008.

<sup>11</sup> Allegany County, Code Home Rule Bill Number 2-09, amending Chapter 141 of the Code of Public Local Laws of Allegany County, Maryland. Available: <http://gov.allconet.org/bcc/2-09windenergy.pdf> (as of December 8, 2009).

which was passed in May 2009 and includes set-back provisions, the project is now on hold. Additional details regarding the project, with respect to the CPCN exemption process and county zoning regulations, are provided below.

The CPCN exemption for the Dans Mountain 69.6 MW wind generation facility in western Allegany County included the following conditions:

- 1) Two weeks prior to putting any portion of the project in service, the Applicant shall file with the Commission a listing of the transmission system improvements required by PJM Interconnection, L.L.C. (“PJM”) before that portion of the project can be placed in service and certification that the improvements have been completed;
- 2) Two weeks prior to putting any portion of the project in service, the Applicant shall file with the Commission a listing of the interconnection requirements of the interconnecting transmission line owner before that portion of the project can be placed in service and certification that the interconnection requirements have been met;
- 3) The owner of the facility shall allow access to the facility to State agencies provided proper notice is given;
- 4) The Applicant must start construction within three years of approval of this waiver and must have at least one functioning wind turbine within five years of the approval; and
- 5) Any upgrades to the transmission system required to be in service after the start-up date should be listed with an expected completion date.

Additionally, Dans Mountain is required to provide an annual report to the Commission describing the status of: (1) the construction of the project; and (2) any regulatory actions undertaken by federal, State or local authorities with respect to the project. Prior to operating the facility, the final interconnection service agreement must be filed with the Commission and Dans Mountain should certify that it has complied with all PJM and the Federal Energy Regulatory Commission (“FERC”) reliability and safety requirements.

The Commission delegated to its Hearing Examiner Division the conduct of a public hearing on the Dans Mountain project as required under § 7-207.1 of the PUC Article. The public hearing took place on January 22, 2009 in Frostburg, Maryland. Dans Mountain addressed the concerns from the public hearing by making the following voluntary commitments:

- 1) Resolving all communications interference issues, particularly those relating to emergency communication carriers, and further agreeing to create an advisory panel and conduct stakeholder meetings;
- 2) Continuing to comply with appropriate PJM requirements applied to the project and filing annual reports with the Commission of the progress of the project and compliance with PJM requirements;
- 3) Operating a computer program to measure shadow flicker once the turbines are constructed and agreeing to adopt reasonable mitigation measures if shadow flicker becomes an issue;
- 4) Meeting the State’s daytime and nighttime noise standards;

- 5) Siting the project in compliance with existing buffer requirements under the current zoning ordinance; and
- 6) Complying with the suggestion from the Power Plant Research Program (“PPRP”) of conducting bird and bat monitoring after construction of the turbines.

The specific conditions of the voluntary commitments, as agreed upon by Dans Mountain, PPRP within the Department of Natural Resources, the Office of the People’s Counsel (“OPC”), and Staff, were submitted to the Commission on March 17, 2009. By Letter Order, the Commission granted the requested CPCN exemption based on the commitments made by Dans Mountain and the continued compliance with these commitments.

In May 2009, Allegany County passed Code Home Rule Bill 2-09, specifying setback requirements (according to turbine height) and minimum separation distances between wind turbines and any structures not owned by the applicant.<sup>12</sup> According to the Dans Mountain project developer, U.S. Wind Force, the new zoning regulations in Allegany County will restrict the envisioned 25 turbine project to a single turbine, unless a special exemption is granted by the County.<sup>13</sup> As a result, the project is on hold while U.S. Wind Force reviews future development and legal options.<sup>14</sup>

### ***Roth Rock***

The Roth Rock Application filed on April 21, 2009 was granted a CPCN exemption on November 18, 2009. The CPCN exemption for a 50 MW generating station in Garrett County is subject to the following conditions:

- 1) That a copy of the final Interconnection Service Agreement between the Applicant, PJM, and the Potomac Edison Company doing business as Allegheny Power in connection with the Roth Rock wind farm shall be filed with the Commission by Applicants;
- 2) The Applicants shall notify the Commission two weeks before the first export of electricity from the Roth Rock wind farm;
- 3) The Applicant shall comply with the recommendations from the Staff of the Maryland Public Service Commission:<sup>15</sup>
  - a. Two weeks prior to putting any portion of the project in service, the Applicant shall file with the Commission a listing of the transmission system improvements required by PJM before that portion of the project can be placed in service and certification that the improvements have been completed;
  - b. Two weeks prior to putting any portion of the project in service, the Applicant shall file with the Commission a listing of the interconnection requirements of the interconnecting transmission line owner before that portion of the project

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<sup>12</sup> Allegany County, Code Home Rule Bill Number 2-09, amending chapter 141 of the Code of Public Local Laws of Allegany County, Maryland. Available: <http://gov.allconet.org/bcc/2-09windenergy.pdf> (as of December 8, 2009).

<sup>13</sup> Email conversation between Staff and David Friend, VP Marketing and Sales for U.S. Wind Force, LLC on October 9, 2009.

<sup>14</sup> *Ibid.*

<sup>15</sup> The Staff recommendations from Craig Taborsky are attached to Order No. 83021.

- can be placed in service and certification that the interconnection requirements have been met;
- c. The owner of the facility shall allow access to the facility to State agencies provided proper notice is given;
  - d. The Applicant must start construction within one year of approval of this waiver and must have at least one functioning wind turbine within two years of the approval;
  - e. Any upgrades to the transmission system required to be in service after the start-up date should be listed with an expected completion date; and
  - f. Expansion of the project to include more turbines or higher output is subject to further review by PJM and the Maryland Public Service Commission.
- 4) That the Roth Rock wind farm shall comply with all International Standards for wind turbines developed by the International Electrotechnical Commission;
  - 5) That the Applicant shall file its new road plan with the Garrett County Office of Inspections and Permits; and
  - 6) That the Roth Rock wind farm shall not physically encroach on the property of the Carl DelSignore Family Trust.

The Commission delegated to its Hearing Examiner Division the conduct of a public hearing on the Roth Rock project as required under § 7-207.1 of the PUC Article. The public hearing took place on June 11, 2009 in McHenry, Maryland. On October 14, 2009 the Commission held a legislative-style hearing regarding the Roth Rock Application in Baltimore, Maryland. Noting that the Commission's review of a CPCN application under § 7-201.1 (c) is limited to "ensur[ing] the safety and reliability of the electric system,"<sup>16</sup> the CPCN exemption was granted November 18, 2009 by Commission Order No. 83021.

A wholesale purchase power agreement was executed between Roth Rock and Delmarva Power & Light Company on May 30, 2008. Roth Rock has executed an interim Interconnection Service Agreement ("ISA") with PJM and the Potomac Edison Company doing business as Allegheny Power and has indicated that it will submit the final ISA to the Commission before operation of the project and will notify the Commission two weeks before the first export of electricity from the project. Roth Rock submitted a development and construction schedule as of June 11, 2009 but the project is conditioned upon meeting the other requirements discussed above.

### ***Criterion***

As previously discussed in this Report, Clipper Windpower, Inc. received a CPCN in 2003 to build a 101 MW wind project in Garrett County. Condition No. 4 of the CPCN required construction of the turbines to be completed within five years of issuance of the CPCN. The CPCN subsequently expired when construction was not completed within five years of issuance.

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<sup>16</sup> At the October 14, 2009 hearing, the Commission heard testimony that, contrary to the position Applicants have taken in the proceeding, Applicants argued during a hearing in the Circuit Court for Garrett County that the Commission's review of the Application encompasses public health and safety issues. At the Commission's request, Applicants filed a copy of the transcript from that hearing on October 21, 2009. Having examined the transcript, the Commission was troubled by Applicant's repeated characterization of the Commission's review to include "safety," which reasonably could be assumed to encompass public health and safety. Section 7-207.1 allows the Commission to consider only the safety of the electric system, and any argument or implication to the contrary is inconsistent with the clear language of the § 7-207.1 of the PUC Article.

The project was reconfigured and a new applicant, Criterion Power Partners, LLC (“Criterion”), filed a new application on January 24, 2008 seeking a CPCN exemption for a 70 MW wind generation facility located in Garrett County, since construction would need to be completed by March 26, 2008 under the original CPCN (Case No. 8938, Clipper Wind). Criterion was granted a CPCN exemption on October 29, 2008 and the second application set an expected in-service date of December 8, 2009.

On November 30, 2009 Criterion filed an annual report with the Commission describing the status of the construction of the project and regulatory actions undertaken by federal, State, and local authorities with respect to the project. Criterion is in the process of finalizing preliminary engineering and design work for the project facilities. As of the date of the report, no applications or requests for authorizations, approvals, or permits have been denied.<sup>17</sup> Criterion anticipates it will commence project construction in the spring of 2010 and expects to be in service by December 2010.

### ***Savage Mountain***

Savage Mountain Wind Force, LLC (“Savage Mountain”) was granted a CPCN on March 20, 2003 for a 40 MW wind generation facility located at the boundary of Allegany and Garrett Counties in Western Maryland. The CPCN would have expired in March of 2008; however, Savage Mountain filed a motion for an extension of the five year deadline for completion of construction of the wind generation facility. On September 5, 2007, the Commission granted a modification of the original application and extended the construction deadline to be completed by no later than March 20, 2010. According to the project developer U.S. Wind Force, the Savage Mountain project is unable to secure a power purchase agreement (“PPA”) necessary to move the project forward, and it is not expected to be completed by the March 20, 2010 deadline.<sup>18</sup>

## **REGULATORY ACTIONS BY OTHER STATE OR LOCAL AGENCIES**

Normally, the Maryland Public Service Commission conducts a comprehensive procedure for the siting, construction and operation of power plants in the State. Several State agencies, most notably the Department of Natural Resources and the Maryland Department of the Environment, participate in the PSC process through the work of the Power Plant Research Program within DNR. Often times, affected local governments participate as well. If a land-based wind-powered generating facility is granted a CPCN, State preemption applies and the project may be constructed without additionally having to comply with local zoning rules, regulations, laws or ordinances.

In light of the fact that § 7-207.1 of the PUC Article creates an exemption from the CPCN requirement for land-based wind generation projects of 70 MW or less, State preemption does not apply and the projects are still subject to other State and local environmental and zoning laws, including but not limited to State or local noise regulations, non-tidal wetlands

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<sup>17</sup> A full list of authorizations, approvals, and permits is included with Criterion report under maillog number 120179.

<sup>18</sup> Email conversation with David Friend, VP Marketing and Sales for US Wind Force, LLC on September 29, 2009.

requirements, water quality and water pollution requirements and regulations, erosion and sediment control requirements and regulations, and the State Endangered Species Act. Additionally, even under § 7-207.1, for land-based wind generating stations of 70 MW or less, the Commission reviews the project to ensure the safety and reliability of the electric system.

Consequently, § 7-207.1 does not remove a land-based wind project of 70 MW or less from all government oversight; just the “one-stop shop” CPCN issued by the MDPSC. Land use, environmental, zoning and other approvals that would normally be subsumed by the CPCN are now individually required in order for siting, construction and operation to take place.

The Commission includes herein the status of any regulatory actions undertaken by other State or local agencies or the federal government with respect to land-based wind-powered generating stations.

### **Action by Local Governments**

The wind projects encompassed by this Report are either located in Allegany County or Garrett County. A brief description of local legislative actions in those two counties follow.

#### *Allegany County*

As previously mentioned, in May 2009, Allegany County passed County Home Rule Bill 2-09, specifying setback requirements (according to turbine height) and minimum separation distances between wind turbines and any structures not owned by the applicant. The preamble to the legislation states, among other things:

**WHEREAS**, the **PURPOSE** of this Bill is to protect the safety and well-being of Allegany County by amending Chapter 141, Code of Public Laws of Allegany County, to provide for additional protection for the public and adjoining landowners from the development of wind energy devices;<sup>19</sup>

This legislation has impacted one existing project, Dans Mountain, and will impact any future land-based wind projects to be located in Allegany County.

#### *Garrett County*

Garrett County has the authority to adopt county-wide zoning. However, the County has not adopted either a zoning ordinance or a comprehensive zoning plan, as is required to exercise its county-wide zoning authority. Consequently, Garrett County does not have the authority to implement zoning restrictions to apply to land-based wind-power generating facilities of 70 MW or less.

During the 2009 Session of the Maryland General Assembly, legislation was introduced to authorize the Garrett County Commissioners to enact ordinances regulating various aspects of a

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<sup>19</sup> Allegany County, Code Home Rule Bill Number 2-09, amending chapter 141 of the Code of Public Local Laws of Allegany County, Maryland. Available: <http://gov.allconet.org/bcc/2-09windenergy.pdf> (as of December 8, 2009).

commercial wind turbine structure.<sup>20</sup> Without passage of enabling legislation or implementation of county-wide zoning, Garrett County has no current authority to impose restrictions on the Roth Rock or Criterion wind projects that are designed to be built in Garrett County and have received CPCN exemptions from the Commission pursuant to § 7-207.1 of the PUC Article.

**State Agency Action**

*Maryland Energy Administration*

The Maryland Energy Administration (“MEA”) developed a model small wind zoning ordinance to address general requirements for small wind energy systems (under 100 kW) and to facilitate the development of small wind projects throughout the State. Of the 23 counties in Maryland, the following nine have developed small wind ordinances: Allegany County; Caroline County; Carroll County; Dorchester County; Frederick County; Harford County; Montgomery County; St. Mary’s County; and Washington County. Seven counties, as well as Baltimore City, are currently developing small wind ordinances, namely, Baltimore County, Charles County, Somerset County, Talbot County, Wicomico County and Worcester County.

**Figure 1. Small Wind Zoning Ordinance Status**



Source: Maryland Energy Administration, Status as of December 14, 2009.

*Maryland Department of General Services and University System of Maryland*

On December 8, 2009, the University System of Maryland (“USM”) Board of Regents and the Department of General Services (“DGS”) announced the award of four long-term power purchase agreements (“PPA”) for renewable energy projects under the *Generating Clean*

<sup>20</sup> See Senate Bill 584 and House Bill 604 of the 2009 Session of the Maryland General Assembly. Each bill received an unfavorable report from the Senate Finance Committee and the House Economic Matters Committee, respectively.

*Horizons* initiative. Three of the four PPAs support wind energy development, including: 55 MW of the BlueWater Wind energy project<sup>21</sup> located off-shore in Delaware; 10 MW of the 69.6 MW Synergics LLC Roth Rock project<sup>22</sup> in Western Maryland; and 55 MW of the U.S. WindForce wind energy project in West Virginia.

## **CONCLUSION**

The Commission continues to monitor the status of wind-energy generating station applications that are exempt from the Commission's CPCN requirement, the subsequent progress of construction for wind facilities in the State of Maryland, and regulatory actions undertaken by other State or local agencies; as well, regional and federal efforts, regarding land-based wind-powered generating stations.

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<sup>21</sup> The Blue Water Wind PPA is an extension to the proposed Delaware off-shore wind project.

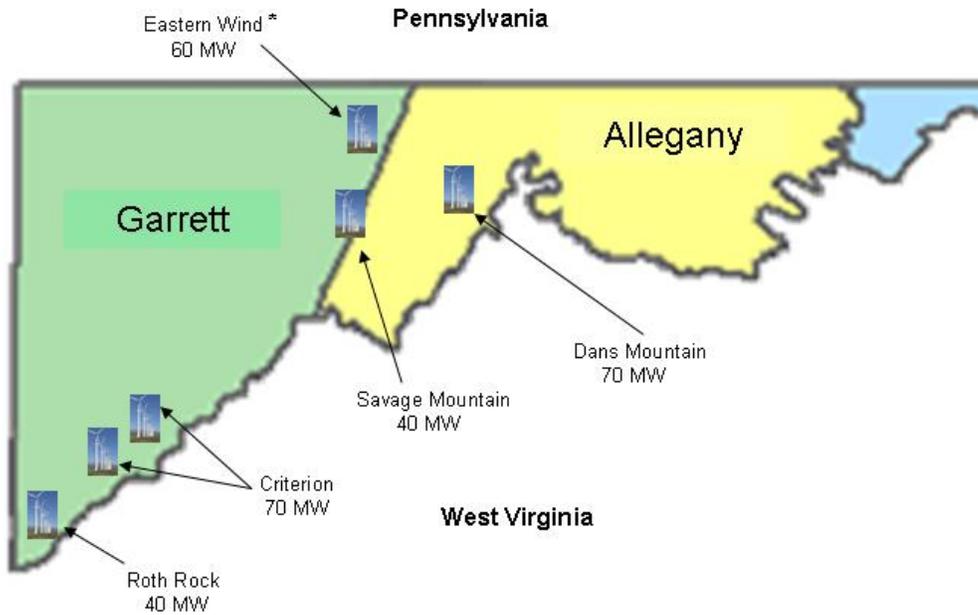
<sup>22</sup> The reviewing committee made a separate award under a small business provision.

## Appendix A. Status of Maryland Wind Projects

Date Granted	Company	Location	Rated Capacity (MW)	Application Date	Case Number	Exemption Application	Current Status
	Eastern Wind / Synergics	Garrett County	60	In Progress			Applied for interconnection with PJM
11-18-2009 Exemption granted	Roth Rock Wind Energy / Synergics	Garrett County	50	4-21-2009	9191	Yes	Expected in-service by October 2010
3-12-2009 Exemption granted	Dans Mountain, / US Wind Force, LLC	Allegany County	69.6	11-5-2008	9164	Yes	Project currently on hold
10-29-2008 Exemption granted	Criterion Power Partners, LLC	Garrett County	70	1-23-2008	8938	Yes	Construction to begin in Spring 2010 and in service by December 2010
10-30-2006 (Proposed Order granting CPCN issued)	Synergics Wind Energy	Garrett County	40	6-30-2004	9008	No	CPCN withdrawn: May 2008
3-20-2003 CPCN granted	Savage Mountain, / US Wind Force, LLC	Garrett and Allegany Counties	40	8-30-2002	8939	No	Unable to secure PPA; not expected to meet construction deadline of March 20, 2010
3-26-2003 CPCN granted	Clipper Windpower, Inc.	Garrett County	101	8-26-2002	8938	No	CPCN expired

**Notes:** In January 2008, Clipper—under the name Criterion Power Partners, LLC—filed a CPCN Exemption for 70 MW of wind powered energy. The Savage Mountain and Synergics 40 MW projects were submitted before enactment of Chapter 163 of the 2007 Session Laws, which provides qualifying wind facilities with the option of applying for a CPCN exemption.

## Appendix B. Sites of Proposed Maryland Wind Projects



Locations of Proposed Wind Energy Facilities in Allegany and Garrett Counties, Maryland

Note: \* The Synergics Eastern Wind project is in the developmental stages, and has yet to submit an CPCN exemption under § 7-207.1(a)(1)(ii) of the Public Utility Companies article.