STATE OF MARYLAND

OFFICE OF THE CHAIRMAN

JASON M. STANEK

PUBLIC SERVICE COMMISSION

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Chair C.T. Wilson
Economic Matters Committee
House Office Building, Room 231
Annapolis, Maryland 21401

RE: HB 1188 – INFORMATION with Amendments – Certificate of Public Convenience and Necessity – Solar Photovoltaic Systems

Dear Chair Wilson and Committee Members:

I write today to provide information regarding HB 1188, which will define the term "generating station" as it relates to the Commission's Certificate of Public Convenience and Necessity (CPCN) requirement for a developer that seeks to construct a solar photovoltaic (PV) system with the power output or "capacity" to produce a certain amount of electricity. HB 1188 addresses an unresolved question of state policy involving the co-localization of smaller-scale solar PV systems and the need to undergo a comprehensive CPCN review for a grouping of such systems. While HB 1188, as drafted, would advance the State's solar policies, it raises several potential concerns, which are discussed below.

By statute and regulation, the Commission requires a CPCN or CPCN exemption for any generating station exceeding 2 MW. The CPCN process constitutes permission to construct the facility and requires the developer to mitigate adverse impacts from the proposed project. There is no statutory definition for "generating station" in the *Public Utilities Article*. Rather, the 2 MW threshold is established by COMAR 20.79.01.02. Since 2011, the Commission has processed CPCN requests for solar PV projects in the range of 2 to 150 MWs. As part of every CPCN review process, the Department of Natural Resources' Power Plant Research Program (PPRP) reviews the potential impacts of a proposed generation project and recommends conditions designed to mitigate those impacts, such as storm water management, project decommissioning, and remediation of the project site upon termination of operations. Before the CPCN process is formally initiated, a CPCN applicant is required to coordinate with PRPP to discuss the project and identify the regulatory issues and any necessary studies. As part of the CPCN application process, the applicant is required to include specific project information, including an environmental review document and, for solar PV projects, a study of glare impacts.

Currently, a single, small-scale solar PV system that is less than 2 MW would not be subject to the CPCN requirement because it is not considered a generating station under COMAR 20.79.01.02. HB 1188 would allow a developer to construct an undefined number of 2 MW generating systems collocated on the same property or adjacent properties, as long as each generating unit or facility is separately metered and does not export electricity for sale on the wholesale market. Such an arrangement of multiple systems would be excluded from the definition of "generating station" under the Bill and bypass the CPCN process. As a result, the existing CPCN provisions that normally serve important public purposes, in addition to local permitting, would be replaced by the local jurisdiction's sole oversight. While this implicates a broader question of state policy, there is a concern that local counties and municipalities may not have the resources or expertise to conduct the same or comparable impact analyses as PPRP. As a solar PV project expands in size and capacity—whether it is a single generating facility or a collective of multiple, collocated systems—the potential impacts from the project's total capacity become more significant and, thus, warrant a comprehensive review. The Commission is concerned that multiple, collocated solar PV systems could be collectively large enough and occupy the same footprint as a single, utility-scale solar facility, with the same types of impacts.

Earlier this month, the Commission considered a matter involving the issuance of solar certification credits (SRECs) for a solar PV project in Howard County that comprised three separately-metered facilities collocated on the same property, each with a capacity rating under 2 MW. The Commission decided in favor of the developer regarding the SRECs, allowing the company to receive the credits without completing the CPCN process. While the Commission noted that Howard County had conducted an extensive review of the project, there was a concern that shifting project approvals to the local jurisdictions lacks the benefit of consistency in evaluating project impacts. The Commission did not rule on the CPCN requirement issue but observed that the issue could be decided separately through Commission processes such as a rulemaking.

Lastly, the provisions in HB 1188 are agnostic to the type of generator energy source, which could include natural gas or other greenhouse gas-emitting fuels. The uncodified portion of HB 1188 states that the General Assembly's intent is for the Bill to apply to "solar energy generating facilities and eligible customer-generators" for net metering. To align the Bill language with the stated intent, the Commission recommends amending HB 1188 to clarify in the definition for "generating station" and in the uncodified portion that the legislation only applies to solar PV facilities and net metering-eligible customer-generators.

I appreciate the opportunity to provide information on HB 1188. Please contact Lisa Smith, Director of Legislative Affairs, at (410) 336-6288 if you have any questions.

Sincerely,

Jason M. Stanek
Chairman