

**SB0489 CPCN - Local Permits FAV.pdf**

Uploaded by: Cecilia Plante

Position: FAV



## TESTIMONY FOR HB0489

### Public Service Commission – Certificates of Public Convenience and Necessity – Local Permits

**Bill Sponsor:** Senator Brooks

**Committee:** Education, Energy, and the Environment

**Organization Submitting:** Maryland Legislative Coalition

**Person Submitting:** Cecilia Plante, co-chair

**Position:** FAVORABLE

I am submitting this testimony in favor of HB0489 on behalf of the Maryland Legislative Coalition. The Maryland Legislative Coalition is an association of individuals and grassroots groups with members in every district in the state. We have over 30,000 members across the state.

This bill seeks to remove the confusion between the Public Service Commission's Certificate of Public Convenience and Necessity (CPCN) process and the county or municipality process of providing technical permits (site plan approval, stormwater management plan approval, building permits, etc.) prior to the start of construction on a solar project. It authorizes a county or municipal corporation to process, within a reasonable time, any local permit required under a CPCN. This will help move solar projects along without procedural delays.

Whether localities are in favor of solar projects or not, those projects are required in order to meet the state's greenhouse gas reduction targets and should be prioritized and allowed to proceed unhindered as much as possible.

The Maryland Legislative Coalition supports this bill and we recommend a **FAVORABLE** report in Committee.

**SB489\_MAREC\_FAV.pdf**

Uploaded by: David Beugelmans

Position: FAV

**GORDON • FEINBLATT** LLC  
ATTORNEYS AT LAW

**SB489**

DAVID W. BEUGELMANS  
410.576.4104  
dbeugelmans@gfrlaw.com

1001 FLEET STREET, SUITE 700  
BALTIMORE, MARYLAND 21202  
410.576.4000  
www.gfrlaw.com

February 20, 2023

Hon. Brian J. Feldman, Chairman  
Senate Education, Energy, and Environment Committee  
2 West, Miller Senate Office Building  
Annapolis, Maryland 21401

Re: **SB489 – Position: Favorable**

Dear Chairman Feldman:

This letter is written on behalf of Mid-Atlantic Renewable Energy Coalition Action (MAREC Action), a coalition of utility-scale solar, wind, and battery storage developers, wind turbine and solar panel manufacturers, and public interest organizations, **in strong support of Senate Bill 489.**

Senate Bill 489 makes important technical changes to the Public Utilities Article to clarify that local governments have authority to review and issue non-discretionary permits required by a Public Service Commission (PSC) order granting a Certificate of Public Convenience and Necessity (CPCN). As you know, the PSC has sole authority to site energy projects over 2 megawatts through the CPCN process.

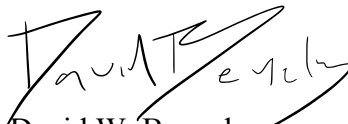
For more than a decade, the PSC has included conditions in CPCN orders granted to renewable energy projects requiring those projects to receive standard non-discretionary permits (such as site plan/stormwater management plan approvals and building/electrical permits) from the local jurisdictions where each project is located. Unfortunately, in recent years certain counties have indicated they do not have authority to review or issue such permits, which has had the effect of halting renewable energy projects already permitted by the PSC. If left unchecked, this trend will undermine the State's ambitious renewable energy and climate change goals.

Once a CPCN is issued, local governments are the correct venue for these non-discretionary reviews because they have the required expertise and perspective to process these permits, as they do for all other development projects within their borders. Accordingly, Senate Bill 489 makes clear that counties and municipal corporations have authority to review all permits required by a CPCN, and that they must process all such permits within a reasonable timeframe. If passed, Senate Bill 489 will codify past practice and allow the important renewable energy projects permitted by the PSC to move forward as intended.

For these reasons, MAREC Action respectfully requests that you give Senate Bill 489 a **Favorable Report**.

Please do not hesitate to contact me if you have any questions.

Very truly yours,



David W. Beugelmans

cc: Members of the Senate Education, Energy, and the Environment Committee

**OPC Testimony SB0489.pdf**

Uploaded by: David Lapp

Position: FAV

DAVID S. LAPP  
PEOPLE'S COUNSEL

WILLIAM F. FIELDS  
DEPUTY PEOPLE'S COUNSEL

JULIANA BELL  
DEPUTY PEOPLE'S COUNSEL

— OPC —  
**OFFICE OF PEOPLE'S COUNSEL**  
State of Maryland

6 ST. PAUL STREET, SUITE 2102  
BALTIMORE, MARYLAND 21202  
WWW.OPC.MARYLAND.GOV

BRANDI NIELAND  
DIRECTOR, CONSUMER  
ASSISTANCE UNIT

**BILL NO.:** Senate Bill 489  
Public Service Commission – Certificates of Public  
Convenience and Necessity – Local Permits

**COMMITTEE:** Education, Energy, and the  
Environment Committee

**HEARING DATE:** February 21, 2023

**SPONSOR:** Senator Brooks

**POSITION:** Favorable

\*\*\*\*\*

The Office of People's Counsel (OPC) supports Senate Bill 489 because it helps limit unnecessary delays in the siting of new generating facilities, including renewable energy projects, such as utility scale solar PV arrays. As a general matter, those delays are detrimental to utility customers and the State because they reduce competition in the market for generation and delay the availability of renewable energy.

SB 489 would require a county or municipality to process, "within a reasonable time," any local permits required by an applicant who has received a Certificate of Public Convenience and Necessity (CPCN) from the Public Service Commission for the construction of an energy generating station. Importantly, the bill does not eliminate the requirement for the energy developer with a CPCN to apply to the local government for any necessary permits. It simply requires the local government to process the permit applications "within a reasonable time."

In creating the CPCN process, the General Assembly vested in the Public Service Commission the authority to review and approve the construction of energy generating facilities in the State. Traditionally the CPCN process involved applications for fossil fueled power plants to supply the electricity needs for the State. Since the General

Assembly adopted the Renewable Portfolio Standard (RPS), however, the CPCN process has also been applied to renewable energy facilities, such as land-based wind turbines and utility scale solar PV projects.

Although local governments play a role in the siting and location of generating facilities requiring a CPCN, final siting authority is vested with the Commission. The Commission is required to consider the views of the local governments and communities affected by the location of the energy facility, and a CPCN includes license conditions formulated by the state agencies and affected communities. As the Supreme Court of Maryland held in a 2019 decision addressing the conflict between State and local authority, the Commission's CPCN authority preempts any local government zoning authority over the siting and location of a generating facility. *Washington County Board of County Commissioners v. Perennial Solar, LLC*, 464 Md. 610, 633 (2019).

Despite the clear vesting of final decision-making authority in the Commission, now affirmed by the Supreme Court of Maryland, some county governments have forestalled the construction of energy facilities through inordinate delays in their permit approval process. Because the Commission lacks the authority to order a local government to process a permit application, the Commission's only recourse is to grant an extension in the terms of the CPCN, which delays the availability of renewable energy as required by the RPS schedule.

OPC is concerned that siting restrictions and delays—while important to ensure compliance with environmental laws and local policy—slow the entry of newcomers to the market. New generation, and in particular renewable generation that requires no fuels, increases the competitiveness of the market, driving costs lower for customers. New, cleaner generation will also further the State's efforts to meet its greenhouse gas reduction goals.

While SB 489 does not remove the requirement for developers to apply for local permits, it does require local governments to act on such applications “within a reasonable time,” allowing project developers to seek relief from the courts when a local government refuses to process a permit application for an energy facility developer with a CPCN.

**Recommendation:** OPC requests a favorable Committee report for SB 489.



**SB489\_MDSierraClub\_fav 21Feb2023.pdf**

Uploaded by: Mark Posner

Position: FAV



P.O. Box 278  
Riverdale, MD 20738

**Committee: Education, Energy, and the Environment**

**Testimony on: SB489 “Public Service Commission – Certificates of Public Convenience and Necessity – Local Permits”**

**Position: Support**

**Hearing Date: February 21, 2023**

The Maryland Chapter of the Sierra Club urges a favorable report on SB489. This bill will help ensure that the process established by state law for approval of large electricity generation projects – i.e., approval by the Public Service Commission (PSC) following an intensive study of a proposed project – proceeds at a reasonable pace through the additional steps local governments need to take following PSC approval to enable projects to be constructed.

Ensuring that county and municipal approvals proceed at a reasonable pace for new electricity generation projects is especially critical because of the need for the development of new solar energy projects in Maryland. The General Assembly has established as a target that solar energy should constitute 14.5% of the State’s energy consumption by 2030. The PSC estimates that the 14.5% amount represents about 6,200 megawatts (MW) of solar. This is the minimum needed to meet Maryland’s greenhouse gas reduction goal of a 60% reduction (compared to 2006 levels) by 2031, a goal set last year by the Climate Solutions Now Act.

For a variety of reasons, however, Maryland is not meeting its year-by-year interim targets for increasing its solar capacity to the 14.5% figure. The Solar Energy Industries Association estimates that Maryland had about 1,600 MW of solar at the end of 2022; this means that Maryland will need to develop 4,600 MW of solar from 2023 to 2030 to achieve the 14.5% target. This would require Maryland to more than double its current rate of solar development.

State law grants sole authority to the PSC to approve electricity generation projects larger than two megawatts, which the PSC does by granting what is known as a Certificate of Public Convenience and Necessity (“CPCN”). In recent years, concerns arose – and were addressed by the General Assembly – regarding the manner in which this state level review takes into account local issues and perspectives relating to proposed projects.

The resolution is a requirement that CPCN applicants seek input from local governments and the public prior to submitting their applications, and provisions that allow local governments to participate in PSC CPCN proceedings to provide their input directly to the decisionmaker. Further, when CPCNs are granted, the PSC specifies the ministerial or technical local permits that need to be obtained for construction to begin (such as a plan for managing stormwater). In this process, local governments may not require any permits not identified in the CPCN nor may

Founded in 1892, the Sierra Club is America’s oldest and largest grassroots environmental organization. The Maryland Chapter has over 70,000 members and supporters, and the Sierra Club nationwide has over 800,000 members and nearly four million supporters.

they use these follow-up permit proceedings to question the decision to site the facility, since that decision belongs exclusively to the PSC.

Despite this well ordered and clear system, some localities now are contending that they lack the authority to implement the permits set forth in a CPCN. This interposition of a lack of authority is at odds with the approved CPCN and the process that resulted in the PSC including the permit requirements in the CPCN. It can put a halt to energy generation projects approved by the PSC, which itself is contrary to the state policy that decisions on whether to proceed with particular projects are made at the state level by the PSC, not by local governments.

This bill will address this unexpected problem by making it clear that local governments have the authority to issue the permits identified in a CPCN, and must process these permits in a reasonable amount of time. It is our understanding that a sponsor amendment will be offered to clarify the language in the bill as introduced.

For these reasons, we urge a favorable report on this bill.

Mark Posner  
Clean Energy Team Lead  
mposner5719@gmail.com

Josh Tulkin  
Chapter Director  
Josh.Tulkin@MDSierra.org

**Brooks\_SB489.pdf**

Uploaded by: Benjamin Brooks

Position: FWA

**BENJAMIN BROOKS**  
*Legislative District 10*  
Baltimore County

Education, Energy, and the  
Environment Committee



**THE SENATE OF MARYLAND**  
ANNAPOLIS, MARYLAND 21401

*Annapolis Office*  
James Senate Office Building  
11 Bladen Street, Room 303  
Annapolis, Maryland 21401  
410-841-3606 · 301-858-3606  
800-492-7122 Ext. 3606  
Benjamin.Brooks@senate.state.md.us

*District Office*  
Windsor Mill Office  
8419 Liberty Road, Suite B  
Windsor Mill, Maryland 21244  
410-496-4037

**TESTIMONY IN SUPPORT WITH AMENDMENT OF SB489**  
**Public Service Commission – Certificates of Public Convenience and Necessity –**  
**Local Permits**

Education, Energy and the Environment Committee  
February 21, 2023

Chair Feldman, Vice-Chair Kagan, and Members of the Committee,

Thank you for the opportunity to testify before you on SB489, Public Service Commission – Certificates of Public Convenience and Necessity – Local Permits. This bill merely fixes a gap in current statute which arose after the Supreme Court of Maryland's decision in Board of County Commissioners vs. Perennial Solar, LLC (2019). As amended, SB489, states notwithstanding any inconsistency with a local law, regulation, or plan, a county or municipal corporation is authorized to and shall process within a reasonable time any local permit required under a Certificate of Public Convenience and Necessity (CPCN) issued.

The Public Service Commission ("PSC") has sole siting authority over solar projects (defined as "generating stations") over 2 Megawatts (2MW). To approve the siting of such a project, the Commission issues a Certificate of Public Convenience and Necessity ("CPCN") through a formal written order.

The CPCN process includes requirements for CPCN applicants to provide information to and seek input from counties, municipal corporations, and the public at least 90 days prior to submitting their CPCN application and provides opportunity for counties and municipal corporations to provide substantive input on a proposed project for PSC consideration, including as parties to the CPCN proceeding.

CPCNs include conditions that require projects to apply to the county or the municipal corporation where the project is located for ministerial and technical permits (site plan approval, stormwater management plan approval, building permits, etc.) prior to the start of construction.

Some counties have taken the position that they do not have legal authority to issue such ministerial and technical permits based solely on the issuance of a CPCN in the absence of the preempted local zoning approvals (e.g., special exception, change of use, etc.). This position will prevent solar projects from moving forward because such permits are

necessary to begin construction. This may lead to years of litigation that will prevent otherwise shovel-ready projects from moving forward.

SB489 would provide counties and municipal corporations with legal authority and require issuance of all permits and approvals required by a CPCN, fixing this perceived gap. This proposed legislation would not impact any aspect of the CPCN process, local permitting, or otherwise change preemption of local zoning approvals, but clarifies that local governments have the authority to process ministerial and technical permits required prior to the start of construction.

If enacted, the State would be able to achieve its renewable energy and climate change sooner by allowing projects to move forward that otherwise would have been delayed for years as the courts decided these issues.

For these reasons, I am requesting a favorable report.

With kindest regards,

A handwritten signature in cursive script that reads "Benjamin T. Brooks".

Benjamin Brooks

**SB0489(HB0692) - FWA - Public Service Commission –**

Uploaded by: Landon Fahrig

Position: FWA



# Maryland Energy Administration

**TO:** Members, Senate education, Energy, and the Environment Committee  
**FROM:** Paul Pinsky - Director, MEA  
**SUBJECT:** SB 489 - Public Service Commission – Certificates of Public Convenience and Necessity  
– Local Permits  
**DATE:** February 21, 2023

---

## **MEA Position: FAVORABLE WITH AMENDMENTS**

The Maryland Energy Administration (MEA) supports the Sponsor’s efforts to ensure counties and municipalities work diligently to support the development of energy generation in the State.

The Public Service Commission has siting authority for energy generation assets exceeding two (2) megawatts in capacity. This authority is expressed through the granting of a certificate of public convenience and necessity, or “CPCN”. However, the local jurisdiction still maintains permitting authority.

This bill will help ensure that the permitting process is conducted in a timeframe that will not unnecessarily delay the development of new, clean, and renewable energy generation in Maryland.

However, **MEA offers an amendment below**, to further clarify the need for timely processing of permit applications. MEA would replace the uncertain term of “a reasonable time” with a certain term of six (6) months.

For the foregoing reasons, MEA urges the committee to issue a **favorable report as amended**.

---

### AMENDMENT NO. 1

On page 2, in lines 4 and 13, in each instance, strike “**A REASONABLE TIME**”, and substitute “**SIX (6) MONTHS**”.



**SB0489-EEE\_MACo\_OPP.pdf**

Uploaded by: Dominic Butchko

Position: UNF



## Senate Bill 489

### *Public Service Commission – Certificates of Public Convenience and Necessity – Local Permits*

MACo Position: **OPPOSE**

To: Education, Energy, and the Environment  
Committee

Date: February 21, 2023

From: Dominic J. Butchko

The Maryland Association of Counties (MACo) **OPPOSES** SB 489. This bill would effectively eliminate any ability of a local jurisdiction to place any regulation or restriction on the development of large-scale solar installations.

Decades ago, the General Assembly chose to create a state-level process to authorize and site utility scale power generation facilities. Recent court decisions have confirmed that these laws, written long before the advent of the modern widespread deployment of solar facilities, also apply to them if they are of a suitably large scale. Local authority is limited in the oversight of the location and approval of such facilities – but communities still have a stake in reasonable provisions including setbacks, line-of-sight limitations, and the like.

SB 489 seeks to end even the most modest local oversight, and simply directs local government to approve and process virtually any request from a planned facility that has received State-level approval from the Public Service Commission. The stark denial of any local input in this legislation poses several problems:

1. **Preservation** – If SB 489 becomes law, all local ability to ensure sensitive, historic, and natural areas remain preserved in their pristine state is eliminated. Should the Public Service Commission award a Certificate of Public Convenience and Necessity (CPCN) for a project on or overlapping with any preserved site, the local jurisdiction is made powerless to stop it.
2. **Legal** – Requiring a jurisdiction to award permits or approvals that fail to meet the basis for the permits is fraught with legal complications. SB 489 does just that, as it requires counties to approve permits for solar installations once a CPCN has been awarded, regardless of whether that installation complies with any local requirements. This practice would bring about uncertainty concerning whether the local governments are then liable or accountable for the actions of the holder of a permit approved, in effect, by this state statute's direction.

3. **Community** – One of the most fundamental powers of county government is the ability to shape the look and feel of a community. SB 489 effectively eliminates any last trace of this power once a CPCN is awarded. No setbacks, no stormwater standards, no vegetation requirements. Marylanders support renewable energy, but SB 489 poses a dramatic policy shift that could fundamentally alter many Maryland communities.
4. **Doesn't Prioritize Smart Solar** – Most would agree that finding practical routes to install solar on rooftops – in developed areas, on brownfield restoration sites, and similar areas – would be wise policymaking. But SB 489, with its fast-track process for any approved project, likely favors the easiest-to-build and easiest-to-buy sites – mostly our state's prime farmland – as the resulting "sprawl."

SB 489 resets the "rules of the game" for large scale solar, and effectively removes communities from the table entirely. Maryland's nuanced approach to balancing energy policy and proper local land use is replaced with a unilateral fast track – jeopardizing sensitive areas, ignoring community feedback, and overriding stakeholder-driven land use laws. Accordingly, MACo requests an **UNFAVORABLE** report on SB 489.

**SB 489 - UNF - MML.pdf**

Uploaded by: Justin Fiore

Position: UNF



Maryland Municipal League  
*The Association of Maryland's Cities and Towns*

# TESTIMONY

February 21, 2023

**Committee:** Senate Education, Energy, and the Environment

**Bill:** SB 489 – Task Force to Study Solar Tax Incentives

**Position:** Opposed

**Reason for Position:**

The Maryland Municipal League opposes Senate Bill 489, which as drafted would require local governments to process any permits required under a certificate of public convenience and necessity.

Our municipal attorneys have advised that the language of the bill would force the approval of permits that they would otherwise not *due to safety or public health reasons*. The term “process” in this context does not mean simply to take the necessary steps to approve, deny, or request changes. Instead, they read “process” to mean approve, or essentially, rubberstamp.

Therefore, MML respectfully requests that this committee provide an unfavorable report on SB 489.

**FOR MORE INFORMATION CONTACT:**

Theresa Kuhns

Angelica Bailey Thupari, Esq.

Bill Jorch

Justin Fiore

Chief Executive Officer

Director, Advocacy & Public Affairs

Director, Public Policy

Deputy Director, Advocacy & Public Affairs

1212 West Street, Annapolis, Maryland 21401

410-268-5514 | 800-492-7121 | FAX: 410-268-7004 | [www.mdmunicipal.org](http://www.mdmunicipal.org)

# **SB 489 Certificates of Public Convenience and Nece**

Uploaded by: Therese Hessler

Position: UNF



**SB489 - Public Service Commission - Certificates of Public Convenience and Necessity - Local Permits**

Education, Energy, and the Environment Committee

February 21, 2023 – 1:00PM

**Position: Oppose**

Dear Chair, Vice-Chair, and Members of the Committee:

The City of Gaithersburg writes to oppose **SB489 - Public Service Commission - Certificates of Public Convenience and Necessity - Local Permits**. If enacted, this legislation would require a county or a municipal corporation to process any local permit required under a certificate of public convenience and necessity issued by the Public Service Commission for generating stations, transmission lines, and qualified generator lead lines.

The bill as introduced would fundamentally remove municipalities from the State's application process regarding the placement of electrical generating stations, transmission lines, and qualified generator lead lines. It would forcibly permit the construction of these types of facilities irrespective of municipal ordinances that would otherwise prevent their construction, including and notwithstanding reasonable local zoning codes, nuisance, and public safety regulations.

In reviewing another pertinent statute in the Public Utilities Article (§ 7-103(b)), we discovered that this bill would be in contradiction to that statute:

- § 7-103(b)(1) states “an electric company must have the consent of the governing body of the municipal corporation... before laying or constructing any power line.”
- § 7-103(b)(2) states “the governing body of the municipal corporation... may adopt reasonable regulations and conditions for the laying of a power line, including regulations requiring the electric company to refill and repave any roadway or public way under which the power line is laid.
- The bill, as written, would also essentially ignore the § 7-103(b) provisions that require municipality consent to reasonably regulate the laying of power lines.

City of Gaithersburg • 31 South Summit Avenue, Gaithersburg, Maryland 20877-2038  
301-258-6300 • FAX 301-948-6149 • [cityhall@gaitthersburgmd.gov](mailto:cityhall@gaitthersburgmd.gov) • [gaitthersburgmd.gov](http://gaitthersburgmd.gov)

---

MAYOR  
Jud Ashman

COUNCIL MEMBERS  
Neil Harris  
Lisa Henderson  
Jim McNulty  
Ryan Spiegel  
Robert Wu

CITY MANAGER  
Tanisha R. Briley

For these reasons, we respectfully request an unfavorable report on SB489.

Should you have any questions, please feel free to contact me at 301-466-5350 or our government relations consultant, Therese Hessler, at [therese@ashlargr.com](mailto:therese@ashlargr.com). We appreciate your support.

Respectfully submitted,

A handwritten signature in black ink that reads "Jud Ashman". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Jud Ashman  
Mayor



**SB 0489, OPP, FCG Attorney, LS23.pdf**

Uploaded by: Victoria Venable

Position: UNF



# FREDERICK COUNTY GOVERNMENT

Jessica Fitzwater  
County Executive

## OFFICE OF THE COUNTY ATTORNEY

*Bryon C. Black, County Attorney*

*Wendy S. Kearney, Deputy County Attorney*

*Kathy L. Mitchell, Senior Assistant County Attorney*

*Catherine S. Keller, Assistant County Attorney*

*Thomas P. Sinton, Assistant County Attorney*

*Jennifer M. Keefer, Assistant County Attorney*

### **SB 0489 - Public Service Commission - Certificates of Public Convenience and Necessity - Local Permits**

**DATE:** February 21, 2023  
**COMMITTEE:** Senate Energy, Environment, and Education Committee  
**POSITION:** Oppose  
**FROM:** The Office of Frederick County Executive Jessica Fitzwater

As the Deputy County Attorney with the Frederick County Government, I urge the committee to give SB 0489 an unfavorable report.

The State legislature typically enacts laws that “enable” local jurisdictions to adopt local legislation to regulate specified areas and subjects.

In contrast, SB 0489 would require local elected officials to violate their oaths of office to uphold the laws of their local jurisdiction in order to issue permits required under a Certificate of Public Convenience and Necessity (CPCN).

SB 0489 would direct a local jurisdiction to process any permit application regardless of whether it is complete, appropriate, and consistent with the laws of that jurisdiction, on the sole basis that a CPCN was issued by the Public Service Commission, a State Agency.

If the State wishes to expand its authority over the permitting of power generating facilities, the State can exercise its authority to process, and issue permits necessary for construction of a generating facility.

Our legislative team is currently working with the sponsor on amendments to address our concerns but at this point in the process we have not yet seen changes that allow us to support this legislation.

Thank you for your consideration of SB 0489. On behalf of Frederick County Government, I urge an unfavorable report.

Wendy Kearney, Deputy County Attorney  
Frederick County Government  
[wkearney@frederickcountymd.gov](mailto:wkearney@frederickcountymd.gov)  
301-600-2914

**SB0489\_Information\_Stanek.pdf**

Uploaded by: Jason Stanek

Position: INFO

STATE OF MARYLAND



OFFICE OF THE CHAIRMAN

JASON M. STANEK

**PUBLIC SERVICE COMMISSION**

February 21, 2023

Chair Brian Feldman  
Education, Energy and Environment  
2 West, Miller Senate Office Building  
Annapolis, Maryland 21401

**RE: SB 489 – INFORMATION – Public Service Commission – Certificates of Public Convenience and Necessity – Local Permits**

Dear Chair Feldman and Committee Members:

SB 489 requires a county or municipality to process any local permit required under a Certificate of Public Convenience and Necessity (“CPCN”) issued by the Maryland Public Service Commission. SB 489 addresses an emerging regulatory “gap” in the wake of the precedential Supreme Court of Maryland decision in *Board of County Commissioners v. Perennial Solar, LLC* (2019), between the Commission’s exclusive authority over the siting of generating stations in Maryland *and* local authority over the issuance of permits by counties and municipalities.

The Commission’s CPCN process includes requirements for CPCN applicants to provide information and seek input from the counties and municipalities (*i.e.*, host jurisdictions) in which the proposed project will be located. This requirement provides the host jurisdiction with an early opportunity to review the proposed project, provide substantive input, and attempt to resolve issues before the developer files an application with the Commission. Upon conclusion of the CPCN review process, every CPCN issued by the Commission includes conditions that require developers to apply to the county or municipality for relevant permits prior to construction—such as final site plan approval, stormwater management plan approval, construction and building permits, etc.

Last year, Dorchester County appeared before the Commission after the issuance of a CPCN but before project construction had begun, arguing that it lacked statutory authority to grant certain site plan approval in view of a local ordinance requirement. The County identified this as an example of the post-*Perennial* “regulatory gap” and stated that because local jurisdictions currently lack the authority to process or approve such non-discretionary permits—based solely on the issuance of a CPCN—more counties will similarly decline to process these

approvals. The Commission finds this matter raises a bona fide issue that will certainly reoccur in the future absent legislative action and further delay the development of renewable generation in the State. A legislative solution now would present an appropriate alternative to the parties seeking judicial remedy through time-consuming litigation.

I appreciate the opportunity to provide information on SB 489. Please contact Lisa Smith, Director of Legislative Affairs, at (410) 336-6288 if you have any questions.

Sincerely,



Jason M. Stanek  
Chairman