

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