

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.