

**GORDON▪FEINBLATT<sub>LLC</sub>**  
ATTORNEYS AT LAW

MICHAEL C. POWELL  
410-576-4175  
mpowell@gflaw.com

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

October 25, 2023

**VIA ELECTRONIC FILING**

Andrew S. Johnston  
Executive Secretary  
Maryland Public Service Commission  
6 Saint Paul St., 16th Floor  
Baltimore, Maryland 21202

Re: ML No. 302893 – Letter **Rejecting** Provisional Order

Dear Mr. Johnston:

The Commission’s October 10<sup>th</sup> Provisional Order did not present Aligned Data Centers (“Aligned”) with sufficient relief to permit the project to proceed. Accordingly, Aligned does not accept the provisional exemption and, instead, will not proceed with its planned mission critical data center project. It is unfortunate that the Commission’s decision came after Aligned invested tens of millions of dollars in Maryland. The Commission is likely costing the state billions of dollars – and at least 48,000 jobs – in further economic development.<sup>1</sup>

Aligned notes that the Commission appears to have erroneously assumed that that the Provisional Order would allow the installation of 70 MW of generators “while the Applicant pursues a CPCN for the full deployment...”. Since 70 MW is insufficient to support the first phase of the planned mission critical data center development, that statement is incorrect. Certainly nothing in the record supports the assumption that the project could proceed on that basis.

The Commission’s grant of the request for 70 MW does not provide any meaningful relief to Aligned. To the contrary, it would require Aligned to begin construction and invest tens of millions of dollars more despite significant doubt that this Commission would allow the installation of equipment (backup generators) that is absolutely essential to the operation of even the first phase of any mission critical data center. No company could invest the hundreds of millions of dollars needed to complete the first phase of the project with that uncertainty – expressed by the Commissioners from the bench – hanging over the project.

Aligned remains concerned that the CPCN process – which was created for merchant power plants and transmission lines – is ill suited for the siting of commercial developments like

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<sup>1</sup> <https://mdtechcouncil.com/quantum-frederick-will-support-48000-jobs-in-frederick-county-over-15-year-period-study-finds/>

the Data Center that include backup generators for onsite emergency use only. We fail to understand how emergency back-up generators that are not connected to the grid and serve only the property owner of a private development could be deemed “generating stations” within the PSC’s purview of determining public service. It is also unclear how the Commission’s decision impacts existing facilities with previously CPCN-exempt backup generation that aggregates to more than 70MW. For instance, the State’s hospitals, pharmaceutical companies, research institutions, college campuses, federal facilities, and military installations all rely on emergency generators. The Commission will need to decide whether those installations must now disclose their aggregated generation on site and, if the amount exceeds 70 MW, seek a CPCN *nunc pro tunc*.

Aligned also notes that Order No. 90830 purports to provide some relief by waiving the two-year notice requirement of Public Utilities Article (“PUA”) § 7-208(c). However, PUA § 7-208 would not have applied to the Aligned project any way since that statute only applies to certain transmission lines – which are not part of the emergency backup generator application. So, the waiver of the notice requirement did not provide any additional relief in this case.

Since the Commission’s Provisional Order failed to provide meaningful relief from the Commission’s original decision, the Aligned project cannot proceed as planned. Aligned will obviously attempt to mitigate its damages and seek some other way to recoup its investment.

We have to express our concern that the Commission’s initial decision and order on rehearing have sent a negative – and perhaps fatal – signal to the hoped-for data center industry in Maryland. The data center industry will presumably continue to locate to other states,<sup>2</sup> and with it the estimated hundreds of millions of dollars of tax revenue<sup>3</sup> that stood to benefit Marylanders and the Governor’s stated policy goals.

Please feel free to contact me if you have any questions about this matter.

Respectfully submitted,

/s/

Michael C. Powell

cc: Brock L. Miller, Assistant People’s Counsel, OPC  
Michael A. Dean, Assistant Staff Counsel, PSC  
Steven M. Talson, Assistant Attorney General, PPRP

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<sup>2</sup> Data centers in other states are not subject to the Commission’s renewable energy offset requirement. Thus, from a climate change perspective, it would be preferable for data centers to be located in Maryland and subject to these requirements. Unfortunately, imposing the full CPCN requirement on these facilities will likely result in them being built in other states without a similar mitigation requirement.

<sup>3</sup> See, e.g., *The Economic Impact of a Data Center Development in Frederick County*, Sage Policy Group (October 2023); see also *Aligned Data Center Campus, Annual Fiscal Contribution to Frederick County, Maryland*, Mangum Economics (August 26, 2023)