

April 1, 2024

Environment & Transportation Committee  
Room 251  
House Office Building  
Annapolis, Maryland, 21401

**Public Testimony of Brookfield Renewable on SB 0837, An Act Concerning Deep Creek Lake – Lower Lake Levels – Requirements and Impact Study**

Dear Chairman Korman, Vice Chair Boyce, and Members of the Environment and Transportation Committee,

Brookfield Renewable respectfully submits these comments in opposition to SB 0837, which would require Brookfield Power Piney & Deep Creek LLC to lower the level of Deep Creek Lake for a period of at least four weeks each winter from 2024-2028. While Brookfield Renewable supports efforts to improve the health and safety of Maryland's waterways, we are concerned that this proposal fails to consider the merits of the existing processes and could have unintended consequences for communities and businesses in Garrett County and the state.

In Maryland, Brookfield Renewable's 20 MW Deep Creek hydropower facility provides carbon-free power, local tax revenues, recreational opportunities, and both direct and indirect jobs in Garrett County. Brookfield Renewable owns 1,441 MWs in PJM, has 120 employees in the territory and supports 460 indirect jobs across the region. It also pays more than \$48,000 in property taxes and up to \$40,000 in donations within Maryland annually, which provides critical funds for local schools, fire departments and public services. This bill will severely impact our operations and imposes risk on our Deep Creek facility and the benefits it provides to the community. We strongly oppose SB 837 for the following reasons:

**SB 837 creates a dangerous precedent for the clean energy industry in Maryland and conflicts with the state's laudable energy goals.**

While this bill has been represented as a local bill, its impacts are not limited Garrett County. Instead, it creates a precedent that could impact the state's transition to cleaner energy resources. Resources like the Deep Creek hydro facility are taking center stage in Maryland's efforts to

build a cleaner and more sustainable future. This committee has worked tirelessly to make those goals a reality. However, this bill will create regulatory uncertainty and risk for clean energy businesses looking to deploy these technologies in the state. It would open the door for any stakeholder to use legislation as a vehicle to substantially shift operating parameters for a clean energy resource in the middle of licenses previously issued by the state.

**SB 837 fails to meet its stated goal – the reduction of submerged aquatic vegetation (SAV).**

While we support efforts to preserve the health and safety of Deep Creek Lake, there is no evidence to suggest that lower lake levels will create that result. In February 2022, the Deep Creek Watershed Foundation released its three-year study outlining the water drawdown efficacy in reducing SAV and its implications. The study’s findings were inconclusive in terms of the efficacy of drawdowns.<sup>1</sup> In fact, for some SAV, the review found that mild drawdowns of this nature show less impact on SAV density and could have the opposite effect, potentially increasing macrophyte richness.<sup>2</sup> The study also found that “the timing and duration of drawdowns can negatively impact species by compressing life histories and changing food web structure”.<sup>3</sup> Specifically:

- Wild Celery makes up 20.13% (Argent, 2022, pg.3) of SAV on Deep Creek Lake and “is best left alone because of the benefit it offers to fish and wildlife species” (Argent, 2022, pg.6).
- Various species of Watermilfoil and Pondweed make up approximately 69% of the SAV population on Deep Creek Lake (Argent, 2022, pg.3), and these species were relatively unaffected or increased in biomass and frequency (Argent, 2022, pg.10).
- Mild drawdowns of 4.5 feet or less show less impact on density and potentially increase the population (Argent, 2022, pg. 10).

Since this review, there have been no material changes that would provide the rationale for legislation to unilaterally bypass robust permitting processes currently in existence. The

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<sup>1</sup> Argent, David. “Water Drawdown Efficacy and Implications.” The Deep Creek Watershed Foundation, February 2022.

<sup>2</sup> Ibid., at p.10

<sup>3</sup> Ibid., at p.18

Watershed Foundation itself found that only 15% of docks are impacted by the water levels at all.<sup>4</sup>

**SB 837 bypasses a robust stakeholder process to give one stakeholder group an outsized voice and the unreasonable ability to attempt to dictate how a clean energy resource in the state should operate.**

Brookfield Renewable currently holds a water appropriation permit with the Maryland Department of the Environment (MDE) that outlines our operational requirements. This review is conducted every 12 years and includes a process to balance all applicable stakeholder concerns. In the previous permit cycle, approximately 18 stakeholder groups weighed in and 62 members of the public attended meetings to provide input. The provisions in this bill could also result in possible deviations from requirements in that permit.

**In the past, Brookfield facilitated reasonable requests from Garrett County regarding the water levels.**

Most recently, Brookfield lowered the water level during the initial phase of the Arrowhead cove sediment dredging project. As noted by Garrett County, Brookfield was a “cooperating and valued partner in the Arrowhead Cove dredging project,”<sup>5</sup> and lowered the water levels in November 2023 following the county’s request and adequate analysis. While we welcome further discussions, the Legislature should defer these decisions to conclusions from robust stakeholder processes to ensure that all voices are heard, and all implications are thoroughly examined.

**SB 837 creates uncertain impacts on stakeholders upstream and downstream and the health of the regional grid during critical winter months.**

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<sup>4</sup> The Deep Creek Watershed Foundation, [Projects - DCWF \(deepcreekwatershedfoundation.org\)](https://www.deepcreekwatershedfoundation.org)

<sup>5</sup> Garrett County Government Department of Community Development, Arrowhead Cove Dredging Project, <https://www.garrettcounty.md.gov/community-development/watershed-management/arrowhead-cove-dredging-project>

The Legislature must also consider the potential consequences of lowering the water band, including impacts to downstream fish comfort requirements, recreational boating, and the white-water rafting community. This bill could harm our ability to uphold our regulatory and stakeholder obligations both upstream and downstream that must be balanced, in addition to providing an essential service in ensuring that clean, reliable power is delivered to homes and businesses throughout the region. As noted above, Brookfield is a significant owner and operator of hydro generation in PJM. Lowering the water band jeopardizes our ability to meet obligations to the electric grid and inject power during crucial winter months where the risk of outages and extreme weather events are becoming more frequent. In fact, as a result of Winter Storm Elliot in 2022, the Federal Energy Regulatory Commission (FERC) approved changes to the PJM capacity market that, among other things, improves the grid operator's modeling of reliability risk during the critical winter period.<sup>6</sup> Cold weather events during the winter are typically longer in duration and therefore have a higher potential of negatively impacting grid reliability.<sup>7</sup> During these winter events, PJM relies on resources with short start-up times and consistent run times, like our Deep Creek hydro-electric facility to meet demand during peak-hours.<sup>8</sup> Reducing Deep Creek's availability during PJM's peak winter period could have a negative impact on reliability in the Deep Creek area of PJM.

Finally, this bill could have costly impacts to a relatively small, economically sensitive facility in the state. By our estimate, this draw down requirement could result in approximately \$100,000 in net revenue losses annually.

In other words, this bill may result in i) risks to the current and future operations of the hydropower dam, which supports family-sustaining jobs, local taxes and recreation within the watershed and generates energy necessary to meet Maryland's laudable policy goals and ii) costly impacts to the recreation communities and the health of the grid. It would also circumvent a well-established stakeholder process and substantially shift operating parameters in the middle of licenses previously issued by the state without adequate evidence while ignoring study results

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<sup>6</sup> FERC Docket No. ER24-99-000, Order Accepting Tariff Revisions Subject to Condition, January 30, 2024.

<sup>7</sup> North American Electric Reliability Corporation, 2023-2024 Winter Reliability Assessment, November 2023.

<sup>8</sup> PJM Learning Center, How PJM Schedules Generation to Meet Demand, <https://learn.pjm.com/three-priorities/keeping-the-lights-on/how-pjm-schedules-generation-to-meet-demand>

that indicate there is no substantially positive benefit to the lake. The Legislature must avoid this outcome and the related consequences.

Thank you for your consideration of our comments. Please don't hesitate to contact me directly to discuss this issue further.

Sincerely,

A handwritten signature in black ink, appearing to read "Prusha Hasan", is written over a light blue horizontal line.

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