STATE OF MARYLAND

PUBLIC SERVICE COMMISSION

February 4, 2025

Chair C.T. Wilson
Economic Matters Committee
Room 231 House Office Building
Annapolis, MD 21401

RE: **HB 398 – Favorable with Amendments - Abundant Affordable Clean Energy - Procurement and Development (AACE Act)**

Dear Chair Wilson and Committee Members:

The Public Service Commission (the Commission) requests a favorable report for HB 398 with the amendments detailed in this testimony. The bill requires the Commission to establish and oversee multiple programs designed to enhance the deployment of energy storage, renewable energy, and clean energy sources in the State of Maryland. The Commission will be responsible for the evaluation of program effectiveness and costs, as well as oversight of competitive selection processes and awarding of various energy credits to participants. This legislation has the potential to lead to meaningful deployment of generation resources that align with the State's clean energy goals while also securing additional capacity to assist with meeting Maryland's energy needs. Further, the provisions of the bill dedicated to deploying energy storage are complementary to the storage procurement process required after the passage of HB 910 (2023). For these reasons, the Commission is supportive of the proposed legislation.

HB 398 fundamentally modifies the Commission's roles with respect to clean energy development in the State by requiring the Commission to procure generation resources that have traditionally been left to third-party developers. In this way, the Commission will become an active entity in the development of energy generation resources, similar to a power authority, rather than reviewing private sector projects for need and siting considerations. To achieve this, the Commission will need additional staff and consultants as explained in our fiscal note. The Commission notes that some of the expected timelines may be ambitious and thus there will need to be flexibility afforded to the Commission and developers on both review and development of projects. The Commission also notes that the proposed legislation does not address generation siting issues that exist within the State for renewable energy resources and these siting issues will remain. While concerns have been expressed as to the level of energy imported into the State, the General Assembly should be cognizant that the location of energy facilities within the State will raise location specific siting concerns. Historically, the siting of any energy facility has the potential to be a publicly contentious proceeding.

HB 398 fundamentally alters the financial structure for renewable energy, and how it is incentivized by the State through the creation of long-term contracts with the generators in lieu of the current renewable energy credit market. Consequently, there may be upward price pressure on customer bills if the proposed legislation leads to resource development that may not have been incentivized under the current incentive structure. The Commission does suggest some amendments to the new REC II and SREC II procurement process to provide policy guidance that helps govern the criteria for which these contracts should be awarded.

The Commission has worked cooperatively with the bill sponsor regarding potential amendments to the proposed legislation. The following are areas of focus to be addressed to improve the bill or provide highlights for the legislature's consideration.

Energy Storage

HB 398 amends § 7-207(b)(2) of the Public Utilities Article (PUA) to exempt front-of-the-meter transmission energy storage devices from needing a Certificate of Public Convenience and Necessity (CPCN) and furthermore § 7-1209(b) bestows the same rights to a selected [transmission connected] proposal that a generating system [station] would otherwise be granted through a CPCN process **if** the proposal is reviewed under an alternative process as determined by the Commission. A CPCN process is not currently required for a stand-alone energy storage device; a CPCN may be required for a solar+storage facility if the solar component exceeds is greater than 2 MW capacity.

§7–216.2(b) prescribes a goal for electric companies to procure 150 MWs of distribution–connected energy storage devices as determined by the Commission. Currently HB 398 applies to all electric companies including small cooperatives and municipal electric utilities. Currently, the Maryland Energy Storage Program 3 GW target by the 2033 PJM Delivery Year only applies to investor-owned utilities. The Commission recommends that § 7–216.2(b) mirror the Maryland Energy Storage Program, as these small cooperatives and municipal electric utilities may find HB 398 difficult to implement.

§ 7–216.2(c)(2) requires that on or before March 1, 2026, for electric company energy storage plans submitted by November 1, 2025, and on or before March 1, 2027, for energy storage plans submitted by November 1, 2026, the Commission must either approve each of the plans or approve them with modifications. The Commission requests that its approvals be extended to May 1, 2026 and May 1, 2027, respectively. These dates allow six months for Commission approval, which is a more realistic timeframe to conduct a litigated proceeding with discovery and to issue a final order.

The Commission notes that the timelines for the development of both distribution storage and transmission storage in the proposed legislation may be aggressive. To date, the electric companies have limited experience installing distribution energy storage under the Energy Storage Pilot Program required by § 7-216 and several of these pilot projects have incurred substantial delays. Transmission storage projects can take up to three years to become operational once an interconnection agreement is signed. Therefore, the target dates for

transmission energy storage devices to become operational within 18 months of Commission selection may be difficult to achieve.

Renewable Energy - Solar, Small Hydroelectric, and Onshore Wind

HB 398 amends §7-705, §7-709, §7-709.2, and §7-709.3 of the PUA, as well as creating §7-1214, §7-1215, §7-1216, §7-1217, §7-1218, §7-1219, §7-1220, and §7-1221 of the PUA to alter the current structure and paradigm of Maryland's Renewable Energy Portfolio Standard (RPS) Program as well as the procurement and retirement of Renewable Energy Credits (RECs) and the accumulation of Alternative Compliance Payments. HB 398 further establishes an escrow account for RECs. The Commission interprets the bill to allow them to be operated in similar manners: with an independent escrow account administrator and not directly by the Commission. However, to ensure there is no ambiguity, the Commission requests that the language under section 7–1214 be used throughout.

Amendments to §7-705 require that funds that accrue as a result of Alternative Compliance Payments (ACPs) which are made in lieu of purchasing RECs to satisfy RPS compliance will be placed into a new escrow account rather than the Strategic Energy Investment Fund (SEIF). The funds that accumulate in this escrow account will be distributed to electric companies to be refunded or credited to each distribution customer based on the customers electric supply consumption that is subject to the RPS. Returning ACP funds to customers via their distribution bill can help to offset future distribution bill increases that may occur.

§7-709.2 establishes a Utility-Scale Solar REC-II (SREC-II) program that allows Utility-Scale solar systems with a generating capacity over 5 Megawatts (MWs) to generate a specific type of SREC-II with an overall goal of providing incentives for the development of 3,000 MWs of Utility-Scale solar generation by 2035. The legislation authorizes the Commission to conduct a competitive procurement process to procure the SREC-IIs from qualifying systems at a price established via a bidding process. Maryland has never incentivized solar via an SREC procurement process; however, it is believed that this process could lead to the construction of utility-scale solar systems within the State. The Commission suggests language to affirm that its regulatory authority to issue Certificates of Public Convenience and Necessity (CPCN) is not in any way negated by the award of SREC-IIs, and that generation projects must still apply and receive a CPCN to begin construction.

§7-709.3 establishes a Small Solar Facilities Incentive Program with a stated goal of incentivizing the development of 3,000 MWs of small solar systems (community solar and net metering systems) by 2035 accomplished by the Commission setting a specific Administratively Determined Incentive value for SREC-IIs that can be generated by small solar systems participating in the program. The program requires that net bill impacts be limited to 5% of a customer's total bill which includes both distribution and commodity rates. This is a useful cost containment measure and may be considered for application to other provisions.

The creation of §7-1214, §7-1215, §7-1216, §7-1217, §7-1218, §7-1219, §7-1220, and §7-1221 authorizes the Commission to conduct a procurement process to procure SREC-IIs and REC-IIs

generated from Utility-Scale solar systems, small hydroelectric systems, and land-based wind systems, as well as establishing the general procedures and guidelines for executing the procurement. These procurement processes are largely equivalent to the process that exists for Maryland Offshore Wind projects and subsequent Offshore Wind RECs (ORECs) which generally involve the purchase and procurement of RECs by the State and the cost recovery of the RECs via distribution rate surcharges. The Commission has only conducted this type of procurement for Offshore Wind and pursuing this procurement process for an expanded amount of energy types is a shift in renewable energy policy and the renewable energy market for the State of Maryland. This arrangement leads to long-term developer guarantees that are not part of the current incentive structures. The full scope of this impact on the renewable energy market is unknown, but it is believed that it may lead to an increase in renewable energy deployment. The Commission notes that the current bill language does not include a concrete cost containment mechanism that limits costs borne by ratepayers. In addition, the Commission flags the lack of guidance on when SREC-II or REC-II contracts should be rejected as a concern and the legislature could consider adding a requirement for a cost effectiveness test or a bill impact cap to the procurement section to address this.

Amendments to §7-709 of the PUA establishes a requirement for utilities to procure RECs in the following specific order: first, ORECs, REC-IIs, and SREC-IIs; second, "certified" SRECs; and third, RECs other than ORECs, REC-IIs, SREC-IIs, and certified SRECs. The Commission will be required to work with PJM/GATs to be able to distinguish between the various different RECs. The Commission must establish this process to allow for the enforcement of this requirement (i.e. tracking multiple types of the same RECs, SREC-II, certified SREC, and SREC) to determine which RECs were retired and the specific timing and order in which they were retired.

The current net energy metering program along with the Utility Scale SREC-II program and the Small Solar Facilities Incentive Program would provide incentives to at least 9,000 MW of largely solar generation (which is 66% of Maryland's estimated 2024 peak demand of 13,682 MW). These three programs have cost implications for Maryland consumers as each program provides additional incentives to these facilities beyond the compensation that is received from simply participating in the energy marketplace.

Nuclear Energy

HB 398 establishes a process for the Commission to award zero emissions credits ("ZEC") to certain nuclear facilities under § 7–232, 7-232, 7-233, 7-234, and 7-235. Further, ZECs may not be received by a nuclear facility if the facility simultaneously receives nuclear power production credits under the Inflation Reduction Act of 2022.

The Commission notes that the process for awarding ZECs under § 7–233 does not set any standards except in the public interest, nor does it explicitly state the Commission can deny an application. The Commission requests that it be made clear that an application can be denied. The Commission also notes it may be appropriate to have supplementary standards in addition to the consideration of public interest when reviewing and approving an application. Finally, § 7–

234 proscribes the equation which sets the price for a zero–emission credit. A clearer definition of the formula would help the Commission implement the legislation.

The Public Service Commission appreciates the opportunity to provide testimony for your consideration for bill HB 398. We request a favorable report with support for the amendments detailed above. Please contact Christina Ochoa, Director of Legislative Affairs at christina.ochoa1@maryland.gov if you have any questions.

Sincerely,

Frederick H. Hoover, Chair
Maryland Public Service Commission