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

CARISSA RALBOVSKY
CHIEF OPERATING OFFICER

BILL NO.:	Senate Bill 316 – Abundant Affordable Clean Energy Act
COMMITTEE:	Education, Energy, and the Environment
HEARING DATE:	February 13, 2025
SPONSOR:	Senator Brooks
POSITION:	Informational

****

The Office of People's Counsel (OPC) respectfully offers the following informational comments on SB 316, the Abundant Affordable Clean Energy (AACE) Act. SB 316 aims to support the State's electric system and advance its clean energy goals by fast tracking the development of energy storage and clean, renewable energy. Specifically, the bill directs the Public Service Commission (PSC) to conduct procurements for distribution and transmission connected batteries, directs the PSC to conduct transmission planning related to Maryland's offshore wind goals, and creates new SREC-II and REC-II programs, which function similarly to the State's existing OREC program. The bill also creates a Zero Emissions Credit program for nuclear energy facilities.

Resource adequacy, or the ability to "keep the lights on," requires having enough electricity generation to serve peak demand along with enough room on the transmission system to reliably deliver the power to customers. Under conservative assumptions, Maryland has sufficient resource adequacy in the near term to meet the peak demands on its system. Specifically, sufficient transmission and generation resources currently exist to meet the resource adequacy needs for every part of the State through at least 2029.[1]

[1] *See* Office of People's Counsel Comments, Public Service Commission Admin Doc. No. PC66, Submission No. 31 (explaining results of technical analysis). Beyond 2029, additional planned transmission capacity is needed. PJM has already approved construction of transmission—scheduled to come online in 2028—to fill this need. *Id.*

For additional information and context, please see the attached FAQs, also available on OPC's website.

Many of the policy objectives of the AACE Act have the potential to decrease costs for Maryland ratepayers and enhance resource adequacy:

- Connecting additional distributed energy resources (DERs) —such as rooftop solar, community solar, and batteries—to the distribution grid can promote resource adequacy and decrease capacity costs. DERs connect to the distribution grid—not the transmission grid—and so are not impacted by the current delays in PJM's process for connecting generation at the transmission level.

- Energy storage specifically—whether connected to the transmission grid or the distribution grid—can decrease costs for consumers if (1) it is strategically deployed to decrease generation, transmission, or distribution costs or to generate wholesale market revenues, and (2) said decreased costs or market revenues exceed the costs that customers are required to pay to procure the storage.[2] Energy storage can "firm up" intermittent renewable generation by allowing energy from solar and wind to be stored and later deployed at times of peak demand, although energy storage devices can also, and often do, charge from gas plants. Energy storage can also help avoid costly transmission-system upgrades by pre-flowing energy over a transmission line and storing it on the other side of the line prior to times of peak demand.

- Robust transmission planning can ensure that least-cost transmission system configurations are built.

While these measures have the potential to decrease costs for Maryland ratepayers, locking in energy prices through ratepayer-backed, long-term procurements also has the potential to raise costs for ratepayers. Whether the AACE would increase or decrease costs for customers depends on whether there will be sustained high market prices and whether the solicitation processes proposed by the bill procure energy at prices that end up being below market rates. If the solicitation process locks in prices that are higher than actual market prices, customer bills will be higher than they otherwise would be. This

[2] The Public Service Commission's 2024 interim report to the General Assembly on the Energy Storage Pilot Program shows that of the eight projects approved by the Commission (several of which have yet to be placed in service) only one is projected to have benefits that exceed its costs. As of June 2024, the projects had *collectively* generated less than $50,000 in PJM wholesale market revenues.

risk for ratepayers exists if the facility is owned by a utility or a third party under a long-term, fixed-price arrangement.

If the new facility is owned by a utility—as the AACE Act only anticipates for a portion of distribution-connected storage devices—there is an additional risk for ratepayers. With utility ownership, ratepayers—rather than private investors—would be supporting and fully taking the risks of facility investments, including potential cost overruns. Moreover, as a general rule, utility ownership means customers must rely on regulation—not competition—to keep costs down. Stated otherwise, utility ownership of resources that can be provided competitively means not taking advantage of the opportunity to keep prices lower through competition. Alternatively, if the utility participates in actual competition to provide the resource, the utility has advantages of information and other ratepayer-funded resources (such as access to land) that its competitors don't have—undermining the efficacy of the competition. Finally, utilities have exclusive government monopolies and captive customers and are paid on a "cost plus return" basis. Even if the costs are higher than competitors' costs, the utility is generally entitled, as a matter of law, to recover its costs—including potential cost overruns—plus an opportunity to earn a return.

The competitive procurements contained in other parts of the bill could be more protective of utility customers, avoiding some—though not all—of the problems described above. Competitive procurements would not avoid locking in prices, which puts ratepayers at risk. Further, we are in a period of high wholesale future prices. Competitive procurements could lock in those high prices for years into the future, even though future prices could drop. And today's high capacity market prices could provide sufficient incentive for competitive entities to build generation—though not necessarily clean energy—without the set-prices created by the REC-II, SREC-II, and procurement policies in the AACE Act. To be more protective of utility customers, the legislation should require any such procurements to be tested for cost-effectiveness.

While there are risks inherent to locking in energy prices through ratepayer-backed long-term procurements, the AACE Act includes important provisions that aim to mitigate these risks, including:

- a 5 percent net ratepayer impact cap on the costs of the small-scale solar program;

- refunding 75 percent of data center franchise tax revenue and sales and use tax revenues to ratepayers; and

- refunding alternative compliance payments to ratepayers.

OPC appreciates these efforts to minimize the potential impact on residential customer bills, although we have not quantified the extent to which these measures would offset the risks associated with ratepayer-backed procurements. We also have not assessed how directing alternative compliance payments to ratepayers would impact other programs that help Maryland ratepayers, such as programs for low- and moderate-income households run by the Maryland Energy Administration. We recommend further mitigating the risks to ratepayers by requiring the PSC to find that each procurement is cost effective, meaning that projected benefits must be greater than projected costs, as determined by the PSC.

Finally, as a general matter, public policies funded through electricity rates are regressive. All utility customers—rich and poor alike—pay the same rates, unlike other funding mechanisms such as general funds that rely on progressive income taxes. These policies can increase costs for Maryland residents who already are having a hard time meeting their energy bills.

OPC appreciates the opportunity to provide comments on SB 316.