

Department of Legislative Services  
 Maryland General Assembly  
 2025 Session

FISCAL AND POLICY NOTE  
 First Reader

House Bill 1035 (The Speaker and Delegate Wilson)  
 Economic Matters

Public Utilities - Electricity Generation Planning - Procurement, Permitting, and Co-Location (Next Generation Energy Act)

This bill establishes a procurement process for a minimum of approximately 3,100 megawatts of dispatchable energy generation and a related temporary expedited approval process, establishes a ratepayer funded incentive for new nuclear energy, and generally prohibits behind-the-meter co-location unless an equivalent amount of additional power is created by the generating station. The Maryland Energy Administration (MEA), in coordination with the Public Service Commission (PSC) and the Department of Natural Resources (DNR), must pursue regional nuclear cost sharing agreements and agreements with federal agencies regarding the siting of small modular reactors. **The bill takes effect July 1, 2025. Provisions establishing an expedited dispatchable energy generation approval process terminate June 30, 2030.**

Fiscal Summary

**State Effect:** Special fund expenditures for PSC increase by at least \$1.8 million annually from FY 2026 through 2030; special fund revenues increase correspondingly. General/special fund expenditures for DNR increase by at least \$335,000 annually from FY 2026 through 2030. Special fund expenditures for MEA increase by up to \$150,000 in FY 2026. Transportation Trust Fund (TTF) expenditures increase by approximately \$150,000 in FY 2026. Special fund revenues for the Maryland Department of the Environment (MDE) increase from FY 2026 through 2030. Additional effects on State finances, not shown, are discussed below.

(in dollars)	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030
SF Revenue	\$1,795,700	\$1,885,600	\$1,923,800	\$1,963,800	\$2,004,000
SF Expenditure	\$2,095,700	\$1,885,600	\$1,923,800	\$1,963,800	\$2,004,000
GF/SF Exp.	\$335,000	\$377,700	\$390,000	\$403,000	\$415,900
Net Effect	(\$635,000)	(\$377,700)	(\$390,000)	(\$403,000)	(\$415,900)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

**Local Effect:** Local government finances and operations, including municipal electric utilities, are significantly affected, as discussed below.

**Small Business Effect:** Meaningful.

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## Analysis

**Bill Summary:** Broadly, the bill:

- establishes that is the policy of the State to encourage the development of nuclear power;
- requires MEA, in coordination with PSC and DNR, to pursue regional nuclear cost-sharing agreements with neighboring states and agreements with federal agencies regarding the siting of small modular reactors;
- generally, prohibits behind-the-meter co-location unless an equivalent amount of additional power is created by the generating station;
- establishes a procurement process for a minimum of approximately 3,100 megawatts of dispatchable energy generation capacity (with costs not recoverable through utility rates) and a related temporary expedited Certificate of Public Convenience and Necessity (CPCN) process;
- establishes an application process for nuclear energy procurement overseen by PSC and funded through a nonbypassable surcharge on customer bills; and
- establishes the General Assembly's support of the extension or renewal of the federal license for the Calvert Cliffs Nuclear Power Plant.

### *Policy of the State to Encourage Nuclear Power*

The General Assembly finds and declares that it is the policy of the State to encourage the development of clean, carbon-free nuclear power, including development through innovative designs.

### *Nuclear Energy Generation Stations – Regional Planning and Cost Sharing*

MEA, in coordination with PSC and DNR, must pursue (1) cost-sharing agreements with neighboring states in the PJM Interconnection (PJM) region to mitigate the risks of developing new nuclear energy generating stations and (2) agreements with federal agencies regarding the siting of small modular reactors on federal land or on or near federal facilities.

By December 1, 2026, MEA must report to the General Assembly on the status of the efforts made in pursuing the above agreements, including an assessment of any opportunities to participate with other states, federal agencies, and public or private partners in a multistate procurement of new nuclear energy technology.

MEA must also report on an evaluation and status of the nuclear energy procurement process established under the bill.

#### *Co-location – General Prohibition without Additional Generation to Meet Expected Load*

Generally, except as provided by federal law, an electricity supplier or other owner of a generating station may not enter into a contract for the provision of the direct supply of electricity to a commercial or industrial customer in a way that bypasses (1) interconnection with the electric transmission and distribution systems or (2) the distribution services of an electric company. However, an electricity supplier or other owner of a generating station may enter into such a contract for the provision of the direct supply of electricity to a “large load customer” if the generating station:

- (1) increases its generation output from existing levels to a level that meets 100% of the large load customer’s expected load demand or (2) creates new generation output at a level that meets 100% of the large load customer’s expected load demand; and
- obtains, if necessary, a CPCN for the construction of the generating station and any other standard siting approvals and permits related to the construction of a generating station.

“Large load customer” means a commercial or industrial customer with an expected load demand of at least 100 megawatts.

These provisions do not apply to the use of electricity from an on-site generating station that has been approved under the CPCN exemption process.

#### *Energy Procurement for Dispatchable Energy Generation*

##### *Generally*

The bill establishes a competitive solicitation, evaluation, and approval process for a minimum of 3,109 megawatts of dispatchable energy generation capacity, beginning no later than October 1, 2025. An approved dispatchable energy generation project is subject to an expedited CPCN process established under the bill through June 30, 2030. The costs related to the construction or operation of a dispatchable energy generation project approved under the bill may not be recovered through utility rates.

“Dispatchable energy generation” means a generating station or energy storage device, as defined in current law, with (1) an effective load carrying capability of at least 65%, as determined by PJM’s most recent Effective Load Carrying Capability Class Ratings; and (2) a lower greenhouse gas (GHG) emissions profile than coal or oil energy generating stations. “Effective load carrying capability” means the expected capacity contribution of an energy resource during PJM’s operating hours when there is high electricity demand and low resource output.

### *Determination of Capacities*

The combined total capacity of dispatchable energy generation projects approved under the bill’s procurement process must be more than the combined summer peak capacity profile of coal and oil energy generating stations in the State as outlined under Table 9 of PSC’s [\*Ten-Year Plan \(2024-2033\) of Electric Companies in Maryland\*](#) (i.e., 3,109 megawatts). However, the combined total capacity of *natural gas* dispatchable energy generation projects approved under the procurement process may not exceed that amount.

### *Procurement Timelines*

By October 1, 2025, PSC must issue one or more competitive solicitations for proposals for constructing or expanding dispatchable energy generation in the State. PSC must set the closing date for the solicitation period to be no sooner than 120 days after the request for proposals is issued. PSC may provide for an additional solicitation period if the 3,109-megawatt capacity minimum has not been met during the initial solicitation period. Unless extended by mutual consent of the parties, PSC must approve, conditionally approve, or deny a proposal submitted in response to a solicitation within 90 days after the close of the solicitation period.

### *Project Specifications*

PSC must include specifications in the solicitation that require each proposal for a dispatchable energy generation project to:

- for a natural gas energy generating station, ensure that the project can be converted to use only hydrogen or a zero-emissions biofuel as the energy source when the conversion is feasible, as determined by PSC;
- include a cost-benefit analysis, as specified, that must include detailed information and analysis of the impact of the project on income, employment, wages, taxes, utility rates, energy and capacity markets, businesses, the environment, and other benefits;

- include a detailed description of the timeline for construction of the project, including identifying the entity that has ownership or site control of the project site, queue position for PJM approval, and the ability to procure materials, including turbines and other pipeline materials;
- include a description of the location of the project site, including its proximity to existing transmission lines and rights-of-way and whether the project would be retrofitting a current or previous generating station site; and
- if applicable, include a description of (1) the type and amount of co-located energy generation from Tier 1 renewable sources, as defined in current law, that would be used with the project; (2) the amount of co-located energy storage that would be used with the project; (3) the use of carbon capture or sequestration technology to mitigate GHG emissions from the project; and (4) the amount of hydrogen or zero-emissions biofuels that the project will mix with natural gas for energy generation.

### *Evaluation and Approval*

The bill specifies the criteria that PSC must use to evaluate and compare proposed projects, such as (1) the lowest cost impact on ratepayers; (2) the extent to which the cost-benefit analysis demonstrates positive net economic, environmental, and health benefits to the State; (3) the timeline for construction of the project; (4) the location of the project site, including the proximity of the site to existing transmission lines and rights-of-way; (5) whether the project would be retrofitting a current or past generating station site; and (6) if applicable, the type of co-located Tier-1 energy generation, the amount of co-located energy storage, the use of carbon capture or sequestration technology, and the amount of hydrogen or zero-emissions biofuels that the project will mix with natural gas for energy generation. PSC may contract for the services of independent consultants and experts in evaluating and comparing a proposal for a dispatchable energy generation project.

### *Expedited Certificate of Public Convenience and Necessity*

As noted above, through June 30, 2030, a dispatchable energy generation project approved under the above process is subject to an expedited CPCN process established under the bill. An energy storage device that is part of an approved project may not be constructed without a CPCN.

Notwithstanding any other provision in § 7-207 of the Public Utilities Article, a CPCN for the construction of a generating station that is part of a proposal accepted by PSC during the solicitation period for dispatchable energy generation must be issued in accordance with the requirements below. A person may not construct a dispatchable energy generation project, which includes any associated infrastructure necessary to interconnect to the electric distribution system, without the applicable CPCN.

PSC must expedite all proceedings for CPCN review and approval and, if necessary, prioritize the proceedings over other matters. PSC, MDE, the Power Plant Research Program (PPRP) in DNR, and any other impacted State agency must waive or expedite any regulatory requirements or decisions to comply with the timeframes established for expedited CPCN applications. The established process timeline is as follows:

- Within 90 days after the submission of a CPCN application, PSC must verify that the generating station or energy storage device is a dispatchable energy generation project and notify the relevant entities under the standard CPCN process that the application is subject to expedited review.
- No later than 90 days after PSC's verification, a State agency must submit any recommended licensing conditions or testimony regarding the issuance of a CPCN.
- No later than six months after PSC's verification, PSC must take final action on the CPCN.

If a proposed site for a dispatchable energy generation project was previously or is currently used for electricity generation and has a higher GHG emission profile compared to the dispatchable energy generation project:

- the applicant is exempt from the requirements of Code of Maryland Regulations (COMAR) 20.79.01.04 and COMAR 20.79.01.05 (generally, pre-application requirements); and
- PSC must presume the proposed site is appropriate and consistent with the CPCN for a new or expanded generating station.

These provisions terminate June 30, 2030.

### *Nuclear Energy Procurement*

The bill establishes a minimum of three rounds of applications and related requirements for PSC approval of one or more proposed nuclear energy generation projects funded through electric distribution rates. If PSC approves proposals that demonstrate, based on the criteria specified in the bill, positive net economic, environmental, and health benefits to the State, PSC must approve orders to facilitate the financing of nuclear energy generation projects. Rate impacts cannot exceed PSC-determined amounts. PSC is authorized to contract for the services of independent consultants and experts, as specified.

### *Applications*

After the effective date of PSC regulations implementing the provisions described below, a person may submit an application to PSC for approval of a proposed nuclear energy

generation project, subject to specified requirements. PSC must adopt regulations, as specified, by July 1, 2027.

On receipt of an application, PSC must (1) open an application period of at least 90 days where other interested persons may submit applications for approval of a proposed nuclear energy generation project and (2) provide notice that PSC is accepting applications. PSC must provide at least two additional application periods before January 1, 2031, and may provide additional application periods. Unless extended by mutual consent of the parties, PSC must approve, conditionally approve, or deny an application within one year of the close of the application period.

The bill specifies what an application must include, such as (1) a detailed description and financial analysis; (2) a cost-benefit analysis, as specified, including an analysis of ratepayer and long-term energy market impacts; (3) a proposed long-term pricing schedule; (4) a decommissioning and waste storage plan; (5) a commitment to abide by a community benefit agreement, as further specified; (6) a description of the applicant's plan for engaging small businesses; and (7) if applicable, a statement that includes information on minority investors interviewed and whether they have invested in the project.

An applicant seeking investors must make serious, good-faith efforts to solicit and interview a reasonable number of minority investors and take other related actions. The Governor's Office of Small, Minority, and Women Business Affairs (GOSBA), in consultation with the Office of the Attorney General (OAG), must provide assistance to potential applications to satisfy the requirements.

### *Evaluation and Approval*

The bill specifies the criteria that PSC must use to evaluate and compare applications, such as (1) the lowest cost impact on ratepayers and potential changes in related electricity market prices; (2) the extent to which the cost-benefit analysis demonstrates positive net economic, environmental, and health benefits to the State; (3) the extent to which the plan for engaging small businesses meets the State's goal for small business contracting; (4) the extent to which the applicant's plan provides for various specified labor considerations; and (5) the extent to which the project would require transmission or distribution infrastructure improvements in the State.

Subject to specified processes and requirements, including that PSC must keep any determined amounts confidential, PSC may not approve an application unless:

- the project is connected to the electric distribution system serving the State;

- over the duration of the proposed long-term pricing schedule, projected net rate impacts for residential and nonresidential customers do not exceed amounts determined by PSC; and
- the price specified in the proposed long-term pricing schedule does not exceed an amount determined by PSC.

Additionally, PSC may not approve an order to facilitate the financing of a nuclear energy generation project unless the project is subject to a community benefit agreement, which has various specified requirements.

A PSC order approving a proposed project must (1) specify the long-term pricing schedule and its duration, up to 30 years; (2) provide that a payment may not be made under a long-term pricing schedule until electricity supply is generated from the project; (3) provide that ratepayers and the State must be held harmless for any cost overruns associated with the system; and (4) require that any debt issued in connection with the project include language specifying that the debt instrument does not establish a debt, an obligation, or a liability of the State. An order approving a project vests the owner with the right to receive payments according to the terms in the order.

The findings and evidence relied on by the General Assembly for the continuation of the State's Minority Business Enterprise (MBE) Program are incorporated into the bill. To the extent practicable and authorized by the U.S. Constitution, an applicant approved for a nuclear energy generation project must comply with the State's MBE Program. Within six months after the issuance of a PSC order approving a project, GOSBA, in consultation with OAG and the applicant, must establish a clear plan for setting reasonable and appropriate MBE goals, as specified.

### *Cost Recovery*

PSC must adopt regulations to establish the nuclear energy long-term pricing purchase obligation sufficiently in advance to allow an electric company to reflect nuclear energy long-term pricing costs as a nonbypassable surcharge paid by all distribution customers of the company. The surcharge must allow an electric company to recover all costs associated with the purchase of nuclear energy. PSC must also establish a related escrow account to facilitate the transfer of funds.

Each electric company must procure the required volume of nuclear energy from the escrow account to meet its obligations. In turn, for each long-term pricing schedule for which a project receives payment, the project must sell all energy, capacity, and ancillary services associated with the creation of the long-term pricing into the PJM markets and distribute the proceeds to electric companies to be refunded or credited to each distribution customer based on the customer's electricity consumption subject to the State Renewable



Energy Portfolio Standard. The bill also establishes a process to refund or credit customers in the event of overpayments due to insufficient nuclear energy being available.

A debt, an obligation, or a liability of a nuclear energy generation project or of an owner or operator of a nuclear energy generation project may not be considered a debt, an obligation, or a liability of the State.

### *Support for Calvert Cliffs License*

The General Assembly supports the extension or renewal of the Federal Nuclear Regulatory Commission license for the Calvert Cliffs Nuclear Power Plant's nuclear reactors in the years 2034 and 2036.

## **Current Law/Background:**

### *Public Service Commission*

#### *Generally*

PSC must supervise and regulate public service companies, which includes electric companies, subject to its jurisdiction to (1) ensure their operation in the interest of the public and (2) promote adequate, economical, and efficient delivery of utility services in the State without unjust discrimination. In doing so, PSC must consider the public safety, the economy of the State, the maintenance of fair and stable labor standards for affected workers, the conservation of natural resources, the preservation of environmental quality, the achievement of the State's climate commitments for reducing GHG emissions, and the protection of a public service company's infrastructure against cybersecurity threats. PSC must also enforce compliance with legal requirements by public service companies.

#### *Long-term Electricity Supply*

In order to meet long-term, anticipated demand in the State for standard offer service and other electricity supply, PSC may require or allow an investor-owned electric company to construct, acquire, or lease, and operate, its own generating facilities, and transmission facilities necessary to interconnect the generating facilities with the electric grid, subject to appropriate cost recovery.

#### *Power Plant Siting*

PSC is the lead agency for licensing the siting, construction, and operation of power plants and related facilities in the State through CPCNs. For general information on the CPCN process, see the **Appendix – Certificate of Public Convenience and Necessity**.

Under COMAR 20.79.01.07, unless otherwise directed by PSC, a decision on CPCN application for the construction of an electric generating station must be rendered within 365 days from the date a complete application is filed. A decision on an application for modification or an existing generating station must be made within 150 days.

### *Co-location*

Chapter 537 of 2024 required PSC to study and make recommendations on issues related to the utilization of end-use electricity customer load that is physically connected to the facilities of an existing or planned electric generation facility, also known as co-located load configuration or co-location. PSC was required to [report](#) its findings and recommendations to the Senate Committee on Education, Energy, and the Environment and the House Economic Matters Committee by December 15, 2024. PSC established Public Conference 61 to address these topics and requested comments from relevant stakeholders, which, along with several Federal Energy Regulatory Commission proceedings, informed the final report.

The report focuses on an emerging co-location arrangement in which a load co-locates with a generator that is interconnected to the grid but is situated behind the generator's meter. Under this arrangement, a load (such as a data center) sets up its facilities to offtake electricity directly from the generator instead of interconnecting directly with the electric grid. In this scenario, some or all of the generator's capacity could be reserved for the exclusive use of the co-located load, in which case it would not be considered available to serve the wider electric grid. The report labels this arrangement a "Type B" configuration, in contrast to a "Type A" configuration that still interconnects to the grid.

The report addresses the various impacts on reliability, rates, and regional energy market of co-location and concludes that "some forms of co-location represent novel approaches to connecting load to the grid. However, certain other co-location proposals have the potential to create immediate and significant challenges to the grid, impacting overall resource adequacy and rates charged to customers. These approaches may warrant changes in the [Public Utilities Article] and future consideration as variations on those approaches develop." Specific recommendations in the report include the following.

- The General Assembly should confirm in statute that the load in a co-location arrangement is a retail electric customer, addressing the arrangement as a retail electric sale subject to PSC jurisdiction.
- The General Assembly should clarify whether generators that engage in a "Type B" (generally, "behind-the-meter") co-location arrangement violate utility franchise agreements under the definition of electric company, or if they should be granted an exception and what the terms of that exception may be.

- The General Assembly should clarify the distinction between retail net metering and a Type-B co-location arrangement.
- The General Assembly should make clear whether the electric company, through which tariffs can be assigned, is the utility in whose territory the load resides. Additionally, or alternatively, the General Assembly should make clear whether any co-location party is an electric company or an electricity supplier, thereby requiring it to meet State renewable energy requirements.
- The General Assembly should require costs for programs like the Electric Universal Service Program and EmPOWER Maryland, as well as other costs that may be deemed appropriate, be allocated to large co-located loads.
- The General Assembly should ensure that there are rules in place to impose penalties on a co-location arrangement at which load unexpectedly comes onto the grid to preclude the risk of reliability challenges, along with related cybersecurity requirements.
- The General Assembly should define the degree of control the State should exercise over co-location arrangements in Maryland, such as a review process similar to CPCNs for determining whether each proposed co-location instance is in the public interest before it is allowed to proceed.
- Large co-located loads should be encouraged to bring new, clean energy generation with them.

### *Minority Business Enterprise Program*

The State's MBE Program requires that a statewide goal for MBE contract participation be established biennially through the regulatory process under the Administrative Procedure Act. The goal has been 29% since 2014. The Maryland Department of Transportation (MDOT) is designated in State regulations as the State's MBE certification agency. An MBE is a legal entity, other than a joint venture, that is:

- organized to engage in commercial transactions;
- at least 51% owned and controlled by one or more individuals who are socially and economically disadvantaged; and
- managed by, and the daily business operations of which are controlled by, one or more of the socially and economically disadvantaged individuals who own it.

**State Fiscal Effect:** Significant individual effects of the bill are discussed separately below. Effects on any agencies not discussed below are assumed to be generally minimal and/or absorbable within existing budgeted resources. The effect on State expenditures for electricity is discussed in the Additional Comments section below.

*Public Service Commission*

PSC advises that the bill creates new and incremental requirements that cannot be absorbed within existing resources. Based on PSC’s responsibilities under the bill, it requires eight staff to implement the various requirements, plus ongoing consultant technical assistance of \$1.0 million annually through at least fiscal 2030.

Accordingly, special fund expenditures for PSC increase by \$1.8 million in fiscal 2026, which assumes two staff necessary to begin implementing the dispatchable energy procurement process are hired July 1, 2025, and otherwise assumes a 90-day startup delay. In total, the estimate reflects the cost of hiring one program manager, three attorneys, two engineers, one climate policy and impact analyst, and one Public Utility Law Judge to handle the anticipated increase in regulatory workload. It includes salaries, fringe benefits, one-time start-up costs, ongoing operating expenses, and \$1.0 million in consultant costs.

Positions	8.0
Salaries and Fringe Benefits	\$716,659
Contractual Services	1,000,000
Other Operating Expenses	<u>79,003</u>
<b>Total FY 2026 PSC Expenditures</b>	<b>\$1,795,662</b>

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses and \$1.0 million in annual consultant costs.

Generally, PSC is funded through an assessment on the public service companies that it regulates. As a result, special fund revenues for PSC increase correspondingly from assessments imposed on public service companies.

*Office of People’s Counsel*

Special fund expenditures for the Office of People’s Counsel (OPC) for additional staff and/or consultants to participate in PSC proceedings on dispatchable energy and nuclear energy at PSC may increase beginning as early as fiscal 2026, although OPC advises that the need depends on the number of other matters requiring OPC’s resources when the proceedings take place. OPC is also funded through assessments on public service companies; thus, any additional special fund expenditures are funded through a corresponding increase in special fund revenues from assessments imposed on public service companies.

*Maryland Energy Administration*

MEA advises that it requires the assistance of consultants with its responsibilities under the bill related to nuclear cost-sharing and siting agreements and the associated reporting requirement, at a one-time cost of up to \$150,000. Costs are assumed to be paid for using the Strategic Energy Investment Fund (SEIF) in fiscal 2026.

Accordingly, special fund expenditures for MEA (specifically, SEIF) increase by up to \$150,000 in fiscal 2026.

*Department of Natural Resources*

DNR advises that its PPRP requires additional technical and legal staff as well as funding for consultants to meet anticipated workloads associated with additional CPCNs under the bill. Staff and consultants are needed through at least fiscal 2030.

In general, special funds from the Environmental Trust Fund are used to fund PPRP's operations. However, general funds may be required to cover part or all of the expenses that PPRP incurs under the bill because the department anticipates a special fund revenue shortfall.

Accordingly, general/special fund expenditures for DNR increase by \$335,017 in fiscal 2026, which accounts for a 90-day startup delay. This estimate reflects the cost of hiring two power plant siting assessors and one half-time attorney to assist with additional CPCN analyses. It includes salaries, fringe benefits, one-time start-up costs, ongoing operating expenses, and \$100,000 in consultant costs.

Positions	2.5
Salaries and Fringe Benefits	\$213,325
Contractual Services	100,000
Other Operating Expenses	<u>21,692</u>
<b>Total FY 2026 DNR Expenditures</b>	<b>\$335,017</b>

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. Future year expenditures also assume continued consultant costs of \$100,000 annually.

*Maryland Department of Transportation*

To comply with the bill's requirement that GOSBA establish a clear plan for setting MBE participation goals, MDOT (as the State's MBE certification agency) must conduct a disparity study to determine whether and how much a disparity exists in the use of MBEs

by nuclear power facilities. Although a new statewide disparity study is due to be completed in September 2025, it likely does not include the analysis necessary for this bill. To the extent that a separate disparity analysis must be completed, and based on costs for similar studies in the past, TTF expenditures likely increase by approximately \$150,000 for MDOT to conduct a disparity study on the use of MBEs by nuclear facilities. This estimate assumes those costs are incurred in fiscal 2026, although costs may be incurred in subsequent years.

#### *Maryland Department of the Environment*

While MDE did not indicate any additional costs under the bill, the agency advises that the expedited CPCN process creates operational effects. MDE is one of the State agencies that is required to waive or expedite any regulatory requirements or decisions to comply with the bill's 90-day agency evaluation period under that process. MDE advises that many requirements cannot be waived, especially those stemming from federal law, and, therefore, the applicant would require separate permits from MDE in addition to the expedited CPCN. The 90-day requirement is difficult to meet, in part, due to ensuring federal Clean Air and Clean Water Act requirements are met. Those processes involve coordination with the U.S. Environmental Protection Agency, federal land managers, and other entities and the time to final resolution of any issues is beyond MDE's control. Revenues from affected permits issued by MDE accrue to at least the Maryland Clean Air Fund and the Maryland Clean Water Fund. Accordingly, special fund revenues for MDE increase by an unknown, but likely modest, amount from fiscal 2026 through 2030.

#### *Limitations on Behind-the-meter Co-location*

As discussed in the PSC report above, the regulatory environment around large load co-location remains uncertain at the federal and state levels. Additionally, whether and to what extent the bill can be considered responsible for a co-location arrangement not occurring in the State is unknown. Therefore, the effect on State (and local) finances due to the bill's limitation on such arrangements is likewise unknown.

However, generally, any generating station and/or large load customer facility not constructed in the State, due to the bill, when it otherwise would have been, decreases State and local revenues due to foregone economic activity. Still, given the growing data center industry and its large power demands, the effect on State (and local) finances could be significant over time.

**Local Fiscal Effect:** The bill has multiple potential significant effects on local government operations and finances. Among the potential effects:

- The State's five municipal electric utilities are not exempt from the ratepayer-funded procurement mechanism for new nuclear energy generation and will be required to pay their proportional share of the cost. The five municipal electric utilities are located in Berlin (Worcester County), Easton (Talbot County), Hagerstown (Washington County), Thurmont (Frederick County), and Williamsport (Washington County).
- Local governments may experience operational effects to participate in CPCN proceedings and for other land use, environmental oversight, and zoning issues and may have additional infrastructure costs associated with approved projects.
- Local government finances are potentially affected by the bill's limitation on behind-the meter co-location arrangements, as discussed above.
- Local governments, as electric customers, are affected by any change in electricity rates, as discussed in the Additional Comments section below.

**Small Business Effect:** Small businesses involved in the construction and operation of energy generating stations benefit from significant new capacity additions over the next several years. Additionally, all small businesses, and particularly small businesses with significant electricity use, are affected by any change in electricity rates, as discussed in the Additional Comments section below.

**Additional Comments:** In the near-term, the bill appears to put downward pressure on electricity rates through the dispatchable energy procurement process. More than 3,100 megawatts of new dispatchable capacity would likely alleviate, at least in part, energy constraints on the local region's electric grid. Costs related to the construction or operation of dispatchable energy projects are explicitly prohibited by the bill from being recovered through utility rates. Additionally, the bill limits certain co-location arrangements unless an equivalent amount of additional power is created by the generating station, further reducing potential energy constraints.

The bill also establishes a long-term ratepayer-funded procurement mechanism for new nuclear energy generation, subject to a limit determined by PSC. Costs associated with electric companies purchasing the nuclear energy will be recovered through a nonbypassable surcharge paid by all distribution customers – perhaps affected by regional cost-sharing. Any rate impacts do not become effective until any projects are constructed and producing power. Like dispatchable energy, approved nuclear projects are likely to alleviate, at least in part, energy constraints on the local region's electric grid, although the Department of Legislative Services cannot further advise on the long-term net effect.

In any case, the State, local governments, and all businesses, including small businesses, are affected by the potential significant change in electricity rates due to the bill.

## **Additional Information**

**Recent Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** SB 937 (The President and Senator Feldman) - Education, Energy, and the Environment.

**Information Source(s):** Public Service Commission; Department of Natural Resources; Maryland Department of Transportation; Maryland Energy Administration; Office of People's Counsel; Maryland Department of the Environment; Department of General Services; Maryland Department of Labor; Governor's Office of Small, Minority, and Women Business Affairs; Department of Commerce; Office of the Attorney General; Harford County; Department of Legislative Services

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## Appendix – Certificate of Public Convenience and Necessity

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### *General Overview*

The Public Service Commission (PSC) is the lead agency for licensing the siting, construction, and operation of power plants and related facilities in the State through Certificates of Public Convenience and Necessity (CPCN). The CPCN process is comprehensive and involves several other State agencies, including the Department of Natural Resources (and its Power Plant Research Program), and the Maryland Department of the Environment. Subject to limited exemptions described below, a person may not begin construction in the State of a generating station, overhead transmission line, or qualified generator lead line unless a CPCN is first obtained from PSC.

State law provides that a “generating station” excludes:

- a facility used for electricity production with a capacity of up to 2 megawatts that is installed with equipment that prevents the flow of electricity to the electric grid during time periods when the grid is out of service;
- a combination of two or more co-located or adjacent facilities used for electricity production from solar photovoltaic systems or specified eligible customer-generators that have a maximum cumulative capacity of 14 megawatts, including maximum individual capacities of 2 megawatts (subject to satisfying other requirements); and
- a facility, or a combination of two or more facilities, used for electricity production for the purpose of onsite emergency backup for critical infrastructure when service from the electric company is interrupted and conducting necessary test and maintenance operations (subject to satisfying other requirements).

The CPCN process, detailed further below, involves the notification of specified stakeholders, the holding of public hearings, the consideration of recommendations by State and local government entities, and the consideration of the project’s effects on various aspects of the State infrastructure, economy, and environment.

In December 2020, PSC initiated a rulemaking (RM 72) to revise regulations governing CPCNs for generating stations. Updated regulations became effective in September 2021. Among other changes, the regulations contain additional information requirements – to assist in project evaluation – and allow for electronic submission and distribution of application materials.

### *Notification Process*

Upon receipt of a CPCN application, PSC – or the CPCN applicant, if required by PSC – must immediately provide notice to specified recipients, including the executive and governing body of affected local governments, affected members of the General Assembly, and other interested persons. When providing the notice, PSC must also forward the CPCN application to each appropriate unit of State and local government for review, evaluation, and comment and to each member of the General Assembly who requests a copy.

### *Public Hearing and Comment*

PSC must provide an opportunity for public comment and hold a public hearing on a CPCN application in each county and municipality in which any portion of the construction of a generating station, overhead transmission line, or qualified generator lead line is proposed to be located. PSC must hold the hearing jointly with the governing body of the county or municipality and must provide weekly notice during the four weeks prior to the hearing, both in a newspaper and online, and must further coordinate with each local government to identify additional hearing notification options. PSC must ensure presentation and recommendations from each interested State unit and must allow representatives of each State unit to sit during the hearing of all parties. PSC must then allow each State unit 15 days after the conclusion of the hearing to modify the unit's initial recommendations.

### *Public Service Commission Considerations*

PSC must take final action on a CPCN application only after due consideration of (1) recommendations of the governing body of each county or municipality in which any portion of the project is proposed to be located; (2) various aspects of the State infrastructure, economy, and environment; and (3) the effect of climate change on the project. For example, PSC must consider the effect of the project on the stability and reliability of the electric system and, when applicable, air and water pollution. There are additional considerations specifically for a generating station or an overhead transmission line. For example, PSC must consider the impact of a generating station on the quantity of annual and long-term statewide greenhouse gas emissions and must consider alternative routes and related costs for the construction of a new overhead transmission line.

### *Generating Station Exemptions*

There are three general conditions under which a person constructing a generating station may apply to PSC for an exemption from the CPCN requirement:

- the facility is designed to provide onsite generated electricity, the capacity is up to 70 megawatts, and the excess electricity can be sold only on the wholesale market pursuant to a specified agreement with the local electric company;
- at least 10% of the electricity generated is consumed onsite, the capacity is up to 25 megawatts, and the excess electricity is sold on the wholesale market pursuant to a specified agreement with the local electric company; or
- the facility is wind-powered and land-based, the capacity is up to 70 megawatts, and the facility is no closer than a PSC-determined distance from the Patuxent River Naval Air Station, among other requirements.

However, PSC must require a person who is exempted from the CPCN requirement to obtain approval from the commission before the person may construct a generating station as described above. The application must contain specified information that PSC requires, including proof of compliance with all applicable requirements of the independent system operator.