



February 16, 2023

112 West Street
Annapolis, MD 21401

Support with Amendments – House Bill 513- Investor-Owned-Utilities-Prevailing Wage Enforcement

Potomac Electric Power Company (Pepco) and Delmarva Power & Light Company (Delmarva Power) support with amendments **House Bill 513- Investor-Owned-Utilities-Prevailing Wage Enforcement**. As it relates to electric companies, House Bill 513 authorizes the Public Service Commission (PSC) to enforce certain prevailing wage requirements for contractors and subcontractors working on projects involving traffic control activities related to underground gas or electric infrastructure of an investor-owned gas company, electric company, or gas and electric company. The bill also clarifies that the prevailing wage rate applicable to investor-owned utility contractors and subcontractors shall be determined solely by the Department of Labor.

Public Utilities Article (PUA) § 5-305 sets forth that utilities shall require their contractors or subcontractors pay their employees the prevailing wage determined by the Commissioner of Labor and Industry for projects involving construction, reconstruction, installation, demolition, restoration, or alteration of any underground gas or electric infrastructure of the utility, and any related traffic control activities (“covered projects”). Pepco and Delmarva Power have sent notice of this requirement to its contractors and have incorporated into our standard contractual terms and conditions a requirement that contractors and their subcontractors pay their employees in accordance with applicable law, which would include the prevailing wage for their employees working on covered projects. We believe the Department of Labor is the appropriate agency to regulate and enforce prevailing wage laws.

It is through the contracting mechanism that Pepco and Delmarva Power set requirements for contractor compliance with not only the prevailing wage law, but all laws (e.g., environmental, health and safety such as OSHA, labor and employment such as anti-discrimination, privacy) applicable to covered projects. While the legislation does not specify the level of enforcement, requiring the PSC to monitor utility compliance with the prevailing wage law would essentially shift to the Commission the enforcement responsibility of private contractual terms and conditions between utilities and their contractors, as well as enforcement of labor laws, which are already subject to enforcement by the Division of Labor and Industry. Additionally, such shift would result in utilities being responsible for contractors’ and subcontractors’ compliance in a way that challenges the fundamental nature of separate and unaffiliated corporate entities.

In late October 2022, the Baltimore-Washington Construction and Public Employees Laborers’ District Council (BWLDC) requested that the PSC adopt a rule or standing order to enable them to monitor compliance with the prevailing wage provisions of PUA § 5-305. The request would have required the utilities to take certain compliance actions, such as collecting regular contractor and subcontractor payroll records and filing annual compliance reports with the PSC. Notwithstanding the lack of prevailing wage schedules for utilities, the PSC observed that utilities have an appropriate enforcement mechanism grounded in contract law, where violation of this and other applicable laws constitute a breach of contract, resulting in liability to the affected employee(s). However, the PSC did direct each utility to file an affidavit

by March 1, 2023, acknowledging its prevailing wage obligation and explaining how the utility will comply with the law. Pepco and Delmarva Power will submit that affidavit by the deadline imposed by the PSC.

While House Bill 513 does not specify what level of enforcement is envisioned, shifting the enforcement responsibility to the PSC is particularly concerning at a time when, as demonstrated by the initiation of Public Conference 57 – Modernizing Commission Staffing and Resources, where the Commission has acknowledged increasing demands upon its personnel from new energy and environmental initiatives and is seeking ways to use its current resources most efficiently and effectively. The idea of the PSC enforcing compliance with the prevailing wage law represents a problematic first step that ultimately could result in the expectation that the PSC enforce through its oversight of the utilities, not only the prevailing wage law, but the myriad of laws applicable to the utility business in which other stakeholders may have an interest.

For the reasons stated above, as currently written, Pepco and Delmarva Power have concerns as to how some of the provisions of the legislation would be implemented. Additionally, we feel it is unnecessary and would burden the PSC resources by inappropriately shifting enforcement of labor matters and private contractual matters to the Commission. We believe the Department of Labor is the appropriate agency for the regulation and enforcement of the prevailing wage laws. We suggest adding the amendment listed below to assign this responsibility more appropriately.

Pepco and Delmarva Power understand that House Bill 513 is well-intentioned and if the Committee is inclined to pursue this legislation, we respectfully ask to continue conversations with the bill sponsor and all stakeholders involved. Pepco and Delmarva Power respectfully request a favorable report only with the attached amendments on House Bill 513.

Contact:

Anne Klase
Senior Manager, State Affairs
240-472-6641
Annek.klase@exeloncorp.com

Katie Lanzarotto
Manager, State Affairs
202-428-1309
Kathryn.lanzarotto@exeloncorp.com

Requested Amendment

AMENDMENT TO HOUSE BILL 513
(First Reading File Bill)

AMENDMENT NO. 1

On page 2, in line 3, strike “COMMISSION” and substitute “**DEPARTMENT OF LABOR**”

Interlineated AMENDMENT NO. 1:

(C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE ~~COMMISSION~~ **DEPARTMENT OF LABOR** SHALL ENFORCE THE REQUIREMENT UNDER SUBSECTION (B) OF THIS SECTION FOR CONTRACTORS AND SUBCONTRACTORS TO PAY EMPLOYEES NOT LESS THAN THE PREVAILING WAGE RATE DETERMINED SOLELY BY THE COMMISSIONER OF LABOR AND INDUSTRY UNDER TITLE 17, SUBTITLE 2 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.