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PUBLIC SERVICE COMMISSION

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

RE: HB 1035 – Favorable with Amendments – Electricity Generation Planning – Procurement, Permitting and Co-Location (Next Generation Energy Act)

Dear Chair Wilson and Committee Members:

The Public Service Commission (the Commission) requests a favorable report for HB 1035 with the amendments detailed in this testimony. The Commission supports the intent of the proposed legislation to increase generation deployment within the state and to provide ratepayer protections from negative outcomes that can occur from co-locating with existing generation.

HB 1035 may lead to meaningful deployment of generation resources to help secure additional capacity to assist with meeting Maryland's energy needs. The dispatchable generation proposal is a novel approach that seeks to incentivize new generation without financial guarantee from ratepayers by instead decreasing the time and hurdles associated with receiving a certificate of public necessity and convenience ("CPCN"). Since the generators will not receive financial guarantees, the Commission suggests amendments that still provide regulatory certainty in a single year but minimize the impacts to the CPCN process. This could attract generation to the State without imposing a financial obligation on ratepayers by providing certainty on regulatory review.

HB 1035 further modifies the Commission's role with respect to clean energy development in the State by requiring the Commission to procure nuclear generation resources in lieu of leaving the entire transaction to third-party developers. This modified role resembles the Commission's role in previous offshore wind solicitations. The Commission notes that there is the possibility of upward price pressure on customers' bills to incentivize nuclear power, but this impact may be negated depending upon how any new generation interacts with the electricity power markets. It is important to note that there is some financial risk when entering into any long-term agreements with third party merchant generators.

HB 1035 actively expedites the CPCN process for dispatchable generation (with potential waivers) and provides for the solicitation of nuclear energy. 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. The Commission seeks amendments to facilitate the goals of the proposed legislation while attempting to minimize impacts to the CPCN process.

To achieve the elements of HB 1035 related to dispatchable generation and nuclear procurement, the Commission will need additional resources as explained in our fiscal note. Finally, the Commission seeks amendments to the co-location section to clarify the Commission's and State's jurisdiction over such arrangements to avoid legal and regulatory issues at a later date.

The Commission looks forward to working cooperatively with the bill sponsor regarding potential amendments to the proposed legislation. The following are areas of focus to provide highlights for the legislature's consideration.

Co-Location

§ 7-506.1 establishes a prohibition on a commercial or industrial customer with capacity below 100 MW from entering a contract for the provision of direct supply of electricity to their facilities from an electricity supplier or other owner of a generating station that bypasses the transmission and distribution system or distribution service of an electric company. A commercial or industrial customer above 100 MW can enter into such arrangements, provided that the output from the existing generation is increased or new generation is developed to cover 100 percent of the customer's load.

The Commission interprets the above provision to control the type of customer that can enter into one form of a "co-location" arrangement in which a customer directly receives electricity from a generator and does not directly interconnect with the bulk power grid. The Commission provided a report to the legislature on this issue as required by SB1 (2024).¹ In the report, the Commission recommended modification of the existing statute to affirm that loads under this arrangement are retail loads and to clarify how such arrangements interact with utility franchises.² As HB 1035 seeks to allow co-location in certain instances, the Commission requests that the legislature address the statute clarifications sought in the report and provide policy guidance on which aspects of Commission and State rules, programs, and costs (that currently apply to retail loads) should apply to permitted co-located loads as established in the bill. This will help avoid potential regulatory and legal uncertainty with these arrangements in the future. Additionally, as worded, the legislation has the potential to impact other forms of co-location such as microgrids, where loads under 100 MW may seek to be off the grid self-sufficiently but would now be precluded. The legislature could consider amendments to specify the situations when the prohibitions in the statute should come into effect. The Commission also seeks technical amendments to minimize interpretation regarding applicability of the statute depending upon generation and load configuration.

Dispatchable Generation and Expedited CPCN Process

HB 1035 requires the Commission to conduct a procurement-style process for dispatchable generation in 90 days after a 120-day solicitation period to determine if it is appropriate for the dispatchable generation to pursue an expedited 9-month CPCN process. During the 90 days, the Commission must examine the dispatchable generation proposals and consider the cost and benefits, time to come to operation, and location of the proposals to determine if the proposed generation should be eligible for an expedited CPCN (§ 7-1204 and § 7-1205). The 9-month expedited CPCN requires the Commission to prioritize these CPCNs over other matters and for state agencies to expedite or waive any regulatory requirements or decisions to comply with the 9-month CPCN timeline (§ 7-207.4).

¹ Report on Co-Location, Maryland Public Service Commission, December 18, 2024. https://www.psc.state.md.us/wp-content/uploads/SB1-MD-PSC-Report-on-Co-location-V4_20241217.pdf

² *Ibid.* pp. 14 – 17 and Appendix F.

The CPCN process can be a contentious proceeding but is a critical juncture when balancing between the allowance for important infrastructure development and ensuring that negative externalities associated with the infrastructure are studied and potentially mitigated. Because there is no financial guarantee being given to generators by ratepayers or the State, most or all of the 90 days following the solicitation period could be subsumed into the CPCN review process period to help avoid the need for expediting or waiving CPCN requirements, while providing a guaranteed review and decision timeline to developers. The legislature could still retain some or all of the testing parameters under § 7-1204 and § 7-1205 if there are specific CPCN waivers that should be granted as a matter of policy (e.g. such as those under § 7-207.4 (F) for modified or new generation at existing sites).

Should the legislature decide to adopt the structure above, the Commission can provide input on specific amendments. Should the structure remain as introduced, the Commission requests technical and operational amendments to prevent misinterpretation of the legislature's intent and allow limited flexibility. These would focus on the definition of dispatchable energy generation and its consistent use in the bill, flexibility for good cause extensions of deadlines, clarification that an award from the solicitation is not a guarantee of CPCN approval, the factors in determining CPCN approval and the waiver of regulations, and guidance regarding the timing of generators' conversions to emissions neutral fuel sources.

Energy storage CPCN

§ 7-207(b)(1)(i)(3) requires a person to obtain a CPCN for the construction of an energy storage device that is part of a proposal accepted by the Commission during a solicitation period under § 7-1202; the CPCN shall be issued in accordance with § 7-207.4. § 7-207.4(a)(4) defines an energy storage device as stated in § 7-216. Currently, storage devices do not require CPCNs, however, the Commission has established CPCN-like requirements in a recently completed RM85 rule making for certain projects. The Commission proposes that amendments be made to instead reflect the rules that have been developed through RM85. Otherwise, the Commission will need to update these RM85 regulations to address this bill's requirements

Nuclear Procurement

As with the dispatchable generation process, the Commission suggests the bill be modified so that the Commission has the ability to extend its review of applications for good cause and not allow one party to prevent the extension.

§ 7-1212 and § 7-1212(a)(1) require that any approved application must meet various rate impact criteria and be connected to the electric distribution system serving the State. Electric generating systems of this size typically do not directly connect to the electric distribution system but are connected through the transmission system. It may be beneficial for this bill to define an "electric distribution system" to avoid any confusion. Transmission circuits are typically recognized as those operating above 69,000 volts. Large power plants, such as nuclear units, are connected to transmission circuits.

§ 7-1215(a)(1) establishes that if the Commission approves a nuclear generation proposal, the Commission must issue an Order to facilitate the financing of nuclear generation projects. If the intent of the language is to authorize the Commission to establish securitization methods or otherwise create long-term ratepayer obligations for funding the projects, it would be useful to clarify the scope, duration,

and limits on ratepayer bill impacts. Alternatively, if the intent of the proposed legislation is simply to issue an order approving the long-term pricing schedule, as with offshore wind projects, then it may be useful for the legislation to explicitly state this.

§ 7-211 requires the Maryland Energy Administration, in coordination with the Commission and the Department of Natural Resources to pursue cost-sharing agreements with neighboring states in the PJM region to mitigate the risks of developing new nuclear energy generating stations; and agreements with Federal agencies regarding the siting of small modular reactors (“SMR”) on Federal land, or on or near Federal facilities, including military and national security installations. §7-2112(A)(1), requires a nuclear energy project approved by the Commission to be connected to the electric distribution system serving the state, essentially establishing a requirement that the project be in Maryland. The Commission suggests the legislature clarify whether Maryland can enter into cost-sharing agreements for nuclear energy generation projects located anywhere in the PJM region or adjacent to Maryland, where the project could reasonably have a substantial positive effect on the availability of energy supply in Maryland, or if the projects must be built in Maryland.

The Public Service Commission appreciates the opportunity to provide testimony for your consideration for bill HB 1035. 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,

A handwritten signature in blue ink that reads "Frederick H. Hoover". The signature is written in a cursive, flowing style.

Frederick H. Hoover, Chair
Maryland Public Service Commission