

February 28, 2025

**Chairman Brian J. Feldman
Education, Energy, and the Environment Committee
2 West Miller Senate Office Building
Annapolis, MD 21401**

**Chairman C.T. Wilson
House Economic Matters Committee
231 Taylor House Office Building
Annapolis, Maryland 21401**

RE: SB 937/ HB 1035 - Public Utilities - Electricity Generation Planning - Procurement, Permitting, and Co-Location (Next Generation Energy Act)

Constellation is the nation's leading energy supplier and largest owner and operator of nuclear energy in the country. Headquartered in Baltimore, Maryland, Constellation generates more clean energy than any other company in the U.S. In addition, Constellation is at the forefront of fueling the emerging data economy, including in its home state of Maryland, which is vital to protecting our nation's national security and driving economic and infrastructure growth. The bills in the leadership energy package that I address in my testimony -- SB 931/ HB 1036, SB 937/ HB 1035, and SB 909/ HB 1037 -- directly impact core elements of Constellation's business.

Study of Incentivizing New Generation through Utility Partnership [SB 931/ HB 1036]:

SB 931 and HB 1036 direct the Maryland Public Service Commission to conduct a study to establish a process by which the Commission may establish partnerships between electric companies and electricity suppliers for electricity generation projects. This study creates an unnecessary burden on the Commission and is improperly focused on only one potential solution that assumes utility ownership is necessary to address a perceived need for new generation. Other solutions including competitive procurements; the PJM market also must be considered, along with the comparative cost to consumers of the various alternatives. Utility solutions have historically proven to be the costliest to consumers, as the state is observing now, and commandeering monopoly utilities to invest in generating capacity will undermine competition from merchant developers and market-based investments. Utilities have not been involved in generation development for over two decades and have no internal resources, experience, or supply chains to support a build-out of new power plants.

The partnership study is also superfluous given the comprehensive study provisions contained in SB 909/ HB 1037, which is also part of the leadership package. The study provisions in SB 909/ HB 1037, among other things, direct the PSC to study the feasibility and efficacy of conducting competitive procurement processes, and "developing electricity procurement plans to ensure adequate, reliable, affordable, efficient, and environmentally sustainable electricity service

at the lowest total cost over time, taking into account any price stability benefits”. A study provision that spreads a wider net that could better lead to the most effective and cost-efficient mechanism to bring new resources online would be superior to the narrow study of a more costly utility partnership construct in proposed in SB 931/ HB 1036.

Solicitation for Fast-Track CPCN [SB 937/ HB 1035]:

Constellation applauds the Senate President and House Speaker for including in SB 937 and HB 1035 a new policy mechanism to incentivize new generation investment in Maryland that does not involve utilities re-entering the generation business or increasing rates for new generation. The solicitation provision for new generation leverages the existing competitive market by reducing barriers to investment through expedited permitting for select projects meeting specific requirements. This provision is an affordable and flexible solution to the state’s resource adequacy challenges by matching the existing investment-inducing market price signals with a commensurate regulatory signal reflected in fast-track permitting for new generation and the related gas and other infrastructure that will be required to serve a new facility. Notably, this solution ensures that competitive generators – and not monopoly utilities – continue to bear the risk of new generation investment, protecting consumers across the state. At a time when utility infrastructure costs and customer bills are skyrocketing, there should be no consideration of utilities re-entering the generation business to put even more costs on the backs of ratepayers. Constellation supports the fast-track permitting solicitation with minor clarifying amendments to make clear that the solicitation is indeed only for expedited permitting (and not any other purpose, such as utility participation and rate recovery) and to clarify that the expedited permitting required to facilitate new generation investment in Maryland includes, when applicable, any permitting for necessary gas infrastructure associated with a project.

New Nuclear Procurement [SB937/HB1035]:

Constellation is a leading participant in efforts around the country to promote and grow new nuclear development, and we are greatly encouraged by Maryland’s focus on nuclear energy as the commonsense solution to secure the clean, reliable and affordable generation that Maryland and the rest of the U.S desperately needs. While Constellation supports the concept of a new nuclear procurement in SB 937 and HB 1035, the proposed mechanism appears to be mirrored after the offshore wind procurement structure (the OREC Structure) that was enacted in 2013 that a decade later has not yet resulted in an operational project. Constellation has concerns with the use of this structure for new nuclear development and does not believe it will result in successful procurement. The length of time required to bring a nuclear project to fulfillment, the layers of permitting and licensing approvals, and the financing necessary to achieve commercial operations will not work in a construct where costs cannot be collected until the project is operational and recovery for costs exceeding initial budgets is expressly prohibited. Constellation is working at the federal level and across states to sort through these complex issues and looks forward to continued coordination with Maryland to both preserve our existing nuclear assets and construct a workable procurement structure to successfully achieve the development of new nuclear energy.

Ensuring the Continued Operation of Calvert Cliffs:

Regarding the preservation of existing nuclear, Constellation recommends an amendment that adopts the backstop zero-emission credit (ZEC) program proposed in SB 316/ HB 398, with clarifying changes to more directly align with the federal nuclear production credit that is found in Section 13105 of the Inflation Reduction Act of 2022 and codified in Section 45U of the Internal Revenue Code. The federal nuclear tax credit has stemmed the tide of retirements across the nuclear industry by providing a revenue floor that provides financial stability to the country's most abundant and reliable sources of clean energy. Like nuclear units in other states, the Calvert Cliffs Clean Energy Center qualifies for the federal tax credit until it expires at the end of 2032.

Calvert Cliffs is licensed by the Nuclear Regulatory Commission (NRC) to operate through 2034 and 2036. The regulatory process to renew NRC operating licenses must start five years prior to expiration of current licenses and, therefore, Constellation must take action to extend Calvert's operating life in 2029 as we are approaching the 2032 expiration of the federal tax credit. We also must plan and execute investments in Calvert to prepare the plant to operate reliably and safely over the life of the new 20-year NRC license. Given the 2032 expiration of the federal tax credit, Constellation will not have financial certainty around plant operations at the time these decisions must be made. The proposed Maryland ZEC program would provide a backstop to the federal tax credit program becoming unavailable, and the 2055 expiration of the Maryland ZEC program would match the end of extended 20-year license renewals for Calvert Cliffs. Consistent with SB 316/ HB 398, the proposed amendment incorporating the Maryland ZEC program will remove that post-2032 uncertainty and establish a policy that ensures Calvert's continued operation through 2055.

Protecting Investments in Maryland [SB 937/ HB 1035]:

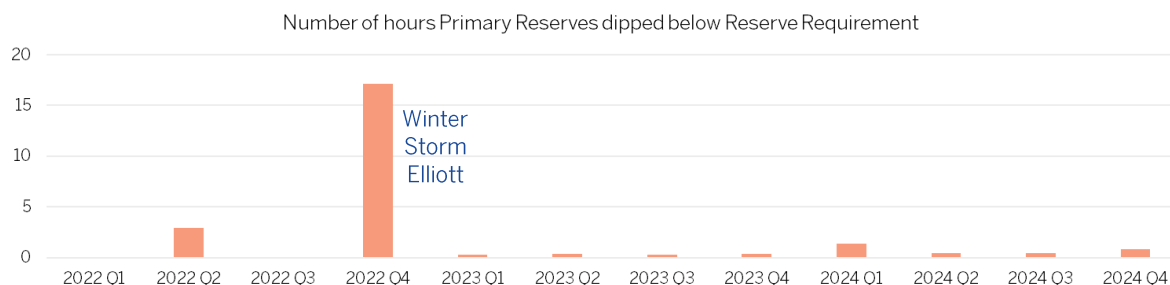
SB 937 and HB 1035 include a provision that would prohibit direct supply of electricity to a commercial and industrial customer in a way that bypasses interconnection with the electric transmission and distribution systems or distribution services of an electric company (aka a behind-the-meter, or BTM, configuration) except as provided by federal law or when meeting certain requirements. A direct supply arrangement would be permitted if the generator providing electricity to the BTM customer increases output by, or if the load creates new generation output at, 100% of the customer's expected demand.

Constellation is not aware of any new data center or other large load development in Maryland that is seeking to implement the BTM configuration targeted by this provision. However, there are large commercial and industrial customers across Maryland – like the Port of Baltimore, University of Maryland, and hospital systems – that have contracted with third parties for on-site BTM generation to reduce their consumption from the utility distribution systems. This reduction in grid use bypasses the distribution services of the electric companies for the portion of demand powered by the on-site generation. That is the entire point of the on-site generation, increasing reliability and efficiency for the customer by meeting power demands locally. The provision prohibiting BTM configurations in SB 937/ HB 1035 could up-end these arrangements for any customer over the 100 MW threshold.

Meanwhile, the target of the provision – data centers – would not be impacted because no data center is pursuing a BTM configuration Maryland. Data centers pursuing such configurations in other states have prompted proceedings at the Federal Energy Regulatory Commission (FERC)

to establish the rules of the road for grid-connected generators hosting BTM customers. Just last week FERC directed PJM and its transmission-owning utilities – including BGE and Pepco – to submit filings no later than March 24 addressing the rates, terms and conditions for BTM configurations on the transmission system. The provision in SB 937/ HB 1035 would have Maryland take an unnecessary and premature position that gets ahead of open issues playing out at the federal level to the potential detriment of other commercial and industrial customers in the state that are using BTM configurations today. It also would signal to developers seeking to invest billions in Maryland that their projects should go to other states, none of which have this type of requirement.

Moreover, there is no indication in the provision as to what the General Assembly is seeking to achieve through the restriction. To the extent the state is trying to reduce impacts on resource adequacy from the addition of large loads, that goal applies equally to any large load regardless of whether it connects to the power grid or uses a BTM configuration. Any policy to improve resource adequacy must be focused on the actual reliability needs of the power grid. Historical data shows that the resource adequacy risk faced by Maryland and other PJM states essentially boils down to having sufficient resources to meet customer demand in a handful of hours of system stress, usually during cold winter days when the natural gas system is constrained. Over the past few years, these times of system stress have been very limited, as evidenced by the small number of hours in which reserves in the PJM market fell below PJM’s requirements:



Any policy adopted by Maryland, whether related to BTM configurations, data centers, large loads, or any other customer arrangement, should be focused on ensuring that generating resources are online and serving the grid during these times of system stress. The large load provisions of SB 937/ HB 1035 would require over-development of generation in a way that is not tailored to any resource adequacy need and that discriminates against a particular type of customer configuration. The provision therefore should be removed.

Sincerely,

Maurice Simpson, Jr.

Maurice Simpson, Jr.

Senior Manager, State Government and Regulatory Affairs

maurice.simpson@constellation.com