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PUBLIC SERVICE COMMISSION

February 25, 2021

Chair Dereck E. Davis
House Economic Matters Committee
Room 231, House Office Building
Annapolis, MD 21401

RE: HB 613 – UNFAVORABLE – Prince George’s County – Coal- and Gas-Fired Generating Stations - Prohibitions

Dear Chair Davis and Committee Members:

I have reviewed House Bill 613, which concerns the construction and operation of certain fossil fuel-fired generating stations located in Prince George’s County, and I provide the information below for the Committee’s consideration and my recommendation for an unfavorable report. HB 613 prohibits the Maryland Public Service Commission from issuing a Certificate of Public Convenience and Necessity (“CPCN”) for the construction of a coal- or gas-fired generating station, if any part of that facility is proposed to be located in Prince George’s County. In addition, HB 613 targets existing coal- and gas-fueled generating stations that are currently operational in the County.

Under PUA § 7-207, a person may not begin construction of a generating station, overhead transmission line, or qualified generator lead line, without first obtaining a CPCN from the Commission. This statutory requirement does not distinguish between different types of generation and, subject to limited exceptions under PUA §§ 7-207.1 and 7-207.2, applies equally to all types of land-based generation greater than two megawatts in capacity, including solar voltaic systems. As affirmed by the Maryland Court of Appeals in *Board of County Commissioners of Washington County, Maryland v. Perennial Solar, LLC* (July 15, 2019), a CPCN issued by the Commission constitutes the final approval authority over the siting of these facilities. Without the requisite CPCN, HB 613 would prevent the construction of any future commercial-scale coal- or gas-fired generation in Prince George’s County. Currently, there are no pending CPCN applications that involve the construction of a fossil fuel-fired generating station anywhere in the State. Earlier this year, Mattawoman Energy, LLC, which was awarded a CPCN in 2015 to construct a planned 900 megawatt natural gas-fueled generating station in Brandywine, Maryland, filed notice of its decision to abandon the project, and the Commission canceled the CPCN on February 5, 2021.

HB 613, through its uncodified language, goes further to prohibit the continued operation of any coal- or gas-fired generating station located in Prince George’s County and for which the Commission has already issued a CPCN. As an emergency measure, this legislation would have an immediate effect on three existing fossil fuel-fired generating stations in the County. The PSEG Keys Energy Center is a 755 megawatt natural gas-fired facility that received a CPCN in 2014 and has been in operation since 2018. Brandywine Power (formerly Panda-Brandywine Power) is a 230

megawatt natural gas-fired facility that received a CPCN in 1994 and has been operational since 1996. The Chalk Point Generating Station has two coal-fired units and several oil- and gas-fired units, for a total combined capacity of 2,647 megawatts. The Chalk Point facility began service in 1964 and received a CPCN in 2005 for requested modifications. Chalk Point has announced plans to retire its coal units, but its oil and gas units will remain in operation.

Pursuant to HB 613, the above referenced operational facilities would be required to cease operations immediately and indefinitely on the effective date of the legislation. An indefinite ban on operations would force the plants to retirement prematurely. HB 613 does not, however, include any provision to compensate affected owners for their economic or property losses as a result of the ban. This could raise a potential takings issue—i.e., whether HB 613 would deny the affected facility owners the physical and economically viable use of their property, without just compensation, in violation of Article III of the Maryland Constitution and the Takings Clause under the Fifth Amendment to the U.S. Constitution. While this letter does not attempt to provide legal analysis or opinion, the Committee should be aware that HB 613 will have significant legal ramifications.

The immediate retirement or closure of three generating stations currently in operation, with a combined maximum output of 3.6 gigawatts of electricity, will likely pose a significant reliability issue for the electric grid. Ensuring adequate electricity supply is essential to avoid exposing Maryland residents and businesses to electric service disruptions, load shedding, and blackouts. If necessary, the U.S. Secretary of Energy is authorized under Section 202(c) of the Federal Power Act, 16 U.S.C. § 824a(c), and Section 301(b) of the Department of Energy Organization Act, 42 U.S.C. § 7151(b), to order the continued operation of these plants on an emergency basis to forestall a shortage of electricity, given the reduction in generation facilities. In the long-term, the energy and capacity output from these facilities will need to be replaced with alternative sources within or outside of the County. To the extent more transmission is needed to compensate for the loss in generation, utility customers could also see an increase in related charges on their electricity bills. If the Committee is inclined to proceed with House Bill 613, I recommend the Committee carefully consider the legal implications, reliability concerns, and ratepayer impacts that will arise from removing three generation resources from the State's electricity generation mix.

Thank you for the opportunity to provide testimony regarding House Bill 613. Please contact my Director of Legislative Affairs, Lisa Smith, at 410-336-6288, if you have any questions.

Sincerely,



Jason M. Stanek
Chairman