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**Testimony of Bryan Dunning
Senior Policy Analyst
Center for Progressive Reform**

**Before the Maryland House of Delegates' Environment and Transportation Committee:
Requesting an Unfavorable Report on HB1561: Electrical Generation and Storage –
Investor-Owned Electric Companies and Front-of-the-Meter Storage (Affordable Energy
Act)**

Dear Chairman Korman, Vice-Chair Guyton, and the members of the Environment and Transportation Committee,

Thank you for the opportunity to provide testimony on HB1561 on behalf of the Center for Progressive Reform (the Center). The Center is a research and advocacy organization that focuses on advancing good governance and achieving equitable public protections. Maryland — along with other 12 states and Washington, D.C. — is served by the Regional Transmission Organization (RTO) PJM. In recent years, these states have seen increased volatility in electric markets, contributing to major questions as to current and continued affordability of electric services through PJM. It is laudable that the legislative assembly has taken up several bills to address this issue, but HB1561 – authorizing Maryland's Electric Companies to rate base generation assets for the first time since 1999 – is not the solution this problem. As such, and for the reasons discussed below, the Center respectfully requests an **unfavorable** report on this bill.

HB1561 is Self-Executing, and even if it were not, it creates perverse incentives to utilities

HB1561's language presents the pathway to a return to utility-owned rate-based generation only if certain conditions are triggered. The conditions are twofold if either –

1. There is insufficient resource adequacy in the state; or,
2. A price stability event has occurred.

While only one of these conditions needs to be met to begin the path to utility owned rate-based generation, it important to note that *arguably*, both conditions have already been met.

Resource Adequacy

Resource adequacy is defined by the bill as a “measure of whether transmission lines have sufficient capacity and reserves to reliably balance electricity supply and demand within the State.” This is qualitative rather than quantitative, as no clear definition is given as to what constitutes “sufficient capacity and reserves.” That said, there is colorable arguable that this condition has already been triggered — either in December 2025, when the Base Residual Auction (BRA) (commonly referred to as the “capacity auction”) for years 2027 and 2028 saw PJM miss its RTO wide reliability target for the first time ever. Or, in June of 2024, when the capacity auction for years 2025 and 2026 saw the locational deliverability area of BGE constrained.

Even if the resource adequacy condition has not been met, there is a second concern, given that the Maryland electrical utilities own a substantial amount of the state’s grid (particularly those under the Exelon banner): The condition that allows grid owners to profit in instances of poor reliability creates fundamentally perverse incentives.

Price Stability

HB1561 is more specific in its definition of a “price stability event,” which is triggered when the clearing price in the PJM capacity market either has exceeded, or is expected to exceed, the net cost of new entry (CONE) for a generating facility that would be owned by a utility. As an example, the NET CONE across PJM in the 2027/2028 BRA was approximately \$289/MW-day. Even with the price collar in place, the clearing price was \$325/MW-day — exceeding the cost of new entry, and qualifying as a price stability event as defined in this bill.

Takeaways

Ultimately, all of this is a comparatively small issue with this bill — absent perhaps the perverse incentive presented to a utility that wishes to own rate-based generation as relates to grid reliability. However, it is important for legislators to understand that, while the conditional language in the bill suggests that such triggers are not certain, or only potential future events, the reality is that prior to the bill’s passage, at least one, if not both, of the conditions have already been met. This bill, if passed, would immediately require the Public Services Commission (MD PSC) to begin the process of allowing utilities to own rate-based generation. There would be no concrete difference between this bill and one that explicitly directs MD PSC to initiate that process.

The Conditions Impacting Electricity Prices are Ubiquitous

There are multiple barriers to entry for generation developers in the state of Maryland, and across the PJM RTO, and many of these are a function of PJM’s operational processes. These include issues with transmission planning and timely review of projects in the interconnection queue, the latter of which has contributed to rising costs, uncertainty, and delayed timelines. In the larger

economy, the supply chain for construction materials has been substantially impacted for the past six years, which only compounds those problems.

These barriers to entry are ubiquitous, applying to competitive market generators and utility generators alike. Allowing utilities to own rate-based generation in the state of Maryland again won't solve a single one of the issues I've described, but ratepayers could be forced to absorb cost overruns from utilities who would now own generation for the first time in 25 years.

HB1561 is Anti-Competitive and Exposes Marylanders to Higher Costs and Risks

Allowing Maryland Utilities to own rate-based generation again places developers of market-competitive generation at an economic disadvantage. Functionally, when a market competitor seeks to come online and sell electricity into the wholesale energy market (or to a discrete offtaker through a power purchase agreement), their project's construction, operations, and fuel costs must be carefully tailored to be market competitive. In other words, it's necessary for competitive generators to keep costs down. This is fundamentally the driving force behind Maryland's decision in the 1990s to shift to a reconstructed energy market and cease rate-based utility generation. The market fundamentals underpinning this decision have not changed in the last 27-odd years.

Currently, in the PJM footprint, as discussed above, developers face barriers of the interconnection queue, transmission costs, and supply chain costs. For cost-competitive generation projects, delays or surprise costs from transmission¹ or materials can lead to cost overruns that preclude a project from moving forward. Rate-based utility generation, which allows a guaranteed return on investment for capital investments, does not have this problem, as cost overruns can be absorbed by the utility as they get a guaranteed return on investment on those costs. This is a good thing for the utility, as it means greater profit, and it may be a "good" thing for PJM, as it provides an easier mechanism for ensuring projects come online — though it allows PJM to skirt the harder question of reforming their queue or engaging in meaningful long term transmission planning.

But rate-based utility generation is a bad thing for market-competitive generation developers in Maryland, as they are placed at a comparative economic disadvantage in securing financing for their projects; and it is a **terrible** thing for Maryland ratepayers, who are ultimately footing the bill for these projects. To provide an example of how cost overlays must be spread through to the public, one can look to Exelon's Brandon Shores Retirement Mitigation Project, which was [approved without a competitive process](#). From its initial price tag of \$796 million, the project has

¹ For instance, PJM's Resource Reliability Initiative, which selected 51 "shovel ready" projects to receive an expedited interconnection queue review, has seen approximately 40 percent of the approved projects (by generation, not by total project number) withdraw their interconnection applications after receiving the initial cost projection for transmission costs after PJM's phase 1 review. Although these projects were removed by the developer without comment as to reason, and understanding that correlation is not causation, the timing of these withdrawals indicates that transmission cost in PJM represents a substantial barrier to new generation.

ballooned through cost overruns to \$1.51 billion, all of it allocated to Maryland ratepayers. Absent other provisions of this bill, discussed below, allowing re-regulation will ask Maryland ratepayers to absorb the costs of non-competitive projects and exacerbate the affordability crisis in the state.

However, the negative impacts of HB1561 expand beyond the costs of rate-based projects to Maryland ratepayers. The bill specifically contains a provision that a utility may recover (with a return on interest) stranded assets. In short, if a utility elects to build a generation project that is functionally a “bridge to nowhere”, regardless of how improbable the long-term necessity of the project is, this bill guarantees that ratepayers are on the hook for the costs and then some. And the bill goes even further by allowing the utility to petition MD PSC for the right to recover these costs through a non-bypassable surcharge on their bill. Writ otherwise, once a utility gets approval for such a project, a ratepayer has no ability to offsetting their electric bill by other means — like investing in rooftop or community solar, or in home energy. Under these circumstances, if a ratepayer is connected to the grid, *they are paying*.

Shifting this risk from the developer to the public is of particular concern given uncertainty in load projections in PJM. Load has been steeply growing in the PJM footprint tied to the explosion of large load interconnection (functionally data center facilities). However, how much of the projected load will actually come online (let alone stay online over the lifespan of a generation project) is incredibly uncertain. After PJM’s December 2025 capacity auction for the 2027/2028 year, the RTO issued an [updated load](#) forecast only one month later, walking load growth back by approximately 4.5 GW. Allowing for spreading risk from the developer to the public is extremely dangerous to ratepayer’s ability to afford electricity given the volatility of load projections in PJM.

HB1561 opens the door to massive gas generation build out

Although HB1561 prioritizes the development of renewables, it leaves open for utilities the possibility of developing rate base thermal generation (i.e. fossil fuels and nuclear generation), including applying for an expedited CPCN process as a large capacity energy resource.

As noted, load growth in PJM is currently being driven by large load, which is subject to a great amount of volatility. PJM has recently filed its decisional letter regarding its “critical issue fast path” (CIFP) process towards meeting large load. The RTO intends to hold a reliability backstop auction at some point in the near future, and this has already led to a filing of an expedited interconnection track (EIT) for interconnection studies with FERC. Although details of the backstop auction are still being discussed, the EIT language clearly preferences facilities with 250 MW of unforced capacity. What all of this points to is functionally more thermal, or fossil fuel, generation, with some preference for project proposals that would pair with large load facilities.

The timing of this legislation allows utilities to return to owning rate-based generation in the state just as we seem poised for “boom time” for new generation to serve load (and perhaps BGE’s enthusiasm to [invest in public ad buys](#)). Coupled with the risk-shielding provisions of this legislation, the elements at play are all strongly suggestive that the utilities see this load spike as a potential for a major financial windfall – albeit a risky one, whose downsides they seek to ensure they are protected from. If the utilities and their holding companies wish to pursue this, they could do so through competitive markets, not as rate based entities with a guaranteed rate of return and investment risk spread to the general public. To do otherwise is fundamentally unfair to Maryland ratepayers, already burdened by high electric costs.²

Re-Regulation does not solve local generation issues and opens the door to greater issues

One argument for re-regulation often put forth is that it will foster “local” generation (i.e. instate) and potentially shift Maryland from being a net importer of electricity to something approximating import-neutral. One has only to look south to Virginia to see that, if this is a concern, re-regulation is not the answer. Since re-regulating Dominion Energy in 2007, Virginia has become the number one net importer of any state in the Union as of 2023. Further, in that time frame, Dominion has become [routinely one of the top five lobbyists](#) in the state of Virginia – often the top – by total expenditure. Opening the door to reregulation will not solve Maryland’s status as a net importer, but does open the door to substantially expanding the political clout of the utilities in the state.

Conclusion

Lowering bills and ensuring resource adequacy in the state of Maryland is an important task for the legislature to undertake, and there are a number of excellent bills in 2026 as well as in recent years that would advance this – notably, largely focused on reining in utility spending, or requiring competition or low-cost alternatives to traditional energy infrastructure. However, HB1561 will not achieve these goals, and would in fact have the effect of suppressing market competition and socializing costs and risks to Marylanders to the benefit of utility shareholders. For these reasons the Center respectfully requests an **unfavorable** reading of this bill.

² Much of which is driven not by commodity prices for electricity but spiking transmission and distribution costs – something the utilities do get a rate of return for in the state of Maryland, and have been increasing year over year at a rate [greater than inflation](#) for certain Maryland utilities – particularly those under the Exelon banner.